

Exploratory study on the  
application and possible revision of  
Regulation 261/2004

**Final report**

Report

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## Executive Summary

### Background

1. The liberalisation of the European air transport market has generated significant benefits for consumers, including a wider choice of air services, and intense price competition resulting in significantly lower fares. In order to limit any potential negative impacts that this might have on service quality, a number of measures have been taken at EU-level to protect air passengers. The most significant of these, Regulation 261/2004, introduced new rules on compensation and assistance in the event of denied boarding, cancellations, long delays and involuntary downgrading, and required Member States to establish national enforcement bodies (NEBs) and introduce dissuasive sanctions into national law.
2. There have been a number of significant developments since Regulation 261/2004 was introduced. In particular:
  - Rulings of the Court of Justice (particularly in the *Wallentin-Hermann*<sup>1</sup> and *Sturgeon and Bock*<sup>2</sup> cases) have had a significant impact on the interpretation of the Regulation.
  - The volcanic ash crisis in April 2010, when airspace in parts of Europe was closed for several days, demonstrated that the Regulation exposes airlines to significant (and unlimited) costs for assistance and rerouting. Some airlines incurred substantial costs.
  - Passenger rights legislation has been introduced in the rail, maritime and bus/coach sectors, defining rights and obligations that differ in some respects from those defined by Regulation 261/2004.
  - There have also been advances in passenger rights legislation in other jurisdictions, particularly the US.
3. The Commission recently issued a further Communication<sup>3</sup> on the application of the Regulation. It notes that significant efforts have been made to improve the operation of the Regulation, but identifies a number of ongoing issues, including inconsistencies in the interpretation of the Regulation, inconsistent and ineffective enforcement, and limited opportunities for passengers to obtain redress. It also identified number of short-term actions that the Commission and others could take to improve operation of the Regulation, but acknowledged that some of the problems relate to the wording and content of the Regulation and therefore cannot be addressed without revising it. Therefore, an impact assessment would be undertaken of potential revisions to the Regulation.
4. This report has been prepared by Steer Davies Gleave, with advice on legal issues provided by Clyde & Co, and support on research in central European Member

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<sup>1</sup> Case 549/07 Wallentin-Hermann v Alitalia

<sup>2</sup> Joined cases C-402/07 Sturgeon v Condor Flugdienst and C-432/07 Bock and Lepuschitz v Air France

<sup>3</sup> COM(2011) 174 final

States from Helios Technology Ltd. The conclusions of the study are the responsibility of Steer Davies Gleave alone.

### The current operation of the Regulation

5. We have assessed the **economic burden** Regulation 261/2004 imposes on air carriers, both in order to understand its current effects, and as a key input to the assessment of options for revisions to the Regulation. In accordance with the Commission's impact assessment guidance, the assessments of economic burden and of the policy options are undertaken on the basis that the Regulation is fully complied with; and where the Regulation contains grey zones of ambiguous meaning, we have had to make assumptions for what the current requirements are in order to assess the economic burden.
6. Our assessment focuses on the incremental economic burden caused by the Regulation, relative to a situation in which it did not exist, and therefore we needed to make assumptions regarding the policies airlines would apply in the absence of the Regulation. These are based on a review of EU air carriers' policies from before the Regulation was introduced, the policies of carriers based in third countries where the Regulation does not apply, information collected from airlines in bilateral interviews as to what their policies would theoretically be, and legal advice on the minimum acceptable policies necessary to comply with other EU legislation.
7. Our analysis indicates that, for a year with typical levels of flight disruption, Regulation 261/2004 imposes an incremental economic burden on airlines of between €821 and €1,007 million per year (central case estimate €907 million); equivalent to between 0.58% and 0.71% of airlines' total passenger revenue (central case scenario 0.64%). Approximately 12% of the incremental burden accounted for by the right to compensation for delays identified in the Sturgeon judgement. The Regulation does not require airlines to actively offer monetary compensation to the passengers who are entitled to it (except in cases of denied boarding), and we estimate that the economic burden would be almost three times this level if all passengers claimed the compensation to which they are theoretically entitled.
8. The main costs of implementing the Regulation do not vary in relation to the length of the journey or the fare paid. As a result, the costs of implementing the Regulation are a higher proportion of revenue for airlines operating shorter distances and with lower fares (particularly, regional and low cost carriers). Costs are particularly high in relation to revenue for airlines operating to remote regional airports which have higher rates of weather-related disruption.
9. Costs were significantly higher during 2010 due to the volcanic ash crisis and other exceptional disruption. If the Regulation had been fully complied with during the crisis, we estimate it would have increased airlines costs by approximately €960 million. However, the actual cost figures provided by airlines directly to this study are significantly lower than this.
10. In most cases these costs will, like any other airline operating cost, be passed on to passengers through higher fares. This may be more difficult for EU carriers on routes beyond the EU, as they are in competition with non-EU carriers, to whom

the Regulation only applies on flights from the EU. However, we estimate that the impact that this has is marginal, largely because the cost of compliance with the Regulation is a much lower proportion of airline revenue on long haul routes. It may also be harder to pass on costs where airlines compete directly with rail or other forms of surface transport; however, in practice this only impacts a small proportion of routes, and Regulation 1371/2007 and national rail passenger rights legislation imposes similar obligations on rail operators.

11. These cost estimates all assume **airlines fully comply** with the Regulation. In practice, none of the evidence on airline compliance is conclusive, but it all indicates that compliance is partial. In order to assess this, we have taken into account:
  - **Survey estimates:** Some consumer associations and NEBs have undertaken surveys of passengers' experiences, which all indicate widespread non-compliance, although the respondents to some surveys were self-selecting, so this may overstate the issue.
  - **Cost data:** The actual costs airlines say they have incurred to comply with the Regulation are much lower than our estimates of the costs necessary to comply. However, this is uncertain for several reasons, in particular due to a small sample size.
  - **Stakeholder views:** Most NEBs, consumer representatives and also other stakeholders such as airports pointed towards non-compliance being a significant issue.
12. We also asked airlines about their policies for several **areas not explicitly covered by the Regulation**, including policies on booking errors, tarmac delays, advance rescheduling of flights, non-sequential use of tickets, and loss or damage to mobility equipment. There were significant differences between carriers on these issues, and in some cases, consumer representatives and NEBs said airlines policies were less generous to the passenger than the airlines said they were.
13. Despite significant efforts being committed to the **enforcement of the Regulation**, our research indicates that there remains scope for improvement. Although some Member States have taken measures to address the issues with enforcement identified in the study we undertook for the Commission in 2009/10, in several others where we identified serious shortcomings the position has not improved. Often the problems we have identified arise from general legal or administrative issues in the State concerned, such as legal or procedural impediments to imposition of sanctions, difficulties in either imposing or collecting sanctions in relation to carriers not based in the State, or sanctions which are too low to provide an economic incentive for carriers to comply with the Regulation.
14. Enforcement is still based almost entirely on retrospective investigation of individual incidents, based on passenger complaints. Although many NEBs undertake inspections, these are in most cases limited to checking compliance with the requirements on information provision in Article 14. The complaints-based approach to enforcement is resource intensive and appears only to be partially effective.

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15. Given the limited effectiveness of some of the NEBs, and that many do not assist passengers with individual claims, it is not surprising that passengers have used **alternative processes to obtain redress**, usually simplified procedures for small claims in the civil courts. However, these alternative processes have a number of important weaknesses: the procedures can be slow, expensive and in some cases arbitrary; and in several Member States, there are no such processes or the maximum claim that can be made is set at a level which excludes some claims under the Regulation and other passenger rights legislation. Alternative dispute resolution (ADR) systems provide an alternative in a few States, but these also have significant weaknesses, and where the systems are not mandatory and binding, airlines may refuse to participate or do not follow the conclusions. The gap is being filled by commercial claims services in some States.
16. The factual research undertaken for this study confirms and where possible quantifies the problems with the Regulation that the Commission has identified:
- the Regulation contains grey zones of ambiguous meaning which can lead to divergent interpretations, which gives airlines an opportunity to try to interpret it in ways which minimise their obligations;
  - there is no clear guidance on a number of issues/situations which frequently arise but are not covered by the existing Regulation, particularly with regard to baggage procedures, and types of travel disruption which are not explicitly addressed within the Regulation;
  - the Regulation's obligations may lead to considerable economic burden on airlines, which is likely to be passed on to passengers in the form of higher fares;
  - the Regulation is not enforced effectively in all Member States; and
  - passengers means to obtain redress are limited and vary between States.
17. We discuss below the potential revisions to the Regulation that could address these issues.

### Conclusions of the option assessment

18. We have evaluated a large number of options, ranging from repeal of the Regulation through to options that would significantly extend its scope. All have been assessed for their consistency with the policy objectives defined by the Commission for this study, which are:
- Maintain and improve the standard of passenger protection, by ensuring that passengers receive adequate care and compensation in the event of travel disruption, are adequately protected in situations not already covered by the legislation, and are provided with effective means of redress.
  - Ensure legal certainty, by ensuring that the legislation is clear and that its requirements are explicit, passengers rights are equivalent in equivalent circumstances, enforcement achieves consistently high rates of compliance, and that the legislation is consistent with international law.
  - Ensure the economic burden is fair and proportionate, by ensuring that the total cost of compliance to the industry are reasonable and are shared

appropriately between entities, whilst minimising distortion of competition and operational costs.

19. Whilst some of the options can be clearly recommended or rejected for their clear consistency (or inconsistency) with these policy objectives, many of the options meet some of the policy objectives but conflict with others. We discuss below how the options could be combined into a series of coherent packages, but ultimately a political judgement will be necessary as to the tradeoff between objectives and hence the selection of these options and packages.

***Options relating to travel disruption***

20. We recommend several options relating to travel disruption which would clarify the Regulation:
- several key terms should be defined, including ‘flight’, ‘connecting flight’ and ‘delay’;
  - the exemption on payment of compensation in cases of extraordinary circumstances should be clarified, to list within the Regulation circumstances when compensation never would be payable, when it always would, and criteria to be followed in other cases;
  - the Regulation should clearly specify whether compensation is payable for long delays and if it is in what circumstances;
  - the Regulation should clarify whether re-routing on other carriers or surface transport is permitted and in what if any circumstances carriers are required to offer this;
  - the Regulation should clarify what rights passengers have in case of advance rescheduling, diversions and missed connections due to delays;
  - the Regulation should clarify when it applies to EU carriers flights to the EU from third countries; and
  - the Regulation should clarify that if carriers do not comply with their obligation to arrange care and assistance, passengers may do this themselves and reclaim reasonable costs from the carrier.
21. In some cases, where there are grey zones in the Regulation, it is not possible to clarify it without making a decision as to what carriers obligations should be - and in order to evaluate it, we have had to make assumptions for what their obligations currently are. Particularly important decisions need to be made in the following areas:
- With respect to the right to compensation for delays identified in the Sturgeon case, any policy decision will have to take into account the decision of the CJEU in the pending cases. If the right identified in Sturgeon is confirmed, this should be clearly defined within the text of the Regulation, to improve legal certainty.
  - With respect to the exemption on payment of compensation in cases of extraordinary circumstances, there may be a case for adopting a wider exemption than implied by the Wallentin judgement, as this implicitly requires carriers to pay compensation in some cases which are not really their responsibility. This option could be considered as an alternative to other

options which reduce the scope or level of compensation (discussed further below).

- With respect to any right to rerouting on other carriers, we recommend that there should be such a right but it should be limited to extreme cases where the carrier cannot provide rerouting on its own services within a reasonable period. Although it might appear in consumers' interests for there to be a more general right, it is not, because this would be much more onerous for new entrants operating a small proportion of flights than other carriers, and non-IATA carriers that do not have access to reciprocal rerouting agreements - and therefore it would create a barrier to entry and potential distortion of competition.
22. We have considered if some of the responsibility to provide care should be transferred to airports. Although airports could have some minimal obligations (including provision of information and free drinking water), and larger airports should be required to prepare contingency plans for mass disruption, we do not recommend any wider switch in responsibility to airports.
  23. We have also considered a number of other options which would change the obligations in the Regulation, for example to change when passengers should be entitled to care or rerouting. There is no clear case for or against these options because they are usually consistent with one but not both of the objectives of improving passenger protection and minimising economic burden. We suggest there would be a stronger case for an option which adopts a common threshold for the right to care provided at airports, regardless of flight length or the type of disruption; this does not have to imply an increase in economic burden, depending on what the threshold is set at, but would make the Regulation more consistent. Although a wider equalisation of passengers rights in different circumstances might be attractive for the same reasons these are likely to imply a substantial increase in the economic burden on carriers.
  24. The Regulation does not at present apply to non-EU carriers on flights to the EU. Many consumer representatives argued that this was unfair, and some airlines also said it potentially distorted competition. Extension to non-EU carriers may be considered extra-territorial, but there is precedent for this in the passenger rights' legislation in other countries. This would significantly increase the total economic burden on airlines although it might actually reduce the burden on EU airlines by removing a distortion of competition. Again, the study quantifies the impacts of this option but neither recommends nor does not recommend it, as it is a political decision whether it is appropriate or not.

### ***Options relating to baggage and additional fees***

25. Several of the submissions to the study argued that there should be common rules on (particularly cabin) baggage, and we have considered whether this could be standardised. However, it would be impossible to define a rule which would be suitable for all carriers - carriers with higher seating densities and load factors have to restrict cabin baggage more than other carriers, due to space constraints.
26. We have also considered options which would introduce standardised compensation for passengers in the event of delayed or lost baggage. However,



this would significantly increase costs for air carriers, and we have been advised it would conflict with the Montreal Convention, which defines carriers' liability for baggage. An alternative of requiring provision of an 'emergency pack' might avoid conflict with the Convention as it might be considered 'standardised assistance', but it is not clear how useful this would actually be for many passengers, and most consumer representatives did not support it for this reason.

27. To address potential consumer detriment and confusion resulting from the wide range of different rules and charges applied by different carriers, rather than attempting to standardise an alternative would be for a 'key facts' document to be provided by carriers and agents to passengers before confirming flight bookings. To facilitate comparisons between carriers this could use a standardised format and terms, to be defined by the Commission after consultation with the industry. There would be a one-off cost in implementing this but there would then be little or no ongoing cost. However, this option is not included in the proposed packages of revisions to the Regulation set out below, as it does not relate directly to travel disruption, and therefore would be considered (potentially with other options) in relation to price transparency.
28. As noted above, the Montreal Convention defines carriers' liability for baggage. Consumer representatives and some other stakeholders consider two aspects of the Convention to be particularly unfair for passengers, namely that mobility equipment is considered baggage and therefore subject to a limit on liability which may be much lower than its cost, and that the deadlines for complaints about damaged or delayed baggage are very short.
29. We have been advised that the limit on liability for mobility equipment could not be removed without amending the Convention. A similar result could however be achieved by a requirement for carriers to provide passengers, free of charge, with insurance against loss or damage to mobility equipment; they could be exempted from this requirement if they voluntarily waived the limit to their liability, as most (but not all) said that they already do. Similarly, it is also not possible to change the deadlines for complaints without amending the Convention, but to address this issue, the Regulation could require carriers to issue a Property Irregularity Report (PIR) or other similar claim form at the airport where passengers complain about delayed or damaged baggage, and then to accept this as a claim for the purposes of the Convention.

***Options relating to other consumer issues in air transport***

30. We also evaluated a number of general policy options which would improve consumer protection when travelling by air. In several cases, these options cover issues which could be considered to be existing requirements of other European consumer legislation, particularly Directive 93/13/EEC on unfair contract terms. Given the uniquely international and technically complex nature of air transport, and the inconsistency in enforcement and interpretation of this Directive in the sector, it may not be sufficient to rely on this alone. Therefore there could be an argument for clarifying and defining these rights more clearly in a Regulation. If this was done, it should include a definition of whether it is acceptable for carriers to cancel the rest of a booking if a passenger does not take one flight; requirements for carriers to correct clear mistakes on bookings free of charge; and

to allow a passenger to transfer a ticket or receive a credit if they cannot travel due to 'force majeure'.

31. We have also considered an option by which carriers would be required to have staff at the airports they serve who are responsible for, and authorised to, arrange the assistance required by the Regulation. However, we do not recommend this, because it would be a substantial economic burden, and it might be possible for carriers to meet the obligations in the Regulation at lower cost than this - for example, given the rapid growth of smartphone usage, in the future these could be used to provide information, and vouchers for refreshments and hotels, without staff necessarily being present. This would be facilitated by a requirement for travel agents to provide passengers' contact details to airlines, although for commercial reasons travel agents strongly oppose this. The Regulation could nonetheless clarify that airlines have an obligation to ensure that information is provided at the airport.

### *Options to reduce or transfer the economic burden*

32. Passengers may currently be entitled to receive significant amounts of compensation (potentially much more than they paid for the ticket) in cases which are not clearly within carriers' control and/or where the delay to their journey is only 2-3 hours. This may be considered disproportionate, and we have considered a number of options which would reduce carriers' liability to pay compensation. This could be achieved by either reducing the circumstances in which it is payable, increasing the time thresholds after which compensation is payable, or reducing the amount of compensation, either by reducing the absolute amounts or to make it a function of the ticket price as for other modes.
33. Any of these options would significantly reduce the amount of compensation which was payable and hence reduce the economic burden on carriers. Although more than one could be applied, to an extent they may be considered alternatives: there is a stronger argument for a high and fixed rate of compensation (as now) if payment is limited to circumstances which are more clearly within carriers' control and/or which cause substantial inconvenience to passengers. It is clearly a political decision which of these options is best, but in our view the stronger case is for flat rate compensation to be retained but with the amounts reduced. This would make compensation more proportionate whilst avoiding the practical problems that could arise from making compensation a function of the ticket price.
34. At present, Article 13 states that the Regulation does not prevent airlines claiming against responsible third parties, but in itself does not provide any such right. We have considered an option by which the economic burden could be shared between airlines and other responsible parties, principally ground handlers, airports and ANSPs. This would appear fair. However, ultimately ground handler, airport and ANSP costs must be recovered through charges levied on airlines, and therefore these would have to increase. There could also be substantial costs incurred disputing responsibility in some cases, and/or disputing whether the amounts claimed by airlines from third parties were reasonable. Therefore, this option might ultimately increase rather than reduce the economic burden, and for this reason we do not recommend it.

35. We have considered several options which would reduce carriers' liability for care costs in exceptional circumstances, as some of the equivalent Regulations in other sectors do. Carriers can budget for an expected level of disruption (for example due to occasional exceptional weather), and reflect the costs of this in fares. However, they clearly cannot budget for an event such as the volcanic ash crisis, and it is also not practical to insure against such an event. We recommend that there should be a limit, but only in exceptional cases of mass disruption defined narrowly so that an event such as volcanic ash would be covered but not other events such as occasional bad weather which a carrier should be able to budget for.
36. We also recommend that Member States should have the option of partially exempting, on a non-discriminatory basis, regional flights with small aircraft where the costs of complying with the Regulation would be disproportionate due to the specific operational characteristics of the route concerned, subject to a number of criteria and conditions.

***Options to improve enforcement and the operation of the Regulation***

37. The analysis undertaken for this study shows that despite significant resources being committed to it, in several Member States enforcement of the Regulation is still not effective, in part due to the widespread focus on enforcement solely through investigation of individual incidents. We therefore recommend that the emphasis should change towards an approach based on requiring airlines to put in place and then follow procedures sufficient to ensure that they comply with the Regulation effectively and consistently, including during periods of major disruption when this may be most challenging. We have considered also whether compliance with these procedures could become a license condition, but recommend it should not, for several reasons but primarily because it is not credible or proportionate that an operating license would be withdrawn for non-compliance. If it was, the carrier would become insolvent and potentially a large number of passengers would be stranded, potentially causing more consumer detriment than the infringements of the Regulation.
38. Some of the problems with enforcement arise from the fact that it is divided between NEBs for each State, and that some States have still not introduced effective enforcement procedures, partly due to constraints in national law. This might be best solved by transferring responsibility from Member States to a new EU-level agency, but this may be unrealistic given the cost. As an alternative, we recommend that the Commission could have a formal role to coordinate actions by NEBs, for example by requesting investigations (E3.2), and NEBs should report on their activities to it.
39. We also recommend some minor changes be made to the Regulation, to strengthen the term on sanctions being dissuasive, require airlines to provide up-to-date contact details to the Commission to distribute to NEBs, require NEBs to produce an annual report to the Commission on their activities, and specify that NEBs have the power to require provision of information from carriers.
40. We have considered if NEBs should also be given responsibility for handling complaints and ensuring compliance with other Community legislation impacting

the air transport sector, such as Regulation 889/2002 and Directive 93/13/EEC on unfair contract terms. Although this would improve compliance it would also generate significant operational costs for NEBs and may be unrealistic given constraints on public budgets. Many of the benefits could be achieved at much lower cost if NEBs ensured at least that carriers policies and published information (such as Conditions of Carriage) were consistent.

### *Options to improve passenger redress*

41. We have considered several options which would improve passengers' ability to obtain redress. In part, this is addressed by the Commission's separate proposal on Alternative and Online Dispute Resolution (ADR and ODR), and so we have not considered new ADR mechanisms. The Regulation should however be amended to require NEBs and ADRs to cooperate, and for ADRs to pass relevant information to NEBs, particularly if they identify what appear to be deliberate or systematic infringements.
42. We have also considered whether NEBs should be required to provide passengers with individual assistance in resolving complaints, or mediate with carrier in order to do so. There is clearly a benefit for passengers if they do but this would also incur significant costs for NEBs and again may be unrealistic given budget constraints.
43. Some of the passenger rights' Regulations in other sectors place minimum requirements on operator complaint handling procedures. Although airlines strongly argued that this should be left to the market, to ensure consumers are not unreasonably deterred from claiming their rights, some relatively minimal requirements could be defined in the Regulation, including requiring clear publication of email and postal addresses for complaints, acceptance of complaints in the main languages of their passengers, and providing an acknowledgement of complaints within 1 month and a full response to complaints within 3 months. Other than the requirement to publish an email address, which in itself should not generate costs as receiving complaints by email should cost no more than receiving complaints by post, most airlines do this anyhow and so it would not generate any significant incremental economic burden on them.

### *Other measures*

44. Some of the issues with the Regulation have arisen partly because it was adopted through a conciliation process between the Council and the Parliament and some of the text that resulted is subject to different interpretations. Whilst this is a risk with any legislation, it has been a particular issue with this Regulation, and is exacerbated by the particular operational and technical complexity, and international nature, of the air transport sector. Judgements by the CJEU have addressed some of the grey zones in the legislation but many remain.
45. We recommend that, to address this, the Regulation should be reorganised to specify general principles, with the detailed requirements transferred to, and defined in much more detail in, implementing rules or a delegated act. There is precedent from several other areas of transport legislation for detailed provisions to be defined in implementing rules (for example, the Single European Sky II performance scheme). The advantages would be provisions could be changed more

easily than provisions in the main Regulation, if they turned out in practice to unclear or to have unintended consequences; provisions could be defined in more detail than it is practical to do in primary legislation; and it would be easier to consult with stakeholders about the design of the detailed provisions if these were defined outside the main legislative process.

46. In order for a competitive market to function properly, good information has to be available to all participants in the market. However, at present consumers in the EU (in contrast to consumers in the US) have little or no factual information available on the performance of different air carriers. Eurocontrol already collects and analyses carrier and route specific delay and cancellation data, and has advised that it could publish it at minimal additional cost; we recommend that it should be required to do so. If other service quality data was to be published, this would have to be specifically collected, but the costs could also be quite low if the level of disaggregation required was less, and we recommend that this should also be required. This would help consumers make an informed decision about which carrier to travel with, and hence improve operation of the market.

#### *Packages of options*

47. Although in most respects these options are independent from each other, we have proposed an approach by which they could be formed into ‘packages’ of options. Four packages, defined after discussion with the Commission, have been assessed.
48. In defining the first three packages, we have taken as a constraint that the total economic burden of the Regulation should not significantly increase and ideally should reduce; therefore, measures which increase airlines obligations in some areas have to be offset by savings in others. Although each package has a specific emphasis, the majority of options are common to all. Many of these core options address the remaining grey zones, reduce inconsistencies, and ensure the obligations are clear in the text, whilst not changing the main rights and obligations or generating a quantifiable burden; however, some are more substantial in scope. All of the core options are either cost-neutral or generate small increases in economic burden. Corresponding reductions in economic burden are derived from the package-specific options discussed below.
49. The packages are as follows:
- **Package 1 - A market mechanism approach:** The most significant change would be that the obligation to provide meals, refreshments and other care would be replaced with a requirement to offer optional insurance. The economic burden would be further reduced by extending the length of delay before compensation is payable for delays and cancellations to 5 hours, and reducing the amount of compensation and making it more related to flight length.
  - **Package 2:** This package focuses on reinforcing airlines’ obligations to provide care and assistance, in particular adopting a common 2 hour threshold after which assistance would have to be provided. The cost of this would be offset by reducing the level and scope of monetary compensation, by reducing the amount of compensation and making it more related to flight length, plus either:

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- **Package 2a:** Extending the compensation threshold to 5 hours; or
  - **Package 2b:** By adopting a narrower definition of the exceptional circumstances exemption than defined in the Wallentin judgement, limited to the situations more clearly under the control of the carrier, but with unchanged thresholds for compensation including the same 3 hour threshold specified in the Sturgeon judgment.
- **Package 3:** This package focuses on passenger protection. Although the compensation levels would also be slightly reduced (as for the previous packages), there would be no change to the circumstances in which compensation was paid. Enforcement would be enhanced by the establishment of an EU-level enforcement body with the current NEBs as local ‘antennae’.
50. We also consider separately the impact on the packages of the following options:
- The Regulation further specifies the right to claim from responsible third parties;
  - A limit of 4 days beyond which there would be no obligation to provide care and assistance in the case of exceptional mass disruption (although current arrangements would remain in place for passengers with reduced mobility); and
  - An industry fund is established, which would finance the cost of care after four days.
51. The table below shows the combined quantified impacts of each of the four packages.

**TABLE 1 QUANTIFIED IMPACTS OF PACKAGES: COSTS AND PASSENGER BENEFITS**

Package		NPV of burden (€ millions)				Impact on burden (%)	Impact on air fares (%)
		Airline	State	Other	Total		
P1	Market mechanisms	-8,346.2	2.2	1.8	-8,342.2	-77.9%	-0.5%
P2a	Reinforced care, reduced compensation (1)	-1,347.4	1.9	1.9	-1,343.6	-12.5%	-0.1%
P2b	Reinforced care, reduced compensation (2)	-1,475.9	-26.3	1.9	-1,500.3	-14.0%	-0.1%
P3	Passenger package	-20.8	224.3	1.9	205.4	1.9%	0.0%
<b>Impact if the Regulation specifies the right to claim from responsible third parties:</b>							
P2a	Reinforced care, reduced compensation (1)	-4,467.2	1.9	3,530.0	-935.4	-8.7%	-0.1%
P2b	Reinforced care, reduced compensation (2)	-4,595.7	-26.3	3,530.0	-1,092.0	-10.2%	-0.1%
P3	Passenger package	-3,140.4	224.3	3,529.8	613.7	5.7%	0.0%
<b>Impact if the cost of an airline industry fund is included:</b>							
P3	Passenger package	387.9	224.3	1.9	614.1	5.7%	0.0%

52. The figures presented in this table do not include the reduction in economic burden from limiting airlines' obligations in cases of exceptional mass disruption, as it is assumed that no such exceptional event similar to the volcanic ash crisis would occur during the impact assessment period. If such an event did occur, the additional economic burden on airlines would be reduced by 34% by these proposals.

### **Conclusions**

53. We recommend that, given the problems that have been identified with this Regulation, it should be significantly revised. It is clearly a political decision which of these packages to adopt, if any, but in our view the objectives which the Commission has defined would be best met through package P2, combined with a limit on the obligation to provide care in cases of exceptional events. In particular, this would:
- address the grey zones in the existing Regulation and ensure that its requirements are explicit;
  - allow the Regulation to be revised more easily if operational problems or unintended consequences arose in the future;
  - ensure passengers were provided with appropriate care and assistance including in circumstances not addressed by the current Regulation;

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- make monetary compensation more proportionate;
  - reduce the economic burden on carriers;
  - ensure airlines' terms and conditions were fairer;
  - improve the transparency of information about airline performance, so consumers can make a more informed decision about which airline to fly with;
  - improve compliance with the Regulation, by improving enforcement; and
  - provide passengers with improved means of redress by imposing some minimum standards on airline complaint handling procedures.
54. Packages P2a and P2b reduce the amount of monetary compensation in partly different ways - P2a by extending the threshold to 5 hours, and P2b by adopting a wider definition of the circumstances in which carriers are exempt than the interpretation of Article 5(3) adopted by the CJEU in the Wallentin judgement. The impact assessment has to assume full compliance with the Regulation and on this basis there would be little difference in the impact of these packages, and indeed P2b may appear fairer, because at present airlines could in principle have to pay compensation in circumstances which are not fully within their control. However, in practice, taking into account the difficulties that passengers have experienced in claiming compensation from airlines, there could be some risks with the adoption of a wider exemption and therefore extending the threshold (P2a) may fit better with the policy objectives.
55. Although package P3 contains many of the same elements we do not recommend it, primarily because the requirement for airlines to reroute passengers via other carriers after a delay of 5 hours could create a barrier to market entry and distort competition.
56. We do not recommend the option of an airline industry fund to cover costs during exceptional mass disruption, because of substantial contributions would have to be collected and there would be a possibility that the fund might never need to pay out.



# 1 Introduction

## Background

- 1.1 The liberalisation of the European air transport market has generated significant benefits for consumers, including a wider choice of air services, and intense price competition between air carriers has resulted in significantly lower fares. In order to limit any potential negative impacts that this might have on service quality, a number of measures have been taken at EU-level to protect air passengers.
- 1.2 The most significant of these, Regulation 261/2004, introduced new rules on compensation and assistance in the event of denied boarding, cancellations, long delays and involuntary downgrading. Depending on the circumstances, the Regulation requires air carriers to:
- provide passengers with assistance, such as hotel accommodation, refreshments and telephone calls;
  - offer re-routing and refunds;
  - pay compensation of up to €600 per passenger; and
  - proactively inform passengers about their rights under the Regulation.
- 1.3 The Regulation also requires Member States to establish national enforcement bodies (NEBs) and introduce dissuasive sanctions into national law.

## The need for this study

- 1.4 There have been a number of significant developments since Regulation 261/2004 was introduced. In particular:
- Rulings of the Court of Justice (particularly in the *Wallentin-Hermann*<sup>4</sup> and *Sturgeon and Bock*<sup>5</sup> cases) have had a significant impact on the interpretation of the Regulation.
  - The volcanic ash crisis in April 2010, when airspace in parts of Europe was closed for several days, demonstrated that the Regulation exposes airlines to significant (and unlimited) costs for assistance and rerouting. Some airlines incurred substantial costs.
  - Passenger rights legislation has been introduced in the rail, maritime and bus/coach sectors, defining rights and obligations that differ in some respects from those defined by Regulation 261/2004.
  - There have also been advances in passenger rights legislation in other jurisdictions, particularly the US.
- 1.5 The Commission recently issued a further Communication<sup>6</sup> on the application of the Regulation. It notes that significant efforts have been made to improve the operation of the Regulation, but identifies a number of ongoing issues, including

<sup>4</sup> Case 549/07 Wallentin-Hermann v Alitalia

<sup>5</sup> Joined cases C-402/07 Sturgeon v Condor Flugdienst and C-432/07 Bock and Lepuschitz v Air France

<sup>6</sup> COM(2011) 174 final

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inconsistencies in the interpretation of the Regulation, inconsistent and ineffective enforcement, and limited opportunities for passengers to obtain redress. It also notes the significant market developments.

- 1.6 The Communication identified number of short-term actions that the Commission and others could take to improve operation of the Regulation, but also identifies that some of the problems relate to the wording and content of the Regulation and therefore cannot be addressed without revising it. Therefore, an impact assessment would be undertaken of potential revisions to the Regulation.

### This report

- 1.7 This report is the Final Report for the study. It sets out:
- information on the methodology adopted;
  - the factual analysis of the current operation of the Regulation, including enforcement and systems for passenger redress, and the economic burden that it generates;
  - the evaluation parameters, and background information that is relevant to the evaluation of the policy options;
  - a qualitative and quantitative assessment of the policy options and packages; and
  - conclusions and recommendations.
- 1.8 This report has been prepared by Steer Davies Gleave, with advice on legal issues provided by Clyde & Co, and support on research in central European Member States from Helios Technology Ltd. The conclusions of the study are the responsibility of Steer Davies Gleave alone.

### Structure of this report

- 1.9 The rest of this document is structured as follows:
- Section 2 sets out policy objectives and evaluation parameters;
  - Section 3 describes the similar legislation introduced in other jurisdictions;
  - Section 4 assesses likely airline policies if the EU legislation were not to apply;
  - Section 5 outlines our findings in the field of enforcement;
  - Section 6 outlines findings in the area of passenger redress;
  - Section 7 presents current levels of flight disruption and estimates of the current level of economic burden generated by the Regulation;
  - Section 8 presents evidence on airline compliance with the Regulation, and policies applied in cases not covered by the Regulation;
  - Section 9 sets out the option and problem definition;
  - Section 10 provides a brief overview of the assumptions and methodology for the impact assessment;
  - Sections 11 to 16 present our impact assessment of the policy options; and
  - Section 17 provides a summary of the impact assessment, and conclusions and recommendations.
- 1.10 We also provide six appendices (as separate documents):

- Appendix A provides the 14 Member State case studies;
- Appendix B summarises the research approach, including the methodology employed in calculating current flight disruption and the economic burden of the Regulation, and the assessment of the policy options;
- Appendix C provides the administrative burden calculations for each option;
- Appendix D provided the results of the sensitivity tests for the baseline scenario and option packages; and
- Appendix E summarises the results of the consultation.



## 2 Policy objectives and evaluation criteria

2.1 This section sets out the criteria and some of the parameters used for the evaluation. This includes:

- Policy objectives (as agreed with the Commission);
- Evaluation criteria; and
- Key evaluation parameters.

### Policy objectives

2.2 A key requirement of the Commission's guidance on impact assessments is to define clearly at the start of the project the policy objectives and criteria for the evaluation of options.

2.3 The 2009 Communication from the Commission on the European transport policy<sup>7</sup>, which describes the key objective as being '*to establish a sustainable transport system that meets society's economic, social and environmental needs and is conducive to an inclusive society and a fully integrated and competitive Europe*'. The Commission's Terms of Reference for this study cite the specific objectives pursued by the Commission in the field of air passengers' rights:

- **Increase air passengers' protection** by ensuring that passengers enjoy minimum service quality standards with all air carriers; by ensuring that passengers are adequately informed, re-routed, and, if necessary, assisted and in certain cases, compensated for flight disruptions; by ensuring appropriate assistance and compensation to passengers in case of delay, damage and loss of baggage; and by ensuring more effective enforcement of these rights;
- Ensure that passengers' rights can be correctly met by the industry by:
  - Providing the necessary **legal certainty** and by;
  - Ensuring a **fair and proportionate economic burden** that may result from particular situations for which the air carriers bear no responsibility (force majeure); and also via a better sharing of the financial costs (linked notably to care) amongst the aviation chain and other parties.

2.4 The Commission also identifies in its Terms of Reference five problem areas emerging from the operation of the current Regulation:

- A. The Regulation contains **grey zones** of ambiguous meaning which can lead to divergent interpretations, and the **complexity** of the rules may enhance these adverse effects and lead to passenger confusion.
- B. There is **no clear guidance on a number of issues/situations** which frequently arise but are not covered by the existing Regulation, particularly with regard to **baggage** procedures, and compensation for loss or delay.

<sup>7</sup> European Commission (2009): A sustainable future for transport

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- C. The Regulation's obligations may lead to considerable **economic burden** on airlines, which may be passed on to passengers in the form of higher fares or lower service quality.
- D. The Regulation is not **enforced uniformly** across all Member States, either due to differences in interpretation, lack of resources or legal constraints.
- E. Passengers' **means to obtain redress** are limited and vary between States.

2.5 Table 2.1 identifies specific sub-objectives which provide the link between these problem areas and the specific objectives identified above.

**TABLE 2.1 SPECIFIC POLICY OBJECTIVES**

Specific objective	Specific sub-objective	Link to problem areas				
		A	B	C	D	E
Maintain and improve the standard of passenger protection	Ensure passengers receive adequate care and compensation in the event of delay, cancellation or denied boarding	✓		✓		✓
	Ensure passengers are adequately protected in situations not already covered by the legislation		✓			
	Provide passengers with effective means of redress					✓
Ensure legal certainty	Ensure the legislation is clear and that its requirements are explicit in the text	✓		✓		
	Ensure passengers rights are equivalent in equivalent circumstances (principle of equal treatment)	✓				
	Ensure enforcement of the legislation is sufficient to achieve consistently high rates of compliance				✓	
	Ensure consistency with international law		✓			
Ensure the economic burden is fair and proportionate	Ensure that the total cost of compliance to the industry are reasonable			✓		
	Ensure that the costs of compliance are shared appropriately within the industry			✓		
	Minimise any distortion of competition	✓			✓	
	Minimise operational costs (including administrative costs)			✓		

## Evaluation criteria

2.6 Consistent with the Commission's recommended criteria for impact assessment, the main criterion for evaluation of policy options will be the extent to which the

options achieve the objectives described above (effectiveness). We have also considered the remaining two criteria, as follows:

- **Efficiency** - the extent to which objectives can be achieved for a given level of resources / at least cost (cost-effectiveness); and
- **Coherence** - the extent to which options are coherent with the overarching objectives of EU policy, and the extent to which they are likely to limit trade-offs across the economic, social, and environmental domain.

- 2.7 The first of these is reflected in the assessment of the specific sub-objective of ensuring that the total cost of compliance to the industry are reasonable. The assessment identifies where there are any issues of coherence with other objectives of EU policy.

### Evaluation parameters

- 2.8 Our evaluation of the effects of the policy options relies on our assumptions regarding a number of evaluation parameters, which were agreed with the Commission at the project kick-off meeting:

- Assumptions about airline compliance;
- The definition of the 'no legislation' scenario;
- Assumptions about the Sturgeon judgement and future judgements by the Court of Justice;
- Airline revenues and costs to be considered; and
- The evaluation period over which the impacts of the options will be assessed.

- 2.9 These parameters are discussed in more detail below.

#### *Assumptions about airline compliance*

- 2.10 It is assumed in calculating the economic burden that airlines fully comply with the obligations of the Regulation. All calculations of costs and economic burden are made on this basis.

- 2.11 However, assumptions are required where the requirements of the existing legislation are unclear or there is a liability, for example to pay compensation, that is not always claimed. The main examples of this are:

- In cases of cancellations or delays over 3 hours, airlines are not obliged to actually offer compensation, and not all passengers claim it. On the basis of data for complaints to airlines, we assume in the calculations of economic burden that most passengers do not actually claim this compensation, although we also calculate the theoretical maximum liability in the case all passengers who were entitled did claim it.
- In addition, in the case of delays over 5 hours, passengers have a right not to travel and claim a refund. However, we assume that most will still decide to travel and therefore this refund is only paid to a small proportion of passengers.

- 2.12 These issues are discussed in more detail in section 7 and further details are provided in the technical appendix (Appendix B).

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### *Definition of 'no legislation' scenario*

2.13 The economic burden has to be evaluated relative to a situation in which EU passenger rights legislation did not apply. As agreed at the kick-off meeting, we assume only the repeal of Regulation 261/2004, with Regulation 889/2002 and the general consumer rights Directives remaining in place. Some rights would still be available if the Regulation was repealed. These would be determined by:

- rights provided by other legislation; and
- policies that may be offered voluntarily by airlines.

2.14 Our assumptions for the rights that would apply in the event Regulation 261/2004 was repealed are set out in section 4 below.

### *Assumptions about the Sturgeon judgement and future judgements*

2.15 The analysis of economic burden and of the impact of options has to be undertaken on the assumption that obligations are fully complied with. However, some issues are being considered by the Court of Justice, and therefore in these cases it is not clear what the current requirements of the Regulation are.

2.16 This is an issue in particular with the Sturgeon judgement. Airlines and their representative associations argue that the Sturgeon judgement is incorrect and there are various cases pending before the Court in relation to it. In the airlines view, it is not non-compliant with the Regulation not to apply the rights identified in the Sturgeon judgement, as it is not settled case law. However, this also applies in reverse: it is possible that the Court might apply the same principles used in the Sturgeon judgement to identify other rights which are not explicit within the text.

2.17 It would clearly not be appropriate for the team undertaking the impact assessment to attempt to interpret EU legislation on the Court's behalf. As the Sturgeon judgement represents the current position, and it is not known what the Court may decide in outstanding or future cases, we assume that the current position holds and we do not make any assumptions about future judgements. Therefore, it is assumed throughout this study that the Sturgeon judgement is applicable law, and therefore the costs of paying compensation for delays are included within our calculations of the economic burden arising from the Regulation.

2.18 There are some other areas in which the current requirements of the Regulation are not clear, and where this is the case, the detailed text below on evaluation of options describes our assumptions.

### *Treatment of airline revenue and costs*

2.19 Some of the costs which airlines may be required to incur as a result of the Regulation may not be treated as costs in airline accounts and may not necessarily be 'real' costs to the airline:

- **Refunds:** Transport companies often account refunds, particularly for passengers that do not travel, as negative revenue rather than a cost. Airlines' estimates of the economic burden caused by the Regulation excluded refunds.
- **Rerouting:** Rerouting on an airlines' own services should not generate any incremental costs and would not be shown in airlines' accounts as a cost.



Particularly for IATA carriers, rerouting via another IATA carrier may also be accounted as negative revenue rather than a cost - the revenue from the ticket may just be transferred to the other carrier. The airline would however incur quantifiable costs where it rerouted passengers via surface transport; non-IATA carriers would also incur a cost where they rerouted via other airlines.

- 2.20 In most circumstances, this is not significant to the assessment because refunds or rerouting (at least on the carrier's own services) would still have to be offered if the Regulation was repealed, and therefore these are not incremental costs caused by the Regulation. The main exception to this is that (as discussed below) we assume airlines would not offer refunds after 5 hours delay if the Regulation was repealed and therefore this is a real incremental cost. In making comparisons of our estimates of economic burden with airlines' estimates, it should be taken into account that airlines' estimates may not include this.
- 2.21 We would expect the following to be real costs to the airline, where they exceed what would have been incurred anyhow in the absence of any legal requirement, and cost estimates for these are included in section 7:
- Any compensation payments;
  - Assistance, primarily refreshments and accommodation;
  - Costs of rerouting via other carriers or surface transport, where this is not already covered by a reciprocal agreement;
  - Ground transport, where this is required (to and from accommodation, and between airports);
  - Refunds (or rerouting) where the carrier still operates the flight, in particular the obligation to refund passengers after 5 hours delay if they chose not to travel (the flight still operates and therefore the operating costs of the flight are still incurred, and it is probably too late to sell the seat to another passenger); and
  - Any administrative costs (or other operational costs) arising from the Regulation.
- 2.22 Finally, revenue that the airline receives as a result of rerouting by other carriers will partly offset these costs. Except in a very small proportion of cases where a passenger is rerouted via surface transport, costs for rerouting will remain within the airline industry as this would always be a payment to another airline. However there will be significant variations in the balance of cost and revenue between airlines which we would need to take into account - an airline with a smaller number of flights may have greater costs of rerouting on other carriers, and receive less revenue, as it is less likely that it will have one of its own flights available within a short period.
- Evaluation period*
- 2.23 An evaluation period of 11 years is used. This reflects that changes to the legislation will take some time to take effect, but that it is harder to project market trends further ahead and therefore if a longer evaluation period was used, there would be greater uncertainty.

## 3 Other passenger rights legislation

### Introduction

- 3.1 This section provides an overview of other passenger rights legislation:
- EU legislation applying in other transport sectors; and
  - other States' legislation in the air transport sector.
- 3.2 The other States' air passenger rights legislation applies to flights between the EU and the States' concerned, and would continue to apply even if EU legislation was changed or repealed. Therefore this is relevant to analysis of what incremental economic burden the EU legislation generates for air carriers (discussed in section 7 below).

### Legislation in other sectors

- 3.3 Passenger rights legislation has now been introduced in other transport sectors:
- Regulation 1371/2007 on rail passengers' rights and obligations;
  - Regulation 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway; and
  - Regulation 181/2011 concerning the rights of passengers in bus and coach transport.
- 3.4 There are a number of differences between the rights and obligations established in these Regulations and those in Regulation 261/2004. Some of these differences reflect the specific nature of the individual transport sectors, but in other cases this is less clear. Key differences are:
- **Limit on accommodation costs:** The more recent bus/coach and maritime Regulations allow carriers to limit the cost of accommodation provided to passengers in the event of delay or cancellation. Both limit the cost of accommodation to €80 per night, with the number of nights limited to two in the case of Regulation 181/2011 and three under 1177/2010. These Regulations also exempt carriers from providing accommodation if it can be proven that weather conditions (and in the case of Regulation 181/2011, natural disasters) endangered the safe operation of services.
  - **Circumstances under which compensation is paid:** Under the three newer Regulations, the circumstances under which compensation is paid for delays or cancellations are different to those in Regulation 261/2004, where compensation is only paid for cancellations. Regulation 181/2011 requires compensation (in addition to reimbursement) to be paid only if the passenger has not been offered the choice between continuation / re-routing and reimbursement. Regulation 1371/2007 grants compensation only if the ticket has not been reimbursed. Under all three newer Regulations, the amount of any compensation is determined only by the delay in arrival at the passenger's final destination; no distinction is made between delay and cancellation. There is an

exemption from payment of compensation in the case of extraordinary circumstances in Regulation 1177/2010 but not in Regulation 1371/2007<sup>8</sup>.

- **Compensation related to ticket price:** In addition to defining different circumstances under which compensation is paid, the three newer Regulations link the amounts of any compensation for delays or cancellations to 50% of the ticket price actually paid by the passenger, in contrast to the fixed monetary amounts used in Regulation 261/2004. The proportion of the ticket price paid is usually 25% if the delay is shorter.
- **Limitation on obligation to provide refreshments:** The bus/coach, rail and maritime Regulations also only require the provision of snacks, meals and refreshments if these are available or can reasonably be supplied. Regulation 261/2004 has no such limit although carriers may try to rely on Recital 18, which allows the limitation of care if provision 'would itself cause further delay'.

3.5 However, in some respects, these new Regulations are actually more generous to passengers than Regulation 261/2004. In particular, the time thresholds are generally lower than those used in Regulation 261/2004 - rail and maritime passengers may be eligible for compensation after a delay of 1 hour, and bus or coach passengers may be eligible for care or assistance after a delay of 90 minutes. Regulations 1371/2007 and 181/2011 also do not provide any exemption from payment of compensation in cases of extraordinary circumstances (although in the case of Regulation 181/2011 compensation is only payable if a choice between reimbursement and rerouting is not offered).

3.6 A detailed comparison of selected provisions of the Regulation is given in Table 3.1 below.

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<sup>8</sup> Note that this is subject to a reference to the CJEU (Case C-509/11) in relation to whether the carrier can rely on the exemption in Article 32(2) of Annex I to the Regulation, or the grounds for exclusion for other modes.



TABLE 3.1 COMPARISON OF RIGHTS IN SELECTED AREAS GRANTED BY LEGISLATION FOR DIFFERENT MODES

Area	Right granted	Rail	Air	Maritime	Bus and coach
		<i>Regulation 1371/2007</i>	<i>Regulations 889/2002, 261/2004 and 1107/2006</i>	<i>Regulation 1177/2010</i>	<i>Regulation 181/2011</i>
Information	Obligation of operator to provide information on rights under Regulation	Must be provided when selling ticket	Notice must be published at check-in desk, and provided in event of incident. NEBs have obligation to inform PRMs of their rights.	Must be published on board and in ports	Must be provided at latest on departure, and at terminals and on internet
Liability and security	Right to immediate assistance in case of death or injury	At least €21,000 in event of death	At least 16,000 SDRs (€19,000) in the event of death or injury	N/A	No
	Right to compensation in case of death or injury	Necessary costs following death, support for any dependents of passenger, up to national limit of at least 175,000 units of account (€161,000)	Carriers are prohibited from contesting claims of up to 113,100 SDRs (€134,000)	N/A	Necessary costs following death, support for any dependents of passenger, up to national limit of at least €220,000
	Right to compensation when baggage is lost or damaged	Up to 1,400 units of account (€1,285) per piece	Up to 1,131 SDRs (€1,344)	N/A	Up to €1,200 per piece
	Obligation of operator to ensure passengers' personal security	Must take adequate measures	No	N/A	N/A
	Liability of operator for passenger safety, and obligation to have insurance to cover this	Yes	Obligation for insurance (defined in detail in Regulation 785/2004)	N/A	N/A

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Area	Right granted	Rail	Air	Maritime	Bus and coach
		<i>Regulation 1371/2007</i>	<i>Regulations 889/2002, 261/2004 and 1107/2006</i>	<i>Regulation 1177/2010</i>	<i>Regulation 181/2011</i>
Delays / cancellations / missed connections	Right to assistance/care (food and drink)	For delays of over 60 minutes, and where available or can reasonably be supplied	N/A	For delays of over 90 minutes, and where available or can reasonably be supplied	For journey of over 3 hours, where delay is over 90 minutes, and where available or can reasonably be supplied
	Right to accommodation where delay is overnight	Yes, with no limitations	Yes, with no limitations	Limited to three nights, maximum of €80 per night. No right where cancellation or delay due to severe weather conditions.	Limited to two nights, maximum of €80 per night. No right where cancellation or delay due to severe weather conditions or natural disasters. For journeys of over 3 hours only.
	Right to alternative	Choice between reimbursement, rebooking and re-routing under comparable transport conditions	Choice between reimbursement, rebooking and re-routing under comparable transport conditions	Choice between reimbursement and re-routing under comparable conditions	Choice between reimbursement and re-routing under comparable conditions
	Right to compensation	Where reimbursement not accepted, right to compensation varying between 25% of ticket price for short delays (1-2 hours) and 50% if longer	For cancellation causing delay over 2 hours, and delays over 3 hours, between €250 and €600 (depending on length of journey), but not paid if extraordinary circumstances can be proved	In event of delayed arrival at destination. Varies between 25% of ticket price for short delays (delay is approximately 25% of planned journey time) and 50% (for delay of 50%). Does not apply in the case of extraordinary	Compensation of 50% of ticket price if choice between continuation / re-routing and reimbursement not offered

Area	Right granted	Rail	Air	Maritime	Bus and coach
		<i>Regulation 1371/2007</i>	<i>Regulations 889/2002, 261/2004 and 1107/2006</i>	<i>Regulation 1177/2010</i>	<i>Regulation 181/2011</i>
				circumstances or severe weather conditions.	
PRMs	Access to services and assistance for disabled persons and persons with reduced mobility	Yes	Yes	Yes	Yes
	Circumstances under which carriage can be refused	If it would contravene access rules	To meet safety requirements set by law or authority, or where physically impossible	To meet safety requirements set by law or authority, or where physically impossible	To meet safety requirements set by law or authority, or where physically impossible
	Requirement for operator to provide training to staff	No	Disability awareness or assistance training, depending on role of staff All new staff must have 'disability-related' training	Disability awareness or assistance training, depending on role of staff	Disability awareness or assistance training, depending on role of staff
	Operator obliged to provide accessibility information	Upon request	Safety rules must be publically available	Access conditions must be publically available	Access conditions must be made publically available, physically or on the internet, and on request of passenger

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Area	Right granted	Rail	Air	Maritime	Bus and coach
		<i>Regulation 1371/2007</i>	<i>Regulations 889/2002, 261/2004 and 1107/2006</i>	<i>Regulation 1177/2010</i>	<i>Regulation 181/2011</i>
	Right to compensation for damage to mobility equipment	Unlimited	In accordance with law	Up to replacement or repair cost of damaged equipment	Up to replacement or repair cost of damaged equipment
Service quality	Obligation for operators to establish complaint handling mechanisms regarding violations of these rights	Yes, initial reply required within one month and final reply within three months	No requirement	Yes, initial reply required within one month and final reply within two months	Yes, initial reply required within one month and final reply within three months
	Obligation for operators to establish service quality standards, and to publish their performance against them	Yes. Publication includes data on complaints received	Only for PRM services: Airports required to publish quality standards (but not explicitly required to publish performance against them) No requirement for airlines	Operators required to publish quality standards with respect to passengers with reduced mobility, but not explicitly required to publish performance against them. No requirement for other service quality issues.	No
Enforcement bodies	Independence	Independent from operators in organisation, funding decisions, legal structure, decision-making	Not required	Independent of commercial interests in terms of organisation, funding decisions, legal structure and decision-making	Independent from operators in organisation, funding decisions, legal structure, decision-making
	Where complaints should be made	To any NEB, no obligation to transfer	For liability: no right to complain. For delays, cancellations: To any NEB,	To any NEB, no obligation to transfer complaint but	To any NEB, no obligation to transfer complaint, but



Area	Right granted	Rail	Air	Maritime	Bus and coach
		<i>Regulation 1371/2007</i>	<i>Regulations 889/2002, 261/2004 and 1107/2006</i>	<i>Regulation 1177/2010</i>	<i>Regulation 181/2011</i>
		complaint but general obligation for NEBs to co-operate	no obligation to transfer complaint PRM issues: To any NEB, but complaints must be transferred to NEB with responsibility for incident	general obligation for NEBs to co-operate	general obligation for NEBs to co-operate



## Legislation in other jurisdictions

- 3.7 There have been advances in passenger rights' legislation in other jurisdictions. Although there is no reason why Europe should necessarily copy legislation adopted elsewhere, aviation is a global industry and there are some benefits from consistency. Experience from other countries can also help demonstrate what can be achieved and practical issues that may be encountered.
- 3.8 We reviewed the air passenger rights legislation of several of the largest and/or most developed air markets outside the EU, and other markets where we identified that laws to protect air passenger rights existed. Table 3.2 shows the key items of legislation for each of the States surveyed. In four of the markets surveyed we were not able to identify any such legislation, although in one of these, the main airlines have agreed some rights on a voluntary basis.

**TABLE 3.2 KEY LEGISLATION BY STATE**

State	Legislation
Australia	None identified
Brazil	Resolution 141, 9 <sup>th</sup> March 2010 ( <i>Resolução nº 141, de 9 de Março de 2010</i> ). Some rights were provided for in earlier legislation, e.g. Ordinance 155/DGAC, 22 <sup>nd</sup> March 1999 ( <i>Portaria DAC N.º 155/DGAC, de 22/03/99</i> )
Canada	Flight Rights Canada (voluntary only)
India	Civil Aviation Requirements Section 3 - Air Transport; Series 'M' Part IV
Mexico	Certain passenger rights defined in the Civil Aviation Law ( <i>Ley de Aviación Civil</i> )
Colombia, Ecuador, Peru and Bolivia	Decision 619 of the Community of the Andes
New Zealand	None identified
South Africa	None identified
UEOMA (West African Economic and Monetary Union)	Regulation 03/2003/CM/UEMOA
US	Enhancing Airline Passenger Protections; Final Rule; 25 April 2011, updating 14 CFR Parts 244, 250, 253, 259, and 399

- 3.9 Below we outline the main legal requirements adopted in each of the States, and discuss some of the key differences and similarities with the legislation in place in the EU. The section concludes with a table summarising the key provisions in each state.

### **Brazil**

- 3.10 The Brazilian legislation (Resolution 141) is similar to Regulation 261/2004 in terms of its content and scope, encompassing delays, cancellations and denied boarding; however it excludes downgrading. Significant additional provisions include a distinction between delays and cancellations at a stop-off or connecting airport as opposed to the first point of departure; and the extension of certain provisions to passengers experiencing tarmac delays or missing connecting flights as a result of earlier delays. The geographical scope of the Resolution is not stated.
- 3.11 The Resolution also requires that carriers provide a notice at check-in stating *'Passengers: in the event of delayed or cancelled flights or denied boarding, request information from the airline about your rights, in particular with regard to rerouting, reimbursement and material assistance'*.
- 3.12 Articles 2 and 7 of the Resolution require carriers to inform passengers of any delays and cancellations via available means of communication, keeping passengers updated whenever the estimated time of departure changes. For a cancellation to be defined as scheduled the passenger should be notified no later than 72 hours before the scheduled time of departure. Any information relating to cancellations, delays or denied boarding must be provided in writing if requested by the passenger (Article 10).

### *Delays and cancellations*

- 3.13 The provisions of the Resolution depend on two factors:
- whether the passenger experiencing the delay or cancellation is at their first point of departure; and
  - the length of delay.
- 3.14 In the event of a cancellation or delay of more than 4 hours at the point of initial departure, Articles 3 and 8 specify that passengers should be offered the choice between rerouting (immediately or at a convenient future date) and a refund of the unused ticket, including any taxes paid. Article 5 of the Resolution also states that the 4 hour time limit should only be invoked if no immediate re-routing options using its own flights are available; suggesting that carriers should reroute in the event of any delay, regardless of its length.
- 3.15 If a cancellation or delay of more than 4 hours occurs at a stop-off or connecting airport the same options should be offered to passengers, in addition to the following (Articles 4, 6 and 8):
- If reimbursement is chosen, rerouting to the airport of origin should be offered.
  - Immediate rerouting by other carriers or modes should be one of the options offered.
  - Care should be provided, unless the passenger is staying in the locality where the disruption occurred, or they accept the option of a refund or rerouting at a later convenient date. Care should comprise:
    - For delay of more than 1 hour, communication facilities such as phone calls or access to internet;
    - For delay of more than 2 hours, adequate food;

- For delay of more than 4 hours, accommodation or lodging in an appropriate place, transfer, and ‘hosting service’ where necessary (unless the passenger resides close to the airport, in which case only transport to the home has to be provided).
- 3.16 The care listed above should also be provided to passengers who are delayed on board an aircraft without access to the terminal, or if a delay causes a passenger to miss a connecting flight (Article 6.1).

#### *Other disruptions*

- 3.17 Article 11 of the Resolution defines a process similar to that specified by Regulation 261/2004 in the event of overbooking, requiring that first volunteers are found before any passengers are forcibly denied boarding. The carrier shall negotiate compensation with the passenger, and may require the volunteers to sign an acknowledgment that this was accepted by the passenger.
- 3.18 If insufficient volunteers can be found, passengers may be denied boarding involuntarily. If the refusal occurs at the first point of departure, Article 12 requires that the passenger should be offered the choice of:
- a full refund;
  - immediate rerouting, by another carrier if necessary;
  - rerouting at a convenient future date; or
  - rerouting via another mode.
- 3.19 Care should be provided if the passenger requests immediate rerouting, or rerouting via another mode (see above for the care to be provided). However, there is no mention of compensation for involuntary denied boarding.
- 3.20 If boarding is denied at a stop-off or connecting airport and the passenger is not staying in the locality, the full refund should be accompanied by rerouting to the airport of origin, and care should be provided.

#### *Complaints*

- 3.21 In addition to the legislation discussed above, on the Brazilian government also introduced Resolution 196<sup>9</sup>, which requires airlines to provide a structure specifically for receiving face-to-face complaints at all airports where they handle over 500,000 passengers per year. At present the Resolution applies to five national carriers and one international carrier, and at 23 Brazilian airports.
- 3.22 The structure accepting complaints must be separate from check-in counters and sales desks, must be specifically identified as handling complaints, and must be available from at least two hours before each take-off and two hours after each landing at the airport. In addition to accepting complaints via this structure, all airlines regardless of number of passengers carried are required to receive complaints via websites and telephone. Information on the telephone number must be visible at the airline’s facilities, on their websites, on tickets, and in any promotional material.

<sup>9</sup> Resolução 196, de 24 de Agosto de 2011, Dispõe sobre a regulamentação do serviço de atendimento ao passageiro prestado pelas empresas de transporte aéreo regular

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- 3.23 For all complaints, airlines are required to accept complaints from passengers, attempt to resolve them, inform the passenger of the deadline for the airline response, and respond within 5 working days. Airlines must also submit twice-yearly quantitative and qualitative reports to ANAC on complaints received and airline responses. We have not been able to identify what fines apply but newspaper reports refer to fines of R\$4,000-10,000 (€1,600-4,200) having been imposed for infringements.

### *General consumer legislation*

- 3.24 Brazil includes measures of consumer protection in its constitution<sup>10</sup>. As a result of this, the Consumer Defence Code (CDC) was introduced in 1990<sup>11</sup>. This set out principles which must be followed in all consumer transactions, including that of direct intervention by the government to protect consumers, and the suppression of unfair business practices. It defines consumer rights which apply across all sectors, including the right to clear and accurate information on products (including price), the right to modification of unfair contract terms, and the right to an inversion of the burden of proof in civil actions when the allegation is probable (as decided by the judge in the action). It also allowed for legal assistance to consumers in need, and set up Consumer Protection Justice offices and Special Small Appeal Legal Courts.

### *Canada*

- 3.25 In Canada certain rights are defined in a voluntary Airline Passenger Charter, which has been agreed by most Canadian airlines. The Charter is more limited in scope than the EU legislation, with no right to refund or rerouting in the event of delay, and no reference to up- or downgrading. The Charter does however address tarmac delays, perhaps reflecting the policies adopted in the neighbouring United States. A political initiative to introduce a more extensive (and legally binding) 'Air Passenger Bill of Rights' has not progressed.
- 3.26 Airlines are required to make reasonable efforts to inform passengers of delays and schedule changes and to the extent possible, the reason for the delay or change.
- 3.27 The Charter includes an overriding exclusion for extraordinary events and the actions of parties outside the control of the carrier, stating that '*Nothing in Flight Rights Canada would make the airline responsible for acts of nature or the acts of third parties*'.
- 3.28 If they are dissatisfied passengers should first complain to their airline; then to the Canadian Transportation Authority if they are unhappy with the response received.

### *Delays and cancellations*

- 3.29 The Charter is more limited than Regulation 261/2004 in terms of the assistance offered to passengers in the event of delay, specifying that:
- For a delay of more than 4 hours, the carrier should provide a meal voucher; and

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<sup>10</sup> Title II on Rights and Fundamental Warranties, Chapter I on Individual and Collective Rights and Duties, section XXXII, Article 5. Signed 1988.

<sup>11</sup> Law 8,078, introduced 11 September 1990.



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- 3.38 Article 3.7 states that passengers who are dissatisfied should first complain to their airline; then to the relevant 'statutory bodies' if they are unhappy with the response received.

### *Delays and cancellations*

- 3.39 Article 3.4 specifies that carriers must provide free meals and refreshments in relation to waiting time provided the passenger has checked in on time where delay beyond the original or revised time of departure is:
- 2 hours or more for flights of up to 2½ hours;
  - 3 hours or more for flights of between 2½ and 5 hours; or
  - 4 hours or more for all other flights.
- 3.40 When the delay beyond the original or revised time of departure is more than 24 hours carriers must provide hotel accommodation where necessary, including transfers.
- 3.41 Similarly, in the event of a cancellation Article 3.3 requires the airline to provide free meals and refreshments in relation to waiting time whilst waiting for an alternate flight, provided they have already reported for the original flight.
- 3.42 Article 3.3 also requires that airlines inform passengers of cancellations as far in advance as possible, provided that the passenger has provided contact details to enable them to do this. Where passengers are not notified of a cancellation at least three hours in advance, carriers must also provide:
- A choice between:
    - Full refund;
    - Flight to the first point of the departure;
    - Alternate transport to the final destination ; or
    - Alternate transport to the final destination at a later date convenient to the passenger, subject to the availability of seats.
  - Unless the passenger did not provide contact details, or does not accept the alternative travel arrangements made by the airline, the following compensation must also be paid:
    - Rs 2,000 (€30) or, if lower, the price of the ticket, for flights of up to 1 hour;
    - Rs 3,000 (€45) or, if lower, the price of the ticket, for flights of 1 - 2 hours; and
    - Rs 4,000 (€60) or, if lower, the price of the ticket, for flights of more than 2 hours.

### *Other disruptions*

- 3.43 Again, in the event of overbooking airlines should first seek volunteers before involuntarily denying boarding to passengers (Article 3.2).
- 3.44 If boarding is denied to passengers against their will they should be offered compensation and a choice between refund and rerouting as outlined under cancellations above.



- 3.45 Carriers are allowed to offset any losses from the provision of compensation by levying ‘no show’ penalties on passengers.

**Mexico**

- 3.46 Mexico is the largest Latin American aviation market after Brazil. Its passengers are offered only limited protection under the provisions of the Civil Aviation Law (*Ley de Aviación Civil*). A law was proposed in 2006 to extend passenger rights, but this was rejected in 2009.

*Delays and cancellations*

- 3.47 Article 52 of the Civil Aviation Law defines that in the event of cancellations which are the responsibility of the carrier, the passenger will have the right to choose between:

- reimbursement of the part of the ticket that was not used;
- transport in the first available flight, with care (telephone calls, meals and accommodation) whilst they wait; and
- transport at a later date.

- 3.48 In addition the passenger has a right to compensation equivalent to 25% of the price of the unused ticket. This does not apply if the passenger is rerouted.
- 3.49 The rejected law would have added, in the case of suspension of services (this term was not defined), a choice between a refund and rerouting, with care being provided in the meantime, plus 25% compensation if the passenger was not informed sufficiently in advance (again it was not defined how much in advance). It would also have given carriers an obligation to reroute passengers to their final destination by the quickest available means.
- 3.50 The rejected law would also have extended the right to care and compensation to delays of more than 1 hour, but only for delays that were the responsibility of the carrier.

*Other disruptions*

- 3.51 Article 52 of the Civil Aviation Law treats denied boarding due to overbooking in the same way as denied boarding due to a cancellation. Therefore the same reimbursement and re-routing options apply as for cancellations above. The rejected law would have added an obligation to call for volunteers in the case of denied boarding.
- 3.52 Article 62 of the Civil Aviation Law defines compensation levels for loss or damage to baggage (40 times the minimum daily wage for hand baggage, 75 times for checked baggage). Article 66 defines that passengers must complain within 15 days.
- 3.53 The rejected law would have given passengers the right to carry two items of baggage on board the aircraft, provided it had 20 or more seats. It also defined compensation for damage or delay to baggage equivalent to 40-75 times the minimum daily wage, although this does not seem to differ from the provisions of the existing law.
- 3.54 The rejected passenger rights law would also have required carriers to:

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- clearly display information on passenger rights;
- provide neutral information on flight times, fares, and other characteristics of the service;
- provide information on any change to the planned service; and
- inform the passengers of insurances that they hold.

### *Colombia, Ecuador, Peru and Bolivia*

- 3.55 The Community of the Andes, which is formed of Colombia, Ecuador, Peru and Bolivia, has adopted Decision 619 which defines air passenger rights in these four States. The rights are quite similar to those defined by Regulation 261/2004 with respect to delays, cancellations and denied boarding, except that airlines are exempt from providing most of the assistance if the event is outside their control, and there is no reference to up- or downgrading.
- 3.56 Decision 619 also covers some issues not covered by Regulation 261/2004:
- baggage (although it does not add to the rights defined by the Montreal Convention);
  - provision of information and services in airports; and
  - customer service policies.
- 3.57 The scope of application of Decision 619 is similar to that of Regulation 261/2004. However, one key difference is that the Decision applies to both the contracting and operating carrier, implying that a passenger could claim against either if the defined rights were not respected.

### *Delays and cancellations*

- 3.58 Article 8(a) defines the assistance that airlines must offer in cases of delays, and Article 7 specifies that this also applies to cancellations. It is more specific than Regulation 261/2004 about what must be offered depending on the length of delay:
- For delays of 2-4 hours, the airline must offer refreshments and communication by the most suitable means, equivalent to one three minute telephone call;
  - For delays of 4-6 hours, the airline must also provide a meal; and
  - For delays over 6 hours, compensation equivalent to 25% of the ticket price, and overnight accommodation if necessary.
- 3.59 Article 8(e) of the Decision specifies the compensation that must be paid for delays and cancellations. It is more specific than Regulation 261/2004 about how compensation based on ticket price should be calculated, defining that the amount is the net price (excluding taxes), and for a multi-sector journey is a function of the length of the sector concerned divided by the total length of the journey.
- 3.60 These rights only apply to incidents that are the responsibility of the carrier. However, Article 7 defines that force majeure events have to be certified as such by the competent national authority in order to exempt the carrier from its obligations.

*Other disruptions*

- 3.61 Article 6 defines that in cases of denied boarding the carrier must seek volunteers, in the same way as for Regulation 261/2004. It also defines that the carrier must provide assistance, pay compensation equivalent to 25% of the ticket price, and reroute them on the same route and day, and if this is not possible, reroute them on another carrier.
- 3.62 Article 9 defines that in the case of diverted flights, the carrier is responsible for the costs of onward transport to the passenger's contracted destination, or another nearby destination agreed with the passenger.
- 3.63 However, these rights are both limited to cases which are the fault of the carrier.

*Other provisions*

- 3.64 Article 4 defines rights to information, including information at the time of booking, information about any change to the flight in advance, information at the airport, and information whilst on board. In order to facilitate the airline in complying with its obligations to provide information in advance about any changes, travel agents and other intermediaries are required to provide the airline with passenger contact details. If they fail to do so, they are liable for any the costs of compensation or assistance arising from the airline's inability to inform the passenger in advance as required.
- 3.65 Article 21 of the Decision defines some relatively limited obligations for airport operators, including the provision of adequate infrastructure, and provision and communication of adequate information on flights.
- 3.66 Article 22 defines that airlines must have a customer service system to receive complaints and assist passengers in person.

***UEOMA (West African Economic and Monetary Union)***

- 3.67 Regulation 03/2003/CM/UEOMA is in many ways similar to Regulation 261/2004, notwithstanding some differences in detail. Its scope is more limited, however, applying only to flights departing from an airport in one of the Union's Member States (Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal or Togo).

*Delays and cancellations*

- 3.68 Reflecting Regulation 261/2004, Article 6 requires that, in the event of a cancelled flight, passengers are offered the choice between a refund and rerouting to the first point of departure; or rerouting to the final destination as soon as possible, or at a later convenient date. If the carrier and passenger fail to agree to such an arrangement, the airline is required to offer the care and compensation required in the event of denied boarding (see below). Carriers are not liable for any assistance or compensation if they can prove that the cancellation was caused by extraordinary circumstances.
- 3.69 In the event of a delay, only care is required to be offered. Article 7 specifies the delay threshold as being 3 hours for flights of less than 2,500km; or 5 hours in all other cases, except for PRMs, for which the 3 hour threshold applies in all cases. The care to be provided (defined in Article 8), is almost identical to that specified

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by Regulation 261/2004, including the cost of a telephone call, telex or email to the destination; meals and refreshments in reasonable proportion to waiting time, and hotel accommodation when an overnight stay is required.

### *Other disruptions*

3.70 Under Article 4, carriers are required to offer carriers denied boarding the same choice between a refund or rerouting as for cancellations, together with compensation. Higher rates of compensation are specified for passengers in higher classes, and for longer distance flights:

- For flights of up to 2,500km, a minimum of 100,000 CFA francs (€152) for economy and 200,000 CFA francs (€305) for business class passengers; and
- For all other flights, a minimum of 400,000 CFA francs (€610) for economy and 800,000 CFA francs (€1,220) for business class passengers.

3.71 Maximum levels of compensation are set at the price of the ticket. The Regulation also allows compensation to be reduced by 50% where passengers are rerouted to their final destination within a specified time; although the thresholds are higher - 3 hours for flights of up to 2,500km, and 5 hours for all other flights.

3.72 If a passenger being denied boarding agrees instead to travel in a lower class, they are also entitled to a refund of 50% of the ticket price. Article 8 also specifies that all passengers denied boarding are offered care, the details of which are as for delays and cancellations, discussed above.

3.73 Where passengers are rerouted to an alternative airport in the same city the carrier must pay for any additional transport required.

### *Other provisions*

3.74 Carriers are required to establish denied boarding procedures, to share these with the Commission; and to notify if any updates are made. These rules must be publicly available, and should be displayed at check-in desks. It is also a requirement that the rules contain a call for denied boarding volunteers.

3.75 Any compensation should be paid in cash, unless the passenger agrees to travel vouchers or other services. In the event of denied boarding on a flight sold as part of a package, the carrier is required to indemnify the tour operator, who will in turn compensate the passenger.

3.76 Air carriers are required to provide all passengers affected by disruption with a notice setting out the rules for financial compensation.

### *Enforcement*

3.77 We have been informed (via the Commission) by representatives of UEMOA that the Regulation is not well applied, as UEOMA has no power to force enforcement by its Member States. Reflecting this, there is an absence of any provisions relating to enforcement in the Regulation. In effect, therefore, it creates a right which passengers would have to take civil action themselves to enforce.

**United States**

- 3.78 The US legislation adopts a different focus to that observed in the other states, focusing primarily on denied boarding and tarmac delays rather than other delays and cancellations.
- 3.79 Most of its requirements cover foreign airlines on flights to as well as from the US, in contrast to Regulation 261/2004, which does not cover non-EU airlines on flights to the EU. In some cases, the US legislation does have exceptions for carriers that do not market their services within the US - for example foreign charter operations which only carry inbound passengers.

*Delays and cancellations*

- 3.80 The focus of the legislation with regard to conventional delays and cancellations is on the timely provision of information to passengers. 14 CFR 259.8 (2011) requires carriers to inform passengers and the general public within 30 minutes of them becoming aware of a cancellation, diversion, or delay of 30 minutes or more. Notification must be made via the following channels:
- In the boarding gate area;
  - Flight status displays and other sources of information at airports;
  - On the carrier's website;
  - Via the carrier's telephone reservation system;
  - Upon enquiry by any person; and
  - Where provided, via flight status notification services.
- 3.81 This commitment should be incorporated in the carrier's Customer Service Plan (defined in 14 CFR 259.5 (2011)), which should also be posted on its website. The Customer Service Plan should also confirm that baggage will be delivered on time, including making reasonable efforts to return mishandled baggage within 24 hours, compensating for reasonable expenses arising from delay in delivery, and reimbursing any fees charged to transport a bag that is lost.
- 3.82 More attention is devoted to the issue of tarmac delays. Under 14 CFR 259.4 (2011) each covered carrier should adopt a Contingency Plan for Lengthy Tarmac Delays for its flights at each US large hub airport, which should include assurance that:
- Passengers will not be required to remain on the plane for more than 3 hours (for domestic flights) or 4 hours (for international flights to/from the US by covered carriers) unless:
    - The pilot-in-command determines that there is a safety or security reason which precludes the passenger from alighting; or
    - Alighting would significantly disrupt airport operations.
  - Adequate food and water will be provided no later than 2 hours before departure from gate or touchdown, unless the pilot-in-command determines that safety or security considerations preclude this;
  - Operable lavatories will be available, plus adequate medical attention if needed;

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- Passengers will receive status updates, explanations for the delay (where known) and, if the opportunity exists, confirmation that they can alight every 30 minutes
  - Sufficient resources are available to implement the plan, and that the plan has been coordinated with security organisations where required.
- 3.83 Failure to comply with the plan would be considered an unfair or deceptive practice that is subject to enforcement action. These commitments should also be reflected in the carrier's Customer Service Plan.
- 3.84 14 CFR 259.7 (2011) required carriers to designate an employee responsible for monitoring the effects of flight delays, flight cancellations, and lengthy tarmac delays on passengers; who will have input on decisions into which flights to cancel and which will be delayed the longest.
- 3.85 14 CFR 244.3 (2011) requires that all applicable carriers should file monthly tarmac delay reports with the DoT. These should report all tarmac delays of 3 hours or more, and the relevant data should be retained for 2 years. Carriers are also required under 14 CFR 234.4 (2008) to file monthly reports of cancellations, delayed and diverted flights.

### *Denied boarding*

- 3.86 As is the case in most of the other jurisdictions discussed above, 14 CFR 250.2 (2011) requires carriers to seek volunteers before denying boarding to other passengers. In addition, carriers are required to:
- Minimise the number of passengers denied boarding;
  - Establish priority rules and criteria for determining which passengers shall be denied boarding in the event that an insufficient number of volunteers can be found. These rules must be intelligible to the average passenger; and
  - Disclose all material restrictions if free or reduced travel is offered as compensation. Where passengers are informed orally that they are entitled to free or discounted rerouting, they should also be informed orally of any restrictions, and that they are entitled to choose monetary compensation instead.
- 3.87 Compensation is defined under 14 CFR 250.5 (2011) as:
- None, if rerouting is offered which allows the passenger to reach their subsequent destination no more than 1 hour later than scheduled;
  - 200% of the fare (but no more than \$650 (€480)) to the subsequent destination if the rerouted passenger reaches their subsequent destination 1-2 hours later than scheduled (1-4 hours for non-US carriers);
  - 400% of the fare (but no more than \$1300 (€970)) to the subsequent destination if the carrier does not reroute the passenger such that they arrive at their subsequent destination less than 2 hours after their scheduled arrival time (4 hours for non-US carriers).
  - Unused ancillary fees should be refunded for optional services paid by a passenger who is denied boarding either voluntarily or involuntarily.

- 3.88 The levels of compensation will be reviewed every 2 years and adjusted in line with inflation. 14 CFR 250.6 (2008) specifies that compensation is not required in instances where:
- The passenger does not comply with the carrier’s contract of carriage or tariff provisions;
  - The flight is unable to accommodate the passenger because of substitution of a smaller aircraft for operational or safety reasons; or, on an aircraft with a designed passenger capacity of 60 or fewer seats, the flight is unable to accommodate the passenger due to weight/balance restrictions when required by operational or safety reasons (this is a key difference with Regulation 261/2004 which does not contain any exemption for denied boarding due to circumstances outside the carrier’s control);
  - The passenger is seated in another class at no extra charge, except that a passenger seated in a section for which a lower fare is charged shall be entitled to an appropriate refund (the reference to up- or downgrading); or
  - The carrier arranges free rerouting, that at the time such arrangements are made is planned to arrive at the passenger’s subsequent destination no later than 1 hour after the planned arrival time.
- 3.89 14 CFR 250.5 (2011) states that free or reduced transportation may be offered in place of compensation if:
- The value of the ticket excluding taxes or mandatory fees is equal to or greater than the cash compensation otherwise required;
  - The carrier fully informs the passenger of the cash which would be payable, allowing the passenger to make an informed choice;
  - The carrier fully discloses all material restrictions.
- 3.90 Where no cash fare was paid by the passenger (e.g. frequent flyer tickets), compensation should be calculated on the basis of the lowest fare charged for a ticket for the same flight and class.
- 3.91 14 CFR 250.10 (2011) requires that monthly denied boarding reports should be provided to the Bureau of Transportation Statistics covering flight segments originating in the US.
- 3.92 14 CFR 250.9 (2008) requires that all passengers denied boarding should be provided with a written statement of the terms of their compensation and the carrier’s boarding priority criteria, which carriers are required to produce under 14 CFR 250.3 (2008). This information should also be provided at airport ticket desks in the form of a posted or a written statement for any passenger who requests it. The statement’s wording was substantially expanded in 14 CFR 250.9 (2011))
- 3.93 Carriers should confirm in their Customer Services Plan that they will adhere to these requirements.
- Other provisions*
- 3.94 The US legislation contains a number of other provisions, some of which were already included in EU law, for example:
- 14 CFR 255 (2004) defines requirements for computer reservation systems;

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- 14 CFR 399.80-83 addresses unfair and deceptive practices, for example misrepresentation that special discounts are available, or unrealistic scheduling;
  - 14 CFR 399.84 (1984) considers it unfair or deceptive to advertise a price which does not represent the entire cost paid by the consumer. This provision was expanded in the 2011 revision of 14 CFR 399; and
  - 14 CFR 399.85 (2011) requires clear notification of charges for baggage and other optional services.
- 3.95 Other provisions go further than EU law. 14 CFR 259.5 (2011) requires carriers to adopt and adhere to a customer service plan. Its minimum standards include requirements for carriers to:

- Deliver baggage on time, including making reasonable efforts to return mishandled baggage within 24 hours, compensating for reasonable expenses arising from the delay in delivery, and reimbursing the relevant baggage fees;
- Allow passengers to hold a seat at an advertised fare for at least 24 hours without payment and without penalty if the passenger decides not to purchase it (provided the reservation is made at least 1 week prior to travel).

### *Enforcement*

- 3.96 As discussed above, a number of methods are set out in legislation which allow the DoT to monitor compliance. All carriers in scope must:

- coordinate any tarmac delay contingency plans with the US Customs and Border Protection, and the Transportation Security Administration;
- provide data to the DoT regarding tarmac delays of 3 hours or more;
- provide monthly reports of cancellations, delayed and diverted flights to the Bureau of Transportation Statistics;
- provide monthly reports of numbers of passengers enplaned and number of mishandled-baggage incidents to the DoT;
- provide quarterly reports of passengers affected by denied boarding to the Bureau of Transportation Statistics; and
- post their tarmac delay contingency plans, customer service plans and contracts of carriage on their websites.

- 3.97 The DoT may review, on request, the results of annual internal audits which carriers are required to undertake of their customer service plans. The DoT also accepts complaints from passengers.

- 3.98 The Secretary of Transportation can impose civil penalties directly on airlines through an administrative process. To date, one fine for tarmac delays has been issued. On 14 November 2011, American Eagles Airlines was fined \$900,000 by the DoT, for delays at Chicago O'Hare airport on May 29 2011. During the first 12 months since the rule was enacted, 105 tarmac delays exceeded 3 hours; each of these could potentially have incurred a fine. In this case, American Eagles had tarmac delays of more than three hours on 15 flights arriving at O'Hare, with delays of up to 45 minutes over the limit. Of the \$900,000, up to \$250,000 can be



credited for refunds, vouchers, and frequent flyer mile awards to affected passengers.

***Summary of key provisions by State***

- 3.99 Table 3.3 compares the key requirements of the legislation and guidance in the five states with the specifications of Regulation 261/2004.



TABLE 3.3 SUMMARY OF KEY PROVISIONS IN OTHER JURISDICTIONS

State	Up/downgrading	Denied boarding		Cancellation	Delay
		Voluntary	Involuntary		
EU	<p>Carrier may not request supplementary payment for upgrading</p> <p>Downgrading subject to refunds of up to 75% of ticket price, depending on distance</p>	<p>Choice of reimbursement of unused portion (with return flight to first point of departure); or immediate or later re-routing</p> <p>Other benefits agreed between carrier and passenger</p>	<p>Only if insufficient volunteers can be found</p> <p>Choice of reimbursement of unused portion (with return flight to first point of departure); or immediate or later re-routing</p> <p>Meals/refreshments, communications and accommodation if overnight</p> <p>Compensation of up to €600, depending on distance</p>	<p>Choice of reimbursement of unused portion (with return flight to first point of departure); or immediate or later re-routing</p> <p>Meals/refreshments, communications and accommodation if overnight</p> <p>Compensation of up to €600, depending on distance, unless there are extraordinary circumstances, the passenger is informed more than 2 weeks in advance, or is informed less than 2 weeks in advance and offered rerouting at times close to the original flight.</p>	<p>Meals/refreshments, communications and accommodation if overnight</p> <p>Reimbursement of unused portion (with return flight to first point of departure) if delay more than 5 hours and the passenger opts not to travel</p>
Brazil	-	<p>Carrier should provide some form of compensation, and may require passenger to sign acknowledgment that this was accepted.</p> <p>Written explanation should be provided</p>	<p>Only if insufficient volunteers can be found</p> <p>Choice of reimbursement of unused portion (with return flight to first point of departure); or immediate or later re-routing, by another mode if necessary.</p> <p>Communications, food and accommodation (where required), depending on length of delay.</p>	<p>Reimbursement and immediate re-routing, including at a later convenient date or by other modes if cancellation is at stop or connecting airport</p> <p>At stop or connecting airport: communications facilities</p> <p>At stop or connecting airport: food</p> <p>At all points of departure: accommodation where required</p>	<p>Reimbursement and immediate re-routing, including at a later convenient date or by other modes if delay &gt; 4 hours</p> <p>Communications, food and accommodation (where required), depending on length of delay.</p>

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State	Up/downgrading	Denied boarding		Cancellation	Delay
		Voluntary	Involuntary		
			Written explanation should be provided		
Canada	-	-	-	<b>Voluntary requirement only</b> Choice between reimbursement of unused portion, or re-routing on flight operated by carrier or partner airline	<b>Voluntary requirement only</b> >4 hours: meal voucher >8 hours requiring an overnight stay: accommodation For tarmac delays: Drinks and snacks where practical If > 90 mins, passengers should be allowed to disembark until departure if practical
India	-	Compensation, to be determined by the airline	Refund of ticket and compensation of up to lower of value of ticket or Rs. 4,000 (€60) depending on length of delay	Choice of reimbursement or immediate or later re-routing  Refund of ticket and compensation of up to lower of value of ticket or Rs. 4,000 (€60) depending on length of delay  Meals/refreshments, accommodation where necessary	Meals/refreshments, accommodation where necessary
Mexico	-	-	Choice of reimbursement of unused portion or immediate or later re-routing  Compensation equivalent to 25% of the price of the unused ticket, unless the passenger is rerouted.	Choice of reimbursement of unused portion or immediate or later re-routing  Compensation equivalent to 25% of the price of the unused ticket, unless the passenger is rerouted.	-

State	Up/downgrading	Denied boarding		Cancellation	Delay
		Voluntary	Involuntary		
			Meals/refreshments, communications and accommodation if overnight	Meals/refreshments, communications and accommodation if overnight	
Community of the Andes		Meals, overnight accommodation if required, communication, compensation equivalent to 25% of the ticket price; and a refund if the passenger decides not to travel	Only if insufficient volunteers can be found. Meals, overnight accommodation if required, communication, compensation equivalent to 25% of the ticket price, and rerouting	Meals, overnight accommodation if required, communication and compensation equivalent to 25% of the ticket price	Depending on the length of delay, meals; overnight accommodation if required; communication; and (if the delay over 6 hours) compensation equivalent to 25% of the ticket price
UEMOA (West African Economic and Monetary Union)	Passengers agreeing to be downgraded are entitled to a refund of 50% of the ticket price, in addition to the provisions for denied boarding.	Carriers' denied boarding policies should include a call for volunteers.	Choice of reimbursement of unused portion (with return flight to first point of departure); or immediate or later re-routing  Meals/refreshments, communications and accommodation if overnight  Compensation of up to €1,220, depending on distance and class of travel.	Choice of reimbursement of unused portion (with return flight to first point of departure); or immediate or later re-routing  If carrier and passenger do not agree on reimbursement or rerouting arrangements, meals/refreshments, communications and accommodation if overnight; and  Compensation of up to €1,220, depending on distance and class of travel.  No assistance required if the carrier can prove extraordinary circumstances.	Meals/refreshments, communications and accommodation if overnight.
United	Passengers should not be charged	Compensation, to be determined by the airline. All material	Only if insufficient volunteers can	Information to be provided in a	Information to be provided in a

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State	Up/downgrading	Denied boarding		Cancellation	Delay
		Voluntary	Involuntary		
States	for involuntary upgrading A refund should be offered in the event of downgrading.	restrictions to be specified. Refund of ancillary fees for optional services.	be found. Rerouting and compensation of up to the lower 400% of the fare or \$1300 (€970), depending on length of delay. Free or reduced travel can be offered in place of compensation if the value of the ticket exceeds the cash compensation. Refund of ancillary fees for optional services. Written explanation should be provided.	timely manner.	timely manner. In the event of tarmac delay, adequate food/water, operable lavatories and medical attention if needed.

## Conclusion

- 3.100 EU legislation for other modes - rail, bus and coach, and maritime - was drafted after Regulation 261/2004, and there are many areas of consistency across these three Regulations. In some areas they are more advantageous to passengers than Regulation 261/2004, but in significant areas they are less so, notably with regard to care and compensation.
- 3.101 Regarding care, for both bus and coach and maritime travel, accommodation for overnight delays is limited to €80 per night, and to three and two nights respectively. In addition, the operator does not have to pay for accommodation in some exceptional circumstances. However, there is no limit on accommodation costs or exemption in the Regulation for rail transport.
- 3.102 The approach to compensation is different in the three non-aviation Regulations, being based on a percentage of ticket price increasing with the length of delay (up to 50% for long delays). Regulation 181/2011 regarding bus and coach transport only requires operators to compensate passengers if they were not offered a choice between continuation/re-routing and reimbursement. Rail passengers do not have a right to compensation if they select reimbursement.
- 3.103 There are also some areas in which the legislation for non-aviation travel is more beneficial to passengers than Regulation 261/2004. The time period after which food and drink is provided is shorter than under Regulation 261/2004, but is only required where it can reasonably be supplied. The non-aviation travel also requires operators to establish complaint handling mechanisms regarding violations of passenger rights, and set out requirements for an initial response to passengers within one month.
- 3.104 There are also significant differences between the rights for air passengers set out in Regulation 261/2004 and those defined in other jurisdictions. Our research suggests that, whilst there are areas of disruption addressed by the legislation in other jurisdictions which are not currently considered by Regulation 261/2004, in many ways the Regulation is more extensive in coverage and generous in its provisions than is the case elsewhere. For example, the issue of up- or down-grading is not addressed to the same extent in any of the legislation assessed other than the UEMOA legislation, with the exception of the cursory reference made in the US legislation.
- 3.105 Regulation 261/2004 also offers more generous provisions in the event of denied boarding, and particularly in cases where passengers volunteer to be denied boarding. Where provided for in the legislation, most decree that the compensation for voluntary denied boarding should be determined by the airline and, in some cases, agreed with the passenger. The EU legislation goes further than others (apart from UEMOA) in specifying that all passengers denied boarding should be offered the choice of receiving a refund or being rerouted; which could be more expensive for the airline. In addition, only the EU and UEMOA offer passengers who are denied boarding involuntarily the combination of compensation, care, and a choice between a refund or rerouting. However, the UEMOA and US regulations specify compensation levels for involuntary denied boarding that in some cases are higher than those in the EU.

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- 3.106 Similarly, passengers experiencing delays or cancellations are in general treated more generously under the EU legislation. In the case of a non-scheduled cancellation, only in the EU, UEMOA and India are passengers offered the three options cited above for denied boarding. However, at around €60 the maximum compensation offered to passengers in India is around a tenth of that available to passengers covered by Regulation 261/2004.
- 3.107 The Brazilian legislation is slightly more generous than Regulation 261/2004 in its treatment of delay, offering the choice between reimbursement and immediate or later re-routing for all delays of over 4 hours. It also specifies the provision of communications facilities and food after 1 and 2 hours delay respectively, both less than 2-4 hours depending on flight length specified in the EU. However, there is no compensation. In the remaining states care and compensation in the event of delay are less generous or non-existent.
- 3.108 As noted above there are areas of disruption not addressed in Regulation 261/2004, the most prevalent of which is the issue of tarmac delay, to which considerable attention is devoted in the US and, to a much lesser extent, in neighbouring Canada. The Canadian guidelines also make additional provisions with regard to delay of baggage which are not addressed in Regulation 261/2004.



## 4 Airline policies without EU legislation

### Introduction

- 4.1 As discussed in section 2 above, the economic burden of the EU legislation is not the total cost of applying it, but the incremental cost relative to the policies that airlines would otherwise apply. To understand the costs and benefit of the Regulation and any changes to it, it is therefore necessary to understand what protection would be available to passengers were the Regulation not to exist.
- 4.2 We have sought to explore this through researching the following:
- the customer service policies of airlines in markets where there is no equivalent legislation or the requirements of the legislation are less extensive;
  - airline policies which applied in Europe before the Regulation was introduced; and
  - airline views on the policies they would adopt in the absence of the Regulation, gathered during stakeholder interviews.
- 4.3 At the end of this section we explain the assumptions we have adopted for the policies followed by airlines if the Regulation was repealed, for the purposes of modelling the economic burden.

### Policies in markets with less or no legislation

- 4.4 We have reviewed the customer policies of 10 non-EU airlines to identify what rights these offer to passengers in cases of delays, cancellations, denied boarding, downgrading and lost/damaged baggage. Our selection criteria were as follows:
- airlines operating in other developed markets where there is either no similar legislation or the legislation is more limited (such as Canada and Australia); and
  - a range of different airline types.
- 4.5 The airlines selected are shown in Table 4.1 below; with the name of the document we reviewed. We also show what, if any, consumer protection legislation applies to them in the state in which they are based.

**TABLE 4.1 NON-EU AIRLINES SELECTED FOR REVIEW**

Airline	Airline type	Document reviewed	State	Passenger protection legislation applying in base State
Qantas	Legacy	Conditions of carriage	Australia	None identified
Virgin Australia	Low-cost / business	Guest charter		
WestJet	Low-cost	Conditions of carriage	Canada	None identified but voluntary code of practice

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Aeroméxico	Legacy	Conditions of carriage	Mexico	Limited
Air New Zealand	Legacy	Conditions of carriage	New Zealand	None identified
South African	Legacy	Conditions of carriage	South Africa	None identified
Mango	Low-cost	Conditions of carriage		
Delta	Legacy	Conditions of carriage	United States	Denied boarding, tarmac delays
United	Legacy	Conditions of carriage		
AirTran	Low-cost	Conditions of carriage		

- 4.6 For each of these airlines, we reviewed the documents shown for policies regarding the incidents covered by the Regulation. The result of this review is shown in Table 4.2, below. Note that none of the airline policy documents we reviewed contained any reference to upgrading.

**TABLE 4.2 REVIEW OF NON-EU AIRLINE PASSENGER PROTECTION POLICIES**

Airline	Cancellation	Delay	Denied boarding	Downgrading	Tarmac delays
Qantas	<p>For cancellations within airline control, offer choice of seat on next available flight or refund of fare.</p> <p>If occurs on day of travel, provide voucher for care or reimburse reasonable costs. If overnight and not at home airport, assist finding hotel, otherwise reimburse reasonable costs.</p> <p>If cancellation due to discontinued route, offer choice of seat on next available flight or refund of fare.</p> <p>If outside airline control, offer choice of reasonable endeavours to rebook on next available Qantas flight, or refund of applicable fare. Not responsible for any other costs incurred.</p> <p>No reference to compensation.</p>	<p>For significant changes to scheduled departure time within airline control, offer choice of seat on next available flight or refund of fare.</p> <p>If occurs on day of travel, provide voucher for care or reimburse reasonable costs. If overnight and not at home airport, assist finding hotel, otherwise reimburse reasonable costs.</p> <p>If outside airline control, offer choice of reasonable endeavours to rebook on next available Qantas flight, or refund of applicable fare. Not responsible for any other costs incurred.</p> <p>No reference to compensation.</p>	<p>Seek volunteers. Volunteers offered incentives to take alternative flight but no other compensation.</p> <p>Passengers denied boarding involuntarily are offered seat on next available flight. If this is not acceptable, they are given care and compensation in accordance with company policy (where no applicable law). Company policy is available on request.</p>	<p>Accommodation on reasonable alternative flight, or refund of difference in fare. No reference to care or compensation.</p>	<p>No reference</p>
Virgin Australia	<p>For cancellations/delays within airline control, offer seats on next available flight. For short-haul flights, delays &gt;4 hours receive credit for flight (or refund depending on ticket class). For long-haul flights, give gift voucher. If overnight and not at home airport, arrange and pay for transfers, meals and accommodation.</p> <p>If outside airline control, will 'do best' to find seat for passenger on next available VA flight, for no additional cost.</p> <p>No reference to compensation.</p>	<p>Seek volunteers, then offer: next available Virgin Australia flight, VA credit for short-haul flights, or gift voucher for long-haul flights. Arrange and pay for food and accommodation if overnight stay necessary.</p> <p>US departures comply with US law.</p>	<p>No reference</p>	<p>At non-US airports, will endeavour to provide necessary food or water if possible.</p>	

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Airline	Cancellation	Delay	Denied boarding	Downgrading	Tarmac delays
WestJet	<p>Defined as cancellation of scheduled service or discontinued route. Passenger is offered seat on next available flight. The carrier, at its discretion, may also offer a choice of: flight via alternative carrier if it deems next available flight on its own services unreasonable, or reimbursement either by refund or by travel credit where a passenger purchases a seat on an alternative carrier. If a passenger chooses not to fly, they receive a travel credit for unused portions of flight.</p> <p>For controllable cancellations resulting in at least 3 hour delay in final arrival, full-revenue passengers also given WestJet credit: CAD 100 for flights &lt;300 miles, or CAD 200 for longer haul flights.</p> <p>Carrier determines which incidents are within its control, and which passengers are eligible for compensation.</p>	<p>Meal vouchers for more than two hours delay, up to 3 meal vouchers a day, overnight stay for passengers not starting their journey at that airport.</p> <p>For controllable delays resulting in at least 3 hour delay in final arrival, full-revenue passengers also given WestJet credit: CAD 100 for flights &lt;300 miles, or CAD 200 for longer haul flights.</p>	<p>Seek volunteers. If more passengers volunteer than necessary, all receive WestJet credit for full fare value.</p> <p>Passengers denied boarding involuntarily offered: seat on next available flight when time permits, or WestJet flight to same destination at later time, or free refund where possible. Care and accommodation for flight within 48 hours of original time.</p>	No reference	<p>Will offer drinks and snacks if safe and practical to do so. If airline deems delay controllable, and &gt;90 minutes, will offer passengers option to disembark if safe and practical to do so.</p>
Aeroméxico	No reference	No reference	<p>Seek volunteers. If insufficient, then deny boarding involuntarily according to boarding priorities. Compensation offered, value not specified. No reference to care or accommodation.</p>	No reference	No reference
Air New Zealand	<p>If flight cancelled or not operated reasonably according to schedule, passenger offered choice, subject to ANZ agreement, of: alternative flight to destination, by ANZ or other carrier (with any fare reduction refunded). If these not acceptable, full refund or credit.</p>		<p>Entitled to compensation if denied boarding involuntarily. No reference to care.</p>	No reference	No reference

Airline	Cancellation	Delay	Denied boarding	Downgrading	Tarmac delays
	No reference to care or compensation.				
South African	<p>If flight cancelled or not operated reasonably according to schedule, offer next alternative SA flight, or reroute within reasonable period of time by own or other carrier's services or (with passenger agreement) other mode of transport, or full refund of unused portions of tickets. If rerouting is at a lower fare than originally paid, refund difference. May arrange for alternative carrier to operate service.</p> <p>No further liability; implies no care or compensation.</p>		Entitled to compensation if denied boarding involuntarily, in accordance with applicable law and DBC policy. No reference to care or accommodation.	Compensation for involuntarily downgrading, in accordance with applicable law.	No reference
Mango	<p>If flight cancelled because of reasons outside airline control (including technical problems), offer next available flight or full refund. Terms not clear regarding refunds: section on cancellations states that all monies paid will be refunded, but section on refunds states that refunds are subject to deduction of reasonable administration fee.</p> <p>If cancelled by airline, offer refund subject to reasonable administration fee. May also offer credit voucher, however wording is not clear.</p> <p>Will not provide meal or accommodation vouchers for cancellations.</p>	<p>If a significant change is made to the schedule after ticket purchase, which is not acceptable to passenger, passenger is offered choice of alternative flight or refund. Refund is subject to reasonable administration fee.</p> <p>Will not provide meal or accommodation vouchers for delays.</p> <p>No reference to what if anything will be provided.</p>	<p>Airline selects which passengers denied boarding. Airline chooses whether to offer next available flight or refund of fare paid, subject to reasonable administration fee.</p> <p>Will not provide meal or accommodation vouchers for denied boarding.</p>	No reference	No reference
Delta Airlines	<p>For cancellations or delays &gt;90 minutes, passenger offered: next available flight, or full refund of unused portion of ticket. Offer lower class with partial refund if acceptable to passenger. May offer travel via other carrier or surface transport, at carrier discretion.</p> <p>If within carrier control and delay &gt;4 hours, also provide meal vouchers, and where necessary overnight accommodation (if not available, provide Delta</p>		Covered by national legislation	No reference	Covered by national legislation

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Airline	Cancellation	Delay	Denied boarding	Downgrading	Tarmac delays
	credit of equivalent value). No reference to compensation.				
United Airlines	If delay/cancellation within airline control, offer: next available flight (via other carrier if required), or full refund of fare paid. Where necessary (>4 hour delay between 10pm and 6am), will provide one night's accommodation (or allowance to cover this). No reference to food or compensation.			Refund of difference in fare	
AirTran	Offer choice between rebooking and refund of or credit for fare paid, for unused portions. Not subject to administrative fee.  If results in overnight stay not at start of journey and not due to bad weather, provide one night's lodging.  Will not refund expenses incurred as a result of cancellation.	Will not refund expenses resulting from delay of flights. No reference to what if anything will be provided.		No reference	

*Conclusions*

- 4.7 Based on the review of non-EU airline policies above, we have drawn together a summary showing the policies which are least and most beneficial to passengers. Table 4.3 shows our assessment of what airline policies are in place where there is no legislation in force.
- 4.8 It should be noted that in Canada many airlines (including WestJet, selected for review) have signed up to a voluntary agreement on airline policy in this area. The provisions of this agreement are more generous to passengers than those offered by the carriers reviewed based in other States, and are shown as the policies most beneficial to passenger for cancellations and delays. This voluntary agreement may have been partly intended to deflect political pressure for regulation of air passenger rights.
- 4.9 The table shows that many airlines have different policies depending on whether the incident was within their control or not. However, many of the airlines reviewed do not define these circumstances, and some define these as including circumstances which would not be sufficient to meet the criteria in Article 5(3), such as all technical problems. Some state that it is the airline’s decision what is within its control or not. Therefore, it is likely that the circumstances which would be deemed outside airlines’ control would be wider than those which are sufficient to meet the criteria in Article 5(3).

**TABLE 4.3 AIRLINE DISRUPTION POLICIES WHERE NO LEGISLATION IN FORCE**

Area	Least beneficial to passenger	Most beneficial to passenger
Cancellation	<p>No reference to refunds or rerouting, or refund only subject to administration fee.</p> <p>Explicitly no provision of meal or accommodation vouchers for cancellations, or refund of expenses incurred.</p>	<p>Offer choice of:</p> <ul style="list-style-type: none"> <li>- seat on next available flight (either by carrier or alternative, subject to passenger agreement); or</li> <li>- flight at later date agreed with passenger; or</li> <li>- full credit for fare paid with no administration fee.</li> </ul> <p>Where inside airline control, provide voucher for care and pay for overnight accommodation where necessary (or reimburse reasonable costs). For long delays within airline control, provide compensation in form of credit with airline.</p> <p>For cancellations outside airline control, no responsibility for expenses incurred.</p>
Delay	<p>No reference to refunds or rerouting.</p> <p>Explicitly no provision of meal or accommodation vouchers for delays, or refund of expenses incurred.</p>	<p>Offer choice of:</p> <ul style="list-style-type: none"> <li>- seat on next available flight (either by carrier or alternative, subject to passenger agreement); or</li> <li>- flight at later date agreed with passenger; or</li> <li>- full credit for fare paid with no administration fee.</li> </ul> <p>Where inside airline control, provide voucher for care and pay for overnight accommodation where necessary (or reimburse reasonable costs). For long delays within airline control, provide compensation in form of credit with airline.</p> <p>For delays outside airline control, no responsibility for expenses incurred.</p>

Area	Least beneficial to passenger	Most beneficial to passenger
Denied boarding	<p>Airline selects which passengers denied boarding. Passengers offered, at airline discretion, next available flight or refund of fare paid, subject to reasonable administration fee.</p> <p>Explicitly will not provide meal or accommodation vouchers for passengers denied boarding.</p>	<p>Seek volunteers, who are offered credit for full fare value (given to all passengers who volunteer, including if there are more than required).</p> <p>If necessary, deny boarding involuntarily. These passengers offered:</p> <ul style="list-style-type: none"> <li>- seat on next available flight; or</li> <li>- flight at later date agreed with passenger; or</li> <li>- full credit for fare paid with no administration fee.</li> </ul> <p>Food and accommodation arranged where necessary.</p>
Downgrading	No reference	Accommodation on reasonable alternative flight, or refund of difference in fare. No reference to care or compensation.
Tarmac delays	No reference	Will offer drinks and snacks if safe and practical to do so. If airline deems delay within its control, and it is >90 minutes, will offer passengers option to disembark if safe and practical to do so.

### European airline policies applying before Regulation 261/2004

- 4.10 An alternative source of information regarding airline policies in the absence of the Regulation is the policies of EU airlines before the Regulation took effect in 2005. We have reviewed the following documents:
- IATA’s Recommended Practice RP1724 on Conditions of Carriage, which pre-dates the Regulation (although is still widely used as the basis for EU carriers’ Conditions of Carriage); and
  - the voluntary passenger service commitment agreed by a number of AEA airlines in 2001, the scope of which was significantly more limited than the Regulation.
- 4.11 These two documents had different legal weight. If included in an airline’s Conditions of Carriage, the provisions of RP1724 would form part of the contract between the airline and a passenger, and would therefore be legally binding, unless there was a conflict with other applicable legislation. The AEA voluntary passenger service commitment, in contrast, is a set of stated aims for airlines which are signatory to it. The text of the agreement states that signatory airlines ‘will endeavour to achieve the standards set out in this Airline Passenger Service Commitment on a consistent basis’, and does not commit them to achieving these standards. A passenger could not make a claim against a carrier for costs arising from its failure to meet these standards.
- 4.12 Elements of RP1724 were amended to improve its compliance with the Unfair Contract Terms Directive after action taken by the UK Office of Fair Trading: as a result, RP1724 gives passengers the right to a refund if there is a significant change in the flight time and the airline is not able to book an acceptable alternative flight. The provisions shown below are therefore more beneficial to passengers than were offered voluntarily by IATA airlines.



**TABLE 4.4 AIRLINE DISRUPTION POLICIES WHERE NO LEGISLATION IN FORCE**

Area	IATA RP1724	AEA voluntary passenger service commitment
Cancellation	<p>Cancellation not defined. If flight cancelled, offer choice between:</p> <ul style="list-style-type: none"> <li>- alternative service on same carrier subject to availability;</li> <li>- rerouting via own or other services or agreed other means, within reasonable period of time; or</li> <li>- a refund.</li> </ul> <p>Refund is fare paid, if no portion used; otherwise at least the difference between fare paid and applicable fare for section used. If the rerouting option is of lower value, difference between this and fare paid refunded. No administration fee is charged.</p> <p>The carrier would have no further obligation except as otherwise provided by the Montreal Convention.</p>	<p>Provide appropriate assistance (e.g. food, accommodation) for passengers delayed for 2 hours or more, subject to local availability.</p> <p>Such assistance is not required to be provided in the following circumstances:</p> <ul style="list-style-type: none"> <li>- where it would further delay departure;</li> <li>- during exceptional circumstances beyond the airline's control;</li> <li>- on public service obligation routes;</li> <li>- on routes frequently disrupted by weather conditions; or</li> <li>- on services of less than 300km to remote airports operated by aircraft with less than 80 seats.</li> </ul> <p>Exceptional circumstances beyond the airline's control are not defined further.</p>
Delay	<p>If fail to operate flight reasonably according to schedule, offer choice between:</p> <ul style="list-style-type: none"> <li>- alternative service on same carrier subject to availability;</li> <li>- rerouting via own or other services or agreed other means, within reasonable period of time; or</li> <li>- a refund.</li> </ul> <p>Refund is fare paid, if no portion used; otherwise at least the difference between fare paid and applicable fare for section used. If the rerouting option is of lower value, difference between this and fare paid refunded. No administration fee is charged.</p> <p>The carrier would have no further obligation except as otherwise provided by the Montreal Convention.</p>	<p>Provide appropriate assistance (e.g. food, accommodation) for passengers delayed for 2 hours or more, subject to local availability.</p> <p>Such assistance is not required to be provided in the following circumstances:</p> <ul style="list-style-type: none"> <li>- where it would further delay departure;</li> <li>- during exceptional circumstances beyond the airline's control;</li> <li>- on public service obligation routes,</li> <li>- on routes frequently disrupted by weather conditions; or</li> <li>- on services of less than 300km to remote airports operated by aircraft with less than 80 seats.</li> </ul>
Denied boarding	<p>If unable to provide previously confirmed space, provide compensation to passengers denied boarding in accordance with applicable law and denied boarding compensation policy.</p>	<p>In the event of a flight at departure time having more passengers than seats available, each airline will first seek volunteers who are prepared to stand down from the flight, subject to any security and/or operational constraints at the airport concerned.</p>
Downgrading	<p>If unable to provide previously confirmed space, provide compensation to passengers denied boarding in accordance with applicable law and denied boarding</p>	<p>No reference.</p>

Area	IATA RP1724	AEA voluntary passenger service commitment
	compensation policy.	
Tarmac delays	No reference.	<p>The airline will make every reasonable effort to provide food, water, lavatories and access to medical treatment for passengers aboard an aircraft that is on the ground for an extended period of time without access to the terminal, as consistent with passenger and employee safety and security concerns.</p> <p>Airlines will make every reasonable effort not to keep passengers on board in long delays.</p>

**Airline views**

4.13 In our interviews with airlines, we asked them what policies they would adopt if the Regulation were to be repealed. This has some limitations as it was a hypothetical exercise and therefore it is unclear whether it would reflect what their policies would actually be. Some airlines said that the question was irrelevant as the Regulation was unlikely to be repealed and therefore they were not willing to discuss this.

4.14 Some of the key points raised by airlines were:

- Several stated that they would not pay compensation for delays, or for circumstances outside their control. Others stated that they would set the value of any compensation as a multiple of the fare paid. One airline stated that they would not pay compensation at all.
- Most airlines responding stated that they would limit the periods for which care and accommodation would be provided. Some would place limits on the maximum cost of these.
- Many airlines stated that they were incentivised by competition with other carriers to provide adequate assistance, care and compensation to their customers. This was particularly stated for denied boarding, where the practice of requesting volunteers was already in place before the introduction of the Regulation. One stated that the only change would be to no longer pay compensation for delays.
- Several legacy carriers stated that repealing the Regulation would allow a more flexible consumer policy, with case-by-case responses. This would particularly affect the treatment of passengers travelling by different classes; it is likely that passengers purchasing premium tickets or who were elite members of airline frequent flyer programmes would receive better treatment than others.

**Other law which would apply if the Regulation was repealed**

4.15 Our legal advisors consider that, if the Regulation was repealed, there would be some minimum standards of air carrier behaviour as a result of:

- Directive 93/13/EC on unfair contract terms; and
- the Montreal Convention and Regulation 889/2002.

- 4.16 Passengers who were not transported, because their flight was cancelled or because they were denied boarding, would most probably have a right to either rerouting or refund in any event (any restriction on this would be most likely to be an unfair contract term and thus be unenforceable - at any rate where the cancellation was within the carrier's control). However, if the cancellation was outside the carrier's control, passengers might not have any right to a choice between these: our legal advisors consider that a term in Conditions of Carriage which defined that a carrier's only obligation was to offer a refund or reimbursement at its discretion may not be considered to be an unfair contract term if it was restricted to circumstances outside the carrier's control and depending on the circumstances. For example, if the passenger's journey no longer served any purpose, it would be more likely to be unreasonable for a carrier to try to restrict that passenger's right to re-routing and such a term probably would not be upheld.
- 4.17 Passengers also would not have any automatic right to assistance, such as refreshments or hotel accommodation. However, our legal advisors consider it would be an unfair contract term if passengers' right to claim for costs of assistance (i.e. their damages resulting from the carrier's breach of contract) was restricted in circumstances where the carrier was responsible for the delay or cancellation.
- 4.18 The Montreal Convention provides a right to compensation in the event of delay. However, the passenger would need to prove that he/she had suffered a loss, and the Convention would provide the carrier with a defence if it could prove that it and its servants and agents took all necessary measures that could reasonably be required to avoid the damage or that it was impossible for them to take such measures. This defence is relatively easy for carriers to establish where the delay is for reasons beyond their control and, in any case, experience has shown that there have been relatively few claims by passengers on this basis both due to the need to prove financial loss and because of the existence of the Regulation.
- 4.19 It is less clear what rights there would be to compensation in the case of cancellation as this is not covered by the Montreal Convention (as it most probably does not constitute 'delay', although some courts, particularly in the US, have considered that it does). Passengers could still claim against carriers for breach of contract under national law, but it is likely that they would have to prove a loss and a carrier could defend a claim on the basis that it was not responsible for the cancellation. Any term in Conditions of Carriage which restricted carriers' obligations beyond this would probably be an unfair contract term. In the case of denied boarding it would be harder for the carrier to prove that it was not responsible for the breach of contract but the passenger would still have to prove a loss in order to obtain compensation.

### Conclusions

- 4.20 For our assessment of the economic burden of the regulation, it is necessary to determine the difference in costs between airline policies with and without the Regulation. Airline policies without the Regulation would be determined by the following factors:
- other laws applying, including other EU laws and laws applying in third countries to which the air carriers operate; and
  - what is in the airline's commercial interest.

- 4.21 The EU laws applying in the absence of the Regulation are discussed above and these would define the minimum possible provisions an EU airline could offer without risking civil action from passengers and in some States enforcement action. Although non-EU legislation (discussed in section 3 above) is more extensive in certain respects - particularly US legislation on tarmac delays and denied boarding - in most cases it goes little further than other EU law would already require. Therefore, on average, we do not think non-EU legislation would have a significant impact on the policies that would be applied if the Regulation was repealed.
- 4.22 It could be argued that it would be in the commercial interest of some carriers to offer a higher level of service, including provision of compensation in some cases. This would appear particularly likely for carriers that market themselves on the basis of quality of service as well as price, which would be disproportionately (but not solely) legacy carriers. However, the boundaries between airline business models have become increasingly blurred, and therefore this is not clear. In addition, as discussed above (paragraph 4.12), the policies defined by IATA in RP1724 and adopted by many of their member airlines (primarily legacy carriers) were amended to be consistent with the Unfair Contract Terms Directive as a result of intervention by the UK regulatory authorities, so are already more generous than the policies the airlines would offer of their own free choice.
- 4.23 Therefore, we have assumed that if the Regulation was repealed, airlines would on average provide the minimum service level required for compliance with other EU law. The only exception to this is that we assume some fixed compensation would be paid for denied boarding, partly because it would be easier in this case for the passenger to prove that the carrier was responsible, but this compensation would not exceed the price of the ticket.
- 4.24 On this basis, for the purpose of quantifying the economic burden, we have assumed that if the Regulation was repealed the airlines would on average apply the policies in the following table.

**TABLE 4.5 LIKELY AIRLINE POLICIES IN THE ABSENCE OF REGULATION 261/2004**

Disruption type	Policy
Cancellation	<p>If flight cancelled for reasons that the airline defines as being within its control, it would offer the passenger a choice of:</p> <ul style="list-style-type: none"> <li>- alternative service on same carrier subject to availability;</li> <li>- a refund.</li> </ul> <p>The refund would be the fare paid, if no portion used; otherwise at least the difference between fare paid and applicable fare for the segment(s) used. No administration fee is charged.</p> <p>The airline would also provide a voucher for care, and pay for overnight accommodation where necessary (or reimburse reasonable costs).</p> <p>For cancellations outside the airline’s control, the airline would provide either rerouting or a refund, but it would be at its discretion which of these was provided. There would be no payment for care or accommodation.</p> <p>The carrier would have no further obligation except as otherwise provided by the Montreal Convention, and therefore in most circumstances no compensation would be payable.</p>

Disruption type	Policy
Delay	<p>If the airline fails to operate a flight within 5 hours of the schedule, for reasons that it defines as being within its control, it would offer the passenger a refund if he/she did not wish to travel.</p> <p>The refund would be the fare paid, if no portion used; otherwise at least the difference between the fare paid and the applicable fare for segment(s) used. No administration fee would be charged.</p> <p>The airline would also provide a voucher for care and pay for overnight accommodation where necessary (or reimburse reasonable costs).</p> <p>For delays outside the airline's control, there would be no option of a refund and no payment for care or accommodation.</p> <p>The carrier would have no further obligation except as otherwise provided by the Montreal Convention, and therefore in most circumstances no compensation would be payable.</p>
Denied boarding	<p>First the airline would seek volunteers, who would be offered incentives according to airline policy. For modelling purposes we have assumed that this would include a refund or rerouting, plus compensation equivalent to 50% of the ticket price with a maximum of €200.</p> <p>For passengers denied boarding involuntarily, the airline would offer the passengers a choice of:</p> <ul style="list-style-type: none"> <li>- alternative service on same carrier subject to availability; or</li> <li>- a refund.</li> </ul> <p>The refund would be the fare paid, if no portion used; otherwise at least the difference between the fare paid and the applicable fare for segment(s) used. No administration fee would be charged.</p> <p>The airline would provide a voucher for care and pay for overnight accommodation where necessary (or reimburse reasonable costs).</p> <p>In addition the airline would provide compensation. This compensation would be equivalent to the ticket price except that it would not exceed a given amount (for modelling purposes we have assumed €400).</p> <p>The carrier would have no further obligation except as otherwise provided by the Montreal Convention, and therefore in most circumstances no other compensation would be payable.</p>
Downgrading	<p>For downgrading within the carrier's control, affected passengers would be offered the choice of:</p> <ul style="list-style-type: none"> <li>- alternative service in the original class on the same carrier subject to availability; or</li> <li>- a refund of the difference in fare between the original class and the downgraded class.</li> </ul> <p>Where downgrading is for reasons which the airline determines as being outside the its control, the choice between these may be at the carrier's discretion.</p> <p>No voucher for care or overnight accommodation would be offered.</p>
Tarmac delays	<p>No provisions - rare occurrence in EU.</p>

## 5 Enforcement and complaint handling by NEBs

### Introduction

- 5.1 This section summarises the complaint handling and enforcement process undertaken by National Enforcement Bodies (NEBs) for Regulation 261/2004. It also provides a summary of information available on complaint handling and enforcement of other consumer protection legislation in the air transport sector. We set out the following information:
- we provide an overview of the NEBs, describing the type of organisations they are and the resources they have available;
  - we set out the legal basis for complaint handling and enforcement;
  - we summarise statistics for the number of complaints received, the nature of the complaints, and the outcomes, and for sanctions that have been issued;
  - we describe in detail the process for complaint handling and enforcement in each State, and outline a number of common issues and difficulties;
  - we provide an overview of other activities undertaken by NEBs in relation to the Regulation, such as inspections undertaken at airports; and
  - we summarise the bodies responsible for enforcement of the other consumer protection legislation and the actions that they have undertaken.
- 5.2 Some of the information within this section is provided for the NEBs in all Member States, but the detailed information relating to the complaint handling and enforcement process has been collected for the 14 States for which case studies have been either developed, or updated based on case studies previously compiled. Further detail on complaint handling and enforcement in the 14 case study States is provided in Appendix A.
- 5.3 Whilst we have undertaken interviews and/or received written submissions from all of the NEBs and most other relevant stakeholders, in some cases NEBs have not confirmed what they had said in interviews, or had not responded to clarification questions or requests for additional information. This report reflects the best information available to us. Some information, particularly in respect to Italy and Belgium, has been updated since the Intermediate Report.

### Summary of changes since 2009/10 study

- 5.4 Similar information was collected and analysed for the 2009/10 study. In some Member States there have subsequently been changes, or the process has been clarified through the research undertaken for this study. These changes are summarised below. In several other States there have been no changes; information is still provided here in order to have one consolidated source but in some cases is therefore unchanged from the previous study.
- 5.5 The most significant changes since our 2009/10 study are:
- Netherlands has introduced into national law punitive sanctions for irreparable infringements, and has been able to apply these since the publication of the policy/penalty procedure in September 2011.

- The UK Air Transport Users Council has been abolished and its complaint-handling functions have been taken over by the UK Civil Aviation Authority (CAA). At the time of our interview the CAA was not undertaking investigations of extraordinary circumstances, although as discussed below it planned to do so in the future.
- Spain has amended national law to explicitly specify that sanctions are available for infringements.
- Difficulties in Germany and Spain with imposition or collection of sanctions in relation to non-national carriers have been resolved.
- The courts in Italy have applied a ‘forced execution’ of an unpaid fine for the first time, which allows them to force payment through seizure of assets.

5.6 We have also found that there are significant differences in application of the rights identified in the Sturgeon judgement: some NEBs including Spain and France are applying it, whereas others including UK and Germany are not doing so until the CJEU issues its judgement in the outstanding references. In addition, whilst most NEBs say that they apply the Wallentin judgement, there are significant differences in how this is interpreted.

### Overview of the enforcement bodies

#### *NEBs for Regulation 261/2004*

5.7 Most of the NEBs are Civil Aviation Authorities. In the States where the NEB is not a CAA, it is generally a statutory consumer authority. In some Member States, another organisation undertakes part or all of the complaint handling and enforcement function. In Finland, there are three complaint handling/enforcement bodies, and in Sweden, there is a separate body responsible for complaint handling but it is not designated as an NEB.

5.8 Table 5.1 lists the NEBs, the nature of the organisation, and where there is more than one NEB in a State, the role of each organisation. The table is divided into case study and non-case study States.

**TABLE 5.1 ENFORCEMENT BODIES FOR REGULATION 261/2004**

State	Enforcement body	Nature of organisation	Role
Belgium	SPF Mobilité Denied Boarding Authority	CAA	Complaint handling
	SPF Mobilité Aviation Inspectorate	CAA	Enforcement
Czech Republic	Czech Civil Aviation Authority	CAA	-
Finland	Consumer Agency/Ombudsman	Consumer authority	Enforcement of contract terms and general practices
	Consumer Disputes Board (CDB)	ADR	Consumer complaints, dispute resolution
	TraFi (Transport Safety Agency)	CAA	Enforcement and complaints from

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			business passengers
France	Direction Générale de l'Aviation Civile (DGAC)	CAA	-
Germany	Luftfahrts-Bundesamt (LBA)	CAA	-
Ireland	Commission on Aviation Regulation (CAR)	Economic regulator	-
Italy	Ente Nazionale Aviazione Civile (ENAC)	CAA	
Latvia	Consumer Rights Protection Centre (CRPC)	Consumer authority	-
Netherlands	Inspectie der Verkeer Waterstraat	CAA	-
Poland	Civil Aviation Office (CAO) Commission on Passengers' Rights	CAA	
Spain	Agencia Estatal de Seguridad Aérea (AESA)	CAA	-
Sweden	Konsumentverket (KV)	Consumer authority	Enforcement
	Allmänna reklamationsnämndens (ARN) <sup>12</sup>	ADR	Complaints handling, dispute resolution
Switzerland	Federal Office of Civil Aviation (FOCA)	CAA	-
United Kingdom	UK Civil Aviation Authority	CAA	-
Austria	Bundesministerium für Verkehr, Innovation und Technologie	CAA	-
Bulgaria	General Directorate Civil Aviation Administration <sup>13</sup>	CAA	-
Cyprus	Department of Civil Aviation	CAA	-
Denmark	Danish Transport Authority (Trafikstyrelsen)	CAA	-
Estonia	Consumer Protection Board	Consumer authority	-
Greece	Hellenic Civil Aviation Authority, International Affairs Division	CAA	-
Hungary	Hungarian Authority for Consumer Protection (HACP)	Consumer authority	Complaint handling and enforcement

<sup>12</sup> Not designated as an NEB

<sup>13</sup> In addition the Consumer Protection Commission (CCP) handles complaints, but is not designated as an NEB



	National Transport Authority Aviation Administration	CAA	Airline supervision and technical investigations
Lithuania	Civil Aviation Administration	CAA	-
Luxembourg	Ministère de l'Économie et du Commerce extérieur	Consumer ministry	-
Malta	Office for Consumer Affairs (OCA)	Consumer authority	-
Portugal	Instituto Nacional de Aviação Civil (INAC)	CAA	-
Romania	National Authority for Consumers Protection (ANPC)	Consumer authority	-
Slovak Republic	Slovak Trade Inspectorate (STI)	Consumer authority	-
Slovenia	Civil Aviation Agency	CAA	-

### ***Resources available and operating costs***

- 5.9 There are significant differences between the resources deployed on complaint handling and enforcement in different States. The largest number of full time equivalent staff working in relation to the Regulation is in Spain, where there are 21 FTEs working on Regulation 261/2004 and a further 17 on other passenger rights issues; in contrast, with a similar size aviation market, Germany has only 9 FTEs and France has 5.5. Approximately 120 FTEs are working on complaint handling and enforcement of the Regulation for NEBs EU-wide, although this estimate is uncertain as some States were not able to provide definitive figures.
- 5.10 We also requested information on the operating costs incurred by NEBs. Unfortunately, many were not able to provide this, because the operating costs could not be separately identified from the total costs of the organisation, and sometimes because no cost information at all was publicly available for the organisation concerned. In addition, some figures provided by States did not include overheads, which could be significant for public administrations, or excluded other factors such as legal costs. However, on the basis of the limited information available, we estimate that the cost of complaint handling and enforcement by NEBs in connection with Regulation 261/2004 is approximately €12-15 million per year<sup>14</sup>. This indicates that significant resources are being committed.
- 5.11 Despite the significant resources employed on complaint handling and enforcement, some NEBs still state that they do not have sufficient resources available to handle the number of complaints received, and as a result in some States there are long delays before

<sup>14</sup> This estimate is based on the costs per FTE incurred by NEBs in the States for which data is available, which equate to approximately €100,000 per FTE. Since there are approximately 120 FTEs working on enforcement this indicates a total EU-wide cost of approximately €12 million. The NEB reported figures often exclude some other costs (e.g. legal costs), hence the estimate that the total cost may be higher than this.

complaints are processed. Resources appear to be a particular constraint at present in France, Italy and also the UK, where there is a backlog of complaints. Further information on the backlogs is provided in Table 5.2 below.

**TABLE 5.2 RESOURCES AVAILABLE AND OPERATING COSTS (2010)**

State	Resources available (FTEs)	Annual operating costs	Explanation / notes
Belgium	3	Not available	-
Czech Republic	1	Not available	-
Finland	2.75	€180,000-200,000	Cost estimate excludes Consumer Ombudsman
France	5.5	Not available	Staff also cover Regulation 1107/2006 and other passenger rights issues
Germany	9	Not available	-
Ireland	2.25	€234,000	Cost is average of 2008 and 2009. No figure available for 2010.
Italy	6 in head office 77 in airports	Not available	Staff based in airports only work part time on passenger rights
Latvia	Not available	Not available	
Netherlands	16	€1.65 million	Includes overheads but excludes cost of legal support and policy department
Poland	9	€300,000	-
Spain	38 (total) 21 (261)	€1.9 million (total) €1.2 million (261 complaint handling)	Total cost excludes overheads but includes other consumer protection activity.
Sweden	3	KV: €79,000 ARN: €175,000	ARN figure estimated based on the reported costs per case
Switzerland	2.4 (total) 1.6 (261)	€330,000	Cost of enforcement includes Regulation 1107/2006
United Kingdom	14 (total) 8-10 (261)	€1.5 million	-
Austria	1.5	Not available	Staff also cover Regulation 1107/2006
Bulgaria	2	Not available	-

State	Resources available (FTEs)	Annual operating costs	Explanation / notes
Cyprus	2	Not available	-
Denmark	1.5	Not available	-
Estonia	3	Not available	-
Greece	3 but not full time	Not available	-
Hungary	1.5	Not available	-
Lithuania	3 but not full time	Not available	-
Luxembourg	3 but not full time	Not available	-
Malta	5 but not full time	Not available	Plus Duty Management Officers based in the airport terminal
Portugal	4	Not available	-
Romania	2	Not available	In addition staff at the territorial offices corresponding to airports
Slovak Republic	1	€16,000	Estimate. Staff not specific to Regulation 261/2004.
Slovenia	0.25	Not available	Estimate of average amount of time spent on Regulation

5.12 A further problem is that, in order to investigate and rule on claims of extraordinary circumstances by carriers, it is necessary for NEBs to have access to staff with technical/operational expertise. Whilst this is available in most NEBs, it is not available in all:

- **Sweden:** Complaints are handled by an alternative dispute resolution system. Although in principle this could appoint a technical expert to advise it, it has not felt this necessary to date.
- **UK:** Although the CAA does have technical and operational expertise, at the moment it is not deploying this in relation to the Regulation as it is not investigating any cases of extraordinary circumstances (see discussion below).
- **Ireland:** The NEB is CAR, an economic regulatory authority. It can draw on expertise within the Irish Aviation Authority (the CAA) but this is not a primary function of the IAA and therefore this depends on availability.

5.13 This problem is particularly significant for the NEBs that are not civil aviation authorities. However, this does not apply to all such NEBs: in Finland consumer complaints are handled by the Consumer Disputes Board, but TraFi (the CAA) is requested to provide technical

advice where needed. Similarly, in Hungary, complaints are handled by a consumer authority but the CAA is used where required for investigations, particularly of claims of extraordinary circumstances. In addition, even where the NEB is a civil aviation authority, there are not always sufficient technical resources available as enforcement of the Regulation may not be a priority; this is an issue in the UK but was also an issue to a lesser extent for other NEBs.

## Legal basis for complaint handling and enforcement

### Overview of the relevant legislation

- 5.14 All of the case study States have complied with the obligation set out in Article 16 of Regulation 261/2004 to introduce sanctions into national law, with the exception of Sweden, which only has sanctions available in national law for infringements of Article 14. The enforcement body in Sweden, KV, could also take action in respect of infringements of other Articles where the carrier's contract terms are non-compliant with the Regulation. As discussed further below, in many States it is not clear that the sanctions are sufficient to meet the requirement in Article 16(3) for sanctions to be effective, proportionate and dissuasive.
- 5.15 In several Member States, enforcement is dependent on more than one law - for example, the law defining how the NEB must operate and the procedure for imposing sanctions may differ from the law introducing sanctions. Table 5.3 below summarises the relevant legislation in the case study States. More detailed information is provided in the case studies in Appendix A.

**TABLE 5.3 RELEVANT NATIONAL LEGISLATION**

State	Summary of relevant legislation
Belgium	<ul style="list-style-type: none"> <li>■ Aviation Law of 27 June 1937 on regulation of air transport: Article 32 defines offence; Article 38 defines criminal sanctions; Article 45-52 defines administrative sanctions and process</li> </ul>
Czech Republic	<ul style="list-style-type: none"> <li>■ Civil Aviation Act (Act No. 49/1997): Article 93, paragraph 2, letter T and U defines potential offences; Article 93, paragraph 8, letter E defines maximum sanctions</li> <li>■ Administrative Code (Act No. 500/2004)</li> </ul>
Finland	<ul style="list-style-type: none"> <li>■ Finnish Civil Aviation Act (1194/2009): allows TraFi to impose conditional fines or orders of execution</li> <li>■ Nomination of the Consumer Ombudsman (38/1978, as amended)</li> <li>■ Act on the Consumer Disputes Board (8/2007)</li> </ul>
France	<ul style="list-style-type: none"> <li>■ Article 330-20 of the Civil Aviation Code, as amended by Decree 2007-863 of 14 May 2007: gives the Minister of Civil Aviation the power to impose sanctions</li> </ul>
Germany	<ul style="list-style-type: none"> <li>■ Air Traffic Licensing Regulation (Luftverkehrszulassungsordnung): paragraph 58(1)(3) defines LBA as the NEB; and paragraph 108(2) defines the offences for breaches of the Regulation.</li> <li>■ Air Traffic Law (Luftverkehrsgesetz): paragraph 58(1)(3) defines that</li> </ul>

	<p>breach of EU Regulations relating to air traffic is an offence, and paragraph 58(2) defines the fines applying</p> <ul style="list-style-type: none"> <li>■ Law on Administrative Offences (Gesetz über Ordnungswidrigkeiten): defines the administrative process that must be followed in order to impose sanctions</li> </ul>
Ireland	<ul style="list-style-type: none"> <li>■ Section 45(a) of the Aviation Regulation Act 2001 as inserted by the Aviation Act 2006: basis for enforcement and sanctions</li> <li>■ Statutory Instrument SI 274/2005: transposition of Regulation into law</li> </ul>
Italy	<ul style="list-style-type: none"> <li>■ Legislative Decree 69/2006 of 27 January 2006: defines process to be followed by ENAC and fines that can be imposed</li> </ul>
Latvia	<ul style="list-style-type: none"> <li>■ Latvian Administrations Violations Code</li> </ul>
Netherlands	<ul style="list-style-type: none"> <li>■ Resolution to set up the Transport and Water Management Inspectorate, Article 2, paragraph 1, item d</li> <li>■ Civil Aviation Act, section 11.2.1 (administrative enforcement by the Ministry of Transport): <ul style="list-style-type: none"> <li>- Article 11.15(b)(1): right to take action in respect to reparable breaches</li> <li>- Article 11.16(1)(e)(1): right to impose fines for irreparable breaches</li> <li>- Article 11.16(1)(3)(e): penalties for irreparable breaches</li> </ul> </li> <li>■ General Administrative Law Act: Chapters 4 (process) and 5 (level of fines) in respect to penalties for reparable breaches.</li> <li>■ Policy/penalty procedure: Approach to sanctions and fines</li> </ul>
Poland	<ul style="list-style-type: none"> <li>■ Aviation Act (Articles 205a, 205b, 209a, 209b): requires fines to be imposed</li> <li>■ Administrative Procedure Code: defines procedures to be followed</li> </ul>
Spain	<ul style="list-style-type: none"> <li>■ Law 21/2003 (Aviation Security Law), as amended by Law 1/2011: <ul style="list-style-type: none"> <li>- Article 37(2)(1): requires compliance with Regulations 261/2004 and 1107/2006</li> <li>- Article 37(2)(2): requires airlines to provide information</li> <li>- Article 55(2): defines sanctions</li> </ul> </li> <li>■ Royal Decree 28/2009: defines inspection regime</li> <li>■ Law on Public Administrations and Administrative Procedures (Law 30/1992): defines operation procedures for the NEB</li> <li>■ Regulation on Procedures for the Imposition of Sanctions (Royal Decree 1398/1993)</li> </ul>
Sweden	<ul style="list-style-type: none"> <li>■ Swedish Aviation Act, Chapter 9, Section 11: designates the NEB</li> <li>■ Marketing Practices Act: allows sanctions to be imposed (relating to Article 14 only)</li> </ul>
Switzerland	<ul style="list-style-type: none"> <li>■ Annex to bilateral air transport agreement between Switzerland and the EU defines Regulation as applying in Switzerland</li> <li>■ Swiss Air Law: Article 91(4) defines sanctions</li> </ul>
United Kingdom	<ul style="list-style-type: none"> <li>■ Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations,</li> </ul>

	<p>Statutory Instrument number 975 (2005): defines penalties and designates NEBs</p> <ul style="list-style-type: none"> <li>■ Enterprise Act 2002: Part 8 defines civil powers for NEB, including to apply for an injunction ('stop now order') and power to seek binding undertakings</li> </ul>
Austria	<ul style="list-style-type: none"> <li>■ Air transport law (Luftfahrtgesetz - LFG): sections §139a and §169</li> </ul>
Bulgaria	<ul style="list-style-type: none"> <li>■ Civil Aviation Act, Ordinance 261</li> </ul>
Cyprus	<ul style="list-style-type: none"> <li>■ Civil Aviation Law 213/2002</li> </ul>
Denmark	<ul style="list-style-type: none"> <li>■ Regulations for Civil Aviation (BL) 9-20</li> </ul>
Estonia	<ul style="list-style-type: none"> <li>■ Aviation Act of Estonia: Section 58 designates NEB and section 60 gives it powers to require a carrier to pay compensation</li> </ul>
Greece	<ul style="list-style-type: none"> <li>■ Decisions of Minister and Transport Communications: D1/D/44137/2978/8-11-2004 (designates the NEB), D1/D/13770/980/14-4-05 and D1/D/1333/148/16-1-07 (sets out penalties), and D3/52598/7561/18-12-95 and D3/B/47159/9521/15-11-2001 (penalties for non-monetary violations)</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>■ Government Decree 25/1999, as amended by Government Decree 33/2005 to reflect the Regulation: legal basis for enforcement by HACP</li> <li>■ Article 47/C of the Act CLV of 1997: legal basis for imposition of sanctions by HACP</li> </ul>
Lithuania	<ul style="list-style-type: none"> <li>■ Paragraph 2 of Article 70 of the Act of Aviation No. VIII-2066 (O.J. 2000, No. 94-2918; 2005, No. 31-971): defines role of CAA</li> <li>■ Code of Administrative Violations of the Republic of Lithuania, Article 115: defines sanctions</li> </ul>
Luxembourg	<ul style="list-style-type: none"> <li>■ Law of 23 April 2008 in relation to the identification and sanction of violations of consumer rights: Article 4 defines NEB; Article 9 legal basis for complaint handling and enforcement</li> </ul>
Malta	<ul style="list-style-type: none"> <li>■ Denied Boarding (Compensation and Assistance to Air Passengers) Regulations, 2011 (LN 280/11) - (Subsidiary Legislation 378.14 of the Consumer Affairs Act (Cap. 378))</li> </ul>
Portugal	<ul style="list-style-type: none"> <li>■ Joint Order 357/2006: designates NEB</li> <li>■ Decree Law 209/2005: defines level of fines which can be imposed for each infringement</li> <li>■ Decree Law 10/2004: defines standard scale of fines</li> </ul>
Romania	<ul style="list-style-type: none"> <li>■ Government Decision 1912/2006: defines sanctions</li> </ul>
Slovak Republic	<ul style="list-style-type: none"> <li>■ Act No 128/2002 (State Inspections Act): defines powers of NEB to conduct inspections, impose preventative measures, and impose sanctions</li> <li>■ Act No 250/2007 on Consumer Protection: provides legal framework for NEB's consumer protection activities</li> </ul>
Slovenia	<ul style="list-style-type: none"> <li>■ General Offences Act (Regulation applies directly)</li> </ul>

***Sanctions defined in national law***

- 5.16 There are significant differences between the States in the maximum sanctions that can be imposed under national law for infringements of the Regulation (Table 5.4 below). The highest defined maximum sanctions are in Spain (€4.5 million) and Hungary (€6.6 million). In Cyprus the maximum fine is 10% of the turnover of the carrier. Unlimited fines can also be imposed in some circumstances in Netherlands, Denmark, Finland and the UK although these fines can only be imposed for failure to comply with some type of enforcement order (discussed further below), not punitively for identified infringements of the Regulation.
- 5.17 In most States the maximum level for sanctions has not changed since our previous study. As a result, in many States maximum sanctions are still close to or below the costs that a carrier may in some circumstances avoid through non-compliance with the Regulation. In these States, the sanctions regime cannot be considered to comply with the requirement in Article 16(3) for dissuasive sanctions to be introduced by Member States, because even if a sanction was imposed for every infringement of the Regulation, the regime of sanctions would not provide an economic incentive to comply with the Regulation in every case.
- 5.18 Maximum sanctions are particularly low (less than €1,000) in Estonia, Latvia, Lithuania, Poland and Romania. Of these States, in Latvia and Poland, sanctions can be imposed per passenger that complains, and therefore in theory the total sanction could be higher if multiple passengers complained about an incident. However, in Estonia, Lithuania and Romania, sanctions would be applied per offence, not per passenger, and therefore if a carrier infringed the Regulation with regard to every passenger on an aircraft, the maximum sanction could be far less than the cost avoided by the carrier.

**TABLE 5.4 SANCTIONS IN NATIONAL LAW**

State	Maximum fine (€)	Explanation / notes
Belgium	€4 million	Minimum fine €200. In addition, 8 days to 1 year imprisonment and potentially loss of traffic rights and/or operating license
Czech Republic	CZK 5,000,000 (€200,000)	-
Finland	Unlimited	Only conditional sanctions available
France	€7,500	Maximum sanction ‘per failing’, which is not defined. Has been imposed on a per-passenger basis to give a higher total sanction. Can be doubled if repeated within a year.
Germany	€25,000	Additional fine can be imposed to recover economic advantage obtained from infringement, but not been used to date
Ireland	€150,000	Maximum €5,000 if heard in a district (local) court

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Italy	€5,000-50,000	Maximum depends on Article infringed and reduced by two thirds if paid within 60 days. Minimum fines of €1,000-10,000.
Latvia	Ls 700 (€988)	In addition up to Ls10,000 (€14,100) for failure to comply with a request for information
Netherlands	Reparable breaches: Unlimited but proportionate Irreparable breaches: €74,000	For reparable breaches, sanction should be in reasonable proportion to the amount of loss and to the severity. For irreparable breaches fines for each infringement are defined in the penalty procedure.
Poland	PLN 2,500-4,800 (€617-1,185) depending on Article infringed	Minimum PLN 200-1,000 (€49-247)
Spain	€4.5 million	For most infringements maximum €70,000 Minimum sanction €4,500
Sweden	Unlimited but proportionate	Article 14 only
Switzerland	CHF 20,000 (€16,250)	-
United Kingdom	Criminal prosecution for infringement: £5,000 (€5,800) Contempt of court: Unlimited	Prosecution for contempt of court possible in the case of breach of an undertaking or enforcement order; penalty could also be imprisonment of up to 2 years; maximum fine £2,500 (€2,900) if case heard in magistrates court
Austria	€22,000	In addition up to 6 weeks imprisonment if there are aggravating circumstances
Bulgaria	€5,000	Per passenger that complains
Cyprus	€8,000 or 10% of turnover	-
Denmark	Unlimited	In addition up to 4 months imprisonment
Estonia	€640	Per offence not per passenger
Greece	€500-3,000	Per passenger. Depends on Article infringed.
Hungary	HUF 2 billion (€6.6 million)	Minimum sanction approximately €50. In addition penalty of up to HUF 100 million (€330,000) for failure to co-operate as required with an investigation
Lithuania	LIT 3,000 (€869)	Minimum sanction €289. Per case, not per passenger.
Luxembourg	€50,000	Minimum sanction €251. Per case not per passenger. Only applied for failure to comply



		with a decision of the NEB.
Malta	€5,000	Minimum €470 In addition fines of €120-230 per day of non-compliance with a compliance order
Portugal	3,000-250,000	The maximum and minimum fines depend on the infringement ('light', 'serious' or 'very serious'), the size of the company, and whether the infringement was intentional or negligent. Minimum fine €350-4,500.
Romania	LEI 2,500 (€588)	Per offence, not per passenger
Slovak Republic	€66,387	Up to €165,969 for repeated violations within 12 months
Slovenia	€33,383	Minimum €834

## Statistics for complaint handling and enforcement

### *Complaints received*

- 5.19 Approximately 81,000 complaints were received by NEBs in 2010, of which around 10,000 related to issues not covered by Regulation 261/2004. Some complaints were handled by more than one organisation (for example, complaints forwarded between NEBs) and therefore this slightly overstates the number of different complaints, although we have adjusted for this where sufficient information was available to do so. Of the complaints for which the reason is known, 72% related to cancellations, 23% to delays and 4% to denied boarding; less than 1% related to downgrading. The highest number of complaints was in Spain, followed by the UK.
- 5.20 The total number of complaints to NEBs increased by 191% relative to 2008, mostly as a result of complaints about cancellations, which increased by 293%. The number of complaints about cancellations in 2010 was impacted in particular by:
- the volcanic ash crisis; and
  - the insolvency of the Spanish long haul airline Air Comet, and subsequent cancellation of its flights.
- 5.21 Despite the high profile given to the volcanic ash crisis by many stakeholders, the insolvency of Air Comet actually had a larger impact on the total EU-wide number of complaints. The Spanish NEB received 25,000 complaints relating to Air Comet, and this alone accounts for over half of the complaints about cancellations EU-wide, and for two thirds of the increase in the number of complaints about cancellations relative to 2008.
- 5.22 Neither the volcanic ash crisis nor the Air Comet failure should have had any impact on the number of complaints about delays. Nonetheless, complaints to NEBs about delays increased by 124% relative to 2008. This is probably due to the Sturgeon judgement and the possibility to obtain compensation for delays. There were particularly large increases in the Netherlands due to the activity of the commercial claims agency EUclaim, and in

2011 there has been a large increase in the number of complaints about delays in Germany.

- 5.23 There was also a 40% increase in the number of complaints about denied boarding. It is not clear why this would have increased so much as it should not have been impacted by any of the factors above and, on the basis of the information received from airlines, the number of cases of denied boarding does not appear to have increased. The number of complaints about downgrading continues to be very low, despite the fact that (on the basis of the information received from airlines) this occurs almost as often as involuntary denied boarding.

**TABLE 5.5 COMPLAINTS RECEIVED BY NEBS**

State	Cancellations	Delays	Denied boarding	Downgrading	Other	Total	Notes
Belgium	No breakdown available					2,730	
Czech Republic	112	65	15	0	0	159	Total figure excludes 33 forwarded to other NEBs
Finland	68	39	18	0	71	196	
France	2,261	1,375	272	0	649	4,557	
Germany	2,475	2,025	291	2	0	4,793	
Ireland	182	62	14	0	6	264	Excludes 542 forwarded to other NEBs
Italy	1,286	870	182	0	221	2,559	
Latvia	88	42	15	0	20	165	
Netherlands	650	2,850	83	0	701	4,284	Some figures approximate. 4,400 forwarded to other NEBs
Poland	611	324	65	0	540	1540	
Spain	27,236	2,390	791	5	1,784	32,206	
Sweden	52	49	13	0	0	683	Excludes 43 forwarded to other NEBs. Breakdown only covers complaints to KV.
Switzerland	3,107	984	208	11	211	4,521	
United Kingdom	6,436	1963	271	20	3,204	11,894	

Austria	448	361	17	0	75	<b>901</b>	
Bulgaria	22	44	10	0	0	<b>76</b>	
Cyprus	85	47	17	0	0	<b>149</b>	
Denmark	No breakdown available					690	2011 data
Estonia	No breakdown available					38	
Greece	379	250	30	0	0	<b>659</b>	
Hungary	64	88	11	0	15	<b>178</b>	
Lithuania	36	23	5	0	0	<b>64</b>	
Luxembourg	17	4	0	0	0	<b>21</b>	Complaints for which NEB competent only
Malta	96	34	5	0	1	<b>136</b>	
Portugal	1,970	1,518	568	0	2,878	<b>6,934</b>	Other includes complaints not relating to 261/2004
Romania	No breakdown available					346	
Slovak Republic	22	11	0	0	4	<b>37</b>	
Slovenia	28	8	1	0	15	<b>52</b>	
<b>Total</b>	<b>47,731</b>	<b>15,426</b>	<b>2,902</b>	<b>38</b>	<b>10,395</b>	<b>80,832</b>	
<b>% increase</b>	<b>293%</b>	<b>124%</b>	<b>40%</b>	<b>36%</b>	<b>56%</b>	<b>191%</b>	

#### *Outcome of complaints*

5.24 We requested information from NEBs on the outcome of complaints. Unfortunately, many NEBs do not have exact figures for the outcome of complaints, and where there are figures, the approach to categorisation used by NEBs differs and therefore the figures are not comparable. Where possible on the basis of data provided, we have estimated both:

- the proportion of complaints submitted during 2010 which have been resolved; (where disaggregation is available, we include as resolved cases which could not be processed, for example because the carrier was insolvent); and
- of those complaints which were resolved, the proportion which were resolved either partly or fully in favour of the passenger.

5.25 Table 5.6 summarises information, where available, on the outcome of complaints submitted in 2010. Of the States which provided data, there are significant differences in the proportion of complaints submitted which were resolved in favour of the passenger, from 9% in Portugal to 70% in Poland and Sweden.

TABLE 5.6 RESOLUTION OF COMPLAINTS SUBMITTED IN 2010, WHERE AVAILABLE

State	Proportion of complaints resolved	Proportion of resolved complaints in favour of the passenger	Explanation / notes
Belgium	n/a	n/a	
Czech Republic	At least 48%	At least 28%	Outcome of 52% of complaints classified as 'other'; NEB not able to provide a breakdown of these
Finland	n/a	n/a	
France	n/a	n/a	
Germany	n/a	n/a	
Ireland	36%	55%	As of July 2011. Excludes cases which were queries only, and cases referred to other NEBs
Italy	n/a	n/a	
Latvia	97%	21%	CRPC is unable to evaluate claims of extraordinary circumstances. This results in a large proportion (45%) of complaints resulting in passenger advice rather than resolution.
Netherlands	80%	n/a	
Poland	n/a	70%	
Spain	99%	n/a	Many of the complaints relate to Air Comet and resolved by default (it is insolvent)
Sweden	n/a	60% wholly in favour 14% partly in favour	Covers complaints to ARN only
Switzerland	90%	n/a	
United Kingdom	94%	61%	Excludes cases not taken up and cases referred to other NEBs
Austria	91%	n/a	2009 complaints
Bulgaria	80%	56%	
Cyprus	77%	n/a	
Denmark	68%	33%	2011 complaints
Hungary	100%	n/a	

Malta	71%	n/a	
Portugal	n/a	9%	

*Sanctions applied*

- 5.26 12 States imposed sanctions in 2010 and in total 644 sanctions were imposed. Almost half of all sanctions were imposed in Italy. 14 States have imposed sanctions to date.
- 5.27 It is notable that although the number of fines increased in 2010, the numbers of States imposing sanctions was almost entirely unchanged from 2008: the Member States which had previously imposed sanctions have continued to do so, and those that had not have continued not to. It is particularly notable that the Member State with the largest aviation market (the UK) has still not imposed any sanction for an infringement of this Regulation. This indicates that the variation in number of sanctions between Member States reflects the different legal systems and processes in the Member States rather than differences in the number of serious infringements identified in any one year.
- 5.28 However, four States which have not imposed sanctions to date informed us that they had cases in the advanced stage towards imposition of a sanction; these generally related to failure to pay compensation for delays in accordance with the Sturgeon judgement.

**TABLE 5.7 SANCTIONS IMPOSED**

State	Sanctions imposed in 2010	Sanctions imposed to date	Explanation / notes
Belgium	0	0	1 case referred to the prosecutor
Czech Republic	0	0	
Finland	0	0	Two cases currently in advanced stages
France	8	18	Fines in 2010 ranged from €5,000 to €25,000
Germany	76	231	Of which 139 fines in force
Ireland	0	0	7 Directions imposed to date
Italy	300	830	Data covers until end 2011
Latvia	4	n/a	
Netherlands	0	4	Refers to punitive sanctions only - imposed for the first time in 2011. Reparatory sanctions also previously imposed.
Poland	86	450	Average sanction 1,815 PLN
Spain	34	n/a	
Sweden	0	0	No power to impose sanctions except for Article 14

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Switzerland	0	0	Sanctions expected by early 2012
United Kingdom	0	0	
Austria	0	0	
Bulgaria	0	0	if infringements occur, sanctions would be between 100 and 10,000 BGN
Cyprus	0	0	
Denmark	0	0	
Estonia	0	0	
Greece	11	20	2007-2010 only
Hungary	11	n/a	
Lithuania	1	2	
Luxembourg	0	0	
Malta	0	0	Two cases pending
Portugal	109	114	
Romania	n/a	10	
Slovak Republic	2	14	
Slovenia	2	10	
<b>Total</b>	<b>644</b>	<b>1,752</b>	Total approximate as data not complete

### The complaint handling and enforcement process

#### *Overview of the process*

5.29 The complaint handling process is broadly similar in each NEB:

- complaints are recorded in a database system;
- most undertake an initial filter of the complaints, to remove those that are not related to the Regulation or where there is no *prima facie* case of an infringement;
- with few exceptions, complaints relating to flights departing from other States are forwarded to the NEB of the State which is competent to handle the complaint;
- airlines are contacted to request information and/or justification for their actions; in particular, most request evidence of extraordinary circumstances if these may apply; and
- a decision is made on the complaint.

5.30 The complaint handling process is very different from this in Sweden where most complaints are handled by an alternative dispute resolution body (see the Sweden case study in Appendix A). Otherwise, the main differences between the processes in different Member States are in the following areas, which are discussed in more detail below:

- the extent of any investigation of extraordinary circumstances and
- circumstances which are considered sufficient to exempt the carrier from payment of compensation (interpretation of the Wallentin judgement);
- whether the Sturgeon judgement is currently applied;
- the nature of the ruling or decision issued to the passenger, in particular whether the carrier is instructed to pay compensation if this is appropriate;
- under what circumstances the investigation of the complaint may lead to sanctions;
- the process by which sanctions may be imposed and collected; and
- the extent to which information on the process is published.

*Language issues*

5.31 Language issues were cited as a key problem by NEBs, consumer organisations and airlines. Many of the examples of correspondence from NEBs to consumers that we have been provided with in the course of the study were drafted in relatively complex legal language, which is likely to be challenging for non-native speakers to understand.

5.32 Most NEBs are able to handle and reply to complaints written in the national language and English, but in many cases NEBs were not able to handle complaints in other Community languages. Not all NEBs meet even this standard:

- the NEB for France will handle complaints written in French, English or Spanish but only replies to passengers in French; and
- ARN, which, although not designated as an NEB, handles individual passenger complaints in Sweden, will only handle complaints written in Swedish.

5.33 In addition the UK NEB only replies in English but does accept complaints in all EU languages (the complaints are professionally translated into English). The languages in which NEBs can receive complaints, and respond to passengers, are shown below.

**TABLE 5.8 LANGUAGES IN WHICH COMPLAINTS ARE HANDLED**

State	Languages in which complaints may be written	Languages in which the NEB will reply to the passenger
Belgium	French, Dutch, English and German	French, Dutch and English
Czech Republic	Czech, Slovak and English	N/A
Finland	Finnish, Swedish or English	N/A
France	French, English, Spanish	French

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Germany	German, English	German, English
Ireland	French, German, Italian, Spanish, English	Spanish, English
Italy	Italian, French, Spanish and English	Italian, French, Spanish and English
Latvia	Latvian, English	Latvian, English
Netherlands	Dutch and English; may handle French and German as a courtesy	Dutch, with English summary of decision if appropriate
Poland	Polish, English	Polish, with English summary of decision if appropriate
Spain	Spanish, English	Spanish, English
Sweden	English, German or other Scandinavian languages (but website used for complaints in Swedish only)	English, German or other Scandinavian languages (but website used for complaints in Swedish only)
Switzerland	French, German, Italian and English	French, German, Italian and English
United Kingdom	All EU languages (complaints professionally translated into English)	English

### *Time taken*

- 5.34 The NEB-NEB agreement specifies that NEBs will complete the complaint handling procedure in:
- 3-4 months for clear cases;
  - 6 months for more complex cases; and
  - longer where legal action is required.
- 5.35 Although most NEBs do take several months to resolve most complaints, most claim to be meeting the timescales in this agreement (Table 5.9 below). However, in some States consumer organisations suggested that NEBs were taking longer than this to respond to passengers. The complaint handling process appears to be particularly slow in Finland, France, Italy and the UK. In Finland this is partly because the process includes a formal decision made by the Consumer Disputes Board, which is a longer process; in France, Italy and the UK this appears to be due to lack of resources.

**TABLE 5.9 TIME TAKEN TO COMPLETE HANDLE COMPLAINTS**

State	Average time taken	Explanation / notes
Belgium	3-6 months	-
Czech Republic	3 months	But significant variation between cases



Finland	10-12 months	Complaints to Consumer Disputes Board
France	No information available	Average 3 months from receipt of complaint to DGAC intervention
Germany	No information available	-
Ireland	Variable - half within 3 months	Depends on timing of complaint, and response time from carrier
Italy	6 months	-
Latvia	2-3 months	-
Netherlands	4 months	Reduced from 6 months further to provision of additional staff
Poland	2-6 months	More time needed for complex cases
Spain	5-6 months	Recent changes to procedure may reduce this in the future
Sweden	3-4 months	Rarely takes more than 6 months
Switzerland	4-6 months	Highly variable between cases
United Kingdom	In some cases over 6 months	Depends on nature of case and how long airline takes to respond. At present a backlog of 5 weeks before CAA starts to process complaints.

***Extraordinary circumstances and the Wallentin judgement***

- 5.36 The NEB-NEB agreement facilitated by the Commission states that NEBs should investigate claims of extraordinary circumstances by carriers in order to establish whether these are reasonable. However, it also states that where carriers provide detailed information to support claims, it is sufficient to investigate a proportion of cases.
- 5.37 Most NEBs stated that they investigated all claims by airlines of extraordinary circumstances, but the nature of these investigations, and the information required, varies significantly between NEBs. The NEB for Germany (LBA) requires carriers to fill out a very detailed form justifying any claim of extraordinary circumstances. The form has to be signed by the person within the carrier legally responsible for handling complaints, and requires (depending on the circumstances claimed by the carrier) provision of:
- Minimum Equipment List and Configuration Deviation List;
  - statement of unscheduled and scheduled maintenance undertaken on the relevant device, component or system in the previous 3 months, supported by documentation;
  - technical log;
  - aircraft continuing airworthiness record; and



Finland	Depends which body handles the case	TraFi investigates all claims of extraordinary circumstances for the complaints it handles. Consumer Disputes Board requests airline fill out a questionnaire based on Wallentin judgement, and may request report from TraFi.
France	All	If necessary, will check log books, weather reports or other technical reports from the airline for instance
Germany	All	Detailed supporting evidence required from carrier
Ireland	All	Proof requested in the form of technical report or event logs. If technical expertise required, may draw on IAA, but subject to IAA's resource constraints.
Italy	All	Technical documents requested from carrier if not initially provided to support claim
Latvia	None	Explanation requested but no investigation as CPRC does not have technical capability
Netherlands	All	Also checks evidence available from other sources, such as the airport
Poland	All	All cases investigated by technical or operational departments in CAO, depending on the nature of the claim
Spain	All	Carriers required to provide detailed information to support claims
Sweden	None	ARN requests information but no capability to investigate. Has the power to appoint a technical advisor but to date has not done so.
Switzerland	All	Detailed supporting evidence required from carrier (similar to the form used by LBA in Germany)
United Kingdom	None at present	CAA challenges claims but does not undertake detailed investigations at present; it did do this in the past and has decided it will do so again in the future

5.41 Despite the clarification issued by the CJEU in the Wallentin judgement, there are also significant differences in NEBs interpretations of which circumstances are sufficient to meet the criteria in Article 5(3) for exemption from payment of compensation. For example, the French NEB generally would accept a technical problem as being sufficient but the Spanish NEB generally would not, and whereas the Italian NEB considers that 85% of airline claims of extraordinary circumstances are not justified, the Swiss NEB considers that 80% are justified. One NEB (Netherlands) has published a rule which explains in more detail the circumstances it considers may be sufficient to avoid payment, but this is contested by both consumer representatives and airlines. It appears likely that certain

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circumstances would be accepted as sufficient to avoid paying compensation by certain NEBs, but not by others.

- 5.42 Where information was provided on the circumstances which are considered sufficient it is set out in Table 5.11 below.

**TABLE 5.11 APPLICATION OF ARTICLE 5(3)**

State	Interpretation adopted
Belgium	Technical problems not extraordinary unless problem was not inherent in normal operations of an airline. Meeting all of the minimum requirements for maintenance is not in itself sufficient.
Czech Republic	Claims of technical problems often not found to be justified
Finland	TraFi states that it applies the criteria in Article 5(3)
France	Airline primary duty is safety and therefore will usually accept that a technical problem or weather is sufficient not to pay compensation for the flight concerned. However will not accept this for subsequent flights with the same aircraft as carrier should be able to provide operational cover.
Germany	Strict interpretation of Wallentin judgement. Event must be genuinely extraordinary, for example a bird strike may not be sufficient, as inherent to industry. Air carriers consider LBA's interpretation to be unreasonably strict.
Ireland	Carrier must demonstrate both that the circumstances were extraordinary, and that it took all reasonable measures to avoid the cancellation; CAR also reviews what measures were taken to avoid the cancellation.
Italy	Applied strictly; ENAC considers that only 15% of carriers' claims of extraordinary circumstances are justified
Latvia	N/A: CPRC not able to make a decision about extraordinary circumstances
Netherlands	Policy defined in <i>Beleidsregel</i> (policy/penalty procedure). IVW considers that a technical fault more likely to be sufficient if it occurs after push back, but if it occurs before it is more likely to be inherent and possible to rectify
Poland	Usually, only external events such as storms, lightings, bird strikes and production defects are accepted; technical problems rarely accepted.
Spain	Only if circumstance is genuinely extraordinary/unpredictable, and unavoidable. Technical cancellation can meet these criteria but rarely would.
Sweden	N/A: ARN does not undertake investigations although states that it does follow Wallentin in reaching judgements
Switzerland	80% of carrier claims of extraordinary circumstances found to be genuine
United Kingdom	N/A: CAA is not currently investigating claims

- 5.43 Whilst the UK CAA is not currently investigating claims of extraordinary circumstances, it said that its Resource Allocation and Prioritisation Committee had recently approved a

project to evaluate the process and approach used by carriers to determine whether a cancellation is caused by extraordinary circumstances. This will include analysis of who takes the decision that a cancellation meets these criteria, on what basis, and after assessing what evidence. It will consider using its enforcement powers if this is inadequate. If implemented this would be an example of a more proactive approach to enforcement than a complaints-based approach relating to past incidents.

***Application of the Sturgeon judgement***

- 5.44 There are also significant differences in the extent to which NEBs and national courts are applying the Sturgeon judgement:
- some NEBs consider this to be currently applicable law, and are undertaking enforcement on this basis;
  - some NEBs consider this to be currently applicable law and are undertaking enforcement on this basis, but national courts are delaying cases until the CJEU issues its decision in the outstanding references;
  - some are not currently enforcing the rights identified in the judgement, until the CJEU issues its decision on the outstanding references, in some cases because they have been advised that they cannot do so; and
  - the rights identified in the judgement cannot be enforced in Switzerland by either the NEB or national courts, as the CJEU’s interpretation only applies within the EU, and therefore does not apply to Switzerland.
- 5.45 The current status on the application of the Sturgeon judgement, based on the information supplied by NEBs, is shown in Table 5.12 below.

**TABLE 5.12 APPLICATION OF THE STURGEON JUDGEMENT**

State	Application of the Sturgeon judgement
Belgium	NEB considers the judgement to be applicable and has referred a case to the prosecutor for a possible sanction on the basis of non-compliance with it
Czech Republic	CAA delaying cases until CJEU rules on the outstanding cases, but informs passengers of the current legal position and that they can take legal action
Finland	NEBs consider compensation should be payable but difficult to determine when extraordinary circumstances would apply and hence most cases have been resolved in favour of the airline
France	DGAC applies the Sturgeon judgement and has referred two cases to CAAC for sanctions on this basis, although these have not been concluded yet. Civil courts are enforcing Sturgeon judgement
Germany	Not possible to enforce as cases outstanding before CJEU; LBA is delaying until judgements issued in the pending cases. Civil courts not consistent - may either accept claims, delay, or refer to CJEU.
Ireland	CAR has not sought to use enforcement powers in relation to compensation to delays, due to pending CJEU cases.

Italy	ENAC applies the Sturgeon judgement and has fined carriers for failure to pay compensation for delays
Latvia	CPRC not able to determine whether this applies in individual cases as does not have technical expertise to evaluate whether the extraordinary circumstances exemption would apply
Netherlands	IFW considers the judgement to be applicable and has imposed sanctions of up to €160,000 on 4 airlines for failure to pay compensation for delays; airlines challenging these through the courts.
Poland	CPR is applying Sturgeon judgement and some airlines are following this but others have appealed decisions through the courts.
Spain	AESA considers the judgement to be applicable and has imposed sanctions on airlines for failure to pay compensation for delays.
Sweden	ARN is adopting the Sturgeon judgement and therefore requests carrier pay compensation for delays
Switzerland	FOCA cannot levy sanctions for infringements of rights identified in Sturgeon, because the CJEU's judgements only apply within the EU. Nonetheless believes most airlines comply with this in Switzerland.
United Kingdom	All civil cases in the UK 'stayed' (delayed) pending decision by CJEU on reference from TUI case. CAA has been advised that it would not be possible to use enforcement powers to enforce Sturgeon judgement until the CJEU has ruled in this case.

**Response issued to passengers**

- 5.46 All of the NEBs in the case study States provide passengers that complain with an individual response. However, the nature of this response varies significantly, based on the extent to which the NEB assists the passenger in obtaining redress.
- 5.47 Some NEBs, including those for the UK, France and Ireland, provide passengers with some assistance in obtaining compensation from carriers, and may mediate with the airline in order to reach an acceptable solution. This may be more effective in States such as France where failure to co-operate may lead to sanctions. However, some NEBs consider that they cannot become involved in a private contractual dispute and therefore, even if they notify the passenger that the complaint has been upheld and a sanction imposed, they do not oblige the carrier to provide redress. NEBs told us that the carrier will often reconsider its position and voluntarily pay when they become involved, but if it does not do so, the passenger would usually have to go to court in order to obtain redress. Table 5.13 summarises the responses issued to the passenger and whether the NEB assists the passenger in obtaining redress from the carrier.

**TABLE 5.13 RESPONSE ISSUED TO PASSENGERS**

State	Response issued to passengers	Assistance provided with redress?
Belgium	Decision issued as to whether the complaint is upheld or not, including	Limited - case may be referred to Inspectorate for sanctions if airline

	a justification for the decision.	does not pay. But only in rare/serious cases.
Czech Republic	Response issued to passenger stating whether there was a breach and whether airline has agreed to pay	Limited - sanction may be imposed if carrier does not pay when required, but only in serious cases
Finland	TraFi: Response issued stating outcome of case Consumer Disputes Board: Initial advice issued; then if necessary final written statement of decision issued	Yes - Consumer Disputes Board functions as an ADR; sanction may be issued where carrier does not pay when required
France	Individual response provided by DGAC summarising the conclusions of the investigation and its opinion on the case	Partial - DGAC mediates with the airline and can refer it to CAAC if it does not pay. However, if the airline still does not agree to pay, it has no means of forcing it to do so
Germany	Decision issued as to whether the complaint is upheld or not	No - LBA will not become involved in a dispute between an airline and a passenger
Ireland	CAR writes to each passenger to summarise conclusions and whether further steps will be taken	Yes - when CAR upholds a complaint it instructs carrier to provide redress; if it does not do so, can issue Direction
Italy	ENAC writes to each complainant to inform them of its conclusions	No - ENAC does not consider this part of its role
Latvia	Individual decision stating whether Regulation infringed and what airline owes to passenger	Partial - decision is legally binding. But except for Latvian carriers no means of enforcing it.
Netherlands	Decision issued as to whether the complaint is upheld or not, including a justification for the decision.	Yes - decision not binding but fine may be imposed if airline does not pay when required
Poland	Formal decision issued to both passenger and carrier	Partial - CAO cannot force carriers to provide redress, although they may be encouraged to do so as it does not impose sanctions if they do
Spain	Decision issued as to whether the complaint is upheld or not, including a justification for the decision.	Yes - decision not binding but fine may be imposed if airline does not pay when required
Sweden	ARN issues non-binding recommendation. However, it is not designated as an NEB and no such response is provided by the designated NEB.	Partial - ARN is an alternative dispute resolution body, but it has no means of enforcing its decisions

Switzerland	Complainant informed whether or not a sanction has been issued but if not issued nothing further. If sanction is issued more explanation would be provided.	Partial - FOCA does require carriers to pay where it identifies an infringement but complainant is not party to the procedure; advised may be able to take civil action.
United Kingdom	Individual response including correspondence with airline, what CAA has done with the complaint, and why	Partial - mediates with airline and response intended to be sufficient to be used as the basis of claim in small claims court. But in effect no threat of sanction if carrier does not pay.

***Circumstances in which sanctions imposed***

- 5.48 There are also significant differences between the States as to whether and when sanctions are imposed.
- 5.49 Some NEBs, including Italy and Poland, always impose sanctions in the case that an infringement is found, even if it is a minor or technical infringement which does not significantly inconvenience passengers (although Poland in practice would not pursue a case if the airline subsequently compensated the passenger). Germany also applies sanctions whenever an infringement is identified, although it has to be proven to the same standard of evidence required for criminal cases, and it does not impose sanctions if the infringement is ‘not significant’.
- 5.50 In contrast, in other States, the policy is to impose sanctions far less frequently:
- In several States including France, Ireland, Netherlands, Finland and the Czech Republic, a sanction would only be imposed where a carrier fails to provide the passenger with redress when required to do so by the NEB. In some States this is a legal constraint (if the carrier provides redress there is no outstanding infringement and so sanctions cannot be imposed); in others it is the policy of the NEB.
  - Spain also cannot impose sanctions where the carrier compensates the passenger, but it also imposes sanctions where infringements are identified through inspections and for failure to co-operate with the NEB, including failure to provide information within the required timescale.
  - The UK will only consider prosecution of a carrier if there is flagrant and systematic infringement of the Regulation which can be proven to a criminal standard of evidence, despite the due diligence defence available in UK law. In addition, if the CAA was to obtain an undertaking or an enforcement order in respect of a carrier, and this was breached, the carrier could be prosecuted for contempt of court. This would be easier to prove but to date no such undertaking or order has been sought in respect of Regulation 261/2004 and it is not clear in what circumstances they might be sought.
  - Belgium would also only impose sanctions in the event of a severe, flagrant or systematic infringement, and practical problems with the sanction process mean that in practice it is very difficult to impose a sanction at all (see discussion below).



- In Ireland a carrier can only be prosecuted if it is possible to prove non-compliance with a Direction to rectify an infringement, after the carrier has had the possibility of contesting this Direction.

5.51 In States where sanctions are only imposed when a carrier does not comply with a requirement to provide redress to an individual passenger or group of passengers, carriers have a strong incentive to provide redress in the case concerned, but there is no incentive to comply in any other cases. It would be possible for a carrier to infringe the Regulation consistently but avoid any sanction by providing redress to the small proportion of passengers that complain to the NEB. As a result of this, the Netherlands recently changed national law to allow punitive sanctions to be imposed for irreparable infringements; previously, sanctions could only be imposed for reparable infringements.

5.52 The policies of the case study States on imposition of sanctions are shown in Table 5.14 below.

TABLE 5.14 POLICY ON IMPOSITION OF SANCTIONS

State	When sanctions imposed	Explanation/notes
Belgium	Only for severe, deliberate and/or systematic infringements	In addition issues with the administrative sanction process mean that it is very difficult to apply these. Criminal sanction unlikely due to lack of resources.
Czech Republic	Only for a serious infringement where the carrier has not complied with the CAA's decision	No sanctions if the airline pays compensation when required to do so by CAA
Finland	Consumer Ombudsman: Only for flagrant, systematic or repeated abuses; required to consider other options first. TraFi: Case by case basis	No sanctions imposed where carrier pays compensation when required to do so
France	Carrier referred to CAAC for sanction if it does not pay when requested by DGAC. Ultimate decision made by the Minister responsible for Civil Aviation on the advice of CAAC.	Cases would only be considered by CAAC if referred by DGAC
Germany	All cases where the case is proven and infringement not insignificant	High standard of proof required, equivalent to criminal cases
Ireland	CAR would consider prosecuting if a carrier did not comply with a Direction.	CAR can consider issuing a Direction if issue identified during an inspection or if a carrier does not rectify a case when required to do so
Italy	Applied in every case of an infringement	Nonetheless number of fines applied low in comparison to number of complaints
Latvia	Will be considered where carriers do not comply with CPRC's decisions	No sanctions if the airline pays compensation when required to do so by CPRC
Netherlands	Sanctions imposes for 11 or more breaches of Article 14, and 41 or more breaches of Articles 4-11, by the same carrier within the same calendar year. In addition reparatory sanctions may be imposed for any reparable breach.	Policy defined in <i>Beleidsregel</i> (policy/penalty procedure)
Poland	Applied in every case of an infringement	In practice not applied if carrier compensates passenger before ruling made (which they usually do)
Spain	For infringements identified through inspections; for claims upheld where	No fixed policy so not necessarily in every case

	carrier refuses to pay; and for failure to co-operate with NEB	
Sweden	Can only be applied for infringements of Article 14 or contract terms which are non-compliant	Otherwise only penalty is publication on a blacklist in a consumer magazine
Switzerland	For repeated or severe infringements, and failure to cooperate with the NEB. May terminate process if carrier pays compensation but would not necessarily do so.	High level of proof across multiple cases required
United Kingdom	Interim Consumer Enforcement Strategy and Prioritisation Principles define approach. Court action would be the exception. Will consider the impact of the intervention on consumers, the seriousness of the issue, the risks of taking or not taking action, and the level and cost of resources needed to take action	Standard of evidence required for criminal prosecution, and ‘due diligence defence’ means that it must in effect be proved that senior management of carrier had intended not to comply. Easier to prosecute for breach of an undertaking or enforcement order.

### *Process to impose sanctions*

5.53 In most Member States, the process to impose sanctions is an administrative procedure undertaken by the NEB, and the decision to impose sanctions is made by the NEB alone. Carriers, and in some cases also passengers, can appeal to the courts.

5.54 The exceptions to this are the following States:

- Belgium:** Where there appear to be grounds to impose a sanction, the NEB refers the case to the public prosecutor. The prosecutor can either decide that there is not sufficient evidence, to start a criminal prosecution process, or to refer the case back to the NEB, in which case the NEB can start a process to impose an administrative penalty. There are significant problems with this system (see below).
- Germany:** The procedure is similar to the administrative procedures applying in other States, but the standard of evidence required is equivalent to that in criminal cases. The process followed to investigate a complaint and impose a sanction is the same as for any other complaint about an infringement in Germany, including a complaint to the police.
- France:** Cases are referred by the NEB (DGAC) to an administrative commission (the CAAC) that meets twice per year. This makes a recommendation to the Minister of Civil Aviation, who takes the ultimate decision about whether a sanction should be imposed, and the level.
- Sweden:** The sanction would be imposed by the Consumer Ombudsman. He is also the Director-General of the NEB (KV), but is formally independent of KV when deciding on sanctions.

- **Switzerland:** Two different processes to impose sanctions. If the sanction is low, a short process can be used; if it is over CHF 5,000 (€4,060) a longer process must be used and the sanction must be applied to a named person who would then have a criminal record. The system is a mix of a criminal and administrative procedure.
- In Denmark, Ireland, Malta and the UK, sanctions can only be imposed under criminal law and therefore a criminal prosecution is required.

5.55 No sanction has been imposed to date in the Member States where a criminal prosecution would be required (although the Malta NEB said that two cases were pending). This reflects the difficulty of imposing these sanctions. Some NEBs in these States acknowledged that there would be a better incentive to comply with the Regulation if they were able to impose punitive sanctions for past infringements through an administrative process.

**Process for imposition of sanctions in Belgium**

Initial investigation would be undertaken by the Denied Boarding Authority, which will refer cases to the Aviation Inspectorate if a carrier does not comply with its decisions or it finds evidence of a particularly severe or systematic infringement. If, further to an investigation, the Aviation Inspectorate has sufficient evidence of a severe or systematic infringement it can refer a case to the public prosecutor. The prosecutor then has 90 days to decide either that:

- there is no sufficient evidence;
- to launch a criminal prosecution; or
- to refer the case back to the NEB for an administrative sanction process.

However, in practice there would not be a criminal prosecution because the prosecutor does not have sufficient resources and this would not be a priority. In addition, there usually could not be an administrative sanction either, because this process must start within 1 year of the alleged infringement, and before this could happen, the following would have to have happened:

- the passenger would have had to have complained to the carrier and then subsequently to the NEB;
- the NEB would have had to have done its investigation;
- the case would have had to have been referred to the prosecutor; and then
- the prosecutor would have had 90 days to consider the case.

Therefore the 1 year period would probably have expired before the sanction process could start. The NEB said it was hoped to change this to 3 years in the future.

A further problem until 2009 was that the unit within SPF Mobilité undertaking enforcement did not have authority to refer cases to the prosecutor, however this issue has now been resolved and a case has been referred to the prosecutor for the first time.

***Application of sanctions to carriers based in other Member States***

5.56 A number of NEBs face difficulties in applying sanctions to carriers that are not based in their State. This arises because national law either:

- does not permit application of sanctions to carriers not based in the State; or

- | requires administrative steps to be taken in order to impose a sanction, which are either difficult or impossible to take if the carrier is not based in, or does not have an office in, the State concerned.

5.57 The problem is particularly significant in relation to carriers based in other EU Member States, as opposed to non-EU carriers. In many Member States where sanctions are imposed through an administrative process, national law requires a notification of a sanction, or the process to start imposition of a sanction, to be served at a registered office of the carrier, or on a specific office-holder within the carrier. Non-EU (long haul) carriers will usually have an office in the each of the States to which they operate, and this can be a condition of the bilateral Air Services Agreements which permit their operation, but there are no such requirements on EU carriers which are free to operate any services within the Union.

5.58 However, some States have been able to address the problems previously identified with imposition of sanctions on carrier based elsewhere in the EU:

- | **Germany:** At the time of our 2009/10 study LBA said it was not able to impose sanctions on non-national EU carriers, because it could not serve the notification required. In 2010 it told us that it believed it could resolve this problem through other options such as sending the sanction through registered mail or via a courier. The German Ministry of Transport said it was now possible to serve sanctions but could not confirm how the problem had been addressed. Non-national EU carriers confirmed to us that they have now received and paid fines issued in Germany.
- | **Spain:** At the time of our 2009/10 study AESA envisaged a problem with enforcing collection of sanctions from non-national EU carriers as it would not have their fiscal identification code (CIF). It said it has now obtained the CIFs for major EU carriers operating in Spain (including low cost carriers), and non-national EU carriers have now paid fines in Spain. However it could still have problems with respect to foreign carriers with fewer operations in Spain.

5.59 Table 5.15 summarises problems with application of sanctions to carriers not based in the Member State.

**TABLE 5.15 ISSUES WITH APPLICATION OF SANCTIONS TO CARRIERS NOT BASED IN THE STATE**

State	Can sanctions be imposed?	Explanation / notes
Belgium	Yes in principle	Notification of the sanction sent by registered mail. Stamp received from the post office is sufficient to show the letter was received, unless proven otherwise
Czech Republic	Yes in principle	Not tested yet and some concerns about whether it is legally possible. No powers to enforce collection (see below).
Finland	Yes in principle	Not tested yet
France	Yes	Sanctions have been imposed on foreign carriers without any difficulties. Notification can be sent by registered mail, and

		by fax if it is not possible to obtain a receipt from the registered mail.
Germany	Yes	LBA had informed us in 2009 and 2010 that it was not possible to serve notification of sanction. We were now informed it now was, but no explanation provided of what had changed. Non-German EU carriers confirmed they had received and paid sanctions.
Ireland	Yes in principle	Notification of a Direction can be served at the carrier's registered office, which does not have to be within the State. Various mechanisms are permitted to serve a Direction. There has not as yet been a criminal prosecution, so this process has not yet been tested.
Italy	Yes but slower / more complex	ENAC uses the process set out in Regulation 1393/2007 to serve notifications on carriers which do not have offices in Italy, but this is slow/complex. This has been short-cut in some cases by the Italian embassy/consulate in the State serving the notification directly.
Latvia	No	Fines can only be imposed on legal persons, which is defined in national law as being individuals and Latvian companies only
Netherlands	Yes	IVW must prove that the company being fined has been notified, for example by proving receipt of the letter setting out the fine. The law states that if IVW can prove it has sent the fine, it is up to the other party to prove it has not received it.
Poland	Yes	Notifications are sent by registered mail or courier to the head office of the carrier - there is no limitation provided a receipt is obtained. A receipt from a courier company is considered sufficient.
Spain	Yes	Sanctions have been imposed on, and paid by, several foreign carriers including non-Spanish EU carriers. Some potential problems with collection from smaller EU carriers with few operations in Spain.
Sweden	Yes in principle	KV said that it can open cases against foreign carriers. However, in practice not relevant as sanctions can only be imposed in relation to Article 14.
Switzerland	Yes if carrier has a natural person representing them in Switzerland	Not a problem if the carrier has a natural person representing them in Switzerland, which most carriers operating in in Switzerland do have (including low cost carriers). Otherwise would have to make a formal request to a foreign court for assistance, which is likely to be difficult.
United Kingdom	Yes	In principle there are no problems; has not been tested as yet as no sanctions have been imposed but non-national carriers have been prosecuted for other infringements. As sanctions

	could only be imposed through a criminal process, this would be undertaken by the criminal courts system not the NEB.
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### **Collection of sanctions**

- 5.60 Although some Member States have imposed significant numbers of sanctions, the proportion of these sanctions which have actually been paid by carriers varies from zero to 84% (Table 5.16).
- 5.61 The most serious problem in any large State is in Italy, where despite imposition of a very large number of sanctions, only 4% of sanctions imposed to date (2.8% of sanctions by value) have been collected. This is even worse than the position reported in 2009/10 when we were informed by ENAC that approximately 20% of sanctions issued to date had been paid. The problem arises in part because collection of sanctions is slow, due to:
- the appeal process, which is slow and can be deliberately extended by a carrier seeking to delay/avoid payment of sanctions, such that the appeal may not be complete for 5-7 years; and
  - the process undertaken by the agency responsible for collection of fines (the Italian Tax Office) is very slow and takes a minimum of one year.
- 5.62 Once 5 years have elapsed without a successful appeal by the carrier, if the fine is still unpaid the courts may order a forced execution ('esecuzione forzata'), which allows them to force payment for example through seizure of assets. In February 2012, the Italian courts applied the first forced execution under Regulation 261/2004 since it came into force. However, the fact that this can only be done after 5 years without a successful appeal is a significant weakness, as a delay of this length before payment can be enforced may reduce the effectiveness of any incentive provided by sanctions. These problems arise from general administrative procedures in Italy and are not specific to either ENAC, airlines or this Regulation.
- 5.63 In addition, of the case study States, Czech Republic also would have problems with collection of sanctions from foreign carriers (none have been imposed to date).

**TABLE 5.16 COLLECTION OF SANCTIONS**

State	Proportion paid	Explanation / notes	Powers to collect sanctions
Belgium	N/A	No sanctions imposed	Process not tested
Czech Republic	N/A	No sanctions imposed	Not possible to enforce payment from foreign carriers
Finland	N/A	No sanctions imposed	Process not tested
France	Not known	DGAC does not have figures for sanctions collected	Fines collected recovered by a public accountant ('comptable public') working for the Ministry of Finance

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Germany	84%	117 of 139 sanctions in force to date have been paid	If not paid, collected following procedure in Administrative Enforcement Act (VwVG)
Ireland	N/A	No sanctions imposed	Process not tested
Italy	4% <sup>15</sup>	Remaining sanctions unpaid due to slow collection process, or because appeal process ongoing	Collection is the responsibility of the Italian Tax Office
Latvia	0%	Airlines challenging sanctions through the courts.	Fine would be passed to bailiffs for compulsory collection
Netherlands	0%	Airlines challenging sanctions through the courts	Collection undertaken by IVW Finance Department
Poland	51%	Of sanctions imposed to date (weighted by value). Includes some carriers which became insolvent.	Collection undertaken by Ministry of Finance or Tax Office
Spain	59%	Of sanctions imposed in 2010. Excludes large fine imposed on Air Comet (as insolvent).	Collection responsibility of State tax/customs agency. Harder if carrier does not have registered entity in Spain.
Sweden	N/A	No sanctions imposed	Process not tested
Switzerland	N/A	No sanctions imposed	Process not tested
United Kingdom	N/A	No sanctions imposed	Process not tested for 261

### ***Publication of information on complaints and sanctions***

- 5.64 Approximately half of the NEBs for case study States publish information on the complaints received and/or the sanctions imposed. With few exceptions, the information published on complaints received is not airline-specific and therefore cannot provide consumers with any assistance when deciding which carrier to travel with.
- 5.65 Most States also do not publish any statistical information on air carrier service quality. Of the case study States, the only exception to this is the UK, where detailed route and carrier-specific punctuality data is published by the CAA. No equivalent data is available in any other EU Member State although similarly detailed data is published in Norway.
- 5.66 In most States where sanctions would be imposed through a criminal court process, any process to impose sanctions would be public. In principle, the bad publicity that a carrier might receive as a result of this process should serve as an additional incentive to comply with the Regulation, on top of any fine which might be imposed. However, these are also often the States where no sanctions have been imposed.

<sup>15</sup> Of fines issued 2006-9. Weighted by value, 2.8% of fines paid.



5.67 In Sweden, the main sanction that can be imposed for non-compliance with the Regulation and failure to provide redress when required by ARN is the inclusion of the name of the carrier on a list in a magazine published by a consumer organisation. ARN considers this list receives significant publicity and therefore this is an incentive. However, a large number of carriers operating in Sweden are currently on this list, some for multiple cases, and therefore this does not seem to be an effective incentive.

**TABLE 5.17 PUBLICATION OF INFORMATION**

State	Complaints	Enforcement
Belgium	No information published	
Czech Republic	Complaint statistics published although not airline specific	No information on conclusions published
Finland	Consumer Complaints Board publishes details of all complaints	Consumer Agency and Ombudsman publishes all decisions
France	No complaints data published	At present no data published but legislation being prepared to allow publication of names of airlines that have been sanctioned
Germany	Number of complaints published, but not airline-specific information	Not published at present, however, LBA is considering publishing details of fines in the future, in order to better inform passengers
Ireland	Annual report provides details of the complaints received. It also provides some summary information on the number of complaints per airline although this is only divided into Ryanair, Aer Lingus, and other.	N/A - no sanctions have been imposed. Any sanctions would be imposed through a criminal court process, which would be public
Italy	No information published	
Latvia	Annual report on complaints published	Decisions published if there is an infringement which affects the collective interest of consumers
Netherlands	No information published	IFW required to publish details of any punitive sanction imposed. Details of reparatory sanctions not published.
Poland	No information published	
Spain	Generally no information published, however, details have been made public by Ministers and senior officials in response to questions in Parliament	
Sweden	All cases considered by ARN, and decisions, publicly available	All enforcement procedures opened by KV would be published List of carriers not complying with

		ARN decisions published in a magazine.
Switzerland	No information published	Any sanction decision would be public
United Kingdom	AUC previously published complaint statistics but to date no information published by CAA	N/A - no sanctions have been imposed. Any sanctions would be imposed through a criminal court process, which would be public. CAA has published enforcement actions in relation to Regulation 1008/2008.

**Other activities undertaken by NEBs**

- 5.68 Most NEBs undertake inspections to verify compliance with Article 14 (provision of information). In a few Member States, the scope of the inspection includes compliance with other Articles of the Regulation, although this is subject to an incident occurring whilst the NEB staff are at the airport. The level of detail at which the inspections are conducted varies between States: many NEBs check only for information notices at check-in under Article 14(1), and sometimes also for availability of information to be distributed in the event of incidents which are covered by the Regulation as required by Article 14(2), but they do not check that the information is actually distributed when required. In contrast some check additional points such as the level of training of airline and ground-handling staff.
- 5.69 The number of inspections undertaken in Italy is far higher than in any other State, because the NEB has staff based at every airport and part of their role is the enforcement of the Regulation. The number of inspections is also high in Spain although we note that there have been relatively few inspections in Spain at the secondary airports dominated by low cost carriers. In addition, staff in some NEBs undertake reactive inspections in the event of a major incident occurring, or the NEB requires carriers to provide evidence of what it has done to meet the requirements of the Regulation.
- 5.70 However, one of the largest States (France) does not undertake any inspections, and the UK appears only to have undertaken isolated inspections since 2009 (although it did was planning to conduct further inspections this winter). The scope of these inspections is summarised in Table 5.18 below.

**TABLE 5.18 INSPECTIONS UNDERTAKEN BY NEBS**

State	Inspections undertaken in 2010	Scope of inspections	Notes
Belgium	15 <sup>16</sup>	Mostly Article 14	Inspectors verify compliance with other Articles if an incident occurs when they

<sup>16</sup> Standard number of inspections per year, not necessarily number during 2010

			are at the airport
Czech Republic	10 <sup>17</sup>	Mostly Article 14	Inspectors verify compliance with other Articles if an incident occurs when they are at the airport
Finland	'Occasional'	Article 14 and staff knowledge	Undertaken when TraFi staff have time available
France	None	N/A	Not undertaken due to lack of resources
Germany	N/A	All of Regulation	No response as to how many inspections or what the conclusions had been
Ireland	37 total to date	Mostly Article 14	Inspectors verify compliance with other Articles if an incident occurs when they are at the airport
Italy	1,200 per year	All of Regulation	Staff permanently based at airports regularly check compliance with Regulation and other legislation
Latvia	1 approximately	Article 14	Other Articles would also be checked an incident occurs at the time of the inspection, but due to small volume of traffic this is unlikely
Netherlands	7 <sup>18</sup>	Article 14 and Regulation 1107/2006	Also checks knowledge of ground staff. Inspections of other requirements planned for 2012.
Poland	10-20	Article 14	Required to notify the airline at least 7 days in advance.
Spain	163	All of Regulation	Inspections also cover 1107/2006 and 2111/2005
Sweden	Not since 2008	Article 14	KV plans to do a follow-up inspection in 2012
Switzerland	5-7	All of Regulation	2 official visits plus 3-5 spot checks which may be at the same time as major disruption
United Kingdom	3 <sup>19</sup>	Article 14 only	An inspection was also carried out at Heathrow during the border agency strike, and the CAA said more were planned for Winter 2011/12

<sup>17</sup> During 2011 year to November

<sup>18</sup> During 2011 year to date

<sup>19</sup> During 2009

- 5.71 In addition, some NEBs have undertaken other activity in relation to the Regulation:
- most NEBs have undertaken meetings with carriers in order to encourage compliance with the Regulation, and in some cases to improve procedures for handling complaints;
  - the Swiss NEB FOCA also reviews the Conditions of Carriage of Swiss airlines to ensure that they are complaint with the Regulation; and
  - the UK CAA carried out a review of airport and airline performance during the winter of 2010/11, including a passenger survey, and in autumn 2011 was undertaking meetings with airports and airlines to review readiness for dealing with major disruption in the coming winter.

**Use of the CPC network**

- 5.72 Most NEBs are making little or no use of the CPC network set up under Regulation 2006/2004 on consumer protection cooperation. In some cases they said that this was because they already had reasonably good contacts with each other, and that it was more efficient to contact each other directly where assistance was required or to forward complaints.
- 5.73 Some NEBs also said that the CPC network was of limited relevance to enforcement of Regulation 261/2004. As discussed above, most NEBs only take action in response to individual incidents identified through individual complaints or (in a few cases) through inspections. Article 16 defines that NEBs are competent to enforce in relation to these individual incidents if they occur within their State, and therefore they do not need to involve other NEBs through the CPC system in responding to them. NEBs do not take action in response to general practices such as a failure to have appropriate policies or procedures in place, which might involve multiple enforcement bodies. NEBs also generally would not have a legal mandate under Article 16(1) to undertake enforcement in relation to an incident that occurred in another State and may not have a mandate under national law to assist with enforcement in another State. Regulation 2006/2004 may provide such a mandate but only in response to cases of collective consumer interest, not individual infringements.
- 5.74 Some NEBs, such as KV in Sweden and the UK CAA, are designated enforcers under the CPC system for other issues. They said that the CPC system was primarily useful where there was a need to force a one-off change to a particular practice (such as to change an unfair contract term), rather than respond to an individual incident.
- 5.75 Some also said that there were technical problems with the CPC IT system which precluded them from using it. For example, the UK CAA said that there were technical issues arising from the type of computer equipment required, and the Finnish Consumer Ombudsman said it had encountered major problems in use of the network.
- 5.76 A summary of use to date of the CPC system is provided in Table 5.19 below.

**TABLE 5.19 USE OF CPC NETWORK**

State	Use of CPC network
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Belgium	Not used: NEB is not a designated enforcement body under Regulation 2006/2004 (designated body is SPF Économie)
Czech Republic	Used once but not considered useful; NEB has had technical problems with it and has to go to a different office in order to access it. Communicates directly with other NEBs.
Finland	None in respect of 261/2004 - list of NEB contacts provided by the Commission used instead
France	Not used - considered unnecessarily complex by NEB
Germany	Not used - LBA uses direct contacts with other NEBs instead
Ireland	Not used - NEB considers not relevant to Regulation 261/2004. Has received what it considers inappropriate requests via the CPC system from other NEBs
Italy	Not used - ENAC uses direct contacts with other NEBs instead
Latvia	Not used so far
Netherlands	Not used - NEB uses direct contacts with other NEBs instead Received one request for help with respect to a Dutch carrier, which it did provide assistance with, but not through the CPC system
Poland	NEB cooperates with CPC network and informs it about potential collective infringements, but does not use it in relation to enforcement of this Regulation
Spain	Not used. NEB considers that it is not relevant as it has sole competence to enforce the Regulation in Spain, but no competence to take 'cease and desist' actions which would be more relevant in relation to unfair contract terms or unfair commercial practices
Sweden	Used by KV for one case in 2007, but considers more relevant to other issues such as unfair contract terms
Switzerland	CPC network not available in Switzerland as not an EU Member State
United Kingdom	CPC system not used extensively to date, partly due to technical issues, however CAA expects to use CPC in the future in relation to the price transparency provisions of Regulations 1008/2008, as well as 261/2004.

## Enforcement of other legislation

### *Enforcement bodies*

5.77 We also requested information on the enforcement bodies for other relevant legislation on consumer protection in air transport, in particular:

- Regulation 1107/2006 on passengers with reduced mobility;
- Regulation 889/2002 on air carrier liability;

- The provisions of Regulation 1008/2008 relating to price transparency and non-discrimination;
- Directive 93/13/EEC on unfair contract terms; and
- Directive 2005/29/EC on unfair commercial practices.

5.78 Regulation 1107/2006 contains an explicit requirement for Member States to designate enforcement bodies. The other legislation does not, although Regulation 1008/2008 contains an explicit requirement for Member States to enforce the legislation, which it is hard to see how they could do without having designated a body to be responsible. There is no equivalent requirement in the other legislation, and whilst many States have designated a body, some have not, or the body designated has not actually been active in the field of air transport.

5.79 In many cases the enforcement body for Regulation 1107/2006 is the same as the enforcement body for Regulation 261/2004, but the other legislation is enforced by different bodies (see Table 5.20 below). As discussed further below it is not clear which body in Belgium is responsible for enforcing Regulation 889/2002 or the price transparency provisions of Regulation 1008/2008.

**TABLE 5.20 ENFORCEMENT BODIES FOR REGULATION 261/2004**

State	Enforcement body	Regulation 1107/2006	Regulation 889/2002	Regulation 1008/2008 <sup>20</sup>	Directives 93/13/EEC and 2005/29/EC
Belgium	SPF Mobilité	✓	Not clear	Not clear	-
	SPF Economies	-			✓
Czech Republic	CAA	✓	-	-	-
	Trade Inspection Authority	-	-	✓	✓ (2005/29/EC only)
Finland	Consumer Ombudsman	-	✓	✓	✓
	TraFi	✓	-	-	-
France	DGAC	✓	✓	-	-
	Competition authority (DGCCRF)	✓	-	✓	✓
Germany	LBA	✓	-	✓	-
Ireland	CAR	✓	-	-	-
	National Consumer Agency (NCA)	-	-	✓	✓

<sup>20</sup> Table refers to the price transparency and non-discrimination provisions of this Regulation only

State	Enforcement body	Regulation 1107/2006	Regulation 889/2002	Regulation 1008/2008 <sup>20</sup>	Directives 93/13/EEC and 2005/29/EC
Italy	ENAC	✓	-	-	-
	Antitrust authority (AGCM)	-	-	✓	✓ (2005/29/EC only)
Latvia	CPRC	-	-	✓	✓
	CAA Latvia	✓	-	-	-
Netherlands	IFW	✓	-	-	-
	Netherlands Consumer Authority	-	-	✓*	✓*
Poland	CPR	✓	✓	✓	-
	Office of Competition and Consumer Protection (OCCP)	-	-	-	✓
Spain	AESA	✓	✓	-	-
	Regional government	-	-	✓	✓
Sweden	KV	✓	-	✓ <sup>21</sup>	✓
	Swedish Transport Agency	✓	-	-	-
	ARN	-	✓	-	-
Switzerland	FOCA	✓	Limited	-	-
United Kingdom	CAA	✓	✓	✓ (lead enforcer)	✓ (support to OFT)
	Equality and Human Rights Commission	✓	-	-	-
	Office of Fair Trading	-	-	✓ (support to CAA)	✓ (lead enforcer)

\* Not actively enforced in air transport sector

5.80 The extent to which these bodies actively enforce the other legislation varies. Table 5.21 provides a brief summary of the enforcement activity with respect to the other legislation.

<sup>21</sup> Not officially designated as enforcement body

TABLE 5.21 ENFORCEMENT OF OTHER LEGISLATION

State	Regulation 1107/2006	Other legislation
Belgium	Enforced by SPF Mobilité on the basis of a similar process to Regulation 261/2004	Unclear which body is responsible for enforcing Regulation 889/2002 or the price transparency provisions of Regulation 1008/2008: both SPF Mobilité and SPF Economie said it was the other organisation. SPF Economie responsible for the consumer protection Directives but unable to say what if anything had been done to enforce these in the air transport sector.
Czech Republic	Enforced by CAA on the basis of a similar process to Regulation 261/2004	Regulation 1008/2008 and unfair commercial practices enforced. ECC will help with cross-border complaints about baggage. Unfair contract terms not enforced, as considered private contractual matter, unless constitutes an unfair commercial practice.
Finland	Enforced by TraFi	Consumer Ombudsman responsible but has not taken any action of late in air transport sector. Previously had a major project on unfair contract terms and has participated in website 'sweep'.
France	Enforced by DGAC on the basis of a similar process to Regulation 261/2004. In addition DGCCRF enforces in relation to travel agents (requirements on provision of information)	DGAC handles complaints in relation to Regulation 889/2002 but has no powers to impose sanctions. DGCCRF responsible for monitoring compliance with Regulation 1008/2008 and the consumer protection Directives. To date no sanctions in national law for infringements of Regulation 1008/2008.
Germany	Enforced by LBA on the basis of a similar process to Regulation 261/2004. No sanctions imposed to date as few complaints.	LBA enforces price transparency provisions of Regulation 1008/2008, on the same basis as Regulation 261/2004. No sanctions imposed to date as few complaints. No enforcement body for other legislation as this is considered a private contractual matter.
Ireland	Enforced by CAR on the basis of a similar process to Regulation 261/2004	No organisation responsible for Regulation 889/2002 although ECC would help with cross-border baggage complaints and Department of Transport ultimately responsible. NCA responsible for other consumer protection legislation. No information available as to extent of activities in air transport.
Italy	Enforced by ENAC on the basis of a similar process to Regulation 261/2004	AGCM responsible for enforcement of consumer protection legislation. It has initiated 16 proceedings against airlines relating to presentation of prices on their websites; 12 of these have been concluded and the average sanction imposed was €219,000.  Information requested from ENAC about responsibility for Regulation 889/2002



Latvia	Enforced by Latvian CAA	CPRC also enforces the price transparency provisions of Regulation 1008/2008 and the consumer protection Directives. It has no mandate to enforce Regulation 889/2002 but it has a general duty to assist consumers and therefore when it receives a complaint it will provide advice.
Netherlands	Enforced by IFW on the basis of a similar process to Regulation 261/2004	Enforcement body is Netherlands Consumer Authority, however has not been active in air transport, and therefore enforcement is mostly by individuals through the civil courts.
Poland	Enforced by CPR on the basis of a similar process to Regulation 261/2004	CPR also responsible for enforcement of Regulation 889/2002 and price transparency provisions of Regulation 1008/2008. Has undertaken random checks and requested modifications. OCCP responsible for enforcement of 2007 Act on Competition and Consumer Protection, which implements the consumer protection Directives into national law; can impose fines of up to 10% of turnover although has not done so to date in the air transport sector.
Spain	Enforced by AESA on the basis of a similar process to Regulation 261/2004. 3 fines imposed for non-compliance in 2010.	AESA also actively enforces Regulation 889/2002 and imposed 5 fines in 2010 for failure to provide correct information on liability. Consumer protection is a competence of regional government and therefore other legislation is enforced by regional government consumer authorities. The INC (National Consumer Institute) facilitates this and is responsible for liaising with other EU bodies, but it does not have powers to undertake inspections or impose sanctions itself.
Sweden	Enforced by KV and the Swedish Transport Agency. KV is responsible for enforcement of Articles 3 and 4 (prohibition on refusal of carriage or reservation) and the Swedish Transport Agency for other Articles. Number of complaints very low.	ARN handles individual complaints in relation to the Montreal Convention and Regulation 889/2002 KV enforces the price transparency provisions of Regulation 1008/2008 (although it is not officially designated as the enforcement body) and the consumer protection Directives. It is currently undertaking a project in relation to unfair contract terms for Swedish domestic flights.
Switzerland	Enforced by FOCA on the basis of a similar process to Regulation 261/2004	FOCA also receives complaints in relation to the Montreal Convention; it will provide advice but does not have a legal mandate to investigate. Legislation on unfair contract terms is a private contractual matter enforced through the civil courts
United	Enforced by CAA with	CAA advises passengers in response to complaints

Kingdom	complaint handling also undertaken by the Equality and Human Rights Commission and Consumer Council for Northern Ireland.	relating to Regulation 889/2002 and Montreal Convention and sanctions are available in national law for failure to provide the information required. CAA and OFT are both designated enforcers in relation to the consumer protection Directives and the price transparency provisions of Regulation 1008/2008. CAA has reviewed price transparency and obtained binding undertakings; OFT has recently worked on price transparency (payment surcharges) and previously air carrier Conditions of Carriage.
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5.81 Whilst Regulation 1107/2006 is in most cases enforced by the same bodies as Regulation 261/2004 and in accordance with the same process, in most cases the number of complaints is far lower, and in addition few sanctions have been imposed. The main exception to this is the UK, where a substantial number of complaints are received. A possible reason for this is that UK national law allows for compensation to be paid to the passenger in the case of infringements, whereas national law in other States only allows for penalties to be imposed.

## Conclusions

### *Enforcement*

- 5.82 As in the previous study, we have attempted to assess the extent to which Member States are meeting their obligations under the Regulation with respect to enforcement. Article 16(1) requires each Member States to designate an enforcement body responsible for flights from airports on its territory and flights from third countries to these airports, and requires this body where appropriate to take measures to ensure that passengers rights are respected. Article 16(3) requires sanctions for infringements to be effective, proportionate and dissuasive, which we understand as meaning that sanctions should create an economic incentive for carriers to comply with the Regulation. This must mean that the expected cost of infringement should be greater than the cost of compliance.
- 5.83 Table 5.22 summarises the results of this. Despite significant efforts in many Member States and substantial human and financial resources being committed to the enforcement of the Regulation, it still does not appear to be sufficient in many Member States. As before, the problems we have identified generally do not arise from failings by the NEB, but from wider legal or administrative issues in the State concerned:
- legal or procedural impediments to imposition of sanctions (such as a requirement for a criminal prosecution in the UK, or time limits in Belgium), which means that the sanctions regime cannot provide an incentive;
  - difficulties in either imposing or collecting sanctions in relation to carriers not based in the State, meaning that sanctions cannot provide an incentive for these carriers to comply with the Regulation (although as noted above some States have now addressed this issue); and

- sanctions which are too low to provide an economic incentive for carriers to comply with the Regulation, taking into account that only a very small proportion of passengers impacted by an infringement are likely to complain to the NEB.

**TABLE 5.22 CONCLUSIONS: STATES' COMPLIANCE WITH ARTICLE 16(3)**

State	Summary	Explanation
Belgium	Not compliant	Very difficult to impose sanctions, as prosecutor does not have sufficient resources to undertake a criminal prosecution, and time limit means many sanctions processes could not be concluded.
Czech Republic	Not compliant	Although maximum sanction high, none imposed to date. Sanctions can only be imposed for severe infringements and after the carrier refuses to pay compensation required; and could not be enforced against non-national carriers.
Finland	Unclear/ borderline	Unlimited fines, but none imposed to date. Only able to impose conditional fines which may not be sufficient to provide a more general incentive to comply.
France	Unclear/ borderline	Some, but very few, sanctions imposed, and maximum sanction is low. Sanctions would only be imposed if a carrier failed to provide redress when required by the NEB.
Germany	Compliant	Sanctions regularly imposed on the basis of thorough investigations and levels probably sufficient to have some dissuasive impact.
Ireland	Unclear/ borderline	Sanctions can only be imposed for an infringement of a Direction. Since this means that carriers would always have the opportunity to rectify an incident before a sanction was imposed, not clear it provides general incentive to comply.
Italy	Not compliant	Currently difficult to collect sanctions due to lengthy appeals process and then a further delay of 5 years before payment can be forced. As a result sanctions do not provide incentive to comply.
Latvia	Not compliant	Maximum sanctions very low, and can only be imposed on Latvian carriers
Netherlands	Compliant	Since September 2011 has been possible to impose punitive sanctions for past infringements, and NEB has started to do so. Level of sanction generally sufficient to provide an incentive, but may not be sufficient for carriers with few operations in Netherlands.
Poland	Not compliant	Although sanctions applied regularly, maximum fines are too low to provide an economic incentive to comply with the Regulation
Spain	Compliant	Sanctions regularly imposed on the basis of thorough investigations and levels sufficient to be dissuasive. Key weakness nonetheless is sanctions cannot be imposed where carrier provides redress when required to do so.

Sweden	Not compliant	Not possible to impose sanctions except for infringement of Article 14. Publication of carrier on a list in a magazine does not appear to be an effective incentive.
Switzerland	Unclear / borderline	Not clear that the level of sanction sufficient given none have been imposed to date, although FOCA has now started the process with respect to 14 carriers. Problematic if carrier does not have legal representation in Switzerland, but most do.
United Kingdom	Not compliant	The need for a criminal prosecution and the availability of a due diligence defence to carriers means that it is very difficult to impose sanctions; even in these cases, the maximum level of sanctions would be low (€5,750) and therefore cannot provide an economic incentive. NEB now also has some civil powers but not clear how it would use these in respect of Regulation 261/2004; could not be used to punish identified past infringements.

5.84 On the basis of the evidence collected for this study, it appears that enforcement of the Regulation has improved significantly since our 2009/10 study in three States:

- Germany, as sanctions now can be and are imposed on non-national EU carriers;
- Netherlands, as punitive sanctions for past infringements have been introduced into national law and there is a clear policy on when these will be imposed; and
- Spain, as potential issues with collection of sanctions from non-national carriers have been largely resolved and an explicit reference to the Regulation has been introduced into national law.

5.85 However, in some other States where we previously concluded that there were significant issues, the position has not improved:

- UK, as the CAA no longer investigates any cases of extraordinary circumstances and has still not imposed sanctions despite its own survey evidence showing substantial evidence of non-compliance (as noted above the CAA expects to investigate extraordinary circumstances again in future);
- Italy, as only 4% of sanctions are now reported as having been paid, even lower than before (although the courts have now sought to force payment of a sanction for the first time); and
- Sweden, as there are still no sanctions in national law for infringements of the Regulation, except for Article 14, and the only penalty in practice is publication on a blacklist in a magazine.

5.86 The analysis also shows that enforcement is still carried out mostly through investigation and potentially sanctioning of individual incidents in response to passenger complaints. Although many NEBs undertake inspections, in most cases these are limited to checking compliance with the information provisions in Article 14, and often Article 14(1) only.

### Complaint handling

- 5.87 Although Article 16(2) states that passengers have the right to complain to NEBs, it does not require them to take action on individual complaints, or to assist passengers in claims against airlines. Many NEBs do provide at least some assistance to passengers but in most cases they have limited powers to enforce decisions that carriers should pay compensation, or provide other redress, in an individual case.
- 5.88 Table 5.23 summarises our conclusions on the effectiveness of complaint handling. It should be noted that our conclusions are based only on our understanding of the process and procedures followed by the NEB; we cannot confirm how useful the assistance that NEBs provide actually is in individual cases, and therefore these results should be treated with some caution. Some stakeholders commented that the assistance with, and investigation of, individual claims some NEBs claimed to provide was actually quite minimal, but this is not possible to validate.

**TABLE 5.23 CONCLUSIONS: EFFECTIVENESS OF COMPLAINT HANDLING**

State	Individual passengers assisted	Effectiveness	Explanation
Belgium	Yes	Some issues	Individual claims, including claims of extraordinary circumstances, investigated by Denied Boarding Authority. But it cannot require compensation to be paid in individual cases, and problems with imposing fines means limited incentive.
Czech Republic	Yes	Some issues	Individual claims investigated and response provided to passenger. But response time is slow, cannot require compensation to be paid, and problems with imposing fines means limited incentive.
Finland	Yes	Some issues	Consumer Disputes Board functions as an ADR and can refer a case for sanctions if its decisions are not complied with. However its process is very slow due to lack of resources.
France	Yes	Some issues	DGAC mediates on behalf of passengers and investigates claims of extraordinary circumstances; carriers can be referred for sanctions if they do not comply. However, constrained by resources; also communicates with passengers in French only.
Germany	No	n/a	LBA undertakes detailed investigations but does not see it as its role to assist individual passengers in obtaining redress.
Ireland	Yes	Good	All cases investigated, and where infringements found, carrier can be required to provide redress through issue of a Direction (and subsequent sanctions if not complied with).

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Italy	No	n/a	ENAC undertakes investigation of complaints but does not see it as its role to assist individual passengers in obtaining redress.
Latvia	Yes	Some issues	All complaints investigated and carriers required to pay compensation where infringements found; fines can be imposed where carriers do not comply but only for Latvian carriers. NEB not competent to evaluate extraordinary circumstances.
Netherlands	Yes	Good	All complaints, and all claims of extraordinary circumstances, investigated by NEB. Conditional fine can be imposed if a carrier does not comply with an instruction to provide redress (and also for irreparable infringements)
Poland	Yes	Good	All complaints, and all claims of extraordinary circumstances, investigated by NEB. Conditional fine can be imposed if a carrier does not comply with an instruction to provide redress. High proportion of positive outcomes for passengers.
Spain	Yes	Good	All complaints and all claims of extraordinary circumstances investigated by NEB. Fines may be imposed if carrier does not provide redress. However significant delays in processing claims.
Sweden	Yes	Some issues	Complaints handled by ARN, but it does not have the capability to investigate claims of extraordinary circumstances, and has no means of enforcing its decisions.
Switzerland	Yes	Some issues	All complaints and all claims of extraordinary circumstances investigated by NEB and may decide not to issue a fine if carrier pays; however limited information disclosed and complainant not party to case
United Kingdom	Yes	Some issues	CAA does assist individual complainants but does not investigate claims of extraordinary circumstances at present, and does not take any action if carrier does not comply with its decision.

## 6 Alternative means for passengers to claim redress

### Introduction

6.1 In addition to complaints made to NEBs, many passengers have used other measures in order to obtain redress:

- Alternative dispute resolution (ADR; mediation) processes;
- Court cases; and
- Commercial services such as EUClaim, EU Flyer Rights and Transindemnit .

6.2 This section describes these alternative dispute resolution processes, which provide an alternative for passengers to pursuing claims through NEBs. However, the extent to which they may be of assistance to passengers varies significantly between the case study States.

### Changes since our 2009/10 study

6.3 We collected and analysed similar information for the 2009/10 study, although the sample of States selected for case studies was different: Belgium, the Czech Republic, Finland and Switzerland were not examined in 2009/10. For the States which were examined in both this review and that in 2009/10, the most significant changes are:

- The airline complaints board of Geschillencommissie in the **Netherlands** is now likely to be wound up for the reasons discussed below. At the time of the previous study it had only been established recently and was yet to hear any cases, although we highlighted its likely potential effectiveness in comparison to ADRs in other States;
- An ADR system was recently trialled for a year in **Italy** for complaints about Alitalia, and an ADR system is being planned in **Germany**;
- **EUClaim**, the main commercial claims service, now provides supporting information and template complaint letters to passengers to use in claims in return for a fixed fee, as well as offering to take over their claims; and
- In most States consumers now have the additional option of the **EU Small Claims Procedure**, but to date the procedure has not been widely used, and national systems for small claims have been left largely unchanged.

6.4 More detail on the options currently available to passengers is provided in the text below.

### Alternative dispute resolution

6.5 In a number of Member States there are alternative dispute resolution or mediation procedures which can handle claims relating to the Regulation:

- **Finland:** The Consumer Disputes Board, which is a designated NEB, offers a free-to-use ADR system across all sectors. It can only handle complaints by persons which fall under the legal definition of a consumer, and there must be a clearly defined monetary compensation claim. Complaints under the Regulation can be handled in Finnish, Swedish and English; although it can only handle cases must have a strong enough connection to Finland, which generally means that a Finnish court of law would have to

be theoretically competent to handle the same case. It has no powers to enforce its decisions.

- **Latvia:** The system offered by the NEB is effectively an ADR, as it is free and gives legally binding decisions; although it has limitations, particularly where foreign airlines are involved. Consumer disputes can also be addressed via the arbitration court, which sets its costs on a case-by-case basis, taking into account the value of the claim and the complexity of the dispute. There are no time or monetary limits on the use of the ADR procedure.
- **Netherlands:** The airline complaints board of Geschillencommissie was established on 1 July 2009 to handle complaints regarding this Regulation and Regulation 1107/2006, and airline blacklist legislation. It gathers evidence by written submission, and can call upon technical and operational experts to help decide a case. Pursuing a case costs the passenger €50, which is refunded if the passenger wins. The decisions are binding, and there are mechanisms in place to compel payment by the airline. The process is only available for airlines which are members of the association of airlines operating in the Netherlands (BARIN); several major European airlines operating in the Netherlands are not members. BARIN also part-funds the system, with the government funding the rest. However, this funding is to be withdrawn at the end of 2011 - BARIN has said it will only continue providing funding if the decisions apply to all airlines operating in the Netherlands as otherwise there is not a 'level playing field'. A further (believed by the Geschillencommissie itself to be the main) explanation is that the ADR was applying the rights identified in the Sturgeon judgment and therefore requiring airlines to pay compensation in cases of long delays.
- **Poland:** Although the Civil Aviation Office prefers to encourage passengers to reach agreement through NEB-mediation, consumers may opt instead for the alternative dispute resolution provided by the consumer courts of arbitration. The decisions of the consumer courts, as well as settlements reached in them, are equally binding as the judgments of common courts of law, once a common court of law has confirmed their enforceability. However, the decision to use arbitration must be made by both of the parties to the dispute. Consumer courts may only hear business to consumer disputes resulting from contracts of sales and provision of services, and (except in the Warsaw court) only where the value in dispute does not exceed 10,000 PLN (€6,080).
- **Sweden:** ARN is not designated as an NEB but performs the complaint handling role in Sweden, and is a free-to-use ADR system. It can handle all complaints - including where carriers refuse to cooperate - but has no powers to enforce decisions. Failures to cooperate with ARN decisions are published as part of a blacklist in a magazine, which is generally effective for Swedish carriers, but less so for carriers based elsewhere.

6.6 In other States similar ADRs are planned, or are currently available but are limited in scope, for example by only handling claims under the Regulation for specific types of passengers:

- **Belgium:** If the flight forms part of a package, the Belgian Travel Disputes Commission (*Commission de Litiges Voyages/Geschillencommissie Reizen*) can handle the claims. It offers both a mediation and arbitration service: each party is charged €50 for mediation; and at least €100 is payable by the losing party for arbitration.



- **Czech Republic:** An ADR, developed jointly by a number of stakeholders, came into effect in April 2008. However, in 2010 one of its main stakeholders became insolvent and details of cases in progress were lost; and consequently its future is uncertain. Participation in the ADR would require the agreement of both parties, and appeal of its decisions to the Ministry of Industry and Trade would be allowed. Mediation services would be free to both participants; and for arbitration proceedings the prosecuting party would pay for the proceedings (3% of the value of the subject in dispute, but no less than 800 CZK or €32). The arbitration judge would be paid by the Ministry of Industry and Trade.
- **Germany:** The German Conciliation Body for Public Transport (*Schlichtungsstelle für den öffentlichen Personenverkehr*; söp) was founded in 2009 and can in theory handle complaints from travellers on all public transport modes. However, the German constitution defines that everyone has a right to seek redress through the court system, so any ADR system can only be voluntary, and the airlines are not currently willing to participate. This may change if Germany's plans for a new ADR come to fruition: the most likely solution will be a voluntary private ADR, which would initially be by the German carriers only. This would be supported by a state-organised ADR which it would be mandatory for other airlines to participate in and fund, although because of the constitutional constraint, they would not be obliged to accept its decisions.
- **Italy:** A trial of a conciliation procedure for passenger complaints regarding Alitalia was in place between July 2010 and July 2011. The procedure was free of charge, but ENAC informed us that a charge of €50-€80 might be introduced if the procedure is expanded to cover other airlines.
- **Switzerland:** ADR is only available to passengers who bought a package holiday from a Swiss travel agency. The service offered by the Ombudsman of the Swiss Travel Industry is free of charge to consumers without legal assistance or representation.

6.7 A number of other States do have ADR systems, but these cannot be used for complaints regarding Regulation 261/2004. Of the States discussed above, four recurring issues can be identified:

- ADRs are only available for certain types of passenger - most commonly those booking flights as part of a package, but also for non-business travellers only;
- Carriers are not required to use the ADR, and in some cases this cannot be required under the State's law or for constitutional reasons;
- ADRs are often not able to enforce their decisions; and
- The wide scope of some ADRs may mean that they lack sufficient expertise available to handle cases relating to the Regulation, in particular to decide on claims of extraordinary circumstances.

6.8 The airline complaints board of Geschillencommissie is perhaps the most effective of ADRs currently in operation, offering a specialised service and making decisions which are binding on air carriers. It is therefore unfortunate that it is likely that it will be wound up at the end of 2011. In addition, although it is the most effective system to date, it still has weaknesses - particularly the fact that it cannot accept complaints in relation to airlines that are not members of BARIN; and although it is not explicitly limited to Dutch residents,

in practice it is primarily designed to be of use to residents (this issue is discussed further in the case study for the Netherlands).

### Civil court claims

- 6.9 A number of passengers have used the civil courts to obtain compensation from airlines under the Regulation. Member States do not collect detailed statistics on the issues covered by civil court cases, and therefore it is not possible to estimate how many such cases there have been relating to the Regulation.
- 6.10 Most Member States have some type of simplified court procedure for small claims, which may allow compensation claims to be made at lower cost, without a lawyer, and without the risk of being held liable for the legal costs incurred by the airline. However, both airlines and consumer organisations highlighted that there can be significant difficulties with these procedures:
- **Arbitrary judgements:** The judge in small claims cases may have minimal experience in, or understanding of, the requirements of the Regulation and therefore rulings can be arbitrary. This was highlighted as a particular problem in France and the United Kingdom. In France small claims cases are decided by 'Juges de Proximité', who are part-time legal experts (lawyers, barristers, law professors, retired senior police officers, etc.); decisions vary between individual judges and stakeholders said that inaccurate decisions can subsequently be used as a precedent by other judges. A high-profile example of an inconsistent judgment in the UK was the *Hendy v. Iberia* case, in which the judge agreed with a (clearly inaccurate) claim by the airline that a passenger could not take court action against an airline themselves, and that only the CAA could do this.
  - **Limit on amount claimed:** Most States have a limit on the amount that can be claimed through a simplified procedure. In some States, this is sufficiently high to include most claims under the Regulation; for example, in the UK, the limit is €5,750 and in Switzerland €24,410. However, in many States, the limit would exclude a significant proportion of claims under the Regulation: for example, the limit on the procedure is €400 in the Czech Republic, and in Italy a lawyer is required for claims over €1,000, significantly increasing costs.
  - **Time taken and difficulty:** Claims can be very slow. For example, in Italy, even small claims generally take over two years, despite the fact that appeals are not possible in most circumstances. Consumer organisations also comment that cases are difficult and time consuming for consumers to undertake.
  - **Cost:** The simplified procedure for small claims significantly reduces costs, but these can still be significant. For example, in the UK, the minimum fee, applied to all claims under €345, is €110. This means that the fee could be a significant proportion of the amount claimed. Although the consumer would be able to claim this back from the airline if they won the case, the risk of losing this amount could be a deterrent to pursuing a claim. In addition, in some States, if the consumer was unsuccessful, he/she could potentially be liable for some of the airline's costs - this may significantly deter claims as airlines would often have legal representation.
  - **Enforcement of an order:** A court may give an order that an airline pays compensation, but it may be difficult to enforce the order, particularly if the airline is

based in another Member State. For example, in the UK, consumer representatives told us that there have been cases where airlines have not paid when instructed to do so by the court, and significant costs and further effort has to be incurred by passengers who wish to enforce the court order.

- **Availability:** Several Member States, including Germany and Hungary, do not have a small claims procedure and therefore passengers have to use the regular court procedure unless the claim is cross-border and the European small claims procedure can be used.

6.11 Some stakeholders commented that the procedures in some Member States could be arbitrary, due to lack of understanding of the Regulation and of the air transport industry by the judges deciding claims; in particular, judges do not have the expertise required to evaluate whether a technical or operational problem amounts to extraordinary circumstances.

6.12 Passengers can also use the European Small Claims Procedure (ESCP) set up by Regulation 861/2007 for cross-border claims (except for claims involving Denmark, where the Regulation does not apply). However, few stakeholders were aware of the procedure having been widely used, and where they were aware, the usage of the procedure was low:

- the German NEB cited 175 cases through the procedure in Germany in 2010, 11 of which related to travel;
- the Belgian ECC was aware of 11 cases, although it was not clear whether these all related to the Regulation; and
- the Irish ECC said that 60 applications lodged in Ireland during the first year of the procedure (compared to 3,633 claims under the domestic small claims procedure).

6.13 The State-specific small claims procedures and issues with them are summarised in Table 6.1 below.

**TABLE 6.1 SMALL CLAIMS PROCEDURES**

State	Small claims procedures	Issues with procedure
Belgium	Small disputes can be handled by the 'Justice de Paix' (local court), which offers either a free reconciliation/arbitration service; or an informal civil court procedure. The local court can handle claims of up to €1,860 and a lawyer is not required.	Legal costs may be payable by the losing party, and there is an advance cost of approximately €250 which comprises the fee for the writ issued by the court; court expenses; and a registration fee. This is paid back by the company if it loses.
Czech Republic	Small claims court procedure is available for claims of any value, although appeals are not possible for claims of lower than 10,000 Kč (€400). The administrative fee is 5% of the value of the claim, or a minimum of 1000 CZK (€40)	If the claim is unsuccessful the passenger may, at the discretion of the court, be held liable for the airline's costs.

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Finland	No small claims procedure	-
France	Claims under €4,000 can be brought to the 'Juge de Proximité'. There are no charges payable and a lawyer is not compulsory.	Decisions can be arbitrary due to lack of expertise, cannot be appealed, and the burden of proof is with the passenger. Losing claimants may be ordered to pay legal costs, although this is rare.
Germany	No small claims procedure although court may decide to adopt a simplified procedure if claim under €600.	The €600 threshold would include only a proportion of claims under the Regulation.
Ireland	Small claims procedure has low fee (€15), but there is a limit of €2,000 on the value of consumer claims that can be heard.	ECC considers the system is 'hugely time-consuming and expensive for the consumer'.
Italy	Simplified procedure for claims under €15,000, heard by a Justice of the Peace. Lawyer not required for claims under €1,000; or if the Justice of the Peace decides that this is not required.	System slow (at least two years) and, if the claim is for over €1,000 and hence a lawyer is required, expensive. An airline also noted that local Justices of the Peace tend to have limited aviation experience, and that the payment of judges per hearing incentivises lengthy cases with multiple short hearings.
Latvia	A small claims court procedure was introduced in October 2011. It can hear claims up to Ls 1,500 (€2,150), and there is no time limit on bringing a case.	Not yet tested as only recently established.
Netherlands	Simplified procedure for claims under €5,000, with fee €70-€100. Lawyer not required, judge decides what costs claimant is liable for.	Costs are at discretion of the judge; this uncertainty may be off-putting to passengers. The consumer would also need to hire a bailiff to serve a writ on the airline, which would cost a further €100-300.
Poland	Simplified court procedure for consumer claims. The cost depends on the value of the claim but is fixed at 30 zł (€7) for claims up to 2,000 zł (€494).	Simple cases may be solved at the first hearing (usually after 3-5 months), but complex cases may require several hearings.
Spain	Simplified procedure for claims under €2,000. No lawyer required and no risk of award of costs. For claims over €2,000 but under €6,000, a simplified process is still used, but a lawyer is required.	The system can be very slow, potentially taking several months or years.  Some regions have their own consumer court systems which may lack aviation expertise.
Sweden	Small claims procedure for claims under 22,400 kr (€2,470), heard at a	Costs could potentially be larger than the value of the claim. Consumer organisation

	municipal court. Claimant must pay a fee of 450 kr (€50), and may have to pay for 1 hour of the defendant's solicitor's time (1,166 kr; €130) if they lose.	states that cases can take up to 6 months to be heard.
Switzerland	Simplified procedure for claims under CHF 30,000 (€24,410). Costs of between CHF 300 (€245) and CHF 2,500 (€2,035) depending on the claim must be paid in advance, but are repaid by the airline if the court finds in favour of the passenger.	Consumer organisation cited the process as being slow. Costs could be significant if the claimant loses.
United Kingdom	Simplified procedure (small claims track) for claims under £5,000 (€5,750). Fees lower than regular court, no lawyer required, and usually no risk of award of costs.	Fees relatively high - minimum £95 (€110) for all claims under £300 (€345). Consumer organisations state procedure is difficult and time consuming (6-9 months). Risk of variance in decisions by local judges, e.g. Hendy vs. Iberia case.

#### *Litigation insurance*

- 6.14 In addition, some consumers (particularly in Germany, Netherlands and Belgium) have litigation insurance, in some Member States because this is bundled with bank accounts. For these consumers, use of litigation is more attractive, because they do not directly incur costs for legal representation. The difficulties of using the civil courts for claims under the Regulation are therefore reduced for these passengers.
- 6.15 The Dutch consumer association said that approximately 60% of Dutch consumers had litigation insurance of some kind. Although not all such policies would cover claims against airlines under the Regulation, many would, and it believed that this could have a greater role in the future in assisting passengers with claims against airlines.

#### *Collective claims*

- 6.16 At present it is not possible for collective action to be taken on behalf of a group of consumers. However we were informed that the Dutch lower House of Parliament has recently voted to allow collective claims by representative organisations on behalf of an unspecified group of consumers. If this were to take effect, it would be possible for a consumer organisation to take legal action against an airline on behalf of all of the passengers on a flight, without having to identify them or seek their agreement. The airline could then be required to pay compensation to all of these passengers, even if they had not claimed it. This would result in redress being provided to a much larger proportion of passengers, but also potentially a substantial increase in the economic burden on airlines.

### Commercial claim services

- 6.17 EUClaim is a commercial claims service operating in Germany, Belgium, the Netherlands, UK and Ireland. Similar organisations (EU Flyer Rights and Transindemnité) operate in Denmark and France respectively.
- 6.18 In return for a fee, EUClaim provides information to passengers on delayed and cancelled flights which can be used as supporting evidence for a claim against the airline. It said that it will also take over claims on passengers' behalf, submitting complaints to the airline or NEB, and taking legal action. EUClaim informed us that it had issued summons in Dutch courts against airlines in 400 cases to date. Its approach appears to have changed since our previous study as it now offers supporting information and template complaints for a fixed fee rather than taking over claims in all cases.
- 6.19 EUClaim collects data from a number of sources including timetable data, aviation authorities, airport websites, meteorological agencies, and aircraft (ADSB/ACARS transmissions). It is able to put these sources of data together, in order to identify what happens to a particular flight or aircraft. It can trace flights and identify the scheduled time of arrival/departure, the actual time of arrival/departure, which aircraft operated the flight, whether there were significant problems at the airport(s) concerned (such as bad weather) and other relevant issues. It informed us that, in some cases, it has been able to use this data to show that airline claims of extraordinary circumstances are inaccurate, for example because its aircraft were all in use operating other flights, and the airline had contracted to operate a charter flight that it did not have aircraft available to operate without cancelling a scheduled flight.
- 6.20 Airlines have criticised commercial claims services on the basis that they believe they do not have access to reliable information, and also because they are commercial organisations providing a service which should be provided by the NEBs. Airlines also argued that the fact that several have settled claims with commercial services should not be taken to imply that the claims were justified, as carriers would often settle claims as the cost was lower than the cost of contesting them.
- 6.21 EUClaim is in a stronger position to contest claims than individual passengers, as a result of the information it has access to and because, as a specialist organisation, it has greater expertise in the Regulation and the industry than an individual passenger is likely to have. Although NEBs may in principle provide a similar service free of charge, as discussed in section 5 above, the extent to which NEBs assist passengers with individual complaints and challenge explanations from carriers is variable. Therefore, commercial services potentially provide a valuable additional service to passengers.
- 6.22 However, there are also a number of limitations:
- Commercial organisations can only fund themselves by either levying a fixed fee for their service, or levying commission on any amounts refunded to passengers, which reduces the amount passengers can potentially receive;
  - The fact that these services are, and any other commercial services would be, funded through a fee or through commission may also limit the cases that can be handled to those where there is a possibility of obtaining significant payments from carriers (which may exclude, for example, claims only for costs of assistance); and

- At present, these services are only available to residents of a small proportion of Member States.

### Conclusions

- 6.23 Given the limited effectiveness of some of the NEBs, and that many focus on enforcement rather than assisting passengers with individual claims, it is not surprising that passengers have used alternative processes to obtain redress, usually simplified procedures for small claims in the civil courts.
- 6.24 However, these have a number of important weaknesses: the procedures can be slow, expensive and in some cases arbitrary, and in several Member States, there are no such processes or the maximum claim that can be made is set at a level which excludes some claims under the Regulation and other passenger rights legislation. Similar issues may also apply to consumer claims in some other sectors although the technical complexity of the air transport sector means that it is likely to be particularly problematic.
- 6.25 ADR systems provide an alternative for passengers in a small number of States, but these also have significant weaknesses, and in most States they are not available. The most effective ADR system with respect to the Regulation, the airline complaints board established by Geschillencommissie in the Netherlands, was expected to cease to function at the end of 2011.
- 6.26 This means there is a gap in the market for companies to assist passengers obtaining redress. Commercial organisations such as EUClaim may be able to fill this gap, but to date these services only available to residents of a small proportion of States, and it is unclear whether the business model can be expanded to cover a higher proportion of passenger claims.

## 7 Current disruption and economic burden

### Introduction

- 7.1 This chapter presents our estimates of the current levels of flight disruption Europe-wide and our estimates of the current economic burden of the Regulation. It also summarises information on the economic burden airlines incurred during the volcanic ash crisis in 2010, and opportunities for airlines to recover costs from third parties.
- 7.2 As discussed in section 2, in calculating the economic burden we assume throughout that the Sturgeon judgment is applicable. The calculation of economic burden includes Iceland, Norway and Switzerland as well as the EU27, and except where stated, any references in this section to the EU also includes these States.

### Current levels of disruption

#### Departure delays

- 7.3 Departure delay rates by carrier and route type are derived from Eurocontrol eCODA data. For the period for which we had data, carriers were not required to submit delay data to eCODA, therefore the source is slightly compromised by the absence of some key large carriers. Although Regulation 691/2010 now requires carriers to submit this information, this has only been required since January 2011. The process by which total flights and passengers affected by delays are estimated is explained in Appendix B.
- 7.4 Overall, the percentage of flights delayed was fairly consistent between 2007 and 2009. However, in 2010 there was an increase in the rate of delays across all flight and route types. Table 7.1 shows average delay rates for all flights.

**TABLE 7.1 PERCENTAGE OF FLIGHTS DELAYED, EUROPE-WIDE**

Delay type	2007	2008	2009	2010
Delay > 60 mins	5.3%	5.1%	4.1%	6.5%
Delay > 120 mins	1.5%	1.5%	1.3%	2.3%
Delay > 180 mins	0.7%	0.7%	0.6%	1.1%
Delay > 300 mins	0.2%	0.2%	0.2%	0.4%

- 7.5 Although delays of over 24 hours were rare, they have increased each year, from approximately 120 flights in 2007 to 680 in 2010.
- 7.6 The proportion of passengers affected by delays was higher than the percentage of flights, reflecting the greater propensity of long haul flights with higher loads to be delayed. For example, whilst in 2009 only 1.0% of intra-EU flights of less than 1500km were delayed by 2 hours or more, the corresponding figure for extra-EU flights of over 3500km was 2.3%. Table 7.2 shows the percentage of passengers which would be eligible for care and



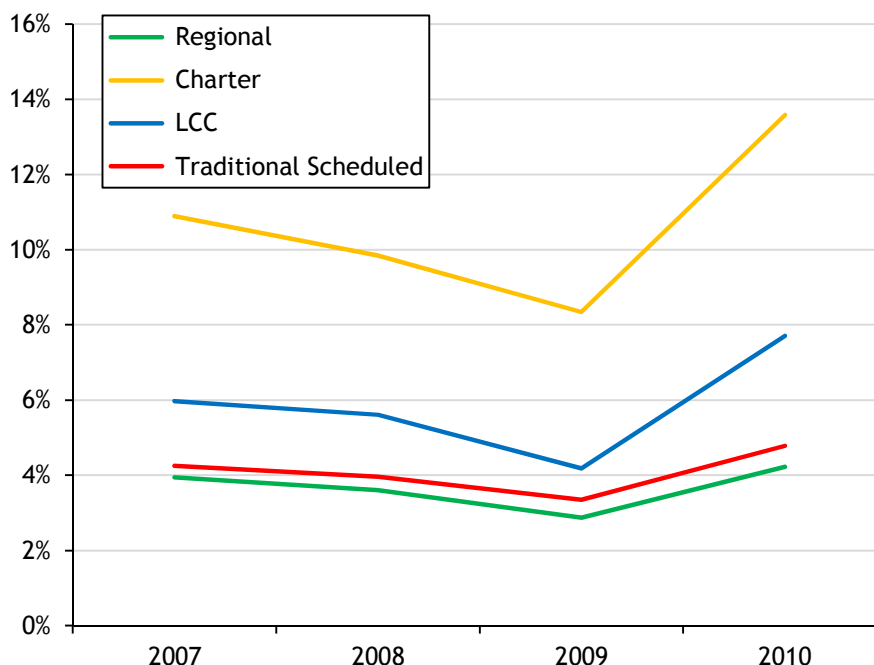
reimbursement or rerouting under the time bands adopted in the Regulation. These percentages represent between 9 and 16 million delayed passengers per year.

**TABLE 7.2 PERCENTAGE OF PASSENGERS ELIGIBLE FOR CARE AND REIMBURSEMENT OR REROUTING**

OD / length	Delay type	2007	2008	2009	2010
EU <1500km	Delay > 120 mins	1.3%	1.2%	1.1%	1.9%
EU 1500-3500km	Delay > 180 mins	1.1%	1.1%	0.8%	1.5%
EU >3500km	Delay > 180 mins	1.4%	1.6%	1.4%	2.8%
Non-EU <1500km	Delay > 120 mins	1.7%	1.7%	1.9%	3.5%
Non-EU 1500-3500km	Delay > 180 mins	1.2%	1.3%	1.0%	2.0%
Non-EU >3500km	Delay > 240 mins	1.0%	1.0%	0.8%	1.3%

7.7 eCODA provides separate data for different categories of service, although it is not specified which carriers or services correspond to each category. On the basis of the eCODA data, regional carriers were the most punctual overall, with charter carriers the most prone to delay. Figure 7.1 shows the percentage of flights delayed by more than 60 minutes for the four key carrier types modelled.

**FIGURE 7.1 PERCENTAGE OF FLIGHTS DELAYED BY MORE THAN 60 MINUTES, EUROPE-WIDE**



7.8 Charter carriers’ higher rates of delay are likely to be a reflection of their reduced propensity to cancel flights. In 2009 for example, the percentage of flights delayed by 12 hours for more was 0.13% for charter flights; whereas the corresponding figure for other carrier types was 0.04% or less. A similar relativity between carrier types occurs within each of the distance bands.

7.9 Rates of delay were higher for non-EU than for EU-licensed carriers: on average 95% of flights by EU carriers departed within 60 minutes of their scheduled time, compared with 93% for non-EU carriers. The larger carriers were more punctual than smaller airlines, although the difference between the two groups was small - on average 95.8% of larger carriers’ flights departed within 60 minutes of their scheduled time, compared with 95.0% of flights by smaller carriers.

*Cancellations*

7.10 In contrast with delays, there is no single coherent EU-wide source for cancellation data. Therefore our estimates for cancellations are derived from average rates for selected airlines which provided the data in response to our information request, with adjustments for different route types applied based on UK CAA and Spanish slot coordinator data. More detail on assumptions and process is provided in Appendix B.

7.11 Reflecting the patterns observed for delay, the level of cancellations remained relatively constant between 2007 and 2009, but tripled in 2010. However, our analysis suggests that the percentage of passengers affected by cancellations was slightly lower than the percentage of flights which were cancelled, perhaps reflecting careful planning by air carriers to minimise disruption and care and compensation payments. Table 7.3 shows the overall percentages for 2007-10. Although much of the increase in cancellations between 2009 and 2010 is attributable to the volcanic ash crisis (these caused approximately 40% of all cancellations in 2010), other factors contributed to the increase, including the winter disruption and various strikes.

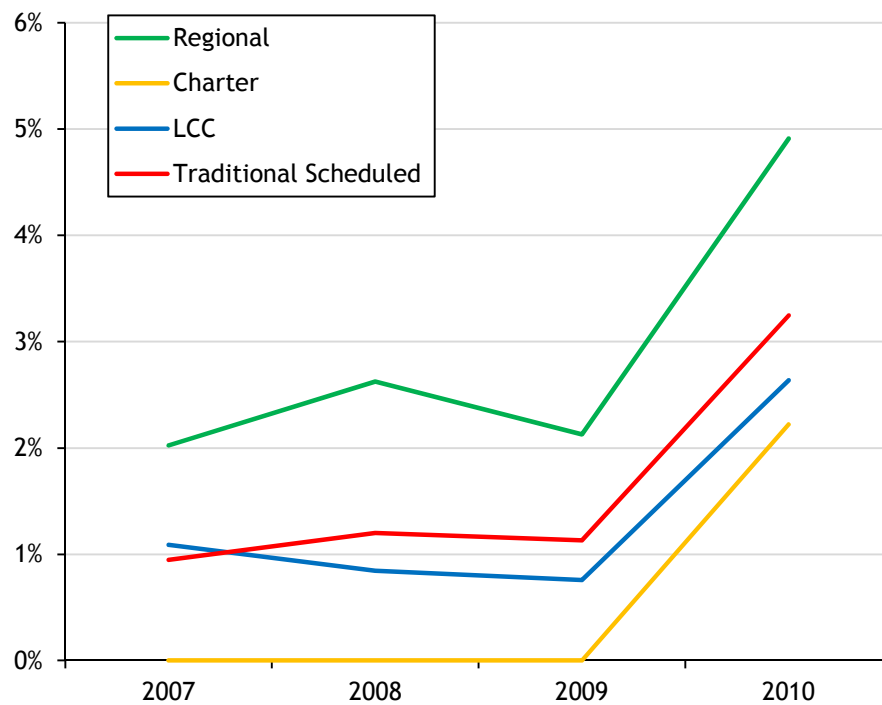
**TABLE 7.3 PERCENTAGE OF FLIGHTS CANCELLED AND PASSENGERS AFFECTED, EUROPE-WIDE**

	2007	2008	2009	2010
Cancelled flights	1.0%	1.1%	1.0%	3.1%
Passengers affected	0.9%	0.9%	0.9%	2.9%

7.12 Although the results suggest a significant degree of variability between route types, no clear trends emerge, with the exception of the Non-EU < 1500km category, which in three out of four years exhibited higher cancellation rates than the other types of route. For example, its cancellation rates in 2007 and 2010 were 4.3% and 5.6% respectively. The results by carrier type suggest a more systemic trend, as shown in Figure 7.2 below. Note that in the absence of appropriate data and taking into account comments made in the bilateral interviews with airlines, we have assumed cancellation rates are zero for charter carriers except in 2010: in order to reflect the volcanic ash crisis we have assumed that

the cancellation rate is equivalent to the increase in the cancellation rate for other carriers between 2009 and 2010.

**FIGURE 7.2 PERCENTAGE OF FLIGHTS CANCELLED, EUROPE-WIDE**



7.13 Reflecting patterns of delay, cancellation rates were generally higher for non-EU than for EU carriers. There was little difference in cancellation rates between the large and small carriers.

*Tarmac delays*

7.14 Our analysis of tarmac delays is based primarily on Eurocontrol eCODA’s average taxi-in and taxi-out times for all European airports. Given that the definitions of taxi-in and taxi-out times do not include any delay between passengers boarding and alighting and off/on block times, we applied an uplift to make the results consistent with the percentages of flights affected by tarmac delay provided by the airlines which contributed.

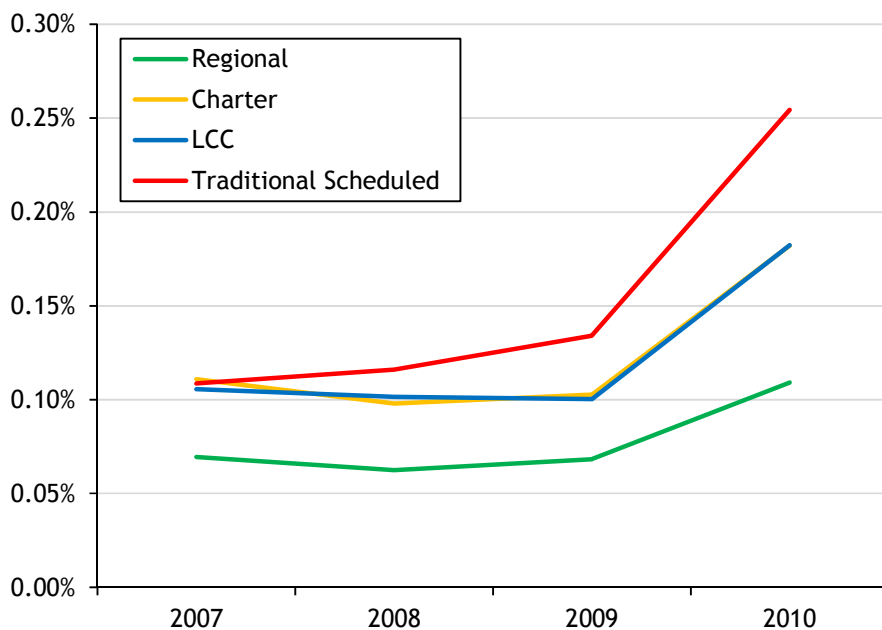
7.15 As indicated in the bilateral interviews tarmac delays remained a rare phenomenon throughout the period, although 2010 did witness a doubling of the rate of delay, which is likely to be a reflection of the volcanic ash crisis (and, to a lesser extent, the winter disruptions). In the years 2007-9 approximately 10,000 flights were subjected to a tarmac delay of more than 1 hour.

**TABLE 7.4 PERCENTAGE OF FLIGHTS DELAYED ON TARMAC, EUROPE-WIDE**

Delay type	2007	2008	2009	2010
Delay > 60 mins	0.105%	0.106%	0.118%	0.218%
Delay > 120 mins	0.010%	0.006%	0.009%	0.018%
Delay > 180 mins	0.003%	0.001%	0.002%	0.006%
Delay > 240 mins	0.003%	0.000%	0.001%	0.004%

7.16 Trends between routes and carrier type are as might be expected given the types of carrier and service operating at the airports with the highest levels of tarmac delay. The highest levels occur on long-haul non-EU services, whereas the occurrence of tarmac delays on shorter-distance routes is much lower. The results by carrier type reflect this - with the highest rates of delay experienced on traditional scheduled carriers serving congested hubs, contrasting with the low rates for the regional carriers serving smaller airports. Figure 7.3 shows the prevalence of tarmac delays by carrier type.

**FIGURE 7.3 PERCENTAGE OF FLIGHTS DELAYED ON TARMAC BY OVER 1 HOUR, EUROPE-WIDE**



7.17 Non EU-registered carriers were more affected by tarmac delays; again this is unsurprising as their services would be more focused on the congested hubs than might be the case for EU-registered carriers. Larger carriers were impacted marginally more than the smaller carriers, although the difference between the two types was marginal. The types of services operating at the airports most prone to tarmac delay are also reflected in the percentage of passengers affected, which in all years exceeds the corresponding proportion of flights.

7.18 In total, over the period 2007-10, we estimate 0.01% of EU flights were delayed on the tarmac by 2 hours or longer, equivalent to 874 flights per year. In contrast, US DoT data shows that over the period May 2010-April 2011, 0.06% of reporting US carriers' flights were delayed on the tarmac for 2 hours or longer.<sup>22</sup> This supports the views expressed by airlines and other stakeholders that tarmac delays are significantly less common in the EU than in the US.

*Denied boarding and downgrading*

7.19 The only accessible data source for denied boarding and downgrading is the airlines themselves; however as discussed in Appendix B, only seven carriers could provide us with this information. Three out of the seven airlines provided us with separate figures for voluntary and involuntary denied boarding, with the remaining carriers providing only total-level figures. Where only totals were provided we estimated the percentages for voluntary and involuntary denied boarding by applying the average of the ratios for the three other carriers, and the corresponding percentages for all US airlines derived from US DoT Consumer Reports (more detail on the calculations is provided in Appendix B).

7.20 The data suggest that both types of denied boarding are rare, averaging approximately 0.04% of passengers carried. Evidence on the relativity between levels of voluntary and involuntary denied boarding is mixed - for three carriers the proportion of involuntary denied boarding was higher; whereas for another two carriers the reverse was true. In the US the proportion of passengers denied boarding voluntarily was also consistently significantly higher than the involuntary percentage. The low proportion of voluntary denied boarding might indicate that some EU airlines are not calling for volunteers as required by Article 4 (this can be difficult to the trend towards online check-in), but it could also reflect differences in route characteristics and business models.

7.21 Given the limited scope of the data received from the airlines it would be unwise to draw conclusions regarding the prevalence of denied boarding between the various types of carrier. However, the data we have obtained suggests that the practice is most prevalent among the traditional scheduled carriers, followed by the regional carriers, and then the low cost airlines. In the absence of any data, but taking into account qualitative information provided by airlines in the bilateral interviews, we have assumed that the proportion of charter passengers denied boarding is zero.

7.22 Table 7.5 shows outturn proportions of passengers denied boarding by type.

**TABLE 7.5 PROPORTION OF PASSENGERS DENIED BOARDING, EUROPE-WIDE**

	2007	2008	2009	2010
Voluntary	0.021%	0.017%	0.017%	0.016%
Involuntary	0.027%	0.022%	0.022%	0.020%

7.23 Only three airlines provided figures for downgrading, and a further two airlines (one regional and one low cost) confirmed that the question was not relevant given that they

<sup>22</sup> US DoT Air Travel Consumer Reports

only offer one class. We assumed that all of these incidents of downgrading would occur on services operated by the traditional scheduled carriers beyond the EU; as on short-haul services airlines can usually reconfigure space as needed by moving curtains or dividers.

7.24 Table 7.6 shows our estimate of the overall number of passengers downgraded across all flights within, and to and from, the EU.

**TABLE 7.6 PROPORTION OF PASSENGERS DOWNGRADED, EUROPE-WIDE**

	2007	2008	2009	2010
Passengers downgraded	0.026%	0.018%	0.014%	0.015%

*Delayed, lost or damaged baggage*

7.25 Our estimates of lost, delayed and damaged baggage are derived from a combination of the SITA Baggage Reports and data provided directly by the airlines. Given that the SITA Baggage Reports only provide data for Europe at the total level of ‘mishandled’ baggage, we have taken this as a basis, and used the airline data to estimate an average split between delay, damage and loss. The mishandled baggage figures reported by SITA are in turn derived from AEA data; which would not be representative for low cost or charter carriers. For these carriers we therefore use the data provided in their submissions directly. Rates of loss, delay or damage to baggage are significantly lower for low cost than for network carriers. This is because:

- approximately half of incidents of mishandled baggage occur at transfer points, whereas most low cost carriers handle point-to-point passengers only<sup>23</sup>; and
- although no clear data was provided for the study, it is likely that the proportion of passengers’ checking in baggage will be lower on low cost carriers, as they usually levy additional charges for this and their average route lengths are shorter.

7.26 Baggage delay is by far the most frequently-occurring issue, followed by damage or theft; with loss occurring very rarely. Table 7.7 shows average rates for loss, delay or damage to baggage.

**TABLE 7.7 PROPORTION OF PASSENGERS HAVING LOSS, DELAY OR DAMAGE TO BAGGAGE**

	2007	2008	2009	2010
Lost	0.004%	0.003%	0.003%	0.003%
Delayed	0.965%	0.790%	0.605%	0.672%
Damaged / pilfered	0.190%	0.166%	0.145%	0.161%

<sup>23</sup> SITA baggage report 2010 states that 51% of mishandled baggage incidents occur in transfer

*Total passengers affected*

7.27 Table 7.8 shows our estimates of the total numbers of passengers affected by the various disruption types.

**TABLE 7.8 TOTAL DISRUPTED PASSENGERS (MILLIONS)**

OD / length	Delay type	2007	2008	2009	2010
<b>Delay</b>					
EU <1500km	Delay > 120 mins	6.425	5.842	5.017	8.853
EU 1500-3500km	Delay > 180 mins	1.119	1.154	0.842	1.634
EU >3500km	Delay > 180 mins	0.024	0.027	0.027	0.051
Non-EU <1500km	Delay > 120 mins	0.476	0.478	0.514	1.040
Non-EU 1500-3500km	Delay > 180 mins	0.603	0.764	0.603	1.485
Non-EU >3500km	Delay > 240 mins	1.530	1.467	1.140	1.756
<b>Other disruption</b>					
Cancellation		8.035	7.864	7.416	23.705
Tarmac delay	Delay > 60 mins	1.017	1.048	1.078	2.087
Denied boarding	Voluntary	0.176	0.144	0.133	0.135
	Involuntary	0.233	0.185	0.173	0.170
Downgrading		0.224	0.153	0.109	0.123
Baggage	Lost	0.036	0.029	0.020	0.025
	Delayed	8.194	6.739	4.844	5.585
	Damaged/pilfered	1.613	1.418	1.158	1.340

**Current economic burden**

*General assumptions*

7.28 The economic burden of Regulation 261/2004 has been modelled by applying per-passenger costs to the numbers of passengers impacted by each type of disruption. We calculate both:

- The 'Total' economic burden, which includes all of the costs airlines are assumed to incur in complying with the obligations defined in the Regulation; and
- The 'Incremental' burden, which deducts the costs airlines would still occur if the Regulation was repealed (section 4 above explains the rationale for our assumptions as to what costs airlines would still incur).

- 7.29 In addition, where the Regulation defines rights for passengers, but does not require airlines to actually offer the right concerned (compensation for delays and cancellations, and reimbursement for delays over 5 hours), we assume that only a proportion of passengers claim the assistance to which they are entitled. In the case of compensation for delays and cancellations we distinguish between:
- The ‘Current’ economic burden, which is the costs airlines would incur in providing compensation to those passengers estimated to claim it; and
  - The ‘Theoretical maximum’ economic burden, which is the costs airlines would incur if all eligible passengers claimed compensation.
- 7.30 We do not make an equivalent distinction in the case of reimbursement for delays over 5 hours. This is because one might expect many passengers to claim monetary compensation if they knew they were entitled to it, and therefore for the compensation claim rate to increase over time due to the activities of commercial claims agencies and collective redress measures in some States; in contrast, most passengers with long delays will still chose to travel (particularly if travelling for holidays) rather than claim a refund.
- 7.31 Costs for reimbursement and rerouting are based on a combination of average route lengths by carrier and service types (derived from OAG) and average yields for a sample of carriers, taken from their annual financial reports. It should be noted that, although we have recorded these as part of the ‘total’ economic burden, transport operators would sometimes account for refunds for passengers who are not transported as negative revenue, rather than as a cost, and costs for rerouting might not be accounted for at all if the passenger is rerouted on the airline’s own services; therefore, these figures will not be directly comparable to airlines own estimates.
- 7.32 Compensation costs are accounted for based on the levels specified in the Regulation (€250, €400 or €600) as appropriate given the route length, reduced by 50% for the proportion of passengers we estimate would wait less time than the thresholds in Article 9(2). There is no compensation for passengers on cancelled flights who wait less than 2 hours for an alternative flight, or passengers on delayed flights who wait less than 3 hours.
- 7.33 In order to estimate costs of providing refreshments, we collected prices at eight European airports when travelling to visit stakeholders for bilateral meetings. At each airport we recorded the price of water, coffee, a muffin, ham and cheese sandwich and burger and chips. For the impact assessment we combined these elements into snacks (provided as soon as the Regulation requires) and main meals (provided after a further 2.5 hours’ delay). We then assume that a further snacks and meals will be provided at alternate 2.5 hour intervals, excluding overnight periods.
- 7.34 Average accommodation costs for leisure, business and visiting friends and relatives have been taken from the 2011 Hotels.com hotel price index. These are combined to create a weighted average nightly cost using average journey purpose shares from the UK CAA and European Tourism Insights 2009-10; with the exception of charter airlines, for which we assume all travel is for leisure. We assume the average cost of travel to and from accommodation is €9.77; the average fare for a 3km taxi journey from a sample of European airports. 1 night’s accommodation is assumed to be required after a delay of 12 hours.



7.35 We assume that passengers will be reimbursed for telephone calls of five minutes, with the call charged at the average rate of a sample of European providers. We assume that 50% of passengers choose to make telephone calls, with the remainder being reimbursed for an hour of internet access. Again, we checked a sample of websites to determine an average hourly rate.

7.36 More details on the assumptions and associated calculations is provided in Appendix B.

*Impact of connecting flights*

7.37 In most respects we calculate carriers' liability to pay compensation or pay for assistance on the basis of the disrupted flight, not any connecting flight. However, the CJEU found in the Sturgeon case that the liability to pay compensation should be calculated from the time of arrival at the final destination. Therefore, the obligation to pay this compensation could arise from either:

- a delay of 3 hours to one flight; or
- a delay of less than 3 hours to a flight which caused the passenger to miss a connection and thereby arrive more than 3 hours late at their destination.

7.38 Therefore, some passengers delayed by less than 3 hours are also assumed to have a right to this compensation. This applies provided the operating carrier of the flight to the connecting airport is an EU carrier and/or the departing airport of the flight is situated in the EU. We assume that only passengers travelling on a combined, single booking would be within the scope of this adjustment.

7.39 We assume (based on analysis of a number of European airports) that 37.5% of passengers on traditional scheduled or regional carriers might be connecting. We researched a sample of 20 indirect flights offered for sale by airlines in order to evaluate the average connection time, which we found to be just over 2 hours. Given the size of a typical hub airport, and even allowing for the fact that carriers would hold departing flights in some cases, we expect a passenger would probably miss their connection if there was less than 30 minutes between their inbound and outbound flights. Therefore, we assume that, in order for the passenger not to miss their connection the incoming flight could not be more than 90 minutes late. On the basis of the delay statistics discussed in chapter 7, this implies that around 3.8 million passengers might miss connections due to delays each year. Of these we estimate based on timetable data that 82% would arrive more than 3 hours late at their destination and therefore potentially could have a right to compensation in accordance with the Sturgeon judgement, and we have adjusted our estimates of delay compensation (discussed below) to include compensation for these passengers.

7.40 We do not make any equivalent assumptions about the costs of provision of assistance to passengers who miss connecting flights due to delays. The Regulation is not entirely explicit about when this has to be provided, but based on the interviews, the evidence available indicates that most airlines provide it anyhow. It is therefore not clear that this is an incremental economic burden associated with the Regulation.

*Scenarios for Article 5(3) exemption from payment of compensation*

7.41 The right to compensation for delays or cancellations depends on whether the criteria in Article 5(3) are met. As discussed in section 8, there is significant disagreement between

stakeholders (including between different NEBs) on what proportion of delays and cancellations would meet these criteria. Therefore, we have defined three scenarios ('Low', 'Medium' and 'High') for the proportion of delays and cancellations for which the Article 5(3) criteria are met.

7.42 Eurocontrol eCODA data provided the basis for the definition of the Low, Medium and High scenarios. For each of the main delay categories we defined the following percentages of delay as not meeting the Article 5(3) criteria for exemption from payment of compensation:

**TABLE 7.9 PROPORTION OF DISRUPTION NOT MEETING ARTICLE 5(3) CRITERIA**

Delay and cancellation category	Percentage of cases in which compensation is payable		
	Low	Medium	High
Technical	0%	50%	100%
ATFM and airports	0%	0%	25%
Weather	0%	0%	25%
Aircraft and ramp handling	75%	100%	100%
Operations and crew	75%	100%	100%
Passengers and baggage	75%	100%	100%
Mandatory security	0%	0%	0%
Reactionary	Weighted average of all other categories		
Other	Weighted average of all other categories		

7.43 Some of our assumptions our assumptions regarding the assistance which would be offered if the Regulation did not exist, which are important for calculating the *incremental* economic burden, also depend on whether the incident concerned was within the airline’s control (see discussion in section 4). However, the criteria of whether an incident was within the airline’s control is less onerous for the airline than the criteria in Article 5(3), and as discussed in section 4, it would often be up to the airline to determine whether an individual incident was within its control or not. Therefore, in calculating the costs that would apply if the Regulation did not exist, we use the Low scenario throughout for the proportion of incidents assumed to be within the airline’s control.

7.44 We use the same scenarios for cancellations, although the analysis was limited by the lack of suitable data, as discussed further below.

7.45 We assumed that the proportion of passengers which complained and/or claimed redress was 100% in all cases, with the exception for compensation for delays and cancellations and reimbursement for delays, which would only be provided where claimed by the passenger. Our analysis of airline submissions suggest that approximately 5% of passengers

travelling on flights which are cancelled complain to the airline, which would be necessary in order to claim compensation. However, this is likely to underestimate the proportion of eligible passengers that might claim compensation:

- some complaints may cover more than one passenger;
- passengers would be more likely to complain in cases where the cancellation appears to be the fault of the carrier and therefore they may be entitled to compensation; and
- passengers would be more likely to claim if they knew they were entitled to compensation, and since stakeholders indicated that in many cases the information notices required by Article 14(2) are not given out, the number of claims is probably lower than it would be if airlines fully complied with the legislation.

7.46 We have therefore assumed that, if airlines consistently complied with the obligations in Article 14(2), twice this number (10%) might claim. No information was available on the proportion of passengers facing delays longer than 5 hours that chose a refund rather than to wait for their flight. Therefore we also assume 10% of the affected passengers chose a refund.

7.47 The economic burden estimates are expressed both in absolute terms, and as a percentage of airline turnover. Total turnover across intra- and extra-European air services was estimated using average route lengths taken from OAG and average yields per passenger-kilometre taken from the annual financial reports of a sample of airlines.

*Departure delays*

7.48 Information regarding the causes of delay was obtained from Eurocontrol eCODA, and was combined with the allocation set out in Table 7.9 to estimate the costs which would apply in each circumstance. In the case of delay under the current Regulation (and the associated ECJ judgments), the only element affected by extraordinary circumstances beyond the airline’s control is the payment of compensation. However, as noted above we assume that only 10% of eligible passengers claim this compensation; and that only 10% claim the reimbursement which they would be entitled to after five hours’ delay. Table 7.10 shows the weighted average proportion of delays assumed to meet the Article 5(3) criteria in each of the three scenarios.

**TABLE 7.10 AVERAGE PERCENTAGE OF DELAYS MEETING ARTICLE 5(3) CRITERIA**

Scenario	2007	2008	2009	2010
Low	23.4%	21.3%	20.6%	17.9%
Medium	42.8%	40.5%	39.5%	33.3%
High	64.3%	63.3%	62.5%	55.9%

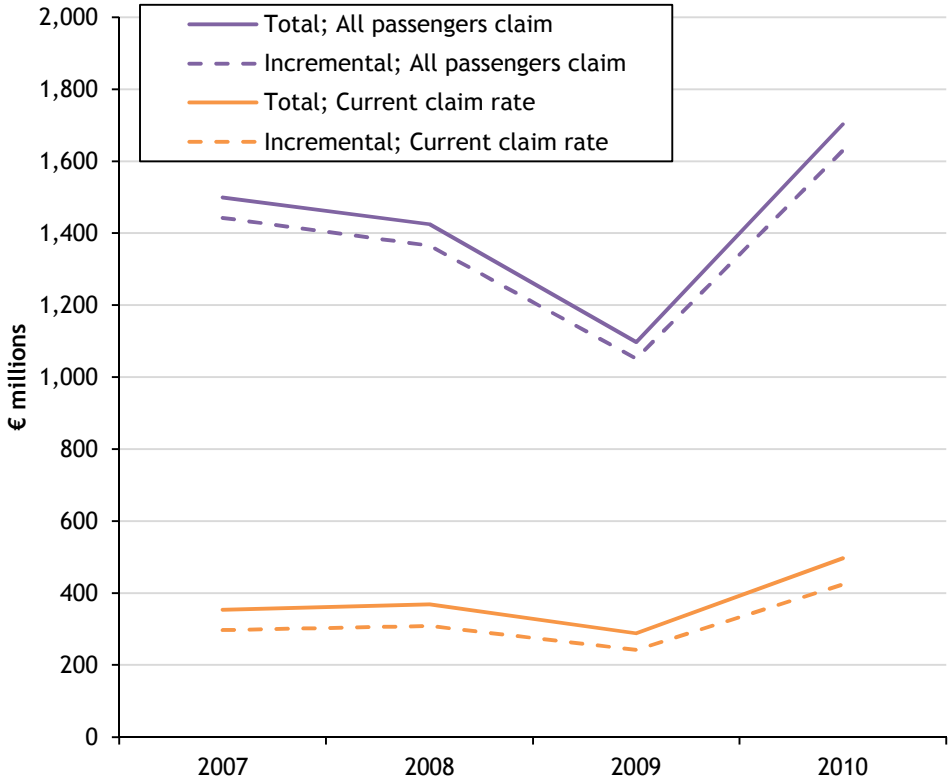
7.49 Minimum thresholds for reimbursement and care in the current situation are as provided for in the Regulation; and the minimum threshold for compensation is the 3 hours specified in the Sturgeon and Bock judgment.

7.50 In order to calculate the proportion of the economic burden which is incremental, we assumed that if the Regulation was repealed:

- No compensation would be provided;
- The option of reimbursement after a delay of 5 hours would still be provided, but only if the cause of the delay is within the airline’s control (and as it would generally be the airline that determined this, we use the Low scenario for the proportion considered within the airline’s control); and
- Care would be provided, with the current time thresholds and levels of care, but again only if the cause of the delay is defined by the airline as being within its control.

7.51 Figure 7.4 shows the total economic burden relating to delays, both with and without the Regulation, in the Medium scenario, with both the current claims rate and with all eligible passengers claiming compensation and reimbursement. It can be appreciated that if all affected passengers are assumed to complain the burden of the Regulation becomes significantly higher.

**FIGURE 7.4 DELAY ECONOMIC BURDEN, MEDIUM SCENARIO**

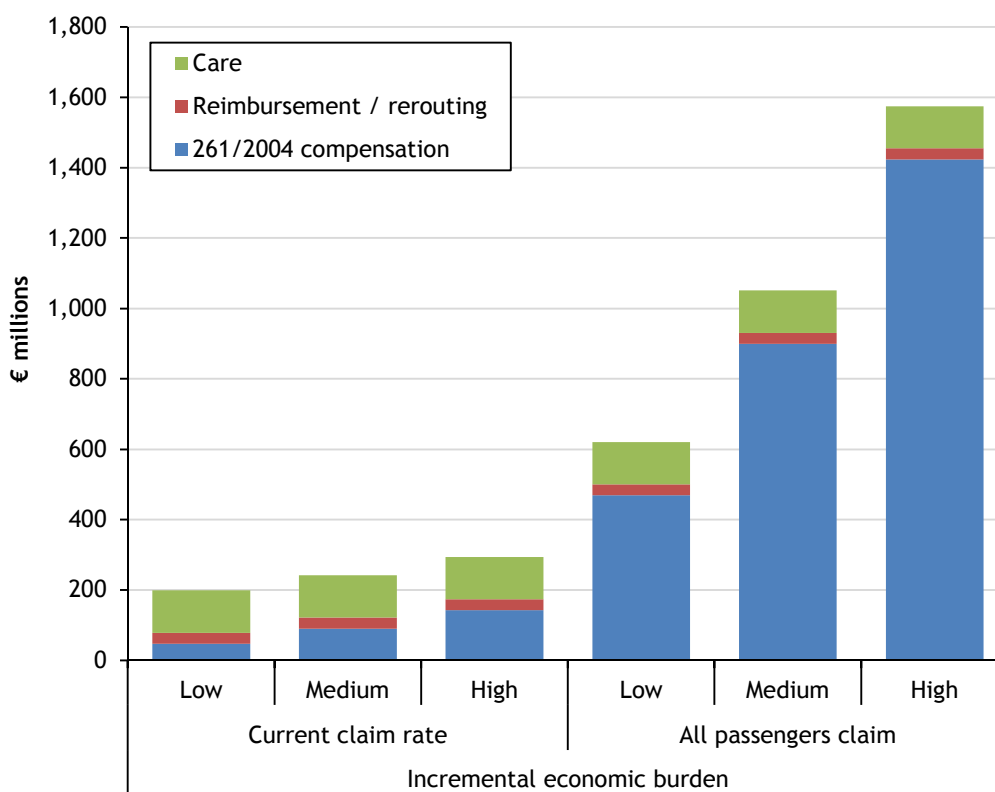


7.52 The incremental economic burden arising from the Regulation in 2009 ranges from €199 million in the Low to €294 million in the High scenario. In the theoretical maximum scenario, where every passenger that is entitled to compensation or a refund claims it, the average incremental burden of the Regulation ranges from €621 million in the Low to €1.6 billion in the High scenario.

7.53 The largest proportion of the economic burden is comprised by the cost of providing care, closely followed by compensation costs. However, whilst the cost of providing care

remains constant in the theoretical maximum scenario, the cost of compensation increases quite significantly, as shown in Figure 7.5 below. Given that we assume no compensation will be paid in the absence of Regulation 261/2004, all compensation costs are incremental; however the costs of care and reimbursement are somewhat lower in incremental terms.

**FIGURE 7.5 INCREMENTAL DELAY ECONOMIC BURDEN BY TYPE, 2009**



*Cancellations*

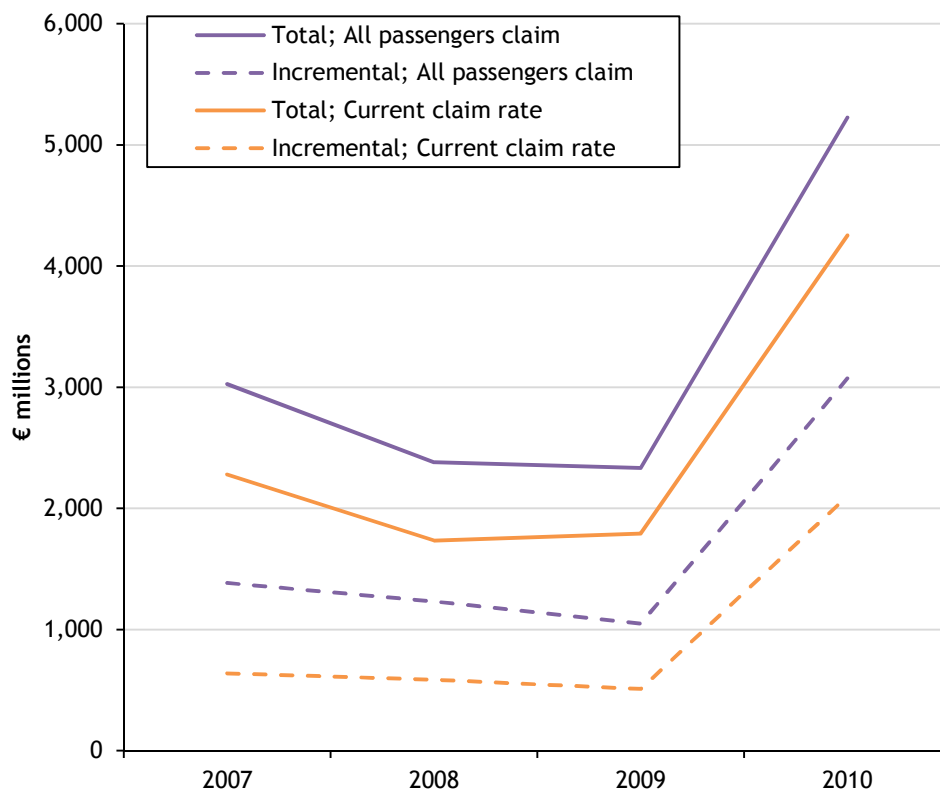
7.54 As discussed previously, Eurocontrol does not provide detailed data on cancellations and their causes. In the absence of such data we therefore assumed the same distribution of causes as for delays, but adjusted the weighted average percentages within the airlines’ control in light of data provided by IATA and a major airline, which suggested that the proportion of cancellations within an airline’s control was lower than for delays. This is because a larger proportion of cancellations are caused by incidents of mass disruption outside airlines’ control, for example strikes or airspace closures. We also assumed that the increase in cancellations in 2010 relative to 2009 could be attributed to volcanic ash and other exceptional events, and was therefore beyond the control of the airlines.

7.55 A further significant factor in determining the assistance which would be required is the amount of time passengers would have to wait before being offered rerouting. We calculated this in two stages:

- ▮ firstly, we estimated the average amount of time to the next flight on the same route operated by the same carrier or its codeshare partners, using OAG data; then

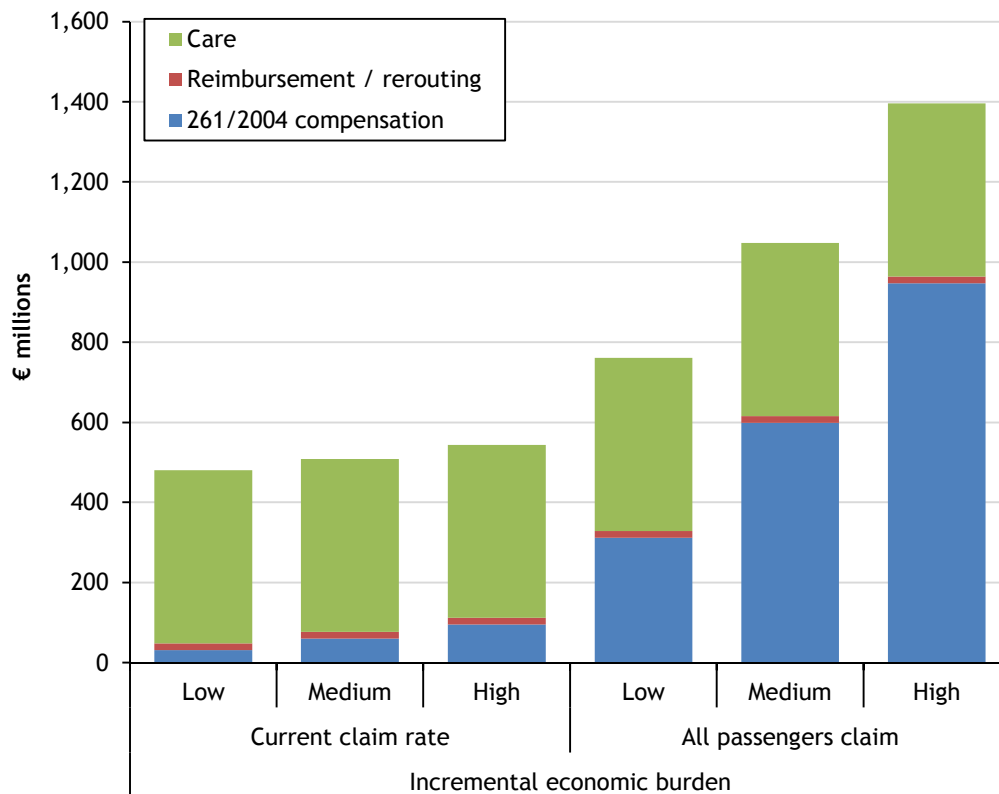
- to reflect that, given high load factors, not all passengers who are booked on a cancelled flight can be accommodated on the next flight, we increased this waiting time by a factor of two.
- 7.56 The OAG data was adjusted to exclude routes with less than a weekly service, or less than a daily service for routes of less than 3,500km, on the assumption that indirect or partly surface rerouting would be offered as an alternative in these cases. Where no data was available for a given carrier type we assumed the maximum wait time interval of more than 24 hours.
- 7.57 Reimbursement and rerouting costs are assumed to be equal, and equivalent to estimated average ticket prices for all except the low cost carriers, for which we assume rerouting costs will be higher in some cases due to the requirement to reroute on other carriers and the absence of reciprocal agreements. We assume that after a delay of more than either 12 hours (for flights of less than 3,500km) or 24 hours (for flights of more than 3,500km) 50% of passengers are rerouted by other carriers, and that for low cost carrier passengers, the cost of rerouting by other carriers will be double that of rerouting by the airline's own services (as low cost carriers generally do not have reciprocal agreements allowing passengers to be rerouted at fixed prices). All other cost assumptions under the 261/2004 scenario are as defined in the Regulation, and applied as described for delays above.
- 7.58 In order to calculate the incremental economic burden, we assume that if the Regulation was repealed:
- No compensation would be provided;
  - The value of refunds and rerouting would be equivalent to that offered under the Regulation, except that rerouting on other carriers would only be offered if the cancellation was within the airline's control (again, as it would generally be the airline that determined whether an event was within its control, we use the Low scenario throughout for the proportion of cancellations with the airline's control); and
  - The same levels of care would be offered, but again only if the cancellation was within the airline's control.
- 7.59 Figure 7.6 shows the total economic burden of cancellations in the Medium scenario.

**FIGURE 7.6 CANCELLATION ECONOMIC BURDEN, MEDIUM SCENARIO**



7.60 The burden of each of the cost elements in 2009 is shown in Figure 7.7.

FIGURE 7.7 INCREMENTAL CANCELLATION ECONOMIC BURDEN BY TYPE, 2009



*Tarmac delays*

7.61 In the absence of any current EU regulation in this area we assume zero economic burden for tarmac delays.

*Denied boarding and downgrading*

7.62 In order to assess the economic burden of denied boarding we combined our estimates of the total passengers affected with an average wait time assumption. The process for calculating the average waiting time by service type is as described in the cancellations section above, although given the greater ease with which the smaller numbers of passengers can be accommodated on subsequent services we did not apply an uplift to the waiting times.

7.63 Compensation, care and reimbursement / rerouting are assumed to be provided immediately as defined in the Regulation, but as defined in the Regulation, compensation may be reduced if the waiting time is short. In the absence of any airline data we assume that:

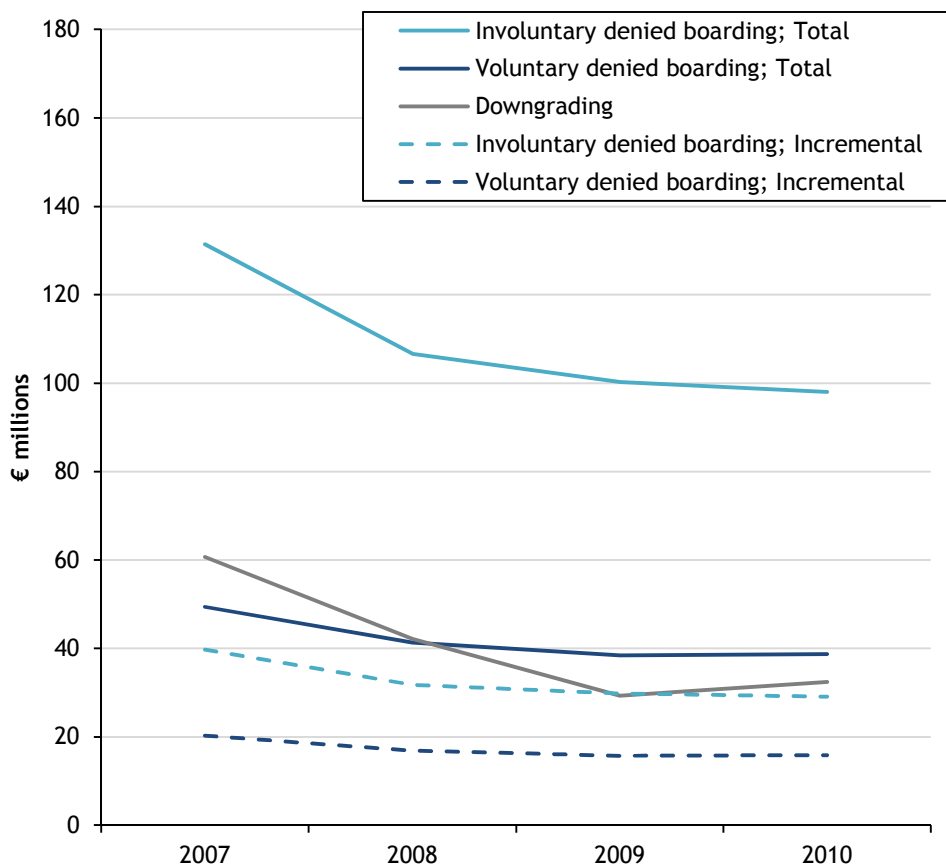
- The cost of offering reimbursement and rerouting is identical for passengers denied boarding voluntarily and involuntarily; and
- The care and compensation offered to passengers denied boarding voluntarily is 50% of that provided to passengers denied boarding involuntarily.

7.64 Again, we assume that after a delay of (depending on flight length) 12 or 24 hours or more 50% of passengers are rerouted by other carriers, and that for low cost carriers, the cost of rerouting by other carriers will be double that of rerouting by the airline's own services.



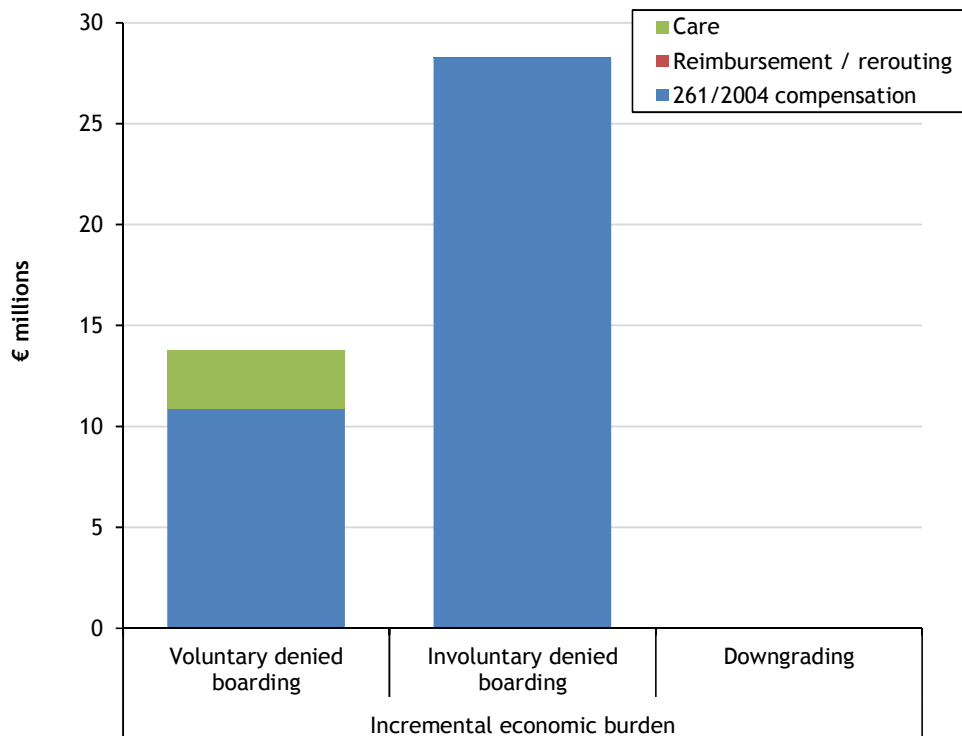
- 7.65 We assume that, if the Regulation was repealed, passengers denied boarding would be offered the following:
- Alternative compensation would be provided: equivalent to 50% of the ticket price with a maximum of €200 for voluntary denied boarding, or equivalent to the ticket price with a maximum of €400 for involuntary denied boarding;
  - Passengers would be offered the choice between reimbursement or rerouting, but this would only be on the carrier’s own services; and
  - Care would be provided only for passengers denied boarding involuntarily.
- 7.66 For downgraded passengers, we assume that if the Regulation was repealed the difference in ticket price would be refunded. Although in some cases this would be less than percentage refund that the current Regulation requires, in some cases it might be more. Therefore the average reimbursement provided to downgraded passengers is assumed to be identical to that required by the Regulation.
- 7.67 Figure 7.8 shows the economic burden for denied boarding and downgrading. The higher economic burden for involuntary denied boarding is in part a reflection of the greater number of passengers affected, but is primarily a function of the assumed higher costs of assistance described above. Note that the absence of any exemptions for extraordinary circumstances means that there is no distinction between the Low, Medium and High scenarios for denied boarding and downgrading.

**FIGURE 7.8 DENIED BOARDING AND DOWNGRADING ECONOMIC BURDEN**



7.68 Figure 7.9 shows the incremental economic burden for denied boarding and downgrading by assistance type. The much lower compensation anticipated in the absence of the Regulation results in the highest increment, followed by care for voluntary denied boarding, which we have assumed would only be offered to passengers denied boarding involuntarily. Reimbursement and rerouting costs are equivalent for voluntary denied boarding, with a slight variation for involuntary denied boarding given the assumption that rerouting via other carriers' services would not be offered if the Regulation was repealed.

**FIGURE 7.9 INCREMENTAL DENIED BOARDING AND DOWNGRADING BURDEN BY TYPE, 2009**



*Delayed, lost or damaged baggage*

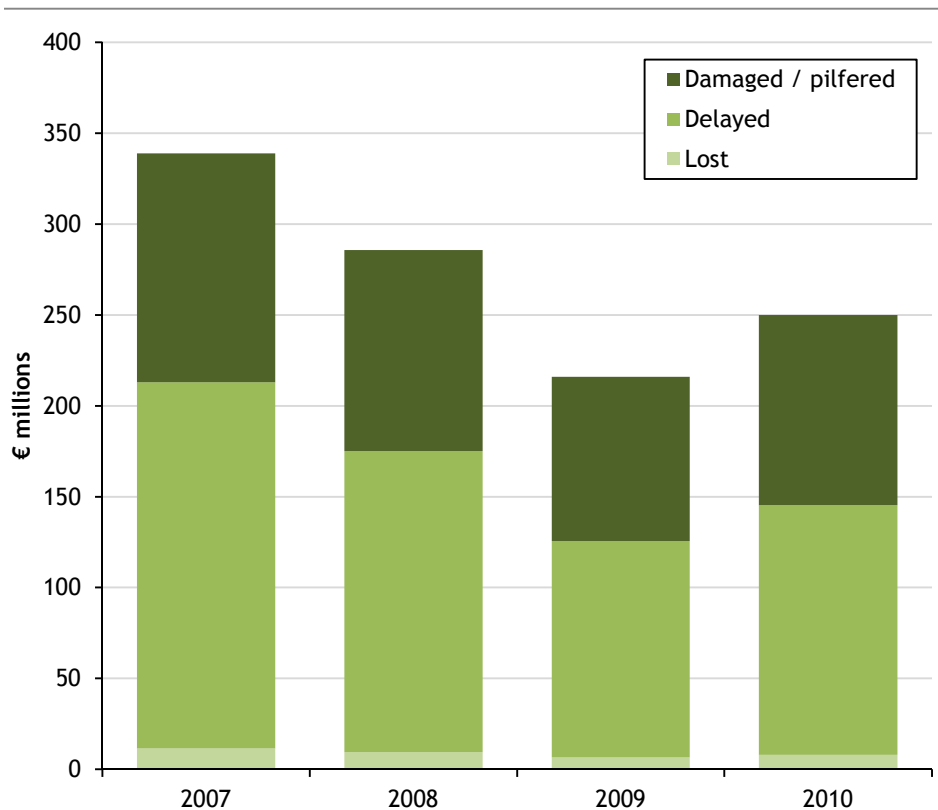
7.69 We used the information provided in the airlines' submissions to estimate the average compensation paid per lost, damaged or delayed bag claim; and used this to calculate an average percentage of the maximum liability under the Montreal Convention which was actually paid to passengers. This would be a reflection of:

- The average value of the items in a passengers' baggage;
- The average extent of delay or damage to baggage; and
- The extent to which airlines pay the amounts claimed.

7.70 As would be expected, the average percentage of the maximum liability paid for lost baggage (24.6%) is higher than that paid for delayed (1.9%) or damaged (5.9%) baggage. However, the total cost of delayed baggage is higher because this occurs much more frequently.

7.71 Given that the assistance provided to passengers in the event of lost, delayed or damaged baggage is specified by the Montreal Convention, the with- and no-261/2004 scenarios have the same assumptions and give the same results. Similarly, in the absence of any exemptions for extraordinary circumstances there are no differences between the Low, Medium and High scenarios.

**FIGURE 7.10 BAGGAGE LOSS, DELAY AND DAMAGE ECONOMIC BURDEN**

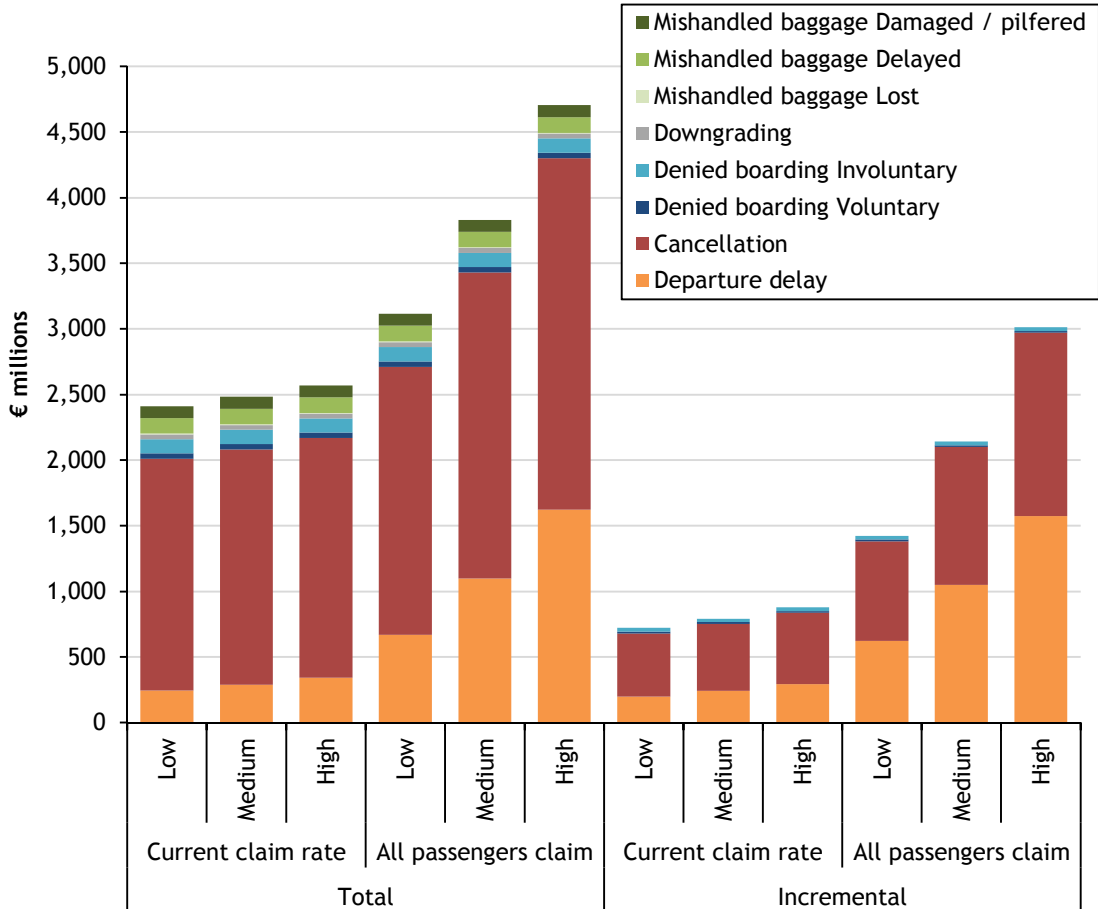


7.72 All of the economic burden generated by incidences of lost, delayed or damaged baggage is comprised of the compensation required under the Montreal Convention.

*Total economic burden*

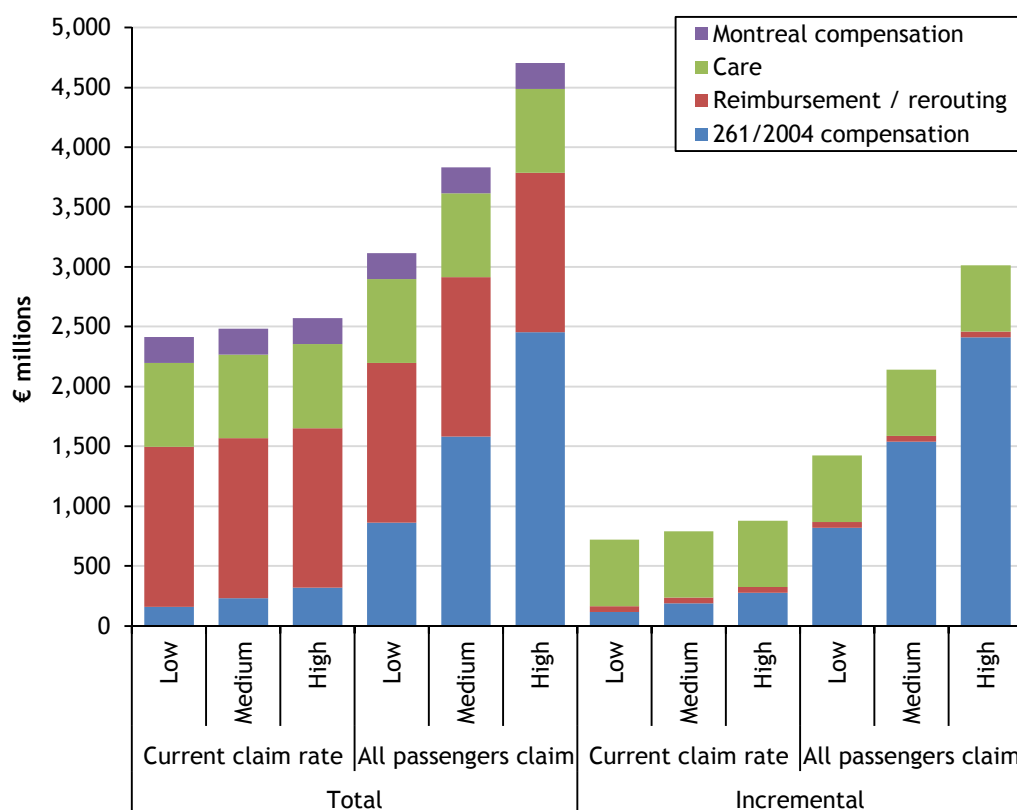
7.73 Figure 7.11 shows the total economic burden of assistance and compensation in cases of flight disruption, and the total economic burden which we estimate is incremental due to Regulation 261/2004. The figure is shown for 2009 and split by type of disruption. It can be appreciated that cost of providing assistance to passengers affected by delays and (particularly) cancellations is far higher than that for any other types of disruption. These figures are shown for 2009 because 2010 was unrepresentative due to the volcanic ash crisis.

FIGURE 7.11 TOTAL ECONOMIC BURDEN 2009, BY DISRUPTION TYPE



7.74 Figure 7.12 shows the 2009 economic burden by type of cost. Although costs of reimbursement and rerouting are high in absolute terms, their incremental costs are much lower, given the assumption that in the absence of the Regulation most carriers would continue to offer similar levels of protection. Conversely, estimated costs of compensation remain high in incremental terms.

**FIGURE 7.12 TOTAL ECONOMIC BURDEN 2009, BY COST TYPE**



**Economic burden by carrier type**

7.75 Table 7.11 shows the average incremental economic burden in the Medium scenario as a percentage of turnover by carrier type for 2007-9.

**TABLE 7.11 INCREMENTAL ECONOMIC BURDEN AS PERCENTAGE OF TURNOVER, AVERAGE 2007-9**

Carrier type	Current claim rates	All passengers claim
EU regional carriers	2.5%	5.4%
EU charter carriers	0.8%	3.3%
EU low cost carriers	1.7%	4.3%
EU traditional scheduled carriers	0.6%	1.6%
Non-EU carriers	0.3%	1.0%
<b>All carriers</b>	<b>0.6%</b>	<b>1.8%</b>

7.76 The higher percentages for certain carrier types shown in the table above are a function both of the different extent of disruption, and different levels of revenue per passenger, relative to other carriers. Overall, it is higher as a percentage of revenue for carriers who

have higher rates of disruption, whose fares are lower (as the incremental obligations in the Regulation do not vary based on the fares), and for those that fly shorter distances (as only the liability to pay compensation increases with distance - the cost of assistance is unchanged).

- 7.77 The impact of different types of disruption is illustrated by Table 7.12, which shows the incremental economic burden at current claim rates by carrier and disruption type, expressed as a cost per passenger. Some of the key points worthy of note comprise:
- The high relative burden for regional carriers is driven by cancellations to a much greater extent than is the case for the other carrier types. This is a reflection of these carriers' relatively high cancellation rates, as identified earlier in this section. In addition, despite regional carriers having relatively high yields per kilometre, the short average distances operated by these services mean that per-passenger fares are low and therefore the burden of the Regulation is relatively high if expressed as a percentage of turnover.
  - Although the per-passenger burden for low cost carriers is towards the middle of the range, the burden as a percentage of turnover is higher given the combination of low per-passenger kilometre yields and short distances.
  - The right to compensation for delays identified by the Sturgeon judgement has a much greater impact on the economic burden for charter carriers than for other carrier types, as these flights have an above-average rate of long delays but in normal circumstances will not be cancelled.
- 7.78 As discussed above, there is no incremental burden relating to tarmac delay or baggage, due to the lack of any requirements in the Regulation, and there is no incremental burden for downgrading, given that we assume that the assistance offered to downgraded passengers in the absence of the Regulation would on average be equivalent. We also assume that charter carriers do not generally cancel flights or deny boarding to passengers.

**TABLE 7.12 INCREMENTAL ECONOMIC BURDEN PER PASSENGER (€), AVERAGE 2007-9**

	Regional	Charter	Low cost	Traditional Scheduled	Non-EU	All carriers
<b>Departure delay</b>	<b>0.13</b>	<b>0.72</b>	<b>0.27</b>	<b>0.26</b>	<b>0.46</b>	<b>0.34</b>
<i>Compensation</i>	0.05	0.26	0.10	0.11	0.19	<b>0.13</b>
<i>Reimbursement</i>	0.01	0.07	0.01	0.05	0.09	<b>0.05</b>
<i>Care</i>	0.07	0.39	0.16	0.10	0.18	<b>0.16</b>
<b>Cancellation</b>	<b>1.30</b>	-	<b>0.75</b>	<b>0.80</b>	<b>0.65</b>	<b>0.69</b>
<i>Compensation</i>	0.14	-	0.08	0.11	0.08	<b>0.09</b>
<i>Reimbursement / rerouting</i>	-	-	0.12	-	0.01	<b>0.03</b>
<i>Care</i>	1.16	-	0.56	0.69	0.57	<b>0.57</b>
Voluntary denied boarding	0.01	-	0.00	0.03	0.02	<b>0.02</b>
Involuntary denied boarding	0.01	-	0.00	0.07	0.04	<b>0.04</b>
<b>Total</b>	<b>1.44</b>	<b>0.72</b>	<b>1.03</b>	<b>1.16</b>	<b>1.17</b>	<b>1.09</b>
Average revenue per passenger	59.98	90.86	61.02	197.35	357.55	<b>168.86</b>
Incremental burden as % of turnover	2.4%	0.8%	1.7%	0.6%	0.3%	<b>0.6%</b>
Total passengers (millions) <sup>24</sup>	18.3	89.2	215.8	401.1	110.2	<b>834.6</b>
Total incremental cost (€ millions)	26.5	63.8	222.4	465.4	128.9	<b>906.9</b>

7.79 As noted previously, the high economic burden observed for certain carrier types (expressed as a share of revenue) can arise for one of two reasons: higher incidences of disruption, or low absolute fares. Both of these are issues for regional carriers serving remote airports, and as a result, the economic burden of the legislation is proportionately higher. This is highlighted in data provided by one regional carrier, which shows significantly higher rates of delays and cancellations and consequently higher costs for its inter-island services than for its services to the mainland, or other regional airline services. Data was also requested from other airlines but was not been provided by the time this report was drafted.

<sup>24</sup> Our estimates for number of passengers of each type are based on the service categorisation discussed in Appendix B. These may differ from the airlines' own categorisation - for example Aegean Airlines is a member of ERAA but given the relatively long distance routes it operates, and the aircraft types it uses (A319, A320 and A321), for the purposes of this analysis we do not consider it is as a 'regional' airline.

7.80 Data provided by two regional carriers suggest that the weather is a more significant cause of disruption than might be the case for other carrier types, although it should be noted that the data is not directly comparable with that used to support our own calculations.

7.81 Despite this, the data provided by these two carriers does not suggest an economic burden which significantly exceeds our estimates at the carrier type level, either when measured on a per-passenger basis or as a percentage of revenue. However, the scope of the data provided by the airlines are not consistent with our estimates, and as noted elsewhere our calculations assume full compliance.

### *Impacts of the Regulation on competition between airlines and other modes*

7.82 Given that the Regulation imposes obligations which are in some ways unique to airlines, there is the potential for distortion of competition where other modes not covered by similar legislation offer a reasonable alternative. In addition, the fact that the Regulation does not apply to non-EU carriers' flights to the EU may distort competition between EU and non-EU carriers.

### *Competition with other modes*

7.83 Rail is likely to represent the most serious competition to air, given its speed, frequency and convenience; although coaches and ferries may offer viable options in isolated cases, or for particular types of passenger.

7.84 However, where air travel offers a faster alternative, passengers are unlikely to wish to travel by rail for longer than 4 hours, which means that the rail option is only really feasible for journeys within the EU. In order to assess the potential for distortion of competition with rail, we analysed the top 50 intra-EU city pairs measured in terms of total seats scheduled in May 2012 (representing 18% of all intra EU city pairs). On the following 7 of these 50 routes rail journey times are typically less than 4 hours (approximate typical rail journey times are shown in brackets):

- Barcelona - Madrid (3 hours);
- Milan - Rome (3.25 hours);
- Marseille - Paris (3.25 hours);
- London - Paris (2.5 hours);
- Gothenburg - Stockholm (3.25 hours);
- Bordeaux - Paris (3.5 hours); and
- Frankfurt - Hamburg (3.75 hours).

7.85 Together these routes represent approximately 16% of the top 50 intra EU flights and seats, or almost 12% of the total seat-kilometres on these routes. Apart from London - Paris all of these routes are domestic, and therefore Member States have the option of exempting rail services from Regulation 1371/2007; this suggests that Regulation 261/2004 might lead to a distortion of competition on a minority of routes. However:

- In practice, of the largest Member States, only the UK and France have exempted domestic long distance rail services from this Regulation, and some Member States have national laws or policies on compensation or assistance for rail passengers which are more generous than the Regulation (particularly Spain).



- | For many network airlines, most passengers on these very short intra-EU routes are carried in order to ‘feed’ the wider network, and therefore competition with rail is not relevant. The increase in costs due to the application of the Regulation on these short routes is insignificant in comparison to the overall cost and revenue associated with the long-haul journey.

- 7.86 The proportion of routes on which coach services are viable competitors is likely to be even smaller, as in the vast majority of cases the journey times of coaches are even less competitive than those of rail services. However, some competition may exist at the margins for the most price-sensitive travellers, and again the difference in burden faced by the two types of operator may to some extent depend on the origin and destination of the route concerned. In addition, Member States are permitted to exempt domestic services from the application of most of the Articles of Regulation 181/2011, and therefore there is potential for competition to be distorted albeit in quite limited cases.
- 7.87 Similarly, although ferries would rarely offer competitive journey times in comparison with air, there are isolated instances where this might be the case - for example, on the Helsinki - Tallinn route the 2 hour journey time offered by the ferry service may be faster than the 30 minute air journey time when waiting times and travel to/from the airports are included (although we would expect that most passengers making this journey by air would be connecting to other air services at Helsinki and therefore in practice modal competition to be very limited). In other cases ferry services may be preferred for reasons other than price - for example, for holidaymakers may use ferries as they wish to take their car with them. Therefore, again there is some potential for competition to be distorted, but the proportion of European air traffic this impacts is likely to be very low.

*Competition with non-EU airlines*

- 7.88 There is most likely to be distortion of competition between EU and non-EU carriers operating flights into the EU, as the provisions of the Regulation do not apply to non-EU carriers. To assess the extent of competition between EU and non-EU carriers, we analysed routes to and from the EU to identify on what proportion EU and non-EU carriers competed directly. Table 7.13 shows the share of routes operated by EU carriers to the EU from outside, together with the number of these routes on which non-EU carriers compete.

**TABLE 7.13 ANALYSIS OF ROUTES TO AND FROM EU, MAY 2012 SCHEDULES**

	Routes	Flights	Seats
All routes into EU	1,998	69,877	14,362,968
EU carrier-operated flights into EU	1,384	34,787	7,406,845
EU carrier-operated flights to the EU on routes shared with non-EU carriers	458	18,381	4,035,142
As % of all flights to the EU operated by EU carriers	33%	53%	54%

- 7.89 On more than half of services into the EU operated by EU carriers, there is direct competition from non-EU carriers. We estimate that 142 million passengers per year travel on EU carriers' flights outside the EU, on routes shared with non-EU carriers, equivalent to 17% of all passengers on flights to, from or within the EU. Even where there is no direct competitor, indirect services also often provide competition on non-EU routes - for example, no airline directly competes with KLM on the route Amsterdam - Shanghai, but services on non-EU airlines via the Middle East do provide an alternative for passengers.
- 7.90 An EU airline competing directly with a non-EU airline could either absorb the cost, reducing its profit margin, or pass it through to passengers. Our modelling shows that, for a long haul route into the EU operated by a large EU traditional scheduled carrier, the average cost of the Regulation over the period was €1.63 per passenger, and the average fare €678 per passenger. If all the costs of the Regulation were added to the fare, the average fare might be increased by 0.24% relative to a non-EU carrier. In many cases this would make no difference to relative demand - passengers might select between the airlines because of better timing of flights, on board service, connections and frequent flyer programmes, regardless of the price difference. However, at the margin it is possible that some passengers might switch to the non-EU airline as a result of the very small price difference.
- 7.91 To calculate the potential impact on demand, we have used a cross elasticity to calculate the impact of the fare increase applied by the EU carrier, in terms of the percentage of passengers which might switch to non-EU carriers' services. Unfortunately, although there is significant published research on overall price elasticities of demand, we have not found any published research on cross-elasticities between carriers. However, given a route level price elasticity is -1.4<sup>25</sup>, we would expect the cross elasticity might be in the range -1.0 to -2.0. Consequently, if the additional €1.63 cost was charged on to passengers by the EU carrier, it could result in a loss of between 0.24% and 0.48% of its passengers to the EU. However, since virtually all long haul passengers buy return tickets, and the Regulation applies to both EU and non-EU airlines from the EU, the overall reduction in volumes would be 0.12% to 0.24%; and if the passenger was aware of and valued the additional protection available travelling with the EU carrier, this would be further reduced. One NEB suggested in the bilateral interviews that EU airlines should advertise the better consumer protection they offer, in order to encourage passengers to use them for non-EU journeys.
- 7.92 This analysis indicates that although the Regulation could in principle impact on competition between EU and non-EU carriers, the effect is likely to be marginal.

### ***Impact of Sturgeon judgement***

- 7.93 This analysis indicates that the Sturgeon judgement, which identified a right to compensation for delays longer than 3 hours, would have increased the incremental economic burden of the Regulation by an average of €111.6 million (12%) over the years 2007-9, had it been applied throughout this period. There is a greater increase in the theoretical maximum economic burden, if all passengers claimed the compensation to which they were entitled - an average of €1.1 billion per year (44%).

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<sup>25</sup> Source: IATA economic briefing

7.94 Table 7.14 shows the impact of the Sturgeon by carrier type in absolute terms and as a percentage of turnover.

**TABLE 7.14 IMPACT OF STURGEON JUDGMENT**

Carrier type	Current claim rates		All passengers claim	
	Total (€ millions)	As percentage of turnover	Total (€ millions)	As percentage of turnover
Regional	1.0	0.09%	9.6	0.87%
Charter	22.9	0.28%	228.5	2.82%
Low cost	21.1	0.16%	211.2	1.60%
Traditional scheduled	45.2	0.06%	452.5	0.57%
Non-EU	21.4	0.05%	213.7	0.54%
<b>Total</b>	<b>111.6</b>	<b>0.08%</b>	<b>1,115.5</b>	<b>0.79%</b>

7.95 As with our other estimates of economic burden, these calculations assume that airlines fully comply. However, many airlines explicitly do not pay compensation in accordance with the Sturgeon judgement at present, as they are contesting it.

***Comparison with actual data provided by airlines***

7.96 We have compared our estimates of compensation and care costs as a percentage of airline turnover with the corresponding values for the airlines which were able to provide this data in response to our information request. We have used the disruption data specific to the airlines concerned, but in all cases we were required to supplement the airlines' disruption data with our own standard assumptions in some areas, most commonly because the data was not sufficiently detailed - for instance, no airlines provided a full breakdown of delay rates by flight length and destination, which are required to calculate the appropriate levels of care and compensation. For the purposes of this comparison we assumed that compensation would not be paid for delays, as the Sturgeon judgement was only issued in November 2009, and in any case most airlines interviewed for the study explicitly stated that they were not applying it.

7.97 The results, shown in Table 7.15 below, indicate that (excluding 2010), our estimates of compensation as a percentage of turnover in the Medium scenario are approximately 4.6 times the airline figures, and that our estimates of care costs are approximately 2.7 times higher than those provided by the airlines.

TABLE 7.15 TOTAL ECONOMIC BURDEN AS PERCENTAGE OF TURNOVER

	2007	2008	2009	2010
<b>261/2004 compensation (denied boarding and cancellation only)</b>				
Airline data	0.11%	0.11%	0.11%	0.14%
SDG estimate	0.59%	0.49%	0.45%	0.42%
Difference	0.48%	0.38%	0.34%	0.28%
<b>261/2004 care (delay, denied boarding and cancellation)</b>				
Airline data	0.19%	0.17%	0.16%	0.25%
SDG estimate	0.53%	0.47%	0.43%	1.42%
Difference	0.34%	0.29%	0.27%	1.17%

7.98 The differences in care costs could arise out of some combination of:

- the cost assumptions described above being excessive;
- the use of standard assumptions where we did not have sufficiently detailed data for the rates of flight disruption for the airlines which provided cost data; and
- the airlines which provided data not consistently complying with this part of the Regulation.

7.99 It is not possible to identify what proportion of the difference is due to non-compliance and what if any proportion is due to the assumptions we have adopted. In addition, this result is very uncertain as sufficiently disaggregate data on compensation costs was only provided by three airlines, and on care costs by four airlines.

#### ***Sensitivity tests***

7.100 As discussed in the preceding text, the extent of data availability means that there is more certainty of some aspects of the economic burden calculation than others. However, this should be balanced against the impact these assumptions have on the overall result. For example, although our denied boarding figures could only be derived from a small sample of airlines and therefore this is quite uncertain, the data we do have suggests that denied boarding rarely occurs, and therefore the impact of this assumption on the overall economic burden is relatively low.

7.101 In order to test the impact of our key assumptions we undertook a number of sensitivity tests. Table 7.16 shows the impacts on the total economic burden of the sensitivity tests on some of the most important assumptions, and evaluates the total importance of the assumption by combining this with the level of uncertainty based on the extent of the available data. Further details of the sensitivity tests, plus sensitivity tests on some of the other parameters, are provided in Appendix D.

**TABLE 7.16 IMPACT OF ASSUMPTIONS**

Sensitivity test	Impact of 50% increase in input on incremental economic burden		Level of uncertainty	Total importance
50% higher denied boarding rate	+2%	Low	Medium	Low
50% higher downgrading rate	+0%	Low	Medium	Low
50% higher cancellation rate	+32%	High	Low	Medium
50% higher hotel costs	+9%	Medium	Medium	Medium
50% higher refreshments costs	+20%	High	Medium	High
50% higher compensation claim rate (15% instead of 10%)	+7%	Medium	High	High

7.102 Although the assumption about the cancellation rate has the most impact on the total economic burden, the data sample is sufficiently good for its total importance to be only medium. Refreshments costs and the compensation claim rate emerge as the most important assumptions overall in terms of their impact on the incremental economic burden of the Regulation.

**Economic burden during the volcanic ash crisis**

***Costs incurred by airlines***

7.103 The four main European airline associations provided estimates of the costs incurred by their members as a result of the volcanic ash crisis. Unfortunately the figures are not directly comparable because in some cases they include lost revenue and other operational costs (such as crew costs, aircraft parking, and complaint handling) as well as direct costs of providing care and assistance under the Regulation. The figures provided by the airline associations were:

- AEA estimated a cost of compliance of €194 million (costs of providing assistance only);
- ERA estimated a cost of compliance of €140 million (costs of providing assistance only);
- IACA estimated a cost of €310 million, including lost revenue and other operating costs as well as costs of compliance with the Regulation; and
- ELFAA estimated a cost of €202 million which includes other operating costs as well as the cost of compliance.

7.104 Some of these figures appear high compared to the individual figures reported by airlines, both in their financial reports, and in information provided to this study. For example, easyJet and Ryanair reported costs of €60 million between them (including other direct operating costs not related to the Regulation) in their financial statements. These two airlines account for 71% of ELFAA's passengers and both operate disproportionately in areas impacted by volcanic ash; therefore these figures appear inconsistent with the ELFAA

estimate. easyJet does not provide a breakdown into costs relating to the Regulation and other costs but Ryanair specified that €14.1 million out of total costs of €31.7 million (44%) were related to the Regulation.<sup>26</sup>

- 7.105 Nonetheless, even though the exact figures are uncertain, it is clear that European airlines incurred substantial costs in complying with the Regulation during the volcanic ash crisis. One airline, Aer Arann, cited the volcanic ash crisis and associated costs as a reason it had to enter receivership (a form of bankruptcy protection). On the basis of the figures provided directly by airlines to this study, we estimate that the total direct cost of care and assistance incurred by airlines operating in Europe due to the volcanic ash crisis was around €150-210 million. However, this figure is very uncertain as only a small sample of airlines provided figures specifically for the costs of care and assistance.

### ***Stakeholder views on airline compliance during the crisis***

- 7.106 We discussed with stakeholders how effectively airlines complied with their obligations under the Regulation during the volcanic ash crisis. The main issue raised by several stakeholders is that airlines initially refused to pay for assistance, or limited assistance to 1-2 nights. Although they changed these policies after NEBs pointed out that they conflicted with the Regulation, by the time they had done this some passengers had accepted refunds and arranged their own rerouting by surface; these passengers were subsequently unable to claim assistance costs. Several stakeholders also said that the airlines did not comply with their obligations to inform passengers during the crisis.
- 7.107 However, some stakeholders also recognised the significant practical problems airlines faced as a result of the number of stranded passengers, and it was not practically possible for them to arrange accommodation and refreshments for the number of passengers stranded. Several stakeholders said that airlines complied well with their obligations during the crisis.

### ***Comparison with our estimate of economic burden***

- 7.108 Using our model of the economic burden of cancellations on airlines during major disruptions, we estimate that the volcanic ash crisis caused an increase in economic burden of approximately €957 million in 2010. The cost is comprised of the elements shown in Table 7.17:

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<sup>26</sup> Source: Ryanair half year results 2012

**TABLE 7.17 ESTIMATED VOLCANIC ASH COSTS BY TYPE**

Assistance type	Passengers entitled (millions)	Cost per passenger (€)	Total cost (€ millions)
Rerouting by surface transport	2.3	118.81	€276.4
Accommodation	7.4	51.60	€380.8
Travel to/from accommodation	7.4	9.77	€72.1
Meals / refreshments	7.4	30.83	€227.5
<b>Total</b>	-	-	<b>€956.8</b>

Note: Costs for accommodation and refreshments are given per passenger per night. Cost for rerouting by surface transport is total

- 7.109 On the basis of our calculations for 2010, 12% of passengers might have been covered by the Package Travel Directive (we estimated that EU charter carriers carried 99 million passengers out of a total of 832 million). Under Article 5(2) of the Package Travel Directive, costs for assisting these passengers might have been covered by the tour operator.
- 7.110 As with our other estimates, this assumes that the Regulation was fully complied with, but we have used slightly different assumptions about costs of assistance - during the crisis, passengers would have been more likely to reroute themselves by surface transport, or cancel their trip altogether, than in normal circumstances. These assumptions are discussed in Appendix B.
- 7.111 This estimate is far higher than the figures provided by individual airlines, and is also higher than the figures estimated by the airline associations. We believe this difference will have arisen partly (but not solely) because some airlines initially said that they would not pay for care, many passengers will not have claimed against airlines for costs that they could theoretically have recovered.

### Recovery of costs from third parties

- 7.112 Article 13 specifies that nothing in the Regulation prevents air carriers from claiming costs from third parties in relation to the compensation or other obligations in the Regulation, in accordance with applicable law. However, this Article does not of itself provide any such right, and therefore air carriers can only make such claims where there is some other legal mechanism through which they can do so.
- 7.113 We discussed with airlines and other stakeholders whether Article 13 could be used for claims against third parties. The main third parties who could be responsible for disruption, principally airports, air navigation service providers (ANSPs), ground handlers, and trade unions but in practice it is very difficult to claim against these:
- Airlines often do not have contracts with the airports they serve and therefore cannot claim against them on the basis of breach of contract. The airport Conditions of Use or similar document (if there is one) generally do not allow any claim except in cases of negligence, and it is very hard to prove that an airport has been negligent.

- ANSPs are usually government bodies and may have State immunity from claims. This also applies to some airports. In addition, airlines generally do not have contracts with ANSPs and therefore would not have a contractual basis for a claim, although again they might be able to claim if they could prove that the ANSP was negligent.
  - Ground handlers are protected by the IATA Standard Ground Handling Agreement, which means that in most circumstances airlines cannot claim costs from them. Although it could be argued that airlines procure ground handlers competitively and could therefore require a change to this agreement, at most airports airlines have only a limited choice of ground handling provider, and therefore they are not necessarily able to negotiate any change. One airline also said that airlines could obtain insurance at lower cost than ground handlers and therefore overall it reduced costs for the industry to protect ground handlers from claims.
  - It is usually not possible to claim against trade unions for disruption caused by strikes as the right to strike is protected by law. Whilst this protection may not apply to undeclared or otherwise illegal strikes, it may nonetheless be impractical to claim as it may be hard to show that the union organised an illegal strike. In Belgium it was noted that unions cannot be sued even in the case of illegal strikes as they do not have legal personality.
- 7.114 In addition, some airlines expressed a concern that even if it was possible to claim on the basis of negligence of a third party (particularly an airport operator), it might be unwise for them to do so:
- some expressed a concern that they might face discrimination in subsequent years, for example in slot allocation (although as slot allocation should be independent from airports this should not occur), or in terms of the level of service quality provided;
  - several said that airports and ANSPs charge on the basis of cost-recovery, and therefore even if there was a successful claim, this would result in higher charges the following year and so would not bring any benefits; and
  - the costs of legal action could be substantial and would deter airlines given the limited chance of success, and a firm of lawyers representing airlines said that it could be very difficult to obtain the information necessary to establish whether there was a potential claim.
- 7.115 Nonetheless, some airlines did inform us that they were in the process of taking legal action against third parties in relation to the costs they had incurred.
- 7.116 These cases are likely to take some time to decide and one of the airlines involved said that it considered that it had limited prospect of success.
- 7.117 Some stakeholders also pointed out that airlines may share responsibility for disruption caused by third parties. For example, the UK CAA said that the airlines operating at Heathrow had agreed a level of snow resilience which they were willing to fund through airport charges, and therefore it was not legitimate for them to complain that the airport was not able to operate when more snow fell.



7.118 In addition, it was noted that at some airports (particularly the main London and Paris airports) there are financial performance incentive regimes which provide airlines with some compensation in the event of poor service quality. To date, only one ANSP (NATS, UK) has a similar financial incentive regime for service quality but as part of the SESII initiative incentives may be introduced in other ANSPs in the future.

### Conclusions

- 7.119 The analysis indicates that, if it was fully complied with, Regulation 261/2004 would impose an incremental economic burden on airlines of between €821 and €1,007 million (central case estimate €907 million) per year, for a year with typical levels of flight disruption. This would increase to between €1,699 and €3,552 million (central case estimate €2,555 million) if all passengers claimed the compensation to which they are theoretically entitled. Costs were significantly higher during 2010 due to the volcanic ash crisis and other exceptional disruption. The incremental economic burden is between 0.58% and 0.71% of airlines' total passenger revenue (central case scenario 0.64%). Expressed as a share of revenue, costs are much higher for low cost and regional carriers than other carriers, because most of the incremental costs are not related to flight length or revenue, and their ticket prices are lower. Costs are particularly high in relation to ticket prices for airlines operating short distance regional services to remote airports.
- 7.120 Although the costs incurred as a direct result of the Regulation are a small proportion of airline turnover, and in most cases it should be possible for airlines to pass these costs through to passengers, this may be more difficult where airlines compete either with:
- other modes of transport, which are not subject to equivalent regulation; or
  - non-EU airlines on flights to the EU, as the Regulation then does not apply.
- 7.121 However, only a small proportion of air routes are in direct competition with rail transport, and this is usually subject to similar - and in some cases more onerous - consumer protection regulations. Direct competition with other modes of transport is limited. There could be more of an issue with respect to competition with non-EU airlines, but the Regulation represents a smaller proportion of costs on long haul routes, and therefore the impact on competition is also likely to be limited.
- 7.122 The total economic cost of assistance, refunds, rerouting and compensation to passengers subject to disruption is much higher than this estimate of the incremental costs of the Regulation. However, the majority of these costs (particularly costs of rerouting and refunds) would be incurred by carriers even if the Regulation was repealed.
- 7.123 Article 13 does not preclude air carriers from claiming costs from third parties where they are responsible for the disruption. However, in itself, it does not provide any such right and to date airlines have not been able to claim successfully against third parties. Therefore the entire economic burden is carried by airlines, and except where absorbed by the airlines in the form of reduced profitability, will be passed through to passengers as higher fares.

## 8 Airline compliance and policies

### Introduction

- 8.1 As discussed above, the assessment of the economic burden is undertaken on the assumption that airlines fully comply with the requirements of the Regulation. This section sets out evidence, where available, for the extent that airlines actually comply. It also sets out information collected from the stakeholder interviews on airline policies for areas not covered by the Regulation.

### Airline compliance with the Regulation

- 8.2 The assessment of the economic burden arising from the Regulation in section 7, and the assessment of the policy options below, was undertaken on the assumption that airlines fully comply with its requirements. However, evidence on compliance is mixed, and therefore it is likely that the costs actually incurred may be lower than our estimates. This section sets out evidence on the extent to which airlines are complying with the Regulation, taken from:

- survey data;
- stakeholder views expressed in interviews for this project; and
- the comparison of the economic burden analysis in section 7 with the actual data on costs of compliance provided by airlines.

#### *Survey evidence*

- 8.3 Four stakeholders presented evidence from surveys of airline compliance with the Regulation:
- Verbraucherzentrale Brandenburg (VZB; the consumer association of Brandenburg, Germany);
  - The Danish Consumer Council;
  - Which; and
  - The UK CAA.
- 8.4 VZB surveyed 1,184 consumers across all German states in 2010, of which 1,122 submissions were included in the survey. It found that:
- In 84% of cases passengers were not informed of the disruption until they arrived at the airport.
  - Over half of passengers were not informed of their rights, as required under Article 14;
  - Where passengers complained, airline response times were long - 24% of complainants received a reply within 1 month, and 22% did not receive a response; and
  - Only one in four airlines provided compensation, any in many cases this was only on request from the passenger.
- 8.5 The Danish Consumer Council has conducted two surveys over the past two years, which have found that:

- Delays were the most commonly experienced type of disruption, with 20% of passengers having been affected in the previous three years. 10% had been affected by cancellations, and only 2% had experienced denied boarding.
  - More than 50% of passengers affected by delays and 40% affected by cancellations were not informed of their rights;
  - 27% of delayed passengers and 11% due to travel on cancelled flights did not receive any assistance;
  - Only 2% of delayed and 4% of cancelled passengers were offered telephone calls, telex/fax messages, or emails;
  - Only 4% of passengers received compensation for delays, and 2% received compensation for cancellations; and
  - None of the carriers serving Copenhagen airport followed the guidelines set by the Danish NEB regarding minimum allowances for refreshments and meals.
- 8.6 Which? undertook a survey in 2010 which indicated that 45% of passengers which experienced delays did not receive the care to which they were entitled. Very few respondents had tried to claim compensation for a long delay or cancellation, so no reliable conclusions could be drawn on this matter.
- 8.7 The UK CAA conducted a passenger survey following the heavy snowfall in the winter of 2010/11, which found that:
- Although 89% of respondents had experienced a delay or cancellation, less than 20% received refreshment or meal vouchers, and 60% received nothing;
  - 74% of respondents were dissatisfied with the information they received during the disruption; and
  - 75% were not informed of their rights when their flight was delayed or cancelled.
- 8.8 All of these surveys suggest that provision of information on disruption and the rights of passengers under the Regulation is poor, and in a large proportion of cases airlines are failing to offer disrupted passengers the assistance required under the Regulation. However, the respondents to the CAA and VZB survey were self-selecting, and therefore it is not clear that wider conclusions can be drawn about airline compliance from these surveys.
- Stakeholder views*
- 8.9 The key issue raised by a number of NEBs was the failure of some airlines to comply with the Sturgeon judgment regarding the payment of compensation for delays, with UK-based carriers often cited as particularly problematic. The Czech NEB suggested that airlines did usually provide assistance, but often failed to inform passengers of their rights, or to pay compensation without the interference of the NEB. The Polish NEB reflected this view, indicating that it had received many complaints regarding a lack of information on passenger rights. However, where reference was made to trends in compliance, the general view was that this has improved.
- 8.10 A number of NEBs stated that it was not possible to draw any conclusions regarding trends in compliance by carrier type. However, the Czech, Italian, Polish and Spanish NEBs suggested that the low cost airlines were in general less compliant than other carriers, and

the French, Italian and UK NEBs cited third country carriers as being generally more problematic than EU airlines. Most other stakeholders did not identify trends in compliance between carrier types, but all of those which did suggested that the low cost airlines were the most problematic, with Adiconsum adding that compliance was in general poorer among the larger carriers.

- 8.11 Most consumer associations emphasised that there were significant issues with airline compliance with the Regulation, although a small number did cite good or improving compliance.
- 8.12 BEUC reported that most of its members did not believe that airlines complied with the Regulation, particularly in terms of the obligation to provide assistance (the obligations regarding reimbursement were believed to be more frequently complied with). This point was reflected by the response of the Estonian and Lithuanian ECCs, which suggested that carriers frequently do not provide an allowance for care in advance, but will compensate passengers later, provided receipts have been retained by passengers. The Lithuanian ECC also suggested that carriers tend to offer only one of the three alternatives specified in Article 8, and that when reimbursement is provided it may not be received for several months. Similarly, the Italian and Norwegian ECCs reported that compensation can be particularly difficult to elicit, and is frequently only paid after persistent lobbying and/or NEB intervention.
- 8.13 The most frequently cited issue was that of non-payment of compensation for delays as required by the Sturgeon judgment for long delays. However, Sveriges Konsumenter did indicate that airlines will eventually pay the required compensation if required by the NEB or the courts; and some other respondents did cite instances where compensation for delays was being paid. The frequent citing of technical problems as a justification was also commonly identified as being an issue. Test Achats cited a general inconsistency of treatment between airlines, Sveriges Konsumenter noted a number of complaints regarding the lack of information provided by carriers, and Consumentenbond suggested that compliance was highest for denied boarding.
- 8.14 Of the other stakeholders which responded, the joint response from ECTAA and GEBTA provided the most detail in this area, citing several issues:
- Airlines refusing to offer rerouting on other carriers or modes;
  - Rebooking only in the same or lower class and therefore not necessarily at the first opportunity;
  - Airlines only offering a refund when a cancellation announced two weeks prior to departure, but no re-routing;
  - Airport staff not providing information on passenger rights and not offering any rights until requested; and
  - Airlines frequently refusing to pay compensation.
- 8.15 The two commercial claims agencies which provided information for the study also reiterated the comments made by other stakeholders regarding airlines' reluctance to pay compensation for long delays as required by the Sturgeon judgment.

*Evidence from our analysis of economic burden*

- 8.16 As discussed in section 7 above, we used the data provided by airlines to compare the actual costs of compliance with their care and compensation obligations, with the costs we estimate would need to be incurred. The actual costs reported by airlines were significantly lower than our estimates of the costs they would need to incur in order to comply - despite our relatively cautious assumptions about the proportion of passengers claiming, and owed, compensation for cancellations.
- 8.17 This also indicates that there is an issue with non-compliance with the Regulation - although also that airlines do comply with the Regulation in some cases, and incur significant costs in doing so. However, it should be noted that only a small sample of airlines provided sufficiently detailed compliance cost data to make this comparison, and therefore it is difficult to draw clear conclusions from this.

*Conclusions*

- 8.18 It is impossible to prove the extent to which airlines comply with the Regulation and none of the evidence is conclusive. However, the survey evidence and our cost analysis both indicate that airline compliance is partial. Both consumer representatives and most NEBs indicated that airlines did not universally comply with the obligations. Most airlines also explicitly stated that they were not paying compensation for delays over 3 hours, which we assume to be a current requirement of the Regulation (see section 2 above).

**Airline policies for areas outside the scope of the current Regulation**

- 8.19 Some issues which occur on a regular basis in air transport are not specifically covered by the current Regulation. In our interviews we requested details of airlines' policies in the following areas:
- If a passenger makes a mistake on a booking for a non-refundable ticket, under what conditions airlines permit them to revise the booking; and if the error is minor (for example, mis-spelling the name when it is clear that it is the same person), under what conditions airlines still accept the passenger for travel;
  - If a passenger does not use one flight on a reservation, does whether the airline cancels their bookings for subsequent flights on the same reservation;
  - If a passenger does not use the final flight on a reservation, and the price would have been higher if this final flight had not been reserved, whether the airline tries to claim additional charges from the passenger;
  - If a flight is subject to a long delay on the tarmac, under what circumstances airlines provides refreshments to passengers and/or allow passengers to disembark;
  - If baggage is delayed, whether airlines send this on to the passenger, or requires the passenger to come to the airport to collect it;
  - If an item of mobility equipment is damaged or lost and its value exceeds the limit on liability specified in the Montreal Convention (1,131 SDRs), what value is refunded refund;
  - What policies are applied where a flight is rescheduled in advance; and
  - What assistance is provided where a flight is diverted to another airport.
- 8.20 Each is discussed in turn below.

### *Mistakes on non-refundable tickets*

- 8.21 In general airlines said that they allow corrections of minor booking errors and/or offer a 24-hour grace period during which more significant changes can be made. Eight of the airlines which responded stated that they offered such a grace period, although it was not always clear whether these changes would incur a charge. The types of changes allowed within this 24-hour period comprised:
- Changes to date and time (usually subject to change in fare, and in one case a fee of €10);
  - Corrections to name or marital status (one airline stated that spelling changes were subject to a £30/€35 fee); or
  - Unspecified minor errors.
- 8.22 Seven carriers stated that they would allow minor changes to the spelling of names free of charge, with two of these carriers adding that they would also permit changes between maiden and married names (although a marriage certificate might be required as proof). However, one airline emphasised that it would have to deny boarding to passengers whose names did not match their passports where it was known that the authorities for the destination country were strict on this matter, for example the US. In contrast an airline not flying to the US stated that passengers would normally be able to fly with up to 3 letters' discrepancy in their name, provided they can be identified.
- 8.23 In most cases airlines added that any such changes would be decided on a case-by-case basis, often depending on the significance of the change and how far in advance of travel the change was requested. One carrier indicated that a fee would normally be charged for any change, and one low-cost carrier indicates that more significant changes would be subject to a fee of £30 (€35) per sector.
- 8.24 In contrast, several consumer associations and NEBs said that airlines often either charged substantial fees for making changes, or required passengers to buy new tickets, without any refund of the other ticket. In some cases consumer representatives specifically contradicted information provided by airlines on this subject.

### *Non-sequential use of coupons*

- 8.25 Airline responses on this issue were clearly divided between the network carriers and other carriers. Most network carriers said that they would cancel subsequent reservations unless the passenger paid any corresponding difference in fare and also in some cases notified the airline in advance. One carrier indicated that it would waive these rules in the event of illness or death.
- 8.26 Low cost and charter carriers generally said that they would not cancel subsequent flights. However, one charter carrier said that in some cases it would be required to cancel onward flight(s) due to customs or charter licence restrictions imposed by third countries (such as Cuba) which require passengers to be carried on return trips only.

### *Non-use of final flight on reservation*

- 8.27 Although this practice is becoming less common, in some cases return tickets can still be cheaper than single tickets, and therefore passengers may buy a return ticket without any intention of taking the second flight. In the maritime sector we are aware of cases where

operators have tried to recover additional charges from passengers who do not use the return trip.

- 8.28 However, all airlines indicated that, if a passenger did not use the final flight on their reservation, they would not seek to charge the passenger any additional fare which could apply. However, one airline specified that an additional fee would be charged for offloading baggage at a connecting point, although it is not clear whether such a fee would still be levied if the airline was informed of this in advance, as another airline within the same owning group indicated that passengers could request in advance to have their baggage offloaded at an intermediate point. However, another network carrier indicated that, if they were informed in advance, their itinerary would be amended and the fare recalculated.

*Assistance in the event of tarmac delay*

- 8.29 Ten carriers indicated that refreshments would be provided in the event of a long tarmac delay, although most added that this would be decided on a case-by-case basis, depending on how long the delay was expected to last or whether it was possible for refreshments to be provided. Refreshments would generally be provided free of charge but one low cost airline said that refreshments could be purchased by passengers after a delay of 45 minutes.
- 8.30 Similarly, there was a general lack of clear policies relating to disembarkation, although the same low cost carrier indicated that this would be permitted after a delay of 2 hours. A charter carrier suggested that the threshold would be 1 hour, and the remaining six cases the policy was not clear or was dependent on the particular circumstances of the event. Only one (low cost) carrier stated that passengers would not be permitted to disembark.
- 8.31 Most NEBs said that as far as they were aware tarmac delays were rare. However, some NEBs and consumer associations highlighted cases where passengers had been badly treated during tarmac delays. For example, the Spanish NEB cited an incident where a carrier had held passengers on board an aircraft in very high temperatures in southern Spain during summer, without air conditioning or refreshments, for a prolonged period. A Spanish consumer organisation said that the airline subsequently tried to sue a passenger who opened the emergency exit door.

*Return of delayed baggage to passengers*

- 8.32 All airlines said that they would transport delayed baggage to passengers at their final address, rather than require them to come to the airport, although three added that this would not be possible where precluded by customs regulations. One airline also stipulated that the passenger would have to have checked in one time. However, some consumer representatives said that airlines were reluctant to transport baggage to passengers' home addresses where they lived in remote areas.

*Compensation for loss or damage to mobility equipment*

- 8.33 The majority of airlines indicated that they would waive the Montreal limits for loss or damage to mobility equipment, with one carrier adding that this would be covered by the airline's own insurance. Although some airlines stated that they would only compensate to the Montreal limits, two added that they might exceed the limits on a case-by-case basis,

and one said that in the one case where it had lost an item of mobility equipment, it did actually pay for new equipment.

### *Policies for advance rescheduling*

- 8.34 All airlines emphasised that they would inform passengers of any changes by all available channels. The most common approach is to initially offer an alternative flight, but if the customer is not satisfied with this solution offer a refund or rerouting. In most cases it was unclear whether passengers would be offered this choice initially, or if they would have to request these from the airline themselves (one carrier clearly specified that passengers unhappy with the change could contact the airline to request a refund or rerouting). One carrier indicated that a hotel would be arranged for passengers where they had been rebooked onto a flight the following day.
- 8.35 One low cost carrier clarified that a refund or rerouting would be offered as a policy for cancellations only, with other circumstances decided on a case-by-case basis. Another low cost carrier has a policy of offering refunds or rerouting only where the rescheduling exceeds 1 hour, except in where there are extenuating circumstances.
- 8.36 In contrast, some consumer representatives said that airlines often did not offer the passenger any choice in the case of a change to the schedule, or offered a refund but no alternative flight. One also noted that, if the schedule change was close to the time of travel, a refund might be of little use to the passenger as an alternative flight with a different airline would be much more expensive. One NEB said that there had been an increase in advance rescheduling, and said that these might be hidden cancellations.

### *Policies for diversions*

- 8.37 In the majority of cases the policies offered by airlines in the event of diversions included, where necessary, care, accommodation and transport to/from the accommodation, and alternative onward transport to the destination. Airlines said that compensation would not be offered because diversions would be for reasons outside their control. Most consumer representatives and NEBs agreed that airlines generally provide onward transport although said that in some cases there might be a long delay before this was provided.



## 9 Option and problem definition

### Introduction

- 9.1 This section sets out a definition of the problem that is to be addressed, in accordance with the Commission's Impact Assessment Guidance. It also sets out a definition of each of the policy options which are evaluated for the study.

### Problem definition

- 9.2 In this chapter we summarise the problems that could be addressed through revision to the Regulation. This is based on examination of the evidence available, described in sections 5-8 of this report.

#### *Who is impacted?*

- 9.3 The Regulation primarily impacts on airlines, who have to comply with it, and air passengers, who benefit from the rights it defines but also may have to pay for these rights through their fares. It also has impacts on Member States, who have to set up bodies and processes to enforce the Regulation.

#### *What are the issues that require action?*

- 9.4 This study has identified a number of issues which require action:
- A. The Regulation contains **grey zones** of ambiguous meaning which can lead to divergent interpretations, and the **complexity** of the rules may enhance these adverse effects and lead to passenger confusion. The lack of clarity within the Regulation gives airlines an opportunity to try to interpret it in ways which minimise their obligations. Some the grey zones have been addressed by judgements of the European Court of Justice, but as a result of the complexity of the legislation and the issues it addresses, not all issues have been, and some of these judgements have raised new issues.
  - B. There is **no clear guidance on a number of issues/situations** which frequently arise but are not covered by the existing Regulation, particularly with regard to **baggage** procedures, and types of travel disruption which are not explicitly addressed within the Regulation, such as missed connections due to delays. In addition, some national courts and enforcement authorities have found that certain airline practices infringe consumer protection legislation, particularly national legislation implementing Directive 93/113/EEC on Unfair Contract Terms, but nonetheless these practices remain widespread.
  - C. The Regulation's obligations may lead to considerable **economic burden** on airlines, which may be passed on to passengers in the form of higher fares or lower service quality. This was particularly illustrated during the volcanic ash crisis in 2010. Although the Regulation does not exclude the possibility for airlines to pass these costs on to third parties, it does not provide a mechanism by which they can do so, and in practice this has not been possible. Most of the other parties either have no contracts with airlines and therefore there is no scope for the airlines to claim against them, or they have immunity from claims.

- D. The Regulation is not **enforced uniformly** across all Member States, either due to differences in interpretation, lack of resources or legal constraints. As discussed in section 8 above, the evidence on compliance is not conclusive but the indications are that some airlines do not consistently comply with the Regulation. Variations in enforcement between Member States may distort the single market for air transport.
- E. **Passengers means to obtain redress** are limited and vary between States. Although the Regulation requires States to establish national enforcement bodies with the power to impose dissuasive sanctions, in many cases these bodies do not see it as part of their role to assist individual passengers. In many cases, passengers would need to take court action themselves to claim against carriers, but the time, cost and complexity of these procedures means that many would not do so for the relatively small amounts (in most cases) they would be entitled to.

9.5 There is widespread agreement amongst stakeholders that there have been problems with the operation of the Regulation and that changes are needed. However, there is no agreement about how it should be revised. Consumer representatives have argued that the provisions of the Regulation should be retained and if possible extended, that enforcement of the Regulation should be made more effective to ensure airlines comply, and passengers should be provided with appropriate means of redress. In contrast, airlines have argued that the economic burden of the Regulation should be reduced, and it should be made easier to pass these costs on to third parties where they are responsible for the disruption to passengers' journeys. Enforcement bodies request clarification of the requirements of the Regulation so that it is easier and less contentious to apply.

### *What are the drivers of the problem?*

9.6 The main drivers of this problem are:

- The original text of the Regulation, which was agreed through a conciliation process between the Parliament and Council, is not specific enough about some rights and obligations. This is exacerbated by the technical complexity of the air transport sector.
- Some Member States have not been effective in enforcing the Regulation. In part, this is because it is very difficult to enforce: it regulates behaviour in response to individual incidents which occur very frequently, and it is practically impossible for enforcement bodies to control airline behaviour in each case.
- Airlines may have limited financial incentive to comply with the Regulation or provide improved service quality, for several reasons:
  - Due to price competition most airlines have low margins and seek to minimise costs.
  - Passengers generally do not know, when making reservations, what the risk of disruption is on a particular carrier or route, or how the airline will handle disruption if it occurs. Little statistical information is available on relative operational performance of different airlines, and many airlines strongly oppose it being made available. Therefore, passengers cannot take this into account when choosing with whom to buy a ticket. Even frequent travellers may not know how a carrier will handle severe disruption, as it is relatively rare. There is in any

case no clear evidence that one carrier or type of carrier performs consistently better than others - some low cost carriers have better operational performance than other carriers (partly due to operating from less congested airports), but they may provide lower service quality in other respects.

- On many routes there is little or no competition, and so even if passengers did know how a carrier would handle disruption, they could not necessarily decide who to travel with on this basis: analysis of OAG schedule data for 2010 suggests that 71% of routes from Community airports are served by only one airline and 38% of flights departing Community airports are on monopoly routes.<sup>27</sup> Even where passengers theoretically have a choice on a route, in practice their choice is likely to be influenced by other factors, such as prices and timing of flights.

9.7 Due to lack of information and competition, it is possible that there could be a market failure, with service quality being lower than consumers would want it to be.

*How will the issues evolve?*

9.8 Despite the economic crisis, the number of passengers using European airports continues to increase. Eurostat figures show a 4% increase in passenger numbers in 2010, and IATA recently projected that European air passenger numbers would increase by 4.7% per year until 2014. Therefore, the number of passengers and flights covered by the Regulation, and hence the cost of compliance with it and the prevalence of the other issues it generates, will increase.

9.9 In addition, costs of compensation for cancellations, whilst representing a small proportion of most air carriers' current compliance costs, may increase faster than this. The Regulation defines that passengers have a right to compensation in cases of some cancellations (and the CJEU found that there was an equivalent right for delays), but there is no requirement for air carriers to actively offer it, and our research indicates that they almost never do. However, the proportion of passengers that claim the compensation to which they are entitled may increase, due to:

- commercial claims services such as EUClaim promoting the right to claim compensation;
- potentially in some Member States, introduction of provisions allowing collective action to claim compensation on the part of a group of consumers, even if they are unspecified, for example collective action on behalf of all of the passengers booked on a flight (this has been proposed in the Netherlands);
- potentially, further clarification by CJEU of the exemption on payment of compensation in Article 5(3); and
- better awareness on the part of consumers.

9.10 This increase may be partly offset by the fact that, if the compensation amounts specified in the Regulation are not updated to reflect inflation, their real value will decrease over time.

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<sup>27</sup> However, in some of these cases there will be competition from airlines operating to different airports serving the same city or from indirect routes.

- 9.11 As noted in section 8 above, most air carriers are not, at present, paying compensation for delays in accordance with the Sturgeon judgement. In some States this is because claims for compensation, and enforcement cases, have been ‘stayed’ (delayed) pending the outcome of various further referrals to the Court of Justice, but even where there is no such stay, air carriers generally do not pay this compensation. If this judgement is reiterated by the Court, airlines will have to start paying this compensation and the economic burden will increase relative to that which has applied so far. Section 7 includes figures for the impact that this may have, although this will not increase the total or incremental economic burden relative to that calculated in section 7 because, as the Sturgeon judgement is applicable now, our estimate of economic burden included the cost of compensation for delays.
- 9.12 Nonetheless, some of the costs which arose from Regulation 261/2004 during 2010 were exceptional. Delays and cancellations were increased as a result of the volcanic ash crisis and a number of other unusual events including particularly bad winter weather and strikes by air traffic controllers, which culminated in the complete closure of airspace in Spain in December. Although there may be exceptional events in the future, there has been no event comparable to volcanic ash in living memory, and even if this were to be repeated, changes to safety regulation mean that this would now be less likely to cause the complete closure of airspace. Therefore, it is unlikely that the Regulation would generate an exceptional economic burden to a comparable extent to that it generated in 2010.
- 9.13 Some of the grey zones in the Regulation may be addressed through judgements issued by the Court of Justice. However, some of these judgements have raised new issues. In addition, although in legal terms these judgements address the lack of clarity in the text of the Regulation, it would be clearer for passengers, airlines, and enforcement bodies if the obligations of the Regulation were clear in the text.
- 9.14 Studies of the enforcement of the Regulation have shown gradual improvements over time, but this improvement has been slow. In the initial years after the Regulation took effect, this was partly because some States had not yet set up the processes to do so (for example, penalties had not been introduced into national law). However, almost 7 years after it took effect, many States still do not enforce the Regulation effectively, and therefore it is likely that some States will continue not to do so. In addition, constraints to public finances in many Member States may result in reductions in staff at enforcement bodies, which may reduce the effectiveness of enforcement.

### *The Community’s right to act*

- 9.15 The Commission’s Impact Assessment Guidelines require an analysis of the Community’s right to act.
- 9.16 The right for the EU to act in this area is based on Articles 114 and 169 TFEU, which require a high level of consumer protection. There is a justification for the EU to act as:
- There is limited scope for Member States to act alone to protect consumers, as Regulation 1008/2008 does not allow scope for them to place additional requirements (other than those specified in the Regulation) on Community air carriers seeking to operate intra-Community services.

- Market incentives do not appear to be sufficient to ensure high service quality in air transport. Passengers generally do not know, when making reservations, what the risk of disruption is on a particular carrier or route, or how the airline will handle disruption if it occurs. Therefore, passengers cannot take this into account when choosing with whom to buy a ticket. As discussed above, on many routes passengers have limited, or no, choice of air carrier. Due to the lack of information and on some routes lack of competition, there may be a market failure.
- The problems which have been identified are partly as a result of issues with existing Community legislation. Only Community-level action can address this.

### Option definition

- 9.17 The table below provides an initial definition of the each of the options that has been considered in the sections below. It identifies what measures would need to be taken in order to implement each option. Most options would require legislative changes, but the table also notes where some might be achieved through non-legislative measures.
- 9.18 The list of options is in most cases equivalent to that agreed with the Commission at the start of the project. However, in a small number of cases it has changed because:
- some options were considered in practice to be equivalent; and
  - some new options have been added where these appear to be a more effective means of achieving the same objective.



**TABLE 9.1 OPTION DEFINITION**

Option	Sub-options	Changes required	Possibility to achieve through non-regulatory measures?
<b>A: Options relating to delay, cancellation and other travel disruption</b>			
A1	Repeal of Regulation 261/2004	Legislation would be passed to repeal the existing Regulation 261/2004. The Montreal Convention would still apply, and airline practices would also be limited by Directive 93/13/EEC on unfair contract terms.	Not possible to achieve without legislation.
A2	No policy action	No change. Application of the Regulation may continue to improve as a result of improved enforcement by States, if necessary due to infringement proceedings initiated by the Commission.	No action required.
A3	Options to clarify the existing Regulation	<p><b>A3.1 Define or clarify key terms within the Regulation such as ‘flight’ and ‘delay’</b></p> <p><b>Delay</b>  <i>Either</i> Add new definition to Article 2: “‘delay” means operation of a flight later than scheduled’ and amend Article 2(j) to state “‘cancellation” means the non-operation of a flight which was previously planned and on which at least one place was reserved and as a result the operation of fewer flights than scheduled’  <i>Or</i> Add new definition to Article 2: “‘delay” means operation of a flight more than [X] hours later than scheduled’ and amend Article 2(j) to state “‘cancellation” means the non-operation of a flight which was previously planned and on which at least one place was reserved, within up to 24 hours after the time scheduled’</p> <p><b>Flight</b>            Add new definition to Article 2 “‘flight” shall mean an air transport operation between two airports; intermediate stops for technical or operational purposes only shall not be taken into consideration’</p> <p><b>Passenger</b>            Add new definition to Article 2 “‘passenger” means any person, except members of the crew, carried or to be carried in an aircraft, and holding a reservation for the flight concerned.’</p> <p><b>Class</b>            Add new definition to Article 2: “‘class” shall mean a class of service offered by an air carrier, distinguished from other classes of service through use of different seats, seating configuration or other means of physical divide (such as</p>	May be possible to address through amendment to Q&A document but would not be binding on airlines, courts or NEBs

		<p>a curtain), and/or any other difference in the service marketed as being provided on board the aircraft.’</p> <p><b>Connecting flight</b></p> <p>Add new definition to Article 2: “connecting flight” means a flight which, according to the contract of carriage, is intended to enable the passenger to arrive at the destination of the flight in time to be able to depart on another flight, or, where appropriate in the context, that other flight.’</p> <p>Amend Article 5(3) to:</p> <ul style="list-style-type: none"> <li>• list circumstances which are always sufficient to avoid payment of compensation;</li> <li>• list circumstances which are never sufficient to avoid payment of compensation; and</li> <li>• list circumstances which (on a non-exhaustive basis) would depend on the specific circumstances, and what criteria should be applied in these circumstances.</li> </ul> <p>Please see section 11 for a suggested list of these circumstances</p> <p>Amend Article 5(3) to state</p> <p>‘An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by circumstances which could not have been avoided by the air carrier even if all it had taken all measures which, in the circumstances, it would have been reasonable for it to take to avoid the occurrence of the circumstances.’</p> <p>Add new Article after Article 6(1) which states ‘Where a flight is delayed beyond its scheduled time of departure by 3 hours or more, passengers shall have the right to compensation by the operating air carrier in accordance with Article 7.’</p> <p>Add new Article to Article 6 to provide an extraordinary circumstances exemption equivalent to Article 5(3), or the amended version of this.</p> <p>Although not explicitly stated by the CJEU in the Sturgeon judgement, for full consistency with cancellations there should also be the opportunity to exclude this if rerouting is offered or the delay notified in advance, by using the same provisions as in Article 5(1)(c).</p> <p><i>Note: Wallentin already addressed by A3.2, and Emirates case addressed by new definition of flight, so this only covers Sturgeon</i></p>	<p>Clarification of existing legal position only. In principle there is no impact as this does not go further than Wallentin judgement.</p> <p>Not possible to achieve without amendment to the text.</p> <p>Clarification of existing legal position only. In principle there is no impact as this does not go further than Sturgeon judgement.</p>
<p>A3.2</p>	<p>Define extraordinary circumstances, taking into account the Wallentin ruling and definitions used for other modes</p>		
<p>A3.3</p>	<p>Limit circumstances in which compensation payable to those within the control of the carrier</p>		
<p>A3.4</p>	<p>Incorporate Court of Justice judgements, particularly Wallentin and Sturgeon, into the main text of the Regulation</p>		



	<p>A3.5 Clarify the Regulation to specifically reject the Sturgeon judgement</p> <p>A3.6 Define rights in the case of multi-cause incidents</p> <p>A3.7 Define rights in the case of combined carriage</p>	<p>Add new Article after Article 6(1) which states ‘No provision of this Regulation may be interpreted as providing a right to compensation in the cases of delays. This shall be without prejudice to any rights to compensation defined by the Montreal Convention or any other applicable law.’</p> <p>Amend Article added to Article 6, equivalent to Article 5(3), to state ‘An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. If a delay is proven to have been caused by a combination of circumstances, the operating air shall not be obliged to pay compensation if it can prove that the delay would have been less than the amount specified in paragraph [refer to paragraph specifying threshold for compensation] if the delay had only been caused by extraordinary circumstances which could not have been avoided [etc]’.</p> <p>Add new Article 3(7)</p> <p>‘(a) In the case of combined carriage performed partly by air and partly by any other mode of carriage, this Regulation shall also apply to the carriage by other modes, provided the carriage by air falls within the scope of Article 3(1), and the carriage by the other mode would have fallen within the scope of Article 3(1) had it been by air.</p> <p>(b) In the case of combined carriage meeting the criteria in paragraph 7(a):</p> <p>(i) The obligations defined in this Regulation as applying to the operating air carrier shall also apply to the operating carrier of the other mode, and for the purposes of this Regulation, transport by the other mode shall be considered to be a ‘flight’ as defined in Article 2(X).</p> <p>(ii) To the extent that there is any conflict with the rights and obligations defined in Regulation (EC) 1371/2007, Regulation (EU) 1177/2010 and Regulation (EU) 181/2011, only the rights and obligations defined in this Regulation shall apply.’</p>	<p>Not possible to achieve without amendment to the text.</p> <p>May be possible to address through amendment to Q&amp;A document but would not be binding on airlines, courts or NEBs</p> <p>Not possible to achieve without amendment to the text.</p>
<p>A4 Options relating to passenger care</p>	<p>A4.1 Require airports to have particular obligations towards passengers with regard to the provision of information and/or of care (covers provision of information, and drinking</p>	<p>Add new definition to Article 2 of airport and airport managing body, as defined in Directive 2009/12/EC</p> <p><b>Information:</b> Add new paragraph to Article 14 to state that the airport managing body shall also ensure that the notices referred to in paragraph 1 are shown and that information on passengers’ rights is displayed at the airport.</p> <p><b>Care:</b> Add new Article to state that airport managing bodies shall ensure that</p>	<p>Not possible to achieve without amendment to the text.</p>

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		water, only)	drinking water is readily available free of charge to all passengers in the airside departure area of the airport.	
	A4.2	Require airports to develop contingency plans for mass disruption	<p>Add new definition to Article 2 of airport, airport managing body, and airport user, as defined in Directive 2009/12/EC</p> <p>Add new Article on obligations of the airport managing body to, in consultation with the airport users, agree a contingency plan to ensure assistance is provided to passengers in the event of major disruption. The plans should in particular ensure that assistance meeting the criteria within the Regulation should, as far as is practically possible, be provided to passengers who are unable to leave the transit area because they do not have a visa.</p> <p>For consistency with the proposed new Regulation on ground handling, define that the obligation only applies to airports with more than 5 million passengers per year.</p>	Not possible to achieve without amendment to the text.
	A4.3 A	Consistent time thresholds for care for delays, regardless of flight length	<p>Amend Article 6(1) to state</p> <p>‘When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure for [two] hours or more, passengers shall be offered by the operating air carrier:’</p>	Not possible to achieve without amendment to the text.
	A4.3 B	Consistent time thresholds for care for delays, cancellations and denied boarding, regardless of flight length	<p>As A4.3A then also amend Article 5(1)(b) to add:</p> <p>‘In the event that the operating air carrier reasonably expects the passenger to be delayed by more than [two] hours as a result of the cancellation...’</p> <p>In addition amend Article 4(1) and 4(3) to qualify that references to Article 8 only apply where the expected delay to the passenger is over [two] hours</p>	Not possible to achieve without amendment to the text.
	A4.4	Clarify that carrier is responsible for arranging care, and that if it fails to do so, the passenger can arrange it themselves and claim back costs from the carrier	<p>Add new Article 9(4) to state:</p> <p>‘The operating air carrier is responsible for offering to the passenger, and arranging, the provision of the assistance specified in this Article. If the operating air carrier does not offer this or ensure that it is provided, it shall be liable for reasonable costs incurred by the passenger in obtaining equivalent services.’</p>	May be possible to address through amendment to Q&A document but would not be binding on airlines, courts or NEBs
A5	Options relating to refunds and rerouting	A5.1 Airlines to be obliged to offer rerouting in case of long delays	<p>Amend Article 6(1)(iii) to state:</p> <p>‘when the delay is at least [five] hours, the assistance specified in Article 8(1).’</p> <p>If this is also intended to cover rerouting on other carriers, also add new paragraph after Article 8(3) to state:</p>	Not possible to achieve without amendment to the text.

		<p>'Where agreed by the passenger, the new flight or flights under Article 8(1)(a) or re-routing under Article 8(1)(b) may use services operated by another air carrier, involve a different routing, or use another mode of transport. Passengers shall have the right to re-routing via another air carrier or another mode of transport where the operating air carrier cannot transport the passenger on its own services and in time to arrive at the final destination within 5 hours of the scheduled arrival time.'</p>	
A5.2 A	A general requirement to reroute via other carriers where there is no reasonable alternative	<p>Add new paragraph after Article 8(3) to state:</p> <p>'Where agreed by the passenger, the new flight or flights under Article 8(1)(a) or re-routing under Article 8(1)(b) may use services operated by another air carrier, involve a different routing, or use another mode of transport. Passengers shall have the right to re-routing via another air carrier or another mode of transport where the operating air carrier cannot transport the passenger on its own flights within a reasonable timescale'.</p>	Not possible to achieve without amendment to the text.
A5.2 B	A specific requirement to reroute via other carriers if the initial carrier cannot provide a service within a given amount of time and/or the time saving is more than a certain amount	<p>As an alternative to the general requirement specified above, this Article could define in which circumstances the air carrier is obliged to re-route by another carrier or mode. For example:</p> <p>'Passengers shall have the right to re-routing via another air carrier or another mode of transport where the operating air carrier cannot transport the passenger on its own services and in time to arrive at the final destination within [12] hours of the scheduled arrival time.'</p>	
A5.2 C	Regulation clarifies that there is no obligation to reroute on other carriers	Alternatively, the Article could specify that carriers are not obliged to reroute passengers on other carriers' services	
A5.3	Define obligations for carriers when passenger notified of a delay in advance (advance rescheduling of flights)	<p>Add new Article to specify that in the event an operating carrier makes a significant change in advance to the scheduled time of a flight, the passenger shall have the right to a refund if no acceptable alternative can be agreed.</p> <p>Any right to compensation can only apply in conjunction with option A3.4 (explicit incorporation of Sturgeon judgement), and could be achieved by amending Article 6(1) to state 'When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure, or an operating carrier amends the scheduled time of departure by more than [1] hour:'</p>	Not possible to achieve without amendment to the text.

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			<p>The new Article 6(2) added as a consequence of option A3.4 could specify that where a flight is delayed beyond its scheduled time of departure by [3] hours or more, or the time of departure is changed by [3] hours or more, passengers shall have the right to compensation by the operating air carrier in accordance with Article 7, unless informed by the carrier more than 14 days in advance and/or offered rerouting [as for Article 5(1)(c)]’</p> <p>Alternatively, implement by replacing Articles 5 and 6 with an integrated Article covering delays, schedule changes and cancellations. This is achieved by Option A8.</p>	
	A5.4	Reduce length of delay before passenger can claim refund and not travel from current 5 hours to 1-2 hours as for other modes	Amend Article 6(iii) to state ‘when the delay is at least [two] hours, the assistance specified in Article 8(1)(a).’	Not possible to achieve without amendment to the text.
A6	Options to extend Regulation to cover areas of disruption not currently included	<p>A6.1 Require provision of care and assistance during tarmac delays</p> <p>A6.2 Require care during flight diversions</p> <p>A6.3 Missed connections due to delays</p>	<p>Add new Article on tarmac delays, to specify that, in the event passengers are delayed on board the aircraft for [one] hour or longer, the operating air carrier shall provide to them, free of charge, access to toilet facilities, drinking water, and in the event passengers are delayed for more than [four] hours they shall have a right to disembark the aircraft and receive assistance in accordance with Article 9 [and potentially also Article 8].</p> <p>Add new Article after Article 6 to state that in the event of diversion of a flight to another airport, the airline shall reroute the passengers to their final destination in accordance with Article 8(1)(b), and provide assistance in accordance with Article 9. The rerouting may be by surface transport where this is the most appropriate means of transport to their final destinations.</p> <p>Where the delay in arrival at the final destination is more than [3] hours, the passenger shall be entitled to compensation in accordance with Article 9, except where [add text from Article 5(3) on extraordinary circumstances].</p> <p>Add new paragraphs 2 and 3 to Article 6, which could state:</p> <p>2. Where a passenger is caused to miss a connecting flight as a result of a delay to a preceding connecting flight, the carrier operating the delayed flight shall offer the passenger:</p> <p>(i) the assistance specified in Article 9(1)(a) and 9(2); and</p> <p>(ii) re-routing as specified in Article 8(1)(b); and</p> <p>(iii) when the reasonably expected time of departure of the alternative flight or</p>	<p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text. Note that following the principles of the Rodríguez v Air France case, the CJEU may consider this to be an existing requirement of the Regulation.</p> <p>May be possible to address through amendment to Q&amp;A document but would not be binding on airlines, courts or NEBs. Note the CJEU may find that this is a requirement of the existing Regulation, applying the principle of equal</p>

			<p>other transport offered under Article 8 is at least the day after the scheduled time of departure of the flight which the passenger has been caused to miss, the assistance specified in Article 9(1)(b) and 9(1)(c).</p> <p>3. The rights specified in paragraph 2 shall only apply where</p> <p>(a) the passenger has a confirmed reservation which covers both connecting flights or which was marketed as covering both flights;</p> <p>(b) the delayed flight is either operated by an EU carrier or the missed connection occurs at an EU airport</p>	treatment.
A7	Options to extend the scope of the Regulation	<p>A7.1 A Simple clarification by amendment of Article 3(1)(b) to refer to benefits and compensation being provided in line with local law requirements</p> <p>A7.1 B Extension to where the contracting carrier is an EU carrier</p> <p>A7.1 C Extension to charter flights, where tickets have been sold in the EU</p> <p>A7.1 D Extension to all flights to the EU</p> <p>A7.2 Extend the Regulation to cover scheduled helicopter services</p>	<p>Replace Article 3(1)(b) with ‘to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, except where assistance and/or compensation has been given in accordance with local law requirements.’</p> <p>Replace Article 3(1)(b) with ‘to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, when either (i) the operating carrier of the flight concerned is a Community carrier; and/or (ii) the contracting carrier is a Community carrier, except where assistance and/or compensation has been given in accordance with local law requirements.’</p> <p>Replace Article 3(1)(b) with ‘to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, when either (i) the operating carrier of the flight concerned is a Community carrier; and/or (ii) the passengers are travelling as part of a package tour purchased within the Community, except where assistance and/or compensation has been given in accordance with local law requirements.’</p> <p>Replace Article 3(1)(b) with ‘to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, except where assistance and/or compensation has been given in accordance with local law requirements.’</p> <p>Delete the words ‘fixed wing’ in Article 2(4)</p>	<p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text.</p>

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A8	Options to ensure consistent treatment of different types of travel disruption	A8.1 A	Replace current rights with rights applying for all travel disruption including delays and cancellations (except denied boarding and downgrading), with the assistance threshold set to 2 hours	<p>Replace current Articles 5 and 6 with a new integrated Article covering delays, advance schedule changes and cancellations, with:</p> <ul style="list-style-type: none"> <li>• right to information, meals/refreshments and communication after two hours;</li> <li>• right to hotel accommodation where the flight departs the following day;</li> <li>• immediately for cancellations, and after two hours in the case of delays or advance schedule changes, a right to a refund, rerouting or travel at a later date; and</li> <li>• when the criteria in Article 5(1)(c) and Article 5(3) are not met, compensation.</li> </ul>	May be possible to address through amendment to Q&A document but would not be binding on airlines, courts or NEBs. Note the CJEU may find that this is a requirement of the existing Regulation, applying the principle of equal treatment.
		A8.1 B	Replace current rights with rights applying for all travel disruption including delays and cancellations (except denied boarding and downgrading), with the assistance threshold set to 3 hours	<p>Replace current Articles 5 and 6 with a new integrated Article covering delays, advance schedule changes and cancellations, with:</p> <ul style="list-style-type: none"> <li>• right to information, meals/refreshments and communication after three hours;</li> <li>• right to hotel accommodation where the flight departs the following day;</li> <li>• immediately for cancellations, and after three hours in the case of delays or advance schedule changes, a right to a refund, rerouting or travel at a later date; and</li> <li>• when the criteria in Article 5(1)(c) and Article 5(3) are not met, compensation.</li> </ul>	May be possible to address through amendment to Q&A document but would not be binding on airlines, courts or NEBs. Note the CJEU may find that this is a requirement of the existing Regulation, applying the principle of equal treatment.
		A8.2	Consistent rights also covering denied boarding	<p>As A8.1, but delete Article 4(3), and integrated Article 5/6 to include denied boarding. Main impact is to remove the right to compensation where passengers offered rerouting and/or informed in advance, or where the denied boarding was due to extraordinary circumstances.</p> <p>Add clarification, for the avoidance of doubt, that overbooking can never be considered extraordinary circumstances.</p>	Not possible to achieve without amendment to the text.
		A8.3	Consistent rights also covering downgrading	Amend Article 10(2) to state that if the carrier cannot carry all passengers in the classes in which they have booked or higher classes, this should be considered as a denial of boarding under Article 4 [or new integrated Article], and that in addition to the options the carrier is required to offer the passenger under Article 8, the carrier may also offer transport in a lower class with a	Not possible to achieve without amendment to the text.

			refund using the percentage rates specified in this Article.	
<b>B: Options relating to baggage</b>				
B1	Options to improve the information provided to passengers	<p>B1.1 Define a minimum standard airline product including check in, issue of a boarding pass, a certain amount of cabin baggage, and potentially also a certain amount of checked baggage</p> <p>B1.2 Define a minimum standard airline product, which would be the basis for fares advertised and initially presented in the booking process, based partly on the proportion of passengers which actually selected 'optional' additional services</p> <p>B1.3 Define minimum cabin baggage allowances</p>	<p>Add new Article to either Regulation 261/2004 or 1008/2008 to define that passengers shall have the right to transport, at no extra cost, a specified quantity of cabin and hold baggage, and have the right to provision without any additional fee of any additional services necessary in order to take the flight, to include provision of a boarding pass, use of the airport, etc.</p> <p>The right to carry the specified quantity of cabin/hold baggage would not apply on smaller aircraft where this is not operationally possible.</p> <p>Amend Article 23 of Regulation 1008/2008 to specify that advertised prices and the price initially offered online shall include any additional services where:</p> <ul style="list-style-type: none"> <li>passengers travelling on the flight concerned cannot purchase the product or service or a similar product or service from a third party, whilst still travelling on the flight (to exclude genuine extras such as hotels or travel insurance); and</li> <li>the airline reasonably expects at least 50% of passengers would purchase the product or service.</li> </ul> <p>In these cases the additional services should be included in the fare and the airline may offer a discount to those that opt out of purchase. In other cases the current requirement for additional services to be on an 'opt in' basis should be retained.</p> <p>Add new Article to either Regulation 261/2004 or 1008/2008 to define that passengers shall have the right to transport, at no extra cost, a specified quantity of cabin baggage, with an exemption where this is not operationally possible (but potentially a requirement for the baggage to be transported free of charge in the hold).</p> <p>The option discussed is to require the air carrier to allow as cabin baggage:</p> <ul style="list-style-type: none"> <li>one item of hand baggage with the dimensions determined by the carrier;</li> <li>personal items such as a handbag, laptop bag, coat etc;</li> <li>a minimum of one bag of purchases from the stores within the airport, and if the carrier limits the size of this bag, not to be less than 40x60cm; and</li> </ul>	<p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text.</p>

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			<ul style="list-style-type: none"> <li>the air carrier may require the above items to be transported in the hold if safety reasons or space preclude transportation in the cabin, but it cannot levy any additional charge for this.</li> </ul>		
		B1.4	Require presentation of a 'key facts' document	<p>Add new Article to either Regulation 261/2004 or 1008/2008 to require airlines to provide passengers, prior to confirming a booking, with a 'key facts' document which can be saved. The 'key facts' document should provide a brief summary of the key conditions of the specific ticket the passenger is being offered, including conditions for cancellation and modification of the ticket, baggage entitlements, and conditions for check in.</p> <p>The format of the document and standard terminology to be used should be developed by the Commission in consultation with consumer representatives and the industry.</p>	Not possible to achieve without amendment to the text.
B2	Options to require provision of immediate help	B2.1	Require provision of an emergency kit if baggage delayed or lost	<p>Add new Article to Regulation 261/2004 to require airlines to provide, in the event of delayed or lost baggage, an emergency kit and to define what this should contain (e.g. toothbrush, toothpaste etc.).</p> <p>Also necessary to define the scope of this requirement as the scope of the current Regulation may not be appropriate for non-EU carriers; to avoid extra-territoriality should apply to all flights on EU carriers, and arrivals by non-EU carriers at EU airports.</p>	Not possible to achieve without amendment to the text.
		B2.2	Require fixed-rate monetary compensation payments for delayed or damaged baggage	<p>Add new Article to Regulation 261/2004 to require airlines to provide, in the event of baggage is lost or delayed and not transported on the same flight as the passenger, a fixed payment of €[50].</p> <p>As for B2.1 above, define scope for non-EU carriers.</p>	Not possible to achieve without amendment to the text.
		B2.3	Require free transport of delayed baggage to the passenger	<p>Add new Article to Regulation 261/2004 to specify that in the event of baggage being delayed and not transported on the same flight as the passenger, the operating carrier for the last flight shall transport the baggage to the passenger without any further charge.</p> <p>As for B2.1 above, define scope for non-EU carriers.</p>	Not possible to achieve without amendment to the text. However, note that if the carrier does not do this at present, the passenger would already be able claim against them under the Montreal Convention.
B3	Options to increase level of	B3.1	Unlimited liability for mobility equipment	<p>Amend Article 12 of Regulation 1107/2006, or add new Article to Regulation 261/2004, to specify that</p> <p><i>Either</i> Where wheelchairs or other mobility equipment or assistive devices are</p>	Not possible to achieve without amendment to the text.



<p>compensation available</p>	<p>B3.2 Refund of baggage fees in the event of lost or delayed baggage</p>	<p>lost or damaged whilst being handled at the airport or transported on board aircraft, the passenger to whom the equipment belongs shall be compensated. There shall be no limit to the liability of air carriers loss or damage to mobility equipment.</p> <p>Or Where wheelchairs or other mobility equipment or assistive devices are transported as baggage, the carrier will provide the passenger, free of charge, with insurance against loss of, or damage to, the equipment. The carrier shall be waived of this obligation if it voluntarily waives the limit defined in the Montreal Convention to its liability for loss, damage or delay to the mobility equipment.</p> <p>Or Where wheelchairs or other mobility equipment or assistive devices are transported as baggage, and the passenger makes a special declaration of the value under Article 22(2) of the Montreal Convention, the carrier shall not levy any supplementary sum for this declaration.</p> <p>Add new Article to either Regulation 261/2004 or 1008/2008 to require airlines to reimburse any additional fees for transport of baggage if it is delayed, lost or damaged, and to specify that this is additional to the liability of the airline to compensate passengers for the loss, delay or damage.</p>	<p>Not possible to achieve without amendment to the text.</p>
<p>B4 Options to address items missing from baggage</p>	<p>B4.1 Requirement that X-rays of baggage be retained, and provided as evidence</p> <p>B4.2 Requirement that the weight of baggage be retained, and provided as evidence</p> <p>B4.3 Allow special declaration of individual items</p>	<p>Add new Article to Regulation 261/2004 to require airport management companies and airlines to retain for at least [28 days] x-rays of baggage, and to provide these to passengers without charge if there is a dispute about loss or damage to the baggage.</p> <p>Add new Article to Regulation 261/2004 to specify that, in the event of a dispute about loss of items from baggage, that a reduction in the weight of the baggage relative to that recorded at check in shall be <i>prima facie</i> evidence of the loss.</p> <p>Add new Article to Regulation 261/2004 to specify that</p> <ul style="list-style-type: none"> <li>• passengers may make a declaration of an individual item at the time the baggage is handed over to the carrier; and</li> <li>• unless the passenger seeks to use their right under Article 22(2) of the Montreal Convention to declare their interest in delivery to be higher than the limit on liability defined in the Convention, there shall be no charge for making such a declaration.</li> </ul>	<p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text.</p>
<p><b>C: Other options to enhance consumer protection in air transport</b></p>			

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<p>C1 Clarify passengers' rights not to use some or all flight segments</p>	<p>C1.1 Sequential use of coupons</p>	<p>Add new Article to Regulation 261/2004 to specify that, if a reservation includes multiple flights, a passenger may take a subsequent flight without payment of any additional fare even if he/she does not take an earlier flight on the booking, notwithstanding any term in the Conditions of Carriage which states that the booking may be cancelled or an additional fare may be collected.</p> <p><i>Note: This could be limited to cases in which the passenger notifies the airline he/she will take the subsequent flight.</i></p>	<p>Depending on interpretation, may already be required by Directive 93/13/EEC on unfair contract terms. Therefore, guidance could be issued to this effect. However, this would not be binding on airlines or national courts or enforcement bodies.</p>
	<p>C1.2 Define that passengers could use any segment of a ticket even if they had not used previous segments, but only if this is due to reasons outside their control</p>	<p>Add new Article to Regulation 261/2004 to specify that, if a reservation includes multiple flights, a passenger may take a subsequent flight without payment of any additional fare even if he/she does not take an earlier flight on the booking, notwithstanding any term in the Conditions of Carriage which states that the booking may be cancelled or an additional fare may be collected, provided the passenger can prove that he/she could not take the booked flight for reasons outside his/her control.</p> <p><i>Note: This could be limited to cases in which the passenger notifies the airline he/she will take the subsequent flight.</i></p>	<p>Depending on interpretation, may already be required by Directive 93/13/EEC on unfair contract terms. Therefore, guidance could be issued to this effect. However, this would not be binding on airlines or national courts or enforcement bodies.</p>
	<p>C1.3 Define that passengers could use the return segment of a ticket even if they had not used the outward segment, but without a more general right to use other segments</p>	<p>Add new Article to Regulation 261/2004 to specify that, if a reservation includes only an outward and return flight, or a combination of connecting flights such as to provide a simple outward and return journey. a passenger may take the return flight without payment of any additional fare even if he/she does not take the outward flight, notwithstanding any term in the Conditions of Carriage which states that the booking may be cancelled or an additional fare may be collected. The airline may still cancel the passenger's reservation for a directly connecting flight if the passenger does not take the first such flight.</p> <p><i>Note: This could be limited to cases in which the passenger tells the airline he/she will take the return flight and the Regulation may need to provide a waiver from this where there is a conflict with the laws of a third country.</i></p>	<p>Depending on interpretation, may already be required by Directive 93/13/EEC on unfair contract terms. Therefore, guidance could be issued to this effect. However, this would not be binding on airlines or national courts or enforcement bodies.</p>
<p>C2 Require airlines to correct booking errors easily and/or without charge</p>	<p>C2.1 Introduce a 24 hour cooling off period in which the passenger can change the reservation without charge (except for bookings made shortly before departure)</p>	<p>Add new Article to Regulation 261/2004 to specify that a passenger may cancel a reservation and receive a full refund by notifying the airline within 24 hours of receiving confirmation of the booking, notwithstanding any contract term which states that the booking is non-refundable. This would not apply to bookings made within [7 days] of departure.</p>	<p>Not possible to achieve without amendment to the text.</p>

	C2.2	Allow clear mistakes to be corrected without fee	Add new Article to Regulation 261/2004 to specify that where there is a clear error in a booking, such as a spelling mistake, the airline must change this without any charge to the passenger, except where it is prevented from making a change by national or international law. This would not include changes to the time, date or route for travel.	Depending on interpretation, may already be required by Directive 93/13/EEC on unfair contract terms. Therefore, guidance could be issued to this effect. However, this would not be binding on airlines or national courts or enforcement bodies.
C3	Define obligations to provide information at the airport	<p>C3.1 Define obligation for airline to provide information on incidents at the airport</p> <p>C3.2 Define obligation for airline to provide information on incidents at the airport and a contact person at the airport to assist in the event of disruption</p>	<p>Amend Article 14 of Regulation 261/2004 to clarify that airlines are required to provide passengers with information on disruption at the airport. Note this would be clarification of the existing requirement only.</p> <p>Add new Article to Regulation 261/2004 to require airlines to have a staffed information desk at each airport terminal that they serve throughout the time in which they operate services from that terminal, and that the staff at the desk shall have responsibility for offering and arranging the assistance specified by the Regulation.</p> <p>Note, information is already required by Article 14 and therefore excluded from the change required</p>	<p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text.</p>
C4	Define that per-passenger taxes and airport charges must be refunded in the event a passenger decides not to travel, and limit the fees that can be charged for this	<p>C4.1 Per-passenger taxes and charges should be automatically refunded to all passengers that do not use their tickets</p> <p>C4.2 Per-passenger taxes and charges should be refunded without any deduction when requested</p>	<p>Add new Article to either Regulation 261/2004 or Regulation 1008/2008 to require that, where airlines collect per-passenger taxes or airport charges on behalf of governments or airport management bodies, and a passenger does not travel:</p> <ul style="list-style-type: none"> <li>the airline must automatically refund these charges to the passenger; and</li> <li>any administration fee for this refund must not exceed the costs that an efficient airline seeking to minimise its costs would incur in processing the refund (and potentially to specify a maximum amount)</li> </ul> <p>Add new Article to either Regulation 261/2004 or Regulation 1008/2008 to require that, where airlines collect per-passenger taxes or airport charges on behalf of governments or airport management bodies, and a passenger does not travel:</p> <ul style="list-style-type: none"> <li>the airline must refund these charges to the passenger on request; and</li> </ul>	<p>Not possible to achieve without amendment to the text.</p> <p>Depending on interpretation, may already be required by Directive 93/13/EEC on unfair contract terms. Therefore, guidance could be issued to this effect. However, this would not be binding on</p>

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			<ul style="list-style-type: none"> <li>no fee may be levied for this refund.</li> </ul>	airlines or national courts or enforcement bodies.
C5	Clarify that passengers can transfer the ticket to another person or claim a credit for future travel if they cannot travel for reasons outside their control		<p>Add new Article to Regulation 261/2004 to specify that, where a passenger cannot travel due to reasons outside his/her control, the airline must allow either the transfer of the ticket to another person or provide a credit for future travel. Any administration fee for making the change/refund must not exceed the costs that an efficient airline seeking to minimise its costs would incur.</p> <p><i>Note: This could be limited to cases in which the passenger tells the airline in advance.</i></p>	Depending on interpretation, may already be required by Directive 93/13/EEC on unfair contract terms. Therefore, guidance could be issued to this effect. However, this would not be binding on airlines or national courts or enforcement bodies.
<b>D: Options to limit economic burden</b>				
D1	Options relating to passenger compensation	<p>D1.1 Amend length of delay before compensation is payable for delays and cancellations to 5 hours</p> <p>D1.1 Amend length of delay before compensation is payable for delays and cancellations to 12 hours</p> <p>D1.1 Amend length of delay before compensation is payable for delays and cancellations to 5 hours (flights under 3,500km) or 12 hours (flights over 3,500km)</p> <p>D1.2 Introduce time threshold for denied boarding</p>	<p>Amend Article 5 and any new text in Article 6, or the replacement integrated Article covering Articles 5 and 6, to increase the time threshold to five hours.</p> <p><i>Note option A8 would also change the length of delay, by introducing consistent compensation periods for delays and cancellations, as these are different at present.</i></p> <p>Amend Article 5 and any new text in Article 6, or the replacement integrated Article covering Articles 5 and 6, to increase the time threshold to 12 hours.</p> <p><i>Note option A8 would also change the length of delay, by introducing consistent compensation periods for delays and cancellations, as these are different at present.</i></p> <p>Amend Article 5 and any new text in Article 6, or the replacement integrated Article covering Articles 5 and 6, to increase the time threshold to 12 hours.</p> <p><i>Note option A8 would also change the length of delay, by introducing consistent compensation periods for delays and cancellations, as these are different at present.</i></p> <p>Amend Article 4 to absolve the airline from liability to pay compensation for involuntary denied boarding if it can offer rerouting under comparable transport conditions within timescales equivalent to those in Article 5(1)(c).</p> <p><i>Note this is also covered by option A8.3 which would exempt the airline from paying compensation if rerouting was offered allowing the passenger to arrive within 2 hours.</i></p>	<p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text.</p>

D1.3 A	Compensation to be a function of ticket price for delays and cancellations	<p>Replace Article 7(1) with ‘Where reference is made to this Article, passengers shall receive compensation equivalent to the price of the ticket for the flight or flights affected by the cancellation, delay or denied boarding, or [€100], whichever is the greater.’</p> <p>Add new Article 7(5) to define the ticket price used as the basis for calculation of compensation, to make clear whether this includes taxes, fees and charges, and to specify how this should be calculated for a reservation involving multiple flights. Add new reference to Article 8 to refer to this in calculation of amount to be paid if a refund requested under Article 8(1)(a).</p> <p>If current compensation arrangements to be maintained for denied boarding, transfer existing text of Article 7 to Article 4 or retain as separate Article, amending references in Articles 4-6 to refer to the correct paragraph.</p>	Not possible to achieve without amendment to the text.
D1.3 B	Compensation amount to be reduced by 50% for delays and cancellations	Add new paragraph after Article 7(1) with rates of compensation 50% lower. Amend references in Article 4-6 to refer to the correct paragraph - 7(1) for denied boarding and new Article 7(2) for cancellations.	
D1.4	Specify progressive compensation per hour of delay in arrival at the final destination	<p>Replace Articles 7(1) and 7(2) with a new Article which specifies ‘Where reference is made to this Article, passengers shall receive compensation of €[25] per hour of delay in arrival at the final destination specified on their ticket.</p> <p>In the event that the passenger selects a refund under Article 8(1)(a) or travel at a later date under Article 8(1)(c), the delay should be calculated as if the passenger had selected re-routing under Article 8(1)(b), at the first opportunity offered by the air carrier.’</p> <p>Add maximum amounts dependent on flight length; these could be based on the existing compensation amounts specified in Article 7(1).</p>	Not possible to achieve without amendment to the text.
D1.5	Introduce right to automatic compensation if carrier fails to provide care when required by the Regulation	<p>Note link to option A4.4 which clarifies that the operating air carrier is responsible for arranging the provision of assistance.</p> <p>Add Article 9(4):</p> <p>‘The operating air carrier is responsible for arranging the provision of the assistance specified in this Article. If the operating air carrier does not ensure that this is provided, it shall be liable for reasonable costs incurred by the passenger in obtaining equivalent services plus [€20] per passenger.’</p>	Not possible to achieve without amendment to the text.

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	<p>D1.6 Introduce right to claim interest if compensation or care/rerouting costs not paid</p> <p>D1.7 Compensation to be adjusted by inflation</p> <p>D1.8 Stronger progressivity of flat rate compensation, plus inflation adjustment</p>	<p>Note partly dependent on option A4.4 which clarifies that the operating air carrier is responsible for arranging the provision of assistance.</p> <p>Potentially also consider removing the reference to making refunds within 7 days and ‘immediately’ paying compensation.</p> <p>Add new Article after Article 10:</p> <p>‘1. Where this Regulation requires an air carrier to pay compensation or make a refund to a passenger, it must do so within 14 days[, except where this Regulation specifies a different time period]. The payment may be made in cash, by electronic bank transfer, bank orders, bank cheques, or where practical, by crediting the passenger through the means by which the passenger paid for the ticket. With the signed agreement of the passenger, the payment may be made in travel vouchers and/or other services.</p> <p>2. Where the air carrier fails to make the payment within this timescale, it shall be liable to the passenger for interest at []% above the [benchmark rate].’</p> <p>Add new paragraph to Article 7 to state that the compensation amounts specified in Article 7(1) will be updated on 1 January each year to reflect the Harmonised Index of Consumer Prices as published by Eurostat. The Commission would publish the updated compensation amounts.</p> <p>Replace Article 7(1) with:</p> <p>‘Where reference is made to this Article, passengers shall receive compensation amounting to:</p> <p>(a) €75 for all flights of 750 kilometres or less;</p> <p>(b) €150 for all flights between 750 kilometres and 1,500 kilometres</p> <p>(c) €300 for all flights between 1,500 kilometres and 3,500 kilometres</p> <p>(d) €500 for all flights not falling within (a) to (c).’</p> <p>Add new paragraph to Article 7 to state that the compensation amounts specified in Article 7(1) will be updated on 1 January each year to reflect the Harmonised Index of Consumer Prices as published by Eurostat. The Commission would publish the updated compensation amounts.</p>	<p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text.</p>
<p>D2 Options to limit or transfer the economic</p>	<p>D2.1 Apply obligation to marketing carrier as well as operating carrier</p>	<p>Note link with option A7.1 with respect to flights from non-EU airports</p> <p>Amend Article 3(5) to state</p> <p>‘This Regulation shall apply to any operating air carrier providing transport to passengers covered by paragraphs 1 and 2. Where an operating air carrier which</p>	<p>Not possible to achieve without amendment to the text.</p>

<p>burden on airlines</p>	<p>D2.2 Further specify the right to claim from responsible third parties</p> <p>D2.3 A Limit airline liability in cases of mass disruption via insurance</p> <p>D2.3 B Limit airline liability in cases of mass disruption via an industry fund which intervenes after 4 days</p>	<p>has no contract with the passenger performs obligations under this Regulation, it shall be regarded as doing so on behalf of the person having a contract with that passenger. <b>In relation to the obligations defined by this Regulation, the acts and omissions of the operating carrier shall be deemed to be also those of the contracting carrier, and the carriers shall be mutually liable to the passenger for the performance of these obligations.'</b></p> <p>Add definition of ground handler, airport managing body and air navigation service provider to Article 2</p> <p>Add Article 13(2) to define that ground handlers, airport managing bodies and air navigation service providers shall be liable to airlines for costs of assistance incurred by the airlines in accordance with Article 9 of the Regulation, where the delay, cancellation or other disruption is due to an act or omission by the ground handler, airport managing body or air navigation service provider.</p> <p>Add Article 15(3) to state that obligations of airport managing bodies and air navigation service providers under Article 13(2) cannot be limited or waived, for example by a term in the Conditions of Use or similar document.</p> <p>Add a definition of mass disruption to Article 2, for example an incident causing the cancellation of more than [10,000] flights.</p> <p>Amend either Regulation 785/2004 or Regulation 261/2004 to require Community carriers and other airlines operating to/from the EU to contact insurance to cover their liabilities to provide assistance to passengers during events of mass disruption.</p> <p>Add a definition of mass disruption to Article 2, for example an incident causing the cancellation of more than [10,000] flights.</p> <p>Add an obligation for each Member State to set up a general reserve fund to compensation airlines for the provision of care and assistance to passengers in the event of mass disruption, and in particular the provision of care and assistance for periods longer than 4 days.</p> <p>The scope of the mechanism would also need to be defined, in particular whether it was to cover carriers registered in the State concerned or flights departing from it; and whether carriers would still be responsible for providing assistance or this responsibility would be taken over by the State.</p>	<p>Not possible to achieve without amendment to the text, but already possible for States to achieve through national law.</p> <p>Not possible to achieve without amendment to the text.</p> <p>Not possible to achieve without amendment to the text.</p>
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D2.4 A	Limit the right of care to 3 nights in all cases, with the cost of accommodation capped at €100 per person per night	Add new paragraph to Article 9 to specify The carrier may limit the total cost of accommodation to €100 per person per night, and for a maximum of 3 nights.	Not possible to achieve without amendment to the text.
D2.4 B	Limit the right of care to 3 nights, but only in cases of exceptional mass disruption	Add new Article 9(4) to specify ‘In the event that the delay, cancellation or other disruption giving rise to an obligation under paragraph 1 is caused by mass disruption which could not have been avoided even if all reasonable measures had been taken, the liability of the air carrier under paragraph 1 shall be limited to provision of hotel accommodation for [3] nights, transport to that accommodation, and provision of meals and refreshments for an equivalent period. The carrier may limit the cost of accommodation to €100 per person per night.  Add definition of mass disruption - for example, complete closure of airspace over at least one State for at least 2 days, or closure of an airport for a prolonged period causing the cancellation of more than 1,000 flights.	Not possible to achieve without amendment to the text.
D2.4 C	Limit the right of care as for D2.4A to 4 nights with the cost of accommodation capped at €100, but only in cases of exceptional mass disruption with exception for PRMs	As D2.4B, but specify that the limits of 4 nights and €100 per person per night would not apply for PRMs [who had notified a need for assistance in advance].	Not possible to achieve without amendment to the text.
D2.4 D	Limit airline obligation for care in cases of exceptional mass disruption, with the remaining costs borne by government	Specify that a limit for airlines’ liability for care would apply in cases of exceptional mass disruption as for Option D2.4B or C. Any costs incurred above this limit would be borne by national governments.	Not possible to achieve without amendment to the text.
D2.5 A	Fully or partially exempt flights with small aircraft	Add new Article 3(7); this could state: ‘(a) National Enforcement Bodies designated under Article 16, after consultation with the appropriate licensing authority, may partly or wholly exempt air services operating between airports within the territory of their State from the scope of Articles 4 to 10 of this Regulation, where the operational characteristics of the service concerned mean that it would be impractical to comply with the relevant provisions of this Regulation, or it	Not possible to achieve without amendment to the text.



		<p>would only be possible to comply with these provisions at an unreasonable cost.</p> <p>(b) Any exemption under paragraph (a) above may only be granted to air services which use aircraft of less than 10 tonnes maximum take-off mass (MTOM) and/or less than 20 seats.</p> <p>(c) Any exemption under paragraph (a) must be granted on a non-discriminatory basis, must be published by the National Enforcement Body on its website or through another widely accessible source, and must specify the reason for the exemption and which Articles the exemption covers. Such an exemption may only apply to all of the air services which operate on a route, and may not be granted with respect to any route on which an air service regularly operates which would not be eligible for an exemption.</p> <p>(d) Where an air carrier or its agent sells tickets for services for which an exemption applies, it must inform the passenger about the exemption prior to sale of the ticket.</p> <p>(e) Where the service concerned operates between two Member States, the exemption may only be granted if agreed by the National Enforcement Bodies of both Member States.</p> <p>(f) Where an exemption from this Regulation is granted, this shall be without prejudice to any other rights passengers may have under Community, national or international law. Where an exemption is granted, passengers whose flights are cancelled or who are denied boarding shall always have at least the right to either a refund or rerouting in accordance with Article 8(1).’</p> <p>Note this would be an alternative to option A7.3 above (with relation to helicopter services), and potentially they could also be brought within the Regulation if this was introduced. This could be achieved by deleting the reference to ‘fixed wing’ aircraft (option A7.2).</p>	
D2.5 B	Exempt flights operated by aircraft of less than 100 seats, distance of less than 500 km and airports with less than 250,000 passengers	As D2.5A, but replace (b) with ‘Any exemption under paragraph (a) above may only be granted to air services which use aircraft of less than 100 seats operating routes of less than 500km where either the origin or destination airport has less than 250,000 passengers per year.’	Not possible to achieve without amendment to the text.
D2.5 C	Exempt flights operated by aircraft of less than 75 seats and distance of less than 250 km	As D2.5A, but replace (b) with ‘Any exemption under paragraph (a) above may only be granted to air services which use aircraft of less than 75 seats operating routes of less than 250km.’	Not possible to achieve without amendment to the text.

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	D2.6	Define when travel agents should be liable to passenger	Add new Article to state that travel agents selling tickets on behalf of air carriers shall be liable for passing on to the passenger information provided by the carrier about delays, cancellations and other travel disruption, and that where the travel agent fails to do this it shall be liable to the passenger for the consequences.	Not possible to achieve without amendment to the text.
	D2.7	Define obligation for travel agents to pass information to airlines	Add new Article requiring travel agents to provide carriers with contact details for the purposes of notifying about disruption. Carriers shall be prohibited from using these contact details for any other commercial purpose. <i>Note: To comply with Directive on data protection, may need to be subject to conditions about passenger consent and in relation to non-EEA carriers.</i>	Not possible to achieve without amendment to the text.
	D2.8	Airline compelled to offer insurance for care (meals, refreshments, accommodation) - no care provided	Delete Article 9 and all references to it Add a new Article which would require air carriers, at the point of sale, to offer passengers the option of purchasing travel insurance which would provide for assistance such as refreshments and overnight accommodation in the event of delays, cancellations and denied boarding. Add that this insurance may be subject to normal limits and conditions specified by insurers. Potentially define that this obligation only applies to airlines offering more than a specified number of seats on departures from the EU.	Not possible to achieve without amendment to the text.
<b>E: Options relating to enforcement</b>				
E1	No further action by Commission		No action required. Enforcement may continue to improve due to increased action by Member States.	No action
E2	More systematic infringement proceedings and further strengthening of NEB coordination		No action required. Enforcement should in particular improve in States such as Sweden which are clearly not complying with Article 16 (because they do not have penalties), however may be limited impact in other States.	No amendment to legislation
E3	Options to make sanctions more effective	E3.1 A Replacement of NEBs with EU-level agency	Replace Article 16 with new Article specifying that an agency would be established with the powers to take all necessary measures to ensure compliance with the Regulation, and that passengers would have a right to complain to the agency. The agency would have the powers to: <ul style="list-style-type: none"> <li>undertake investigations and require parties to provide necessary information;</li> <li>apply fines for infringements of the Regulation and specify the potential levels of these fines (up to a certain percentage of</li> </ul>	Not possible to achieve without amendment to the text.

	<p>E3.1 Commission to have the power to impose sanctions directly</p>	<p>turnover);</p> <ul style="list-style-type: none"> <li>• apply fines for failure to co-operate with the agency or its investigations; and</li> <li>• issue an order requiring air carriers to bring to an end any practice which constitutes an infringement of the Regulation, and if necessary issue a fine contingent on the failure to do so.</li> </ul> <p>The Regulation would also need to be amended to:</p> <ul style="list-style-type: none"> <li>• determine the procedure by which the agency/ Commission will act</li> <li>• determine the circumstances within which the agency/Commission can act</li> </ul> <p>New Articles to be added to grant to the Commission the powers to:</p> <ul style="list-style-type: none"> <li>• undertake investigations and require parties to provide necessary information</li> <li>• apply fines for infringements of the Regulation and specify the potential levels of these fines (up to a certain percentage of turnover);</li> <li>• apply fines for failure to co-operate with investigations; and</li> <li>• require air carriers to bring to an end any practice which constitutes an infringement of the Regulation</li> </ul> <p>The Regulation would also need to be amended to:</p> <ul style="list-style-type: none"> <li>• determine the procedure by which the Commission will act</li> <li>• determine the circumstances within which the Commission can act.</li> </ul> <p>These circumstances might be, for example, where a carrier with significant operations in two or more Member States:</p> <ul style="list-style-type: none"> <li>• committed a serious and repeated infringement of the Regulation, affecting passengers in two or more Member States;</li> <li>• did not have sufficient or appropriate procedures to implement the Regulation;</li> <li>• repeatedly failed to comply with procedures put in place to implement the Regulation; or</li> <li>• did not reflect the Regulation in other relevant policies, documents, or contracts - for example if the Conditions of Carriage were non-compliant or ground handling agreements were inconsistent with the</li> </ul>	<p>Not possible to achieve without amendment to the text.</p>
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		implementing procedures.	
E3.1 C	Partial replacement of NEBs with an EU-level agency but with current NEBs retained as local branches	As for E3.1A, except Article 16(1) would be retained. The Article establishing the new agency would specify that the agency would have the power to coordinate actions by the enforcement bodies designated in accordance with Article 16(1) including requiring them to conduct inspections or investigate specific cases.	Not possible to achieve without amendment to the text.
E3.2	Commission to require NEBs to investigate individual cases	Article 16 to be amended to give the power to the Commission to require NEBs to investigate a case <i>Note: not all NEBs would have the power under national law to do so, so other measures might need to be taken to ensure that they had this power</i>	Not possible to achieve without amendment to the text.
E3.3	Commission to have powers to require NEBs to impose fines	Article 16 to be amended to require States to be able to impose sanctions that are not of a criminal nature and cover all past infringements of the Regulation; and to impose such a sanction in each case identified	Not possible to achieve without amendment to the text.
E3.4	Give NEBs or licensing authorities the right to suspend traffic rights or ground aircraft	Option deleted; no right to suspend traffic rights under Article 15(3) of Regulation 1008/2008 - it is a power for the Commission to instruct a licensing authority that a carrier is not in compliance with 1008/2008 and hence suspend its license. If compliance was a license condition this power would therefore automatically follow <i>Note, option E5.3 in effect covers this</i>	N/A
E3.5	NEBs to investigate each complaint	<i>Option deleted as Commission considers this a current requirement</i>	N/A
E3.6	Require sanctions to exceed a particular level to ensure they can be dissuasive	Option assessed: Amend Article 16(3) to define that sanctions shall be effective, proportionate and dissuasive and sufficient to provide carriers with a financial incentive to comply consistently with the Regulation. Alternatively could specify minimum levels for sanctions.	Not possible to achieve in all States without amendment to legislation.
E3.7	Require airlines to designate a person or body in each State on which notifications of sanctions can be served	Amend either Regulation 261/2004 or Regulation 1008/2008 to require an airline operating to a State to designate a legal representative within the State with sufficient authority to receive all notices of sanctions, and provide information required, by enforcement bodies for Regulation 261/2004 and potentially other legislation. Possibly, should be limited to airlines with more than a specified number of	Not possible to achieve without amendment to legislation.

			scheduled operations in the State concerned.	
	E3.7 A	Require airlines to provide contact details to the Commission	<p>Add a requirement to the Regulation to specify that each carrier (potentially over a size threshold) shall inform the Commission of:</p> <ul style="list-style-type: none"> <li>• an email address which may be used for all contacts from NEBs and which will be regularly monitored by the airline;</li> <li>• a postal address at which legal notice may be served and which may be used for contacts from NEBs; and</li> <li>• the name of a person to contact with respect to claims.</li> </ul>	Not possible to achieve without amendment to legislation.
	E3.8	Require NEBs to provide information to the Commission to demonstrate that sanctions effective	Add as Article 16(4) a requirement for NEBs to provide an annual report to the Commission with details of the complaints received, the sanctions issued or sanction processes undertaken, and other activities such as inspections undertaken; and to demonstrate that the State meets the requirement for effective, proportionate and dissuasive sanctions as defined in Article 16(3).	Not possible to achieve without amendment to legislation.
E4	Other options to improve effectiveness of enforcement	E4.1 NEBs and/or licensing authorities to have power to require provision of information, such as operating manuals and ground handling agreements	<p>Add to Article 16 that NEBs shall have the power to require air carriers to provide them any information that they require in relation to the investigation of a possible infringement.</p> <p><i>Note this is requirement to provide information only, as requirement to check it covered by options E5.2 and E5.3.</i></p>	Not possible to achieve without amendment to legislation.
	E4.2	NEBs to publish statistics on complaints, sanctions and other actions taken	<p>Add as Article 16(4) a requirement for NEBs to publish an annual report to the Commission with details of the complaints received, the sanctions issued or sanction processes undertaken, and other activities such as inspections undertaken.</p> <p><i>Note link to option E3.8 - the main difference is that this would require a public report.</i></p>	May be possible to achieve in some States through guidance and encouragement to NEBs, but not possible to achieve in all States without amendment to legislation.
	E4.3	NEB meetings to be able to issue binding rulings	Not defined, as advised that only the CJEU can interpret legislation.	N/A
	E4.3 A	Detailed provisions to be defined in implementing rules / delegated act	<p>The main Regulation would be substantially amended to specify that there should be rules to protect air passengers in the event of travel disruption, the scope of the flights it should cover (as currently defined in Article 3), and the basic scope of these rules. It would specify that:</p> <ul style="list-style-type: none"> <li>• the rules would protect passengers in the event of delay,</li> </ul>	Not possible to achieve without amendment to legislation.

	<p>E4.4 Airlines to be required to prove that they have complied with respect to all passengers</p>	<p>cancellation, denied boarding, downgrading and other similar or related disruption;</p> <ul style="list-style-type: none"> <li>• passenger protection should take the form of standard assistance (such as refreshments, hotel accommodation, rerouting, and where appropriate monetary compensation);</li> <li>• States would be required to designated NEBs and introduce effective, proportionate and dissuasive sanctions into national law; and</li> <li>• detailed provisions would be defined in the implementing/delegated rules.</li> </ul> <p>A delegated act or implementing rules would define the detailed requirements, such as:</p> <ul style="list-style-type: none"> <li>• when each type of assistance would be provided;</li> <li>• how each type of circumstance should be defined;</li> <li>• the criteria for any exemptions;</li> <li>• where necessary, detailed provisions on how assistance should be calculated and provided; and</li> <li>• detailed procedures to be followed in complaint handling and enforcement.</li> </ul> <p>Add to Article 16 that where an NEB identifies that an infringement [of specified Articles] has occurred in relation to at least one passenger on a particular flight, the air carrier concerned shall provide the NEB with proof that it has complied with [the specified Articles of] the Regulation with respect to the other passengers on that flight; and potentially that if it cannot do, it shall be assumed that the carrier has failed to do so and therefore it shall be required to compensate the passengers concerned.</p> <p>May be limited to:</p> <ul style="list-style-type: none"> <li>• payment of compensation in cases of denied boarding and, where requested, in the cases of cancellations and long delays not caused by extraordinary circumstances;</li> <li>• provision of refunds and rerouting in cases of cancellations and denied boarding; and</li> <li>• provision of overnight accommodation.</li> </ul>	<p>Not possible to achieve without amendment to legislation.</p>
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		E4.5	Improve CPC system	No specific changes proposed	Not possible to achieve without amendment to legislation.
		E4.6	Define role for licensing authority in passenger rights, and clarify relative responsibilities of NEB and licensing authority	<i>Option deleted as covered by E5.2 and E5.3</i>	Option deleted
E5	Other options to encourage good service quality	E5.1 A	Publication of delay and cancellation data	<p>Amend Commission Regulation 691/2010 to reduce the threshold on airport size for which operational data on delays and cancellations has to be provided; and remove or amend the statement that this data is for the purposes of performance review.</p> <p>Add new Article to either Commission Regulation 691/2010 or Regulation 261/2004 to require the Commission or a nominated agency to publish detailed monthly data on delays and cancellations and specify the level of disaggregation of the data to be published, including that it should be specific to air carriers and routes and that a monthly summary report should be published as well as disaggregated data.</p> <p>Potentially also amend Regulation 691/2010 to change the definition of the cancellation data to be provided by airlines. Instead of (or in addition to) air carriers identifying which cancellations are ‘operational’ as at present, carriers should provide the time/date at which a flight was moved from ‘active’ to ‘deactivated’ on its system.</p>	Not possible to achieve without amendment to legislation.
		E5.1 B	Other service quality data to be published	Add new Article to Regulation 261/2004 to require air carries to provide annual data on the number of items of lost, damaged or delayed baggage (in absolute terms and as a percentage of total checked baggage); and number of incidents of involuntary and voluntary denied boarding and downgrading, and to require the Commission or a nominated agency to publish this data.	Not possible to achieve without amendment to legislation.
		E5.2	Airlines to develop and apply procedures to comply consistently with the Regulation, including contingency plans	Add new Article to Regulation 261/2004 to require each EU air carrier, and any other carrier providing services from a Community airport, to develop and then implement procedures which are sufficient to ensure that it consistently complies with the Regulation. These procedures should include contingency plans to ensure it still complies with the Regulation in cases of major disruption. The procedures would have to include who should be responsible for arranging the assistance and other rights defined, how it would be arranged,	Not possible to achieve without amendment to legislation.

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	<p>E5.3 Compliance to become a license condition</p>	<p>and how passengers would be communicated with.</p> <p>These detailed requirements would ideally be defined in implementing rules rather than in the main Regulation.</p> <p>The Regulation would also have to define that the carrier should make these procedures and any supporting contracts, policies or documents available on request to the NEB for each State from which it operates or the Commission (or its licensing authority if option E5.3 was adopted); and potentially also define how frequently NEBs should check these procedures.</p> <p>Amend Article 3 of Regulation 1008/2008 to add an additional requirement ‘That it complies with applicable consumer protection legislation, including Regulation 261/2004 [and potentially also Regulation 1107/2006, chapter IV of Regulation 1008/2008, and Regulation 889/2002,] and that it has such policies and procedures in place to ensure that it does so consistently.’</p> <p>Amend Article 9 of Regulation 1008/2008 to give licensing authorities the power to suspend or revoke an operating license where the carrier does not comply with the specified consumer protection legislation.</p> <p>Amend Regulation 261/2004 to require NEBs to provide information to the licensing authority on request.</p>	<p>Not possible to achieve without amendment to legislation.</p>
<p>E6 Options to extend the scope of enforcement activity</p>	<p>E6.1 A Expand scope of NEBs to cover baggage issues (including complaint handling)</p>	<p><i>Either</i></p> <p>Amend Regulation 2027/1997 (as amended by Regulation 889/2002) to require States to:</p> <ul style="list-style-type: none"> <li>• designate enforcement bodies who will take such actions necessary to ensure that the provisions of the Regulation are respected by carriers operating flights from airports in their State and from third country airports to their State; and</li> <li>• introduce effective, proportionate and dissuasive sanctions for non-compliance.</li> </ul> <p><i>Or</i></p> <p>Add new Article to Regulation 261/2004 to specify that the enforcement bodies designated under Article 16(1) shall also ensure compliance with Regulation 2027/1997 (as amended by Regulation 889/2002).</p> <p>Also define that there should be effective, proportionate and dissuasive sanctions for infringements of this Regulation, and passengers shall have the right to complain to the designated body about these issues.</p>	<p>Not possible to achieve without amendment to legislation.</p>



	<p>E6.1 B Expand scope of NEBs to cover baggage issues (no complaint handling)</p> <p>E6.2 A Expand scope of NEBs to cover other consumer issues in air transport</p> <p>E6.2 B Expand scope of NEBs to cover other consumer issues in air transport (no complaint handling)</p>	<p>Add new Article to Regulation 261/2004 to specify that the enforcement bodies designated under Article 16(1) shall also ensure that air carriers operating from airports on the territory of their State have and apply policies on loss, damage and delay to baggage consistent with those defined in Regulation 2027/1997 (as amended by Regulation 889/2002)</p> <p>Also define that there should be effective, proportionate and dissuasive sanctions for infringements of this Regulation.</p> <p>Add new Article to Regulation 261/2004 to specify that the enforcement bodies designated under Article 16(1) shall also ensure compliance with Regulation 2027/1997 (as amended by Regulation 889/2002), chapter IV of Regulation 1008/2008 and (with respect to air carriers only) Directive 93/113/EEC on unfair contract terms, Directive 2005/29/EC on unfair commercial practices, and Directive 2000/31/EC on electronic commerce.</p> <p>Also define that there should be effective, proportionate and dissuasive sanctions for infringements of this legislation; and that passengers shall have the right to complain to the designated body about these issues..</p> <p>Add new Article to Regulation 261/2004 to specify that the enforcement bodies designated under Article 16(1) shall also ensure that air carriers operating from airports on the territory of their State have and apply policies consistent with Regulation 2027/1997 (as amended by Regulation 889/2002), chapter IV of Regulation 1008/2008 and (with respect to air carriers only) Directive 93/113/EEC on unfair contract terms, Directive 2005/29/EC on unfair commercial practices, and Directive 2000/31/EC on electronic commerce.</p> <p>Also define that there should be effective, proportionate and dissuasive sanctions for infringements of this legislation.</p>	<p>Not possible to achieve without amendment to legislation.</p> <p>Not possible to achieve without amendment to legislation.</p> <p>Not possible to achieve without amendment to legislation.</p>
<p><b>F: Options relating to means of redress</b></p>			
<p>F1</p>	<p>No action</p>	<p>No amendment to legislation</p>	<p>No amendment to legislation</p>
<p>F2</p>	<p>Complaint handling procedure to be specified, for example in Conditions of Carriage</p>	<p>Add new Article on air carrier complaint handling, which could include: ‘Air carriers shall set up a complaint handling mechanism for the rights and obligations covered in this Regulation. Air carriers shall provide details of this mechanism in their Conditions of Carriage. These details shall include at least details of how complaints may be made, and the timescale within which the carrier will provide a reasoned reply.’</p> <p>Note some overlap between this option and F3A.</p>	<p>Not possible to achieve without amendment to legislation.</p>

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<p>F3A Carriers to provide adequate means of receiving complaints</p>	<p>Add new Article on air carrier complaint handling, which could be based partly on Article 27(1) of Regulation 1370/2007:</p> <p>‘Air carriers shall set up a complaint handling mechanism for the rights and obligations covered in this Regulation. The air carrier shall publish on its internet website contact details for complaints, which shall include at least a postal address and an electronic mail address.’</p> <p>Note some overlap between this option and F2.</p>	<p>Not possible to achieve without amendment to legislation.</p>
<p>F3B Carriers to handle complaints in the languages of the States they operate to</p>	<p>New Article on airline complaint handling to state that ‘Air carriers shall accept, and respond to, complaints relating to the rights and obligations in this Regulation, in at least the main national languages of Member States from which they operate services and sell tickets, where at least [100,000] tickets are sold for journeys originating in that State on flights operated by the air carrier. This requirement shall be without prejudice to any national laws requiring air carriers to handle complaints in a specific language’.</p>	<p>Not possible to achieve without amendment to legislation.</p>
<p>F4 Extend deadlines for passengers to complain about delay or damage to baggage</p>	<p>Amend Regulation 2027/1997 (as amended by Regulation 889/2002) or Regulation 261/2004 to specify longer time periods during which passengers could claim for delay or damage to baggage</p>	<p>Not possible to achieve without amendment to legislation.</p>
<p>F4A Require PIR to be issued and accepted as a claim for the purpose of the Montreal Convention</p>	<p>Amend Regulation 2027/1997 (as amended by Regulation 889/2002) or Regulation 261/2004 to specify that:</p> <ul style="list-style-type: none"> <li>• airlines shall provide an adequate means at the airport for passengers to report loss, damage or delay to baggage;</li> <li>• that where the passenger does so, the airline shall immediately issue to the passenger a Property Irregularity Report form (which may be in electronic or paper format);</li> <li>• the airline shall request the passenger complete the form immediately and inform the passenger that failure to submit the form within the appropriate timescale may result in the passenger losing any right to claim; and</li> <li>• the form shall be considered a notice of claim for the purposes of the Montreal Convention.</li> </ul>	<p>Not possible to achieve without amendment to legislation</p>
<p>F5 Carriers to respond within fixed timescales</p>	<p>Add new Article on air carrier complaint handling, which could be based on Article 27(2) of Regulation 1370/2007:</p> <p>‘Passengers may submit a complaint to the operating [or contracting] air carrier. Within one month, the addressee of the complaint shall either give a</p>	<p>Not possible to achieve without amendment to legislation</p>

		reasoned reply or, in justified cases, inform the passenger by what date within a period of less than three months from the date of the complaint a reply can be expected.'	
F6	NEBs to mediate with carriers to seek to obtain appropriate redress for consumers	<i>Option deleted as Commission considers assisting individual passengers to be a current requirement</i>	N/A
F7	All States to have ADR in place	Add new Article to Regulation 261/2004 to specify that each Member State should set up a dispute resolution procedure to handle complaints under the Regulation. Use of the procedure would be mandatory for air carriers but the passenger would be able to decide in each case whether to use it. The Regulation would need to specify whether the decisions of the ADR would be binding and how it should be funded.  <i>Note, option not considered as covered by Commission proposal on ADR and ODR</i>	Addressed by alternative Commission proposal
F7A	Amendment of complaint handling system to reflect proposal on ADRs	Add a new Article which defines that, where a Member State establishes an Alternative Dispute Resolution (ADR) process to handle complaints from passengers relating to this Regulation, the ADR body and NEB shall cooperate with each other. Where appropriate, the ADR body will pass information on complaints to the NEB, particularly where it identifies an infringement of the Regulation.	Not possible to achieve without amendment to legislation.
F8	NEBs to reply with a substantive analysis of each complaint within a given deadline	<i>Option deleted as Commission considers assisting individual passengers to be a current requirement</i>	N/A



## 10 Impact assessment: overview and methodology

### Introduction

10.1 This section provides a brief summary of the methodology adopted for the impact assessment, and in particular the baseline scenario against which options are assessed.

10.2 We adopted a two stage process for evaluation of options:

- An initial assessment was undertaken to identify which options were most likely to meet the policy objectives. Options were also excluded at this stage where they could not be implemented because they were impractical, or where we were advised that they could not be implemented for legal reasons.
- At the second stage, a more detailed assessment was undertaken, including where possible a quantified assessment of the costs for the industry ('economic burden') and the benefits for passengers. A quantified assessment was not possible for options which represent clarification of the current position only, or in a few cases because there was no evidence.

10.3 The options excluded at the initial stage are still included within the subsequent sections but less detail is provided as these options have not been analysed further.

### Baseline scenario for economic burden

10.4 Where options are assessed in quantitative terms, the quantitative impacts are expressed in terms of their impact on the incremental economic burden (relative to a scenario where Regulation 261/2004 was repealed). In order to do this, we needed to calculate:

- a 'Baseline' scenario, for the evolution of economic burden if the Regulation was not amended; and
- a 'No 261/2004' scenario, for what costs would still be incurred if the Regulation was repealed.

10.5 The methodology adopted in calculating current levels of economic burden for the Baseline and No 261/2004 scenarios was discussed in Section 7, and is explained in more detail in Appendix B. Our estimates of costs for the years 2011-2025 rely on some further assumptions, the most important of which being future traffic growth. Each is explained in the text below.

10.6 As for our assessment of the current economic burden, all calculations of future economic burden assume that airlines fully comply with the Regulation, including the right to compensation for delays identified in the Sturgeon judgement. This was discussed in section 2 above.

#### *Traffic growth*

10.7 Overall air traffic is assumed to increase at the rate specified in the Airbus Global Market Forecast.

10.8 With respect to specific traffic categories, we assume that on the basis of recent trends, for intra-EU flights of less than 1,500km, only low cost carriers (LCCs) will experience

growth. In addition, given the long-term trends towards passengers arranging their own travel itineraries, charter traffic is assumed not to grow on any category of route.

10.9 For other market segments, future demand is estimated using Airbus' Global Market Forecast. The Forecast provides an average growth rate between pairs of regions, which is assumed to remain constant for each year covered by the impact assessment. Data for passengers (from Eurostat) and for seats (from OAG) are used to estimate current total passengers for each flow and carrier type. Airbus' growth rates are then disaggregated by carrier type, such that the growth for the carrier types for which growth is assumed to occur exceed the average for the inter-regional flow, whilst at the total level the flow grows at the average rate estimated by Airbus.

10.10 We have benchmarked our forecast against Eurocontrol STATFOR long- and medium-term forecasts, and have found it to be generally slightly more conservative, although the difference is small, averaging 0.4% each year for both forecasts.

### *Trends in disruption*

10.11 For all types of disruption we assume that the rate of disruption in future years will remain constant within each market segment, at the average for 2007-9. The basis for this assumption is a review of historic disruption data which indicated no clear trend - this is discussed in Appendix B. 2010 is excluded due to the extraordinary effects of the volcanic ash crisis and the other disruption that year. The absolute number of passengers affected therefore grows at the same rate as overall traffic for each carrier and route type. In total, the number of cancellations increases slightly faster than the number of long delays.

### *Trends in complaint rates and NEB costs*

10.12 We assume that complaint rates remain constant on a per-passenger basis, and consequently that the absolute number of complaints increases in line with traffic. Notwithstanding any potential scope for efficiencies we assume that NEB operating costs are related to the number of complaints, and therefore the impact of any options which relate to NEB complaint handling will also increase in line with traffic.

10.13 At present not all NEBs investigate fully all complaints received, however the Commission considers that this is a current requirement, reflecting the NEB-NEB agreement. Therefore, consistent with the assumption of full compliance, NEB's baseline costs are increased on the basis of the resources currently committed in Ireland and the Netherlands, which currently investigate each complaint and appear (on the basis of the information provided to us) to do so relatively effectively. This amendment increases total baseline NEB costs by around €14 million per year.

### *Claim rates*

10.14 It is likely that the current 10% claim rates for compensation for delays and cancellations will increase, due to improved awareness of passengers rights under the Regulation, increased activity by commercial claims agencies, and potentially introduction of measures on collective consumer redress in some Member States. It is not possible to know how much of an increase these factors will generate, and as the data on claim rates we have is limited, it is not possible to extrapolate from current trends. Therefore, we have assumed an indicative 0.5% annual increase in the claim rate and for each option we also report the impact if all passengers claimed the compensation to which they are entitled.

- 10.15 There is no change assumed to the claim rate for refunds for delays over 5 hours - most passengers are assumed still to wish to travel.

*Inflation and discounting*

- 10.16 We model future costs in real 2010 terms. For most cost types, rates remain constant in real terms, so for most cost items no inflation is applied; historically air fares have fallen in real terms but due to carbon pricing and increased fuel prices, it is unclear this will be the case in future.
- 10.17 However, this means that any costs which are fixed in nominal terms have to be deflated. The only example of such a cost is fixed compensation of the type currently specified in the Regulation. The inflation rates applied in the impact assessment model are derived from the European Central Bank's inflation forecast of December 2011. A 4% discount rate is used to calculate net present values (NPVs) of impacts<sup>28</sup>.

*Results*

- 10.18 If the Regulation is not amended, we estimate that the incremental economic burden of the legislation on airlines will increase from €0.9 billion on average over 2007-2009 to €1.7 billion in 2025, mostly due to traffic growth. As a share of airline revenue, the burden will increase from 0.6% to 0.7%.
- 10.19 Almost all of the economic burden is carried by airlines (and ultimately passengers through higher fares) but costs are also incurred for States, due to the requirement to establish and fund NEBs. On this basis we estimate the cost for States will increase from approximately €27 million now (assuming full complaint handling as discussed in paragraph 10.13 above) to €46 million by 2025.

**Presentation of results**

- 10.20 Where a quantitative assessment has been undertaken, impacts are reported for:
- Economic burden by type:
    - Disruption compensation;
    - Reimbursement or rerouting costs;
    - Care costs;
    - Baggage compensation;
    - Other costs; or
    - Administrative burden.
  - Economic burden by organisation:
    - Airline;
    - Airport;
    - ANSP; or
    - State.
  - The impact of changes in economic burden on fares; and
  - Where quantifiable, service quality impacts (discussed below).

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<sup>28</sup> Source: European Commission Impact Assessment Guidelines, Annex 11.6

10.21 As the options will impact air fares, there also may be an impact on air transport demand, which would in turn have wider economic, social and environmental impacts. This is very uncertain as it depends on the extent to which air passengers value the services which the options would require airlines to provide them, and also the extent to which they realise that they are (or are not) entitled to specific services. As discussed in section 7, the data provided by airlines suggest that current claim rates are very low, which implies that passenger awareness of their entitlements under the Regulation is also very limited.

10.22 In section 17 below we give indicative figures for the potential impact on demand, and consequential impacts on:

- Employment; including airline, handling agent and airport-based employment;
- Economic benefits (or disbenefits) generated by additional (reduced) traffic; and
- CO<sub>2</sub> emissions.

10.23 For the purposes of the quantitative assessment, options are assumed to be implemented with effect from 1 January 2015, and results are presented for the period 2015-2025. We present both the impact on economic burden for an average year during this period, and the net present value (NPV) of the total impact on economic burden. Any results discussed in the text are (unless stated otherwise) for the medium economic burden scenario and are the change in the incremental economic burden (see section 7 for further information). However, we also present results for the theoretical maximum scenario in the option summary tables.

### *Service quality impacts*

10.24 Where possible, we have calculated impacts of each option on service quality. This is divided into:

- directly quantifiable benefits to passengers, such as payments of compensation and refunds, and the monetary value of assistance costs (primarily refreshments and accommodation); and
- for options which impact the amount of time passengers would have to wait in the case of disruption, the monetary value of the change in waiting time.

10.25 The main options which impact waiting time are those relating to rerouting - for example, when and whether passengers are entitled to be rerouted on another carrier if it is quicker. Where waiting time impacts have been calculated, we have analysed flight timetable data to calculate the amount of time passengers have to wait with the given assumption for rerouting, and applied a value of time to this. We have used two values for waiting time; one for working and another for non-working time. Both are derived from the 2008 *Handbook on estimation of external costs in the transport sector*.

### *Impacts on micro-enterprises*

10.26 The Commission's impact assessment guidance requires us to assess whether there is an impact on small companies or micro-enterprises. Micro-enterprises (defined as companies with fewer than 10 employees and a turnover or balance sheet total equal to or less than €2 million) would be beyond the scope of the proposed options. Even the smallest air carriers within the scope of the current Regulation are well beyond the threshold - for example, according to the CAA statistics, Astraeus (one of the smallest airlines in the UK)



in 2010 had 260 employees and a turnover of £58 million. The only aviation enterprises which might fit this definition could be small business aviation operators, but these are beyond the scope of the current Regulation and any of the proposed options.

- 10.27 As discussed in section 7 above, the Regulation does have a relatively significant impact on airlines operating to remote regions such as islands which are particularly subject to bad weather. Given their size, these airlines will not be ‘micro-enterprises’ and would rarely be considered SMEs; nonetheless, a specific option has been considered to address the impact on these operations.

*Legal assessment*

- 10.28 The assessment also identifies other issues with options, including when they conflict with international law or basic principles of EU law. For some options, however, it is uncertain what a Court would decide about this, and therefore the Commission will need to take its own legal advice before deciding whether to pursue these options. We highlight in the text where there are risks with options and uncertainty about this where appropriate.

*Safety impacts*

- 10.29 It is assumed throughout this study that the Regulation, and the policy options, have no safety impacts. No airlines interviewed indicated that, as a result of the Regulation, they would operate flights when there was doubt about whether it was safe to do so, and the potential consequences of operating an aircraft when it is unsafe are so catastrophic that no airline should ever do this. Even if a company was not concerned about the potential human impacts, this might also have a fatal impact on its business; airlines which have had accidents have in the past ceased to exist, and regulatory authorities have in effect closed airlines they found not to be meeting safety regulations (for example, Air Madrid was grounded and consequently became insolvent in 2006 after the Spanish authorities suspended its operating certificate).
- 10.30 This issue has also been addressed in the CJEU’s judgement in the Wallentin case, which said that ‘air carriers are confronted as a matter of course in the exercise of their activity with various technical problems to which the operation of those aircraft inevitably gives rise. It is moreover in order to avoid such problems and to take precautions against incidents compromising flight safety that those aircraft are subject to regular checks which are particularly strict, and which are part and parcel of the standard operating conditions of air transport undertakings. The resolution of a technical problem caused by failure to maintain an aircraft must therefore be regarded as inherent in the normal exercise of an air carrier’s activity.’

## 11 Impact assessment: options relating to travel disruption

### Introduction

11.1 This section sets out the assessment of a number of options relating to passengers' rights in the case of travel disruption, such as delays, cancellation and denied boarding. There is an overlap between some of these options and the options in section 14 below, and therefore these should be considered together. In section 17 below we discuss possible combinations or 'packages' of options.

### A1: Repeal of Regulation 261/2004

11.2 The option of repeal of the Regulation has to be considered, for two reasons:

- whilst it may be considered unlikely that the Community legislature would accept this option, that decision can only be taken by the legislature, not by the impact assessment; and
- the assessment of the costs and benefits of the Regulation has to, as far as possible, assess the incremental costs and benefits of the options, relative to a situation where the Regulation did not apply and therefore it is necessary to quantify this situation.

11.3 Section 4 above evaluates the policies that airlines might apply if the Regulation was repealed. These would be constrained by:

- other applicable legislation, in particular the Montreal Convention and Directive 93/13/EEC on unfair contract terms;
- for flights outside the EU, the applicable legislation of third countries; and
- airlines' own commercial policies: in some cases airlines would provide the minimum legally possible, but some passengers might receive better treatment, for example those travelling in premium classes, and members of the elite tiers of airline frequent flyer programmes.

### *Estimate of impacts*

11.4 Table 11.1 shows the quantified impacts of repeal of the Regulation. By far the largest proportion of the reduction in economic burden is generated by the savings for airlines which no longer have to pay care, compensation or reimbursement / rerouting costs; although there is also a smaller reduction for Member States as they are no longer required to fund the NEBs.

11.5 We also anticipate negative service quality impacts for passengers, arising from two main sources:

- Airlines would not provide care or compensation, or reimbursement for delays over 5 hours, in circumstances outside the airlines' control.
- Rerouting in the case of denied boarding or cancellation would only be on flights operated by the same carrier. Taking into account information obtained in the bilateral interviews, we assume that at present airlines will reroute passengers on other airlines

but only if there is no practical alternative. Therefore, overall waiting times would increase, which we have expressed in monetary terms on the basis of a value of time.

- 11.6 Although the incremental economic burden generated by the Regulation is eliminated, some compensation is still paid, as we assume that in the absence of the Regulation compensation will continue to be paid albeit at a lower rate for denied boarding.

**TABLE 11.1 QUANTIFIED IMPACTS: OPTION A1**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	- 364,449	- 2,637,469	-100.0%	- 2,166,400	- 15,859,218	-100.0%
Reimbursement / rerouting	- 111,900	- 810,390	-100.0%	- 111,900	- 810,390	-100.0%
Care	- 963,060	- 6,984,018	-100.0%	- 963,060	- 6,984,018	-100.0%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	- 38,750	- 281,535	-100.0%	- 38,750	- 281,535	-100.0%
<b>Total</b>	<b>- 1,478,160</b>	<b>-10,713,412</b>	<b>-100.0%</b>	<b>- 3,280,110</b>	<b>-23,935,162</b>	<b>-100.0%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 1,439,409	- 10,431,876	-100.0%	- 3,241,360	- 23,653,626	-100.0%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	- 38,750	- 281,535	-100.0%	- 38,750	- 281,535	-100.0%
<b>Total</b>	<b>- 1,478,160</b>	<b>-10,713,412</b>	<b>-100.0%</b>	<b>- 3,280,110</b>	<b>-23,935,162</b>	<b>-100.0%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 29,287	- 215,003	-100.0%	- 53,848	- 397,403	-100.0%
EU charter	- 75,415	- 554,939	-100.0%	- 245,143	- 1,819,843	-100.0%
EU low cost	- 487,831	- 3,516,320	-100.0%	- 1,002,532	- 7,271,409	-100.0%
EU traditional scheduled	- 619,039	- 4,500,808	-100.0%	- 1,377,619	- 10,076,590	-100.0%
Non-EU	- 227,838	- 1,644,806	-100.0%	- 562,217	- 4,088,382	-100.0%
<b>Total airline</b>	<b>- 1,439,409</b>	<b>-10,431,876</b>	<b>-100.0%</b>	<b>- 3,241,360</b>	<b>-23,653,626</b>	<b>-100.0%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.7%	-	-	-1.5%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 1,371,924	- 9,943,615	-100.0%	- 3,173,874	- 23,165,365	-100.0%
Waiting time	- 432,326	- 3,141,016	-100.0%	- 432,326	- 3,141,016	-100.0%
<b>Total</b>	<b>- 1,804,250</b>	<b>-13,084,631</b>	<b>-100.0%</b>	<b>- 3,606,200</b>	<b>-26,306,381</b>	<b>-100.0%</b>

### Conclusions

- 11.7 Repeal of the Regulation would be lead to a substantial reduction in the level of passenger protection in cases of delays, cancellations or denied boarding, and is therefore clearly not consistent with the first of the three specific policy objectives for this study (to maintain and improve the standard of passenger protection).

- 11.8 Equally, by significantly reducing the economic burden on air carriers, in particular in relation to circumstances which are outside their control, it is consistent with the third objective (ensure the economic burden is fair and proportionate). Consumers would indirectly benefit from this because air fares would reduce. However, as the burden and level of passenger protection would also be reduced in circumstances that are partially or fully within carriers' control, some judgement is required about the extent to which this is 'fair' for consumers.
- 11.9 Repeal of the Regulation also appears to be, at best, partially consistent with the other objective (ensure legal certainty). It would avoid any issues of inconsistency with international law. However, passengers' rights would be dependent on interpretation by national enforcement bodies and courts of national law implementing Directive 93/13/EEC on unfair contract terms, which sets broad principles but not specific requirements. Since these interpretations have differed, and the extent to which this is applied by national authorities also differs, it is likely that different rights would in effect apply in different Member States.

### **A2: No policy action**

- 11.10 In the event of no policy action, the problems identified in section 9 would remain. The economic burden on carriers' would gradually increase as the air transport market grows, and as discussed in section 9 it is possible that the proportion of consumers claiming compensation to which they are entitled might increase. Judgements by the CJEU might further address the grey zones in the Regulation, but this process is slow, and it is possible that these judgements might raise new issues.
- 11.11 Enforcement has slowly improved and so might become more effective over time in some States, but it is likely that some States would continue not to enforce the Regulation effectively, and reductions in budgets in some States might reduce the effectiveness of enforcement. It might be possible for the Commission to take infringement proceedings against States where the system of sanctions was clearly not sufficient to meet the 'effective, proportionate and dissuasive' criteria in Article 16(3), but the fact that this has not been possible to date, despite the fact that the systems of sanctions in many States appear not to meet this criteria, suggests that there may be difficulties with this. The Commission has advised us that there are several reasons why it is difficult for it to take infringement proceedings, in particular:
- The Regulation does not define Member States' obligations precisely enough, and therefore it is hard to show that they have not complied with them.
  - The Commission often lacks the information required to act - NEBs are not required to report to the Commission, therefore the only information it has is limited to the few passengers that complain to it about the NEBs.
- 11.12 Furthermore, the Commission informed us that, in many cases, problems have been solved during the initial informal contact and information-gathering phase, thus not requiring the launch of formal proceedings.
- 11.13 Overall, the standard of passenger protection would be maintained, but would not be improved, and the issues of legal certainty and economic burden would remain.

11.14 Given that Option A2 represents no change from the baseline scenario, the incremental economic burden generated would be zero.

### **A3: Options to clarify the existing Regulation**

#### ***Option A3.1: Define or clarify key terms within the Regulation such as ‘flight’ and ‘delay’***

11.15 The terms most commonly raised by stakeholders as being unclear were ‘extraordinary circumstances’ and ‘comparable transport conditions’. Specific options have been considered to address these (see options A3.2 and A5.2 below). This policy option discusses other elements of the Regulation that might benefit from being more clearly defined.

11.16 NEBs and other stakeholders interviewed for the study suggested that the following definitions should be added:

- I Flight:** Some stakeholders suggested that this should be defined in accordance with the judgement of the CJEU in the Emirates case, in particular to clarify that different segments of the same journey count as separate flights.
- I Connecting flights:** Connecting flights are referred to in Article 2(h), which defines the final destination, but connecting flights are not defined. This should be defined to make clear that it covers two flights sold as being part of the same reservation, to exclude circumstances where the passenger buys two entirely separate tickets (see also discussion under option A6.3 below).
- I Delay:** A definition of delay would be necessary if there was a significant difference between rights in the case of delay and cancellations, for example if the Sturgeon judgement was not upheld, in order to minimise dispute about what would be considered a delay and what would be considered a cancellation. It could be defined either that a delay means a failure to operate a scheduled flight within a given period (say, 12-24 hours) after the scheduled time, or it could be clarified that delay means operation of a flight any time after the original scheduled time and that cancellation means operating of fewer flights than scheduled.
- I Passenger:** It could be further clarified what a passenger is.
- I Class:** Some airlines have introduced products where it is not clear whether or not they are a separate class. For example some carriers offer a clearly distinct ‘premium economy’ product; others offer an ‘economy comfort’ product within the main economy cabin; and some sell extra legroom seats. Given the provisions on downgrading, the Regulation should make clear what is a separate class.
- I Denied boarding:** Some stakeholders suggested that the Regulation should clarify that denied boarding only refers to overbooking or excludes circumstances outside the carrier’s control (this is addressed as part of option A8.2 below). Some also suggested that the Regulation should clarify what rights passengers have when the carrier denies boarding on the basis of what it believes are one of the criteria in Article 2(j) such as inadequate documentation, but this is subsequently shown to have been incorrect.

11.17 It would improve legal certainty if these terms were defined. If the definitions we have suggested in the section above are adopted, there would not be any impact on passengers’

rights or the obligations and economic burden on air carriers, but it would be easier for passengers to obtain redress if the Regulation was clearer. **Therefore we recommend that this option should be pursued.**

***Option A3.2: Define extraordinary circumstances, taking into account the Wallentin ruling and definitions used for other modes***

- 11.18 One of the issues with the Regulation raised most often by NEBs and other stakeholders was that the circumstances in which compensation may be payable are still unclear, despite the Wallentin judgement. As discussed in section 5 above, whilst virtually all stakeholders say they respect and apply the judgement, their interpretations of it vary substantially. This is a particular issue in relation to technical problems:
- Some airlines and their representatives have said that technical problems with an aircraft are almost always extraordinary circumstances (despite the Wallentin judgement), because they do everything possible to avoid these problems occurring and an aircraft cannot safely fly with a technical fault. Some enforcement bodies also generally accept that technical problems are sufficient to exempt payment of compensation.
  - Some enforcement bodies consider that, whilst technical problems can in principle be extraordinary circumstances, they usually would not be - problems do occur from time to time and this is inherent in the normal operations of an airline. There are even differences about whether circumstances such as a bird strike are sufficient, as some consider that, whilst this clearly could not have been avoided and the aircraft could not safely operate afterwards, it is inherent in airline operations and therefore not extraordinary.
- 11.19 The Netherlands NEB has sought to define in a published document the circumstances in which it considers that air carriers would be exempt from paying compensation under Article 5(3)<sup>29</sup>. This definition appears to be a useful attempt to clarify the issue and how it will be applied by the NEB. However, as a result of their different views on the issue, the document is not accepted by either airline or consumer representatives. This dispute can only be addressed by a clearer definition of extraordinary circumstances within the main text of the Regulation.
- 11.20 It is not possible for a definition to cover every circumstance which could occur. Some could never be predicted, and some might depend on the specific circumstances. However, if the Regulation was revised, it would be possible to define within the text:
- circumstances which would always be sufficient to avoid payment of compensation;
  - circumstances which would never be sufficient to avoid payment of compensation; and
  - a non-exhaustive list of circumstances where it would depend on the specific case, and what criteria should be applied in these circumstances.
- 11.21 The main benefit of a clearer definition would be to improve legal certainty, in particular by clarifying the requirements of the Regulation and facilitating enforcement. Depending

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<sup>29</sup> IFW (2011): Beleidsregel, Article 3

on what definition was adopted, this would not necessarily have any impact on either the level of passenger protection or the economic burden, but it would facilitate passengers in obtaining redress if this was clearer. It could also slightly reduce the operational and enforcement costs associated with the Regulation as there would be less disputes over whether compensation was payable in a particular case.

- 11.22 **We recommend that this option be implemented.** Taking into account the Wallentin judgement and the responses to the public consultation, we provide below draft text which could be used for the basis for a definition.

#### Potential amendment of Article 5(3) to define extraordinary circumstances

(3)(a) An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the [delay or] cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

(b) The criteria in paragraph (a) shall be considered to be met where the air carrier proves that the [delay or] cancellation was a direct result of one of the following circumstances, and that it had taken all reasonable measures to operate the flight despite the occurrence of these circumstances:

- i. natural disasters such as earthquakes or volcanic eruptions;
- ii. technical problems of a nature which are not inherent in the normal operation of the aircraft, such as the identification of a defect which prevents the operation;
- iii. conflicts, political instability, security risks, acts of sabotage or terrorism;
- iv. air traffic management restrictions;
- v. closure of airspace or an airport;
- vi. meteorological conditions incompatible with operation;
- vii. strikes in essential service providers such as airports and ANSPs; and
- viii. actions by governments or regulatory authorities, except any that result from an act or omission by the air carrier.

(c) The criteria in paragraph (a) shall not be considered to be met where the [delay or] cancellation resulted from one or more of the following circumstances:

- i. technical problems of a nature inherent in the normal operation of the aircraft, such as a problem identified during the routine maintenance of the aircraft or which arises due to failure to carry out such maintenance;
- ii. unavailability of flight crew or cabin crew;
- iii. actions or omissions by the airline's own staff or contractors, including ground handling and catering staff;
- iv. actions by governments or regulatory authorities that resulted from an act or omission by the air carrier;
- v. incidents or failures with passenger services or baggage handling;
- vi. other operational issues which are the responsibility of the air carrier; or
- vii. commercial decisions by the air carrier.

***Option A3.3: Limit circumstances in which compensation payable to those within the control of the carrier***

- 11.23 The CJEU emphasised in both the Wallentin and Sturgeon judgements that not all extraordinary circumstances confer exemption from payment of compensation. The exemption in Article 5(3) on payment of compensation only applies if two tests are met separately:
- the circumstances have to be extraordinary, as in ‘not inherent in the normal operations of the air carrier and beyond its control’; and
  - the carrier must have done everything reasonable to avoid the circumstances ‘even if it had deployed all its resources in terms of staff or equipment and the financial means at its disposal’ without making ‘intolerable sacrifices’.
- 11.24 This test is a difficult one to meet and implies that carriers may have pay compensation, for example, in circumstances:
- where the event concerned is outside their control, for example, in the case of an event which occurs regularly and therefore arguably is inherent to normal operations of an airline, but cannot be avoided by the carrier (such as a bird strike, or at some airports, potentially even bad weather); or
  - which are extraordinary, such as exceptional weather, but could have been avoided if sufficient backup aircraft were provided - which also raises the issue of what number of backup aircraft have to be provided, and whether this is a sensible cost for the carriers to incur.
- 11.25 This could be argued to create an unfair economic burden on carriers and it is not clear that it is in consumers wider interests for carriers to have to pay compensation in circumstances which are not their fault, as this would lead to higher ticket prices. This could be addressed by amending the criteria for exemption from payment from compensation in Article 5(3) or any successor Article. We have considered whether this could be addressed by deleting the word ‘extraordinary’ but our legal advisors have suggested the text should state that carriers are not obliged to pay compensation where the cancellation is caused by circumstances which could not have been avoided by the air carrier, even if all it had taken all measures which it would have been reasonable for it to take to avoid the occurrence of the circumstances.

***Estimate of impacts***

- 11.26 The effect of this option would be to limit the obligation to pay compensation to circumstances which are more clearly within the control of the carrier. The relevant circumstances would probably exclude most technical issues, ATFM, weather, airport or mandatory security requirements; and would be primarily limited to the following:
- Aircraft and ramp handling;
  - Flight operations and crewing; and
  - Passengers and baggage.
- 11.27 To quantify the impacts of this change, we have assumed that the proportion of cases in which compensation would be payable would reduce from the ‘medium’ to the ‘low’



scenario, discussed in more detail in Section 7. The option should also simplify the role of the NEBs, as they would have to evaluate fewer claims of extraordinary circumstances. Although it is not possible to quantify this exactly, the potential reduction in the burden of enforcement for NEBs could be around 10%.

11.28 Table 11.2 shows the quantified impacts for this option. The economic burden of the Regulation reduces by 10% on average, most of which is for airlines in the form of lower compensation payments.

**TABLE 11.2 QUANTIFIED IMPACTS: OPTION A3.3**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	- 149,433	- 1,079,039	-40.9%	- 990,224	- 7,248,314	-45.7%
Reimbursement / rerouting	-	-	-	-	-	-
Care	-	-	-	-	-	-
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	- 3,875	- 28,154	-10.0%	- 3,875	- 28,154	-10.0%
<b>Total</b>	<b>- 153,308</b>	<b>- 1,107,192</b>	<b>-10.3%</b>	<b>- 994,099</b>	<b>- 7,276,468</b>	<b>-30.4%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 149,433	- 1,079,039	-10.3%	- 990,224	- 7,248,314	-30.6%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	- 3,875	- 28,154	-10.0%	- 3,875	- 28,154	-10.0%
<b>Total</b>	<b>- 153,308</b>	<b>- 1,107,192</b>	<b>-10.3%</b>	<b>- 994,099</b>	<b>- 7,276,468</b>	<b>-30.4%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 2,013	- 14,714	-6.8%	- 13,474	- 99,821	-25.1%
EU charter	- 13,865	- 101,689	-18.3%	- 93,060	- 691,893	-38.0%
EU low cost	- 42,914	- 308,156	-8.8%	- 283,074	- 2,060,283	-28.3%
EU traditional scheduled	- 62,803	- 454,276	-10.1%	- 416,757	- 3,055,939	-30.3%
Non-EU	- 27,837	- 200,204	-12.2%	- 183,858	- 1,340,378	-32.8%
<b>Total airline</b>	<b>- 149,433</b>	<b>- 1,079,039</b>	<b>-10.3%</b>	<b>- 990,224</b>	<b>- 7,248,314</b>	<b>-30.6%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.1%	-	-	-0.5%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 149,433	- 1,079,039	-10.9%	- 990,224	- 7,248,314	-31.3%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>- 149,433</b>	<b>- 1,079,039</b>	<b>-8.2%</b>	<b>- 990,224</b>	<b>- 7,248,314</b>	<b>-27.6%</b>

11.29 The reduction in economic burden varies by route and carrier type, reflecting patterns of disruption (particularly delays). The reduction is greatest for the longest routes (an average of -14% for non-EU flights of more than 3,500km), and for charter carriers (-18%). Conversely, percentage increases are lowest for regional carriers (-7%); and for flights of less than 1,500 km.

### *Conclusions*

- 11.30 This option would be consistent with the policy objective of ensuring legal certainty, and would also deliver a significant reduction in the burden for airlines. It would in particular reduce the economic burden for airlines in circumstances that are not, or only partially, within their control and therefore may be consistent with the objective of ensuring the economic burden is fair and proportionate. These benefits would need to be balanced against the adverse impact on the objective of maintaining and improving passenger protection.

### ***Option A3.4: Incorporate Court of Justice judgements, particularly Wallentin and Sturgeon, into the main text of the Regulation***

- 11.31 The issue of whether a further definition of extraordinary circumstances should be incorporated into the text, potentially based on the Wallentin judgement, is discussed under options A3.2 and A3.3 above. Therefore this section focuses on the Sturgeon judgement.

### *Legal certainty*

- 11.32 Most NEBs considered that it would be helpful if the Sturgeon judgement was incorporated into the main text of the Regulation. The main advantage of doing this would be that it would improve legal certainty if the obligations arising from the Regulation were spelt out clearly within the text. In particular:
- This would help ensure consistent interpretation by national courts and NEBs in different Member States. As discussed in section 5 above, very different approaches are being adopted at present.
  - The rights arising from the Regulation would be clearer, in particular to individual citizens, who may be aware of (and easily be able to find a copy of) the Regulation, but are less likely to be aware of the implications of all of the court judgements.
  - It would be easier for Member States that rely on criminal prosecutions to enforce the Regulation, and therefore require a high standard of proof in order to impose sanctions.
  - This would be beneficial for non-EU States to which the Regulation applies by virtue of having a Common Aviation Area Agreement, or similar agreement, with the EU. This issue was raised in particular by the Swiss NEB, which stated that civil court judgements which were not actually included in the text of the Regulation could not be enforced in Switzerland.
- 11.33 Air carriers and their representatives, and also some NEBs, have argued in interviews for and submissions to this study, and in responses to the public consultation, that the Sturgeon judgement should not be incorporated into the Regulation because it is incorrect, either because it is not consistent with the original objectives of the Regulation, because it is not consistent with the text of the Regulation, and/or because it is not consistent with the Montreal Convention. This issue is discussed below.
- 11.34 As discussed in section 2, we assume throughout this study that the Sturgeon judgement is the currently applicable legal position, but note the risk that the Court may take a different view.

## Potential for conflict with the Montreal Convention

As noted above, many airlines and their representative associations argued both in the bilateral interviews and in their responses to the public consultation that the right to compensation for delays over 3 hours identified in the Sturgeon judgement conflicted with the Montreal Convention. As identified by the CJEU in the IATA/ELFAA judgement, the Convention is an international agreement that takes precedent over EU law<sup>30</sup>. Some public authorities also echoed this view and this issue is subject to a number of outstanding references to the CJEU<sup>31</sup>. At the time this report was drafted, the Advocate General had given an opinion on this case but the CJEU had not issued its judgement.

Our legal advisors consider that there are two possible conflicts with Article 29 of the Montreal Convention 1999 (hereafter, the Convention) as regards exclusivity and non-compensatory damages.

### Exclusivity

Article 29 of the Montreal Convention provides as follows: ‘In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract, tort or otherwise, can only be brought subject to the conditions and such limits of liability as set out in this Convention....’

This principle of exclusivity was affirmed inter alia, by the UK House of Lords in *Abnett/Sidhu v British Airways* [1997] AC 430 and the United States Supreme Court in *Tseng v El Al Israel Airlines Ltd* [1999] SC .

Further, in *Stott v Thomas Cook Tour Operators Limited* and *Hook v British Airways*, a claim based on the UK legislation implementing Regulation 1107/2006, the Court of Appeal recently dismissed a claim for compensation, on the basis of the exclusivity of the Convention. It held that where the Convention applied to the claim in question, and in particular where the ‘real injury, loss or damage’ was within the scope of the Convention, there could be no private law remedy of the damage. The UK Equality and Human Rights Commission has reported that this issue is likely to be referred to the CJEU.

The question therefore arises whether the interpretation of the Regulation so as to oblige airlines to pay compensation to passengers in the event of delay is consistent with this.

In his Opinion delivered on 15 May 2012, the Advocate General referred to the Court’s decision regarding the challenge by IATA and ELFAA to the Regulation where it held that the Regulation provides ‘standardised and immediate assistance or care’ in respect of damage that is experienced by all passengers concerned, while the Convention remedies ‘individual damages’ assessed on a case by case basis. The Advocate General went on to state that the remedies available to passengers under the Regulation constitute standardised and immediate assistance given the flat rate nature of the compensation payable to all passengers, variable only in relation to the distance of the relevant flight.

The distinction the Court drew in the IATA decision does indeed appear, prima facie, to apply in the present case too and to remove any conflict with the first sentence of Article 29. However, our legal advisors consider that this is not entirely clear because claims for compensation are often made and settled much after the event. The IATA decision did not explicitly discuss the issue of whether reimbursement was standardised and immediate.

### Non-compensatory damages

Article 29 of the Convention goes on to say ‘...in any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable’.

Although the question of compatibility of the Regulation’s provisions on compensation for delay with

<sup>30</sup> Case C-61/94 Commission v Germany [1996] ECR I-3989, paragraph 52, and Case C-286/02 Bellio F.lli [2004] ECR I-3465, paragraph 33

<sup>31</sup> Joined cases C-581/10 and C-629/10: Nelson v Lufthansa; TUI and others v Civil Aviation Authority

this provision of Article 29 was raised in the references, our legal advisors consider that the Advocate General did not fully address this issue in his Opinion. The distinction drawn by the CJEU in the IATA case does not necessarily answer this question.

### Conclusions

It is possible that the Court will find no conflict on the same basis as the IATA case. However, there is a difference, because that case was not concerned with the issue of monetary compensation, rather the other remedies that the Regulation prescribes in the case of delay, the right to care and assistance. There is a stronger argument that monetary compensation is not consistent with the Convention.

As noted by the Advocate General in his Opinion, some academic lawyers have criticised the Sturgeon judgement, and our legal advisors also believe that there is a potential conflict with the Convention. However, some others support the Sturgeon position; we note the article by Cees van Dam, "Air Passenger Rights After Sturgeon" in which Mr van Dam agrees with the Court's interpretation of the Regulation in Sturgeon, particularly that the Regulation is compatible with the Convention. Although Mr van Dam comments that "the way the Court calculated the three hours delay is not beyond criticism", Mr van Dam agrees that the Regulation upon a literal reading breached the principle of equal treatment in respect of remedies available for long delays and cancellations from the passengers' point of view. Mr van Dam further suggests that carriers are responsible for their own delays due to organisational errors and poor planning, and should therefore be held accountable. Mr van Dam also states that compensation payable under Sturgeon is compensatory as it is linked to the loss of time suffered by passengers.

- 11.35 An issue has also been raised as to whether the judgement is compatible with the separation of powers in the EU. Although not explicitly stated in the reference, we assume this is because (on the issues as to whether there should be compensation for long delays) the legislature appears to have specified that this is not payable and the Court has interpreted the Regulation as meaning that it is.<sup>32</sup> This case had also not been decided at the time this report was drafted.

### *Definition of delay*

- 11.36 The Sturgeon judgement refers to a right to compensation based on delay at the time of arrival at the final destination. This could be different from the delay on departure, for a number of reasons:
- particularly for long haul flights, the duration of the journey can be impacted by factors such as wind direction which are outside the control of the carrier, and therefore a flight could be delayed by more than 3 hours on arrival even if the delay on departure was 1-2 hours; and
  - a small delay, for whatever reason, may nonetheless lead to a missed connection and therefore a significant delay on arrival.
- 11.37 It is in particular unclear whether a delay of less than 3 hours which causes a missed connection entitles passengers to the compensation identified by the Sturgeon judgement. The judgement clearly refers to delay in arrival at the 'final destination' but all of the rights in cases of delay defined in the Regulation are based on delay on departure, and the title and objectives of the Regulation refer to (amongst other things) 'long delay[s] of

<sup>32</sup> Case C-413/11 Germanwings GmbH v Amendc

flights' - not short delays which lead to a consequent long delay to the passenger. Several cases have been referred to the CJEU for preliminary rulings on issues related to this<sup>33</sup>.

- 11.38 As the Sturgeon judgement refers to the final destination, and this represents the current legal position, our calculation of economic burden assumes that there is a right to compensation in case of a short delay leading to a delay over 3 hours due to a missed connection.
- 11.39 Determining the entitlement to compensation from the time of arrival at the final destination would benefit passengers by providing airlines with an incentive to reroute them to reach their destination sooner. It would also appear fairer to the passenger, as delay to the time of arrival at the final destination, after all connecting flights, is a better proxy for the inconvenience that they actually suffer.
- 11.40 However, calculation of delay based on the time of arrival raises some practical difficulties, including with enforcement. In cases of dispute, it may be difficult for the NEB to check the actual time a passenger arrived at their destination, particularly where the passenger has had to be rerouted on a connecting flight, as this will usually be in another Member State or a third country. A connecting flight is also objectively different to a direct flight: there is inevitably a higher risk of delay due to the possibility of a missed connection, and a reasonably well informed passenger should be aware of this. A delay of 3 hours is also likely to be a lower proportional increase in journey time for a connecting flight.
- 11.41 For the reasons discussed above, although we have calculated economic burden on the basis of the time of arrival at the final destination, if the Regulation is amended to explicitly state that there is an entitlement to compensation in cases for delays, in our view there would also be some advantage to stating that the delay should be calculated on the basis of the time of departure of the flight.

#### *Other issues*

- 11.42 Air carriers and their representatives also argued that delays and cancellations are fundamentally different circumstances and therefore the issue of 'equal treatment' does not arise. In the case of a delay, the flight will still operate, albeit later than scheduled; in the case of a cancellation, the flight does not operate. Delays at arrival can be caused by circumstances en route (such as a strong headwind) which are unavoidable.
- 11.43 Carriers also argued that a requirement to pay compensation for delays could lead to an increase in cancellations, as carriers would prefer to cancel than allow it and all subsequent flights to be delayed by more than 3 hours. On the basis of the available data, there is no evidence that this has happened to date, and on the basis of the information provided by air carriers for this study, it appears the amount of compensation actually paid for delays and cancellations is low, despite the substantial theoretical entitlement (see section 7 above). Therefore, on the basis of the evidence available, it appears unlikely this would have happened so far. However, in principle it could in certain circumstances (see box below).

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<sup>33</sup> Case C-11/11 Folkerts v Air France; C-594/11 Becker v Air France; Joined cases C-436/11 Schüsslbauer v Iberia and C-437/11 Schauß v TAP;

Potential for flights to be cancelled as a result of compensation for delay

Some airlines argued that a requirement to pay compensation for delays incentivised them to cancel flights, as if one flight was delayed by more than 3 hours all subsequent flights in the same day planned to be operated with the same aircraft would also be, whereas cancelling one rotation could avoid any knock-on delays. To assess whether this could in principle happen, we have modelled the marginal cost and revenue impacts to airlines from delaying and cancelling flights.

At the margin, delaying or cancelling a flight would have the following cost and revenue impacts:

- Assistance has to be provided to both passengers on delayed and cancelled flights. The costs will on average be higher with respect to passengers on cancelled flights, as they are more likely to have to wait overnight.
- Compensation may be payable to those passengers that claim it.
- Refunds have to be paid to passengers who chose not to travel, which could be a significant proportion of passengers on cancelled flights but not on delayed flights.
- If passengers booked on cancelled flights have to be rerouted on other carriers, a cost would be incurred, but if they can be rerouted on the airline’s own flights there is no rerouting cost.
- Offsetting the above, for flights which are not operated, an airline would save the fuel costs, airport and ANS charges, and some variable maintenance costs; these account for about 43% of costs on short haul routes.

As a simple example of this, we have modelled the costs for a typical short haul low cost airline in the circumstance where an aircraft planned to operate 4 more flights in the day is delayed by over 3 hours, and it can either:

- cancel 2 flights (one round trip) but operate the 2 remaining flights on time; or
- operate all 4 flights but with a delay over 3 hours.

The assumptions for assistance costs per passenger are taken from the main economic burden model and therefore follow the same assumptions described in section 7 and Appendix B, including that 10% of eligible passengers claim compensation. It is assumed that the aircraft would have 180 seats and a load factor of 85%, therefore 153 passengers are impacted on each flight. We do not consider other consequential costs (such as impacts on reputation) of either option. The marginal cost and revenue impacts of delays and cancellations are as shown below.

		Cancel	Delay
Passengers impacted		306	612
of which claiming refund		31	0
<b>Costs of:</b>			
Assistance	€	14,538	11,492
Rerouting	€	0	0
Refunds	€	2,295	0
Compensation	€	8,415	16,830
Operating costs avoided	€	-9,823	0
<b>Net cost to airline - with Sturgeon</b>	€	<b>15,425</b>	<b>28,322</b>
<b>Net cost to airline - no Sturgeon</b>	€	<b>15,425</b>	<b>11,492</b>

Optimal outcome - with Sturgeon	Cancel
Optimal outcome - no Sturgeon	Delay

This shows that, if no compensation was payable for either delays or cancellations, the airline would be better off cancelling the two flights. If compensation was payable for cancellations but not delays, the airline would be better off operating all the flights with a delay. And if compensation was payable for delays as well, the airline would once again be better off cancelling the two flights

and operate the remainder on time.

However, this could only happen in quite limited circumstances:

- Short haul flights only: for long haul, turnaround times are longer and therefore there is less risk of 'reactionary' delay.
- Delay of longer than 3 hours, but not much longer: If the delay was less than 3 hours, delay compensation would not apply and therefore the Regulation would not make a difference. But if the delay was much more than 3 hours it would not be possible to operate all the flights without impacting the following day's operations as well.
- Space available on other flights: Regardless of the compensation liability, if the airline was not able to accommodate the passengers on the cancelled flights on its own services and therefore had to reroute them on other carriers, it would be better off operating all flights with a delay.

11.44 We have considered whether this option implies an economic burden on air carriers. If compensation were actually paid for delays, this would be a significant cost relative to the current position, as compensation for delays is very rarely paid at present. However, we are required to assess options on the assumption that the current requirements are complied with, and also that the Sturgeon judgement is applicable law. Since this means that carriers should be paying compensation for delays at the moment, the option does not imply an additional economic burden. However, if the CJEU were to reverse the Sturgeon judgement in its decision on the outstanding references, this policy option would then represent an economic burden relative to the position that would then apply.

#### *Conclusions*

11.45 If the Sturgeon judgement becomes the accepted legal position, there would be significant benefits in terms of improved clarity and legal certainty from incorporating it within the main text of the Regulation.

11.46 However, this only applies if the CJEU upholds the Sturgeon judgement and in particular confirms that it does not conflict with the Montreal Convention, in line with the opinion of the Advocate General. More generally, it would be sensible to wait until the Court has ruled in respect of the outstanding referrals before bringing forward any proposals in this regard. This is because the Court could make decisions which would require particular approaches to be adopted regarding this option, either:

- the Court could confirm, as it found in the Sturgeon case, that there *must* be compensation for delay, because if there is not, there would be a breach of the principle of equal treatment; or
- the Court could find that there cannot be compensation for delay because this would be a conflict with the Montreal Convention.

11.47 We also recommend that, if compensation for delays is explicitly introduced into the text of the Regulation, the delay should be measured based on time of departure, rather than the time of arrival at the final destination.

***Option A3.5: Clarify the Regulation to specifically reject the Sturgeon judgement***

- 11.48 The Regulation has been interpreted by the Court to grant a right to compensation in cases of delays over 3 hours. As noted elsewhere, this is strongly opposed by the airlines, and we understand also that some Member States have expressed a view that the Court exceeded its remit in this decision.
- 11.49 We have considered the option of amending the Regulation to specify that it cannot be interpreted to mean that there should be compensation for delays. However, since the Court identified a right which is not in the existing text but was, in its opinion, necessary to ensure the Regulation was consistent with the principle of equal treatment, it is unclear that such a clarification would have any impact. Following the same principles as in the Sturgeon case, the Court could also strike down the relevant amendment on the basis of inconsistency with basic principles of EU law. Alternatively, it could find that, as a result of the amendment, it was not possible to interpret the Regulation in a way which was consistent with these principles, and therefore it could find that both Articles 5 and 6 were void.
- 11.50 **Therefore we have not further considered the option of explicitly rejecting the Sturgeon judgement.** The Court will rule again on the outstanding references within the next year and this judgement will need to be taken into account in determining any compensation requirement in the case of delays in a revised Regulation. Since the Sturgeon judgement was based on two cases with very long delays of approximately 24 hours, and the 3 hour threshold in Sturgeon could be calculated differently, we suggest that amendment to the threshold (for example by defining delays more than a given number of hours as being cancellations for the purposes of the rights and obligations defined in the Regulation) might be more appropriate.

***Option A3.6: Define rights in the case of multi-cause incidents***

- 11.51 The rights defined by the Regulation generally do not depend on the cause of the incident. The only exception to this is the right to compensation: airlines are exempt from the requirement to pay compensation if the cancellation (or delay) is caused by extraordinary circumstances that could not have been avoided even if all reasonable measures were taken. In addition to the general lack of clarity surrounding the definition of extraordinary circumstances, the situation has the potential to become more complex when a cancellation or delay or is caused by a combination of circumstances, of which only a proportion can be categorised as extraordinary. It is currently debateable whether a claim for compensation could exist if only a proportion of a three hour delay is due to extraordinary circumstances. This is a less significant issue for cancellations, as the flight has still not been operated regardless of the extent of any extraordinary circumstances.
- 11.52 This could be addressed by clarifying that, if the delay was caused by multiple circumstances, compensation would be payable if the circumstances which did not meet the criteria for exemption caused a delay of more than three hours.
- 11.53 Clarification of the rights of passengers in these situations could be beneficial, provided that the CJEU upholds the Sturgeon judgment. However, attributing a delay between its constituent causes would be complex, and given the likelihood that a significant proportion of delays are the result of a combination of extraordinary and non-extraordinary circumstances, the operational costs generated could be high.



***Option A3.7: Define rights in the case of combined carriage***

- 11.54 Some airlines sell combined tickets covering surface and air segments, with the surface segment having a flight code and appearing on the reservation system in the same way as a flight, but with the actual operator being a train. The main examples of this in Europe are:
- **Paris CDG:** Air France and some other airlines codeshare with TGV services from CDG to Brussels and various French cities
  - **Frankfurt:** Lufthansa codeshares with the ICE high speed train from Frankfurt to Cologne and Stuttgart
- 11.55 At present the Regulation would only apply to the air segment of the journey. Therefore, if a passenger was travelling from Brussels to New York via CDG, and the train was cancelled, it is not clear what if any right to compensation or assistance the passenger would have.
- 11.56 Air France argued that different modes have separate characteristics and so should have separate Regulations, although it agreed these should be harmonised as far as possible. However, this does not address the issue of what protections passengers should have when they are sold a ticket which covers more than one mode and therefore involves a connection between these modes. For example, if a train was cancelled and as a result a passenger missed their connecting flight, it is not clear whether the operator would have any obligation to reroute them to their final destination (as opposed to their final rail destination).
- 11.57 In principle the Regulation could be extended to cover the surface segment where it operates in codeshare with an airline. However, this would generate some practical difficulties: for example it would mean that different rights would apply to the train passengers who had joint air-rail tickets to the other passengers who had rail tickets only.
- 11.58 In our view, it is likely to be very complex to implement this and it may be difficult to force rail operators to implement a Regulation aimed at airlines. As a result, there is a risk that some may respond by ceasing to sell through tickets. In addition, whilst no statistics are publicly available for sales of joint air-rail tickets, we understand the quantity is relatively low and so it is likely that any measure would only cover a small number of passenger journeys. No issues with these journeys were raised by either consumer representatives or NEBs in our interviews. For this reason we suggest this option is unlikely to generate significant passenger benefits and due to its complexity would have significant implementation costs; **therefore it is not consistent with the policy objectives and so should not be pursued.**

**A4: Options relating to passenger care**

***Option A4.1: Require airports to have particular obligations towards passengers with regard to the provision of information and/or of care***

- 11.59 The current Regulation defines obligations for air carriers to provide information (Article 14) and care (Article 9). However, it could be argued that some of these obligations might be more efficiently delivered by airports. This policy option relates to the delivery of this

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care and information; there is a separate issue of who should ultimately pay for it, which is discussed separately.

11.60 The advantages of provision of some services by airports are:

- as check-in desks and gates are shared between airlines, it may be more practical for airports to provide the notices required by Article 14;
- airports may have more staff available than airlines (except at their own bases);
- airports may have better access to information on local hotel facilities (again, particularly compared to airlines away from their main base airports);
- airports may be able to obtain refreshments at a lower price than the airlines can; airlines told us that they generally have to pay for refreshments at standard airport prices, which our research on economic burden indicates can be quite high<sup>34</sup> - implying that airports may significantly profit from the provision of refreshments by airlines in accordance with Article 9; and
- as airports usually face less price competition than airlines, they might have less incentive to minimise or avoid their obligations, so compliance with the Regulation might be improved.

11.61 However, there are a number of disadvantages to transferring responsibility to airports:

- since airlines are the operators of the flights, they are in a much better position to know if a particular flight will be cancelled, how long a delay would be, and what rerouting options are available; and hence what the obligations are;
- only airlines have a contractual relationship with their passengers, and therefore it may be harder for a passenger to take action against an airport in cases of non-compliance with its obligations;
- in most cases, any costs would be charged back to airlines, as airports tend to charge on a cost-recovery basis, so there would be no reduction in the economic burden on airlines (and it might even increase, as the airport operator would not have an incentive to minimise costs); and
- although airports could be given responsibility for provision of information or services for flights departing from the EU, it would not be possible for flights to the EU, even for flights operated by EU carriers to whom the Regulation still applies.

11.62 For these reasons, a transfer of the primary responsibility to airports does not appear likely to meet the policy objectives defined for the study. We also note that neither airlines nor airports interviewed for the project supported this proposal. Therefore, in most respects, this option should not be pursued further.

11.63 Nonetheless, there are certain tasks that could be undertaken more efficiently by airports:

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<sup>34</sup> For example at one European airport we found that drinking water was not available for less than €4.25

- For major airports, there could be a requirement for contingency plans for mass disruption to be developed, in collaboration with the airlines, which define how care and assistance will be provided (see option A4.2 below).
- Article 14 could be extended to require European airports to provide standard notices at check-in desks and departure gates (this would not replace the primary obligation which is on the airline).
- Some requirements should be considered for very basic services to be provided by the airport, which could reduce the cost of assistance to airlines. In particular, there could be a requirement to provide free drinking water to passengers airside: this is arguably different to other forms of care as it is a basic necessity, passengers cannot bring their own water airside due to security regulations, and the very high prices that some airports currently charge for such a basic necessity could be considered to be exploitation of passengers who are in effect ‘captive’ at this point.
- There might also be some benefits in requiring airports to coordinate care for passengers stranded in transit areas due to visa requirements.

#### *Estimate of impacts*

- 11.64 We therefore assume for the purposes of the impact assessment that the assistance to be provided by airports might be limited to shared responsibility for the provision of Article 14 notices; provision of free drinking water to airside passengers; and arranging basic assistance for passengers stranded in transit areas.
- 11.65 Given that the notices required by Article 14 should already be in place, there would only be an ongoing maintenance and replacement cost. These should be very low and therefore we have not quantified them. Although ACI indicated that by replacing posters and advertisements such notices potentially reduce advertising revenue, again given that the focus would be on maintaining existing notices rather than adding new ones there should be no incremental cost (although not all airports may show these at present).
- 11.66 Drinking water could be provided by either distributing bottled water; by using catering outlets to issue tap water free of charge (which is in any case a requirement of national law in some Member States); or by providing water fountains for passenger use. We have assumed that airports will adopt the final (lower cost) option, and have used data provided by ACI to adjust for the percentage of airports already having water fountains and their cost of installation.
- 11.67 The requirement to provide free drinking water could lead to a reduction in revenue from airport shops and catering outlets, as some passengers are probably currently forced to buy bottles of water because there is no alternative. However, we note that free drinking water is generally available at UK airports and despite this they have commercial revenue per passenger similar to or higher than other European airports<sup>35</sup>. Therefore, it is not clear that this would actually lead to a significant reduction.
- 11.68 We do not assume any incremental cost of care for transit passengers, as in their submission to the study ACI indicated that in across a sample of airports, most already

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<sup>35</sup> Source: Airport revenue benchmarking analysis

make provisions for basic passenger care. The costs would in any case be charged back to airlines as they are already responsible for providing care to their passengers in the case of disruption, including those stranded airside (although clearly the nature of the care that can be provided to these passengers is more limited).

11.69 At current prices this option might represent a cost to all EU airports of €181,000 NPV.

### *Conclusions*

11.70 Our estimate of the cost of the very basic requirements suggests that the incremental cost to airports would be low. This would be consistent with the policy objective of ensuring passengers receive appropriate care and assistance and the economic burden would be minimal.

11.71 Although some other tasks, such as provision of hotel accommodation, could arguably be more efficiently provided by the airport, there is no reason why airlines could not already contract with airports to provide these services for them if they considered this a cost-efficient means of meeting their obligations under the Regulation. If airlines and airports have not chosen to contract that airports should provide this service, presumably they do not think it is the most efficient means for delivering it.

### ***Option A4.2: Require airports to develop contingency plans for mass disruption***

11.72 Mass disruption, involving the partial or complete closure of an airport or airspace, presents particular problems in terms of provision of the care required by the Regulation:

- airlines may not have enough staff at the airport to cater for the large number of stranded passengers;
- there may not be sufficient hotel accommodation available in the vicinity;
- airport catering facilities may close or run out of supplies;
- depending on the reason for the closure, surface transport to/from the airport may also be disrupted; and
- if transfer passengers are stranded, it may be impossible to arrange hotel accommodation if they do not have a visa to enter the country concerned.

11.73 Research by the UK CAA indicates that provision of information, care and assistance during the closure of some UK airports due to snow in December 2010 was very poor. Less than 20% of passengers received refreshments or meal vouchers, and 60% received nothing at all. At least in part this was because airlines and airports were not adequately resourced to handle the disruption. The CAA recommended that:

- each airport should develop a major disruption plan, in consultation with airlines, to cover the roles and responsibilities of each stakeholder during periods of mass disruption; and
- each airline and airport should deliver a welfare capability assessment, and passenger welfare plan, to define how many passengers might have to be assisted in periods of mass disruption, how they would arrange and deliver this assistance, key policies (for example on rebooking), and how passengers will be kept informed.

11.74 Preparation of contingency plans could help mitigate the impact of mass disruption. As the Regulation places the obligation to provide care and assistance on airlines, at least part of the obligation to prepare contingency plans should be undertaken jointly with the airlines (we discuss as option E5.2 below a requirement for airlines to prepare plans, including for mass disruption).

*Content of contingency plans*

11.75 The open public consultation provided a limited number of suggestions regarding the contents of airport contingency plans - most respondents focused on the type of assistance which airports could provide and when this might be required. One airline suggested airports should plan how to accommodate passengers in the terminals when local hotels were full; and Norwegian, Ryanair and ELFAA indicated that airports should have adequate contingency plans to cope with extreme weather events. Another airline emphasised that the plans should include provisions for the deployment of additional employees to assist with communication, and the Danish Transport Authority suggested that plans should specify how stranded passengers should be handled. Some of the consumer associations also made suggestions as to the content of such plans, but these were usually not very precise; they cited the importance of mitigating the consequences of extraordinary incidents and ensuring that passengers are advised on how to proceed. One travel retailer proposed that airports plan alternative transport routes for stranded passengers to leave the airport.

11.76 Some other respondents cited the importance of developing contingency plans in cooperation with airlines, and suggested that they should be designed to apply for events which impact more than just a single carrier operating at the airport; and two individuals suggested that decisions regarding the implementation of contingency plans could be made on the basis of the percentage of passengers impacted by any disruption. The European Passengers' Federation requested that contingency plans be made available to the public for inspection, and their rehearsal reported to the relevant NEB and reported on its website.

11.77 Taking into account the information submitted at bilateral interviews and through the public consultation, we recommend that contingency plans should cover:

- where large numbers of stranded passengers should be accommodated - for example, it might be possible to allocate a specific area of a terminal for this purpose, depending on the numbers of passengers affected;
- what assistance the airport will provide to these passengers, under what circumstances, and how this would be coordinated;
- acquisition and storage of items that might be needed (for example camp beds);
- coordination of arrangements with other airport-based businesses (for example agreement with catering outlets that they would remain open);
- agreement with immigration authorities of emergency arrangements to accommodate transfer passengers;
- likely staff requirements, which could potentially include some contingency for temporary staff, or secondments from other departments; and

- possible alternative ground transport arrangements if existing modes are insufficient or also affected by disruption.

11.78 Given that the level of assistance required will depend on the nature and severity of any event the plans should also specify under what circumstances the various types of assistance should be provided.

### *Estimate of impacts*

11.79 It is unlikely that adoption of this option would generate a significant incremental economic burden Europe-wide. In its submission ACI informed us that its members (particularly the large airports) already have developed contingency plans; a view confirmed by BAA and Dublin Airport Authority (DAA) in their submissions. In addition, the proposed new Regulation on groundhandling will require larger airports to produce minimum quality standards for ground handling services, which include contingency and information and assistance to passengers under Regulation 261/2004. Although the contingency plans required by this Directive will have a different focus to anything required under 261/2004, there is some degree of overlap, and indeed the proposed Regulation refers to Regulation 261/2004.

11.80 ACI informed us that the cost of developing and implementing a typical contingency plan might be €500,000. A review of the constituent tasks shows that this total includes items such as special pricing for airport car parks (as passengers may not be able to return to collect their vehicles), external call centres to handle increased call volume, and materials to set up an ‘assistance corner’ where needed; we have therefore assumed the development of the plan itself might account for one fifth of the total cost. We have combined this with their figure for the percentage of airports already having such plans in place, excluding any airports with less than 5 million passengers per year (this is consistent with the threshold set out for contingency plans in the draft Regulation on Groundhandling). This suggests a total cost for airports of €1.8 million NPV.

### *Conclusions*

11.81 This option could significant benefits for passengers by ensuring airports are adequately prepared for incidents of mass disruption, although this would be at the expense of some costs, and the benefits are dependent on the frequency of extraordinary mass disruption events. However, the costs would largely be one-off, as only infrequent, limited updates should be required in subsequent years.

### ***Option A4.3: Consistent thresholds for provision of care, regardless of flight length***

11.82 The threshold for care specified in the Regulation varies depending on the flight length. It is not clear what the rationale for this variation is, as the time within which passengers will require food or drink does not depend on the length of their journey. Some airlines interviewed for the study said that they adopted the same two hour threshold regardless of flight length, as it was impractical to distinguish between flights of different lengths. Some suggested that only compensation should vary by flight length, as compensation payments are calculated afterwards; anything provided at the airport should be consistent regardless of flight length.

11.83 There is some logic in adopting a two hour threshold as most passengers will arrive 1-2 hours in advance, so a delay of two hours doubles the amount of time they have to spend at the airport. We have evaluated two sub-options:

- Option A4.3A: Consistent time thresholds for care for delays, regardless of flight length; and
- Option A4.3B: Consistent time thresholds for care for delays, cancellations and denied boarding, regardless of flight length.

11.84 The results are discussed in turn below.

*Legal issues*

11.85 Although the amendment would strengthen the protection of passengers in the event of delays, our legal advisors consider that removal of the link to flight distance could raise problems with the principle of proportionality, in particular given the IATA/ELFAA ruling, although this would depend on the overall package of which this measure was part. They have advised that the test under EU law for proportionality involves a balancing act between:

- The Community objective of a particular regulation;
- Whether there are less restrictive measures available to achieve the objective that would preclude the implementation of a more onerous provision; and
- The burden created by the provision on other stakeholders.

11.86 The CJEU could take the view that the objective sought by Regulation is achieved as currently drafted, and that the more restrictive measures proposed by this option would be above and beyond what is necessary to achieve the objective. Two statements from the IATA/ELFAA judgment suggest that the Court's view was that the fact that rights varied with length of delay (and hence flight) in the current Regulation contributed to it being considered proportionate:

- Paragraph 85 of states that '[t]he criteria thus adopted for determining the passengers' entitlement to those measures [that is, the significance of the damage suffered by passengers by reference to the length of delay etc] do not therefore appear in any way unrelated to the requirement for proportionality'; and
- Paragraph 86 states that, '[g]iven that these measures vary...according to the significance of the damage [such as the length of the delay etc] suffered by the passengers, they likewise do not appear to be manifestly inappropriate...'

11.87 As noted above, the economic burden expected to be generated by this option would be relevant to an assessment of whether it met the proportionality test. This is set out below.

*Estimate of impacts (Option A4.3A): Consistent thresholds for provision of care for delays, regardless of flight length*

11.88 This sub-option generates an increase in the economic burden, as in many cases passengers now receive care after a shorter time than is currently required. Cost increases are highest on the longest distance services (over 3,500km), for two reasons:

- The difference between the baseline care thresholds and the 2 hours proposed by this option is greatest for services within the highest distance band; and

■ Longer flights are more prone to departure delays of over 2 hours, as shown in below.

**TABLE 11.3 % PASSENGERS ON FLIGHTS DELAYED OVER 2 HOURS, BY TYPE**

	2007	2008	2009	2010
Less than 1,500km	1.3%	1.2%	1.2%	2.0%
Non-EU flights 1,500-3,500km and all EU flights over 1,500km	2.2%	2.3%	1.8%	3.3%
Non-EU flights over 3,500km	2.9%	2.6%	2.1%	3.2%

11.89 Table 11.4 shows the estimated impacts for this option. The economic burden increases by approximately 5%, with all of the increase being for airlines in the form of additional care costs.



**TABLE 11.4 QUANTIFIED IMPACTS: OPTION A4.3A**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	-	-	-	-	-	-
Reimbursement / rerouting	-	-	-	-	-	-
Care	77,572	563,630	8.1%	77,572	563,630	8.1%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>77,572</b>	<b>563,630</b>	<b>5.3%</b>	<b>77,572</b>	<b>563,630</b>	<b>2.4%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	77,572	563,630	5.4%	77,572	563,630	2.4%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>77,572</b>	<b>563,630</b>	<b>5.3%</b>	<b>77,572</b>	<b>563,630</b>	<b>2.4%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	140	1,015	0.5%	140	1,015	0.3%
EU charter	13,717	101,151	18.2%	13,717	101,151	5.6%
EU low cost	14,277	103,678	2.9%	14,277	103,678	1.4%
EU traditional scheduled	32,024	231,837	5.2%	32,024	231,837	2.3%
Non-EU	17,414	125,950	7.7%	17,414	125,950	3.1%
<b>Total airline</b>	<b>77,572</b>	<b>563,630</b>	<b>5.4%</b>	<b>77,572</b>	<b>563,630</b>	<b>2.4%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	0.0%	-	-	0.0%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	77,572	563,630	5.7%	77,572	563,630	2.4%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>77,572</b>	<b>563,630</b>	<b>4.3%</b>	<b>77,572</b>	<b>563,630</b>	<b>2.1%</b>

- 11.90 The impact on economic burden by carrier type reflects relative levels of delay and flight distances. In general, the increases in economic burden are highest for charter carriers (18% on average), and lowest for regional airlines (0.5%), as most of their flights are less than 1,500km and so not impacted. The Non-EU > 3,500km category experiences the highest increase of all route types (12% on average).

*Estimate of impacts (Option A4.3B): Consistent time thresholds for care for delays, cancellations and denied boarding, regardless of flight length*

- 11.91 This option generates a much smaller increase in the economic burden, as the increases generated by additional care for delays of 2-4 hours on flights over 1,500km are largely outweighed by the reductions for cancellations and denied boarding, as care is no longer provided to passengers who are rerouted immediately.

11.92 Table 11.4 shows the quantified impacts of Option A4.3B. The reduction in economic burden for cancellations and denied boarding approximately offsets the increase in economic burden for delays.

**TABLE 11.5 QUANTIFIED IMPACTS: OPTION A4.3B**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	-	-	-	-	-	-
Reimbursement / rerouting	-	-	-	-	-	-
Care	13,291	97,528	1.4%	13,291	97,528	1.4%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>13,291</b>	<b>97,528</b>	<b>0.9%</b>	<b>13,291</b>	<b>97,528</b>	<b>0.4%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	13,291	97,528	0.9%	13,291	97,528	0.4%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>13,291</b>	<b>97,528</b>	<b>0.9%</b>	<b>13,291</b>	<b>97,528</b>	<b>0.4%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 1,765	- 12,974	-6.0%	- 1,765	- 12,974	-3.3%
EU charter	13,717	101,151	18.2%	13,717	101,151	5.6%
EU low cost	- 8,505	- 60,653	-1.7%	- 8,505	- 60,653	-0.8%
EU traditional scheduled	1,606	10,316	0.2%	1,606	10,316	0.1%
Non-EU	8,237	59,689	3.6%	8,237	59,689	1.5%
<b>Total airline</b>	<b>13,291</b>	<b>97,528</b>	<b>0.9%</b>	<b>13,291</b>	<b>97,528</b>	<b>0.4%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	0.0%	-	-	0.0%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	13,291	97,528	1.0%	13,291	97,528	0.4%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>13,291</b>	<b>97,528</b>	<b>0.7%</b>	<b>13,291</b>	<b>97,528</b>	<b>0.4%</b>

11.93 Although the overall impact on the economic burden is small, it varies significantly by carrier types, depending on their flight lengths and the extent to which they are affected by either delays or cancellations. Thus, whereas the average burden for charter carriers increases by 18%, for regional carriers it reduces by 6%. The economic burden for operators of flights of less than 1,500km reduces - for example the burden for short extra-EU flights reduces by 6% - whereas the burden for long haul extra-EU flights increases by an average of 8%.

### Conclusions

11.94 Adopting a consistent threshold for the entitlement to assistance, regardless of flight length, would be consistent with the objective of maintaining and improving passenger protection and would make the Regulation simpler to apply. However, our legal advisors consider that this might raise issues of consistency with the principle of proportionality, given the IATA/ELFAA judgement and the incremental burden it would impose. This would need to be considered in the context of the overall impact of the proposed package of options on the economic burden of the Regulation.

11.95 These issues may be addressed by option A4.3B, which would introduce a consistent 2 hour threshold for delays, but eliminate the right to assistance for passengers denied boarding or with cancelled flights who are rerouted within 2 hours; although the issue of long haul passengers arguably having suffered less from a 2 hour delay in comparison to short haul passengers would still remain. This option would also make the rights defined in the Regulation more consistent, and given its limited impact on the economic burden, it therefore appears to be consistent with the policy objectives.

***Option A4.4: Clarify that carrier is responsible for arranging care, and that if it fails to do so, the passenger can arrange it themselves and claim back costs from the carrier***

11.96 The Regulation clearly defines that it is the carrier that is responsible for offering care and rerouting: Articles 5, 6, 8 and 9 state that the passengers shall be **offered** the specified assistance. This contrasts with compensation in case of cancellations, where Article 5(1)(c) specifies only that passengers **have the right to** compensation, not that it should be offered. If the carrier fails to offer the assistance required by the Regulation, the passenger can claim for expenses incurred as a result. As a result of this, our legal advisors consider that in principle it should make no difference to clarify that passengers can arrange care and assistance themselves if the carrier fails to do so.

11.97 Nonetheless, there could be some benefit in doing this:

- to clarify, primarily for the benefit of passengers, that if they incur these costs because the airline has failed to meet its obligations, these will be reimbursed by the airline (some NEBs mentioned that this would be useful clarification); and
- to clarify that, where passengers incur costs themselves, these must be reasonable and the right is not unlimited - airlines have cited examples of passengers booking five star hotels, and a firm of solicitors representing airlines even gave one example of hire of a private jet.

11.98 This option appears to be consistent with the policy objectives for the study, in that it improves legal certainty, and may help ensure the economic burden is fair by enabling plainly unreasonable claims to be excluded. **Therefore we suggest that this should be considered for inclusion in the revised Regulation.**

## A5: Options relating to refunds and rerouting

### *Option A5.1: Airlines to be obliged to offer rerouting in case of long delays*

- 11.99 In the event of a cancellation, passengers are entitled to a choice between rerouting at the first opportunity, rerouting at a later date, or a refund - even if the airline concerned has another flight with space available almost immediately. In contrast, passengers facing delays are not permitted to choose a refund until the delay reaches 5 hours, and have no right to rerouting: if they want to be rerouted via an earlier flight (even on the same airline) they must buy a new ticket. This could be considered to be a breach of the principle of equal treatment.
- 11.100 Airlines and their representative associations interviewed for this project argued that there was a major difference between delays and cancellations, and therefore the issue of 'equal treatment' did not arise. The key difference is that, in the case of a delay, the originally booked flight still operates. Several airlines also emphasised that if delays and cancellations were treated in the same way, airlines might be incentivised to cancel flights in order to minimise delays, which would generally not be in passengers' interests.

#### *Estimate of impacts*

- 11.101 In most cases there should be no incremental cost generated by having to offer rerouting as an alternative to a refund the case of long delays. Low cost carriers are an exception: reflecting the assumptions made for rerouting following a cancellation, we assume that carriers will have to reroute passengers via other carriers where the delay would otherwise be very long, and low cost carriers have to pay a premium for this rerouting given their lack of access to reciprocal rerouting agreements.
- 11.102 However, we also anticipate that rerouting would be more attractive to passengers than reimbursement, which might increase the claim rate. Clearly it is not possible to know how much the claim rate would increase but we have estimated the impact of an increase from our current estimate of 10% to 20%. As a result, there would an increase in the costs of rerouting/refunds. In reality, it is possible that, for IATA carriers, this option may have little impact, as RP1724 already specifies that passengers will have the choice of rerouting in the event of a long delay.
- 11.103 There are two offsetting impacts on care costs, and as a result the net impact on care costs is negligible. Passengers who would otherwise have received a refund and not travelled will require care whilst they wait, but passengers being rerouted would wait less time than they would otherwise have done and therefore care costs for these passengers are reduced.
- 11.104 Therefore the quantified impacts in Table 11.9 include both additional reimbursement / rerouting, and a small impact on care costs. The overall increase in economic burden is relatively low at around 5%, and airlines are the only entities experiencing increases in the economic burden. As some passengers who would otherwise have selected a refund are rerouted instead, total passenger care, refunds and compensation reduce overall - the additional costs are offset by refunds not being paid to passengers delayed by over 5 hours who choose to be rerouted instead. There could also be a significant benefit to passengers in terms of reductions in waiting time; although it is not possible to precisely quantify this, we have calculated the benefit on the basis that the waiting time is halved for those

passengers who chose rerouting. The analysis indicates that, even with this significant reduction in waiting times, the value to passengers of the time saved is less than the incremental economic burden to airlines.

**TABLE 11.6 QUANTIFIED IMPACTS: OPTION A5.1**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	-	-	-	-	-	-
Reimbursement / rerouting	77,789	564,097	69.6%	77,789	564,097	69.6%
Care	- 50	- 365	-0.0%	- 50	- 365	-0.0%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>77,739</b>	<b>563,733</b>	<b>5.3%</b>	<b>77,739</b>	<b>563,733</b>	<b>2.4%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	77,739	563,733	5.4%	77,739	563,733	2.4%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>77,739</b>	<b>563,733</b>	<b>5.3%</b>	<b>77,739</b>	<b>563,733</b>	<b>2.4%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	173	1,258	0.6%	173	1,258	0.3%
EU charter	8,101	59,737	10.8%	8,101	59,737	3.3%
EU low cost	7,088	51,289	1.5%	7,088	51,289	0.7%
EU traditional scheduled	38,642	279,758	6.2%	38,642	279,758	2.8%
Non-EU	23,734	171,691	10.4%	23,734	171,691	4.2%
<b>Total airline</b>	<b>77,739</b>	<b>563,733</b>	<b>5.4%</b>	<b>77,739</b>	<b>563,733</b>	<b>2.4%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	0.0%	-	-	0.0%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 28,907	- 209,812	-2.1%	- 28,907	- 209,812	-0.9%
Waiting time	61,294	444,617	14.2%	61,294	444,617	14.2%
<b>Total</b>	<b>32,387</b>	<b>234,805</b>	<b>1.8%</b>	<b>32,387</b>	<b>234,805</b>	<b>0.9%</b>

11.105 The increases in economic burden by carrier and route type reflect delay trends: charter carriers and non-EU long haul flights experience the largest increases (11% and 17% respectively).

*Conclusions*

11.106 This option would improve passenger protection but could represent a significant cost for air carriers in certain circumstances, depending in particular on whether rerouting on other carriers is required. In addition, our analysis indicates that the cost to airlines would be greater than the monetary value of the benefit to passengers, in terms of reduced waiting time, which would imply that the option should not be implemented.

11.107 However, if the Sturgeon judgement is taken as a precedent, there is a significant ‘equal treatment’ issue and therefore this could be considered to be necessary to ensure legal certainty. The forthcoming judgement of the CJEU may help clarify if this is an issue.

***Option A5.2: Define circumstances under which the passenger has to be rerouted on another carrier or surface transport***

11.108 Other than extraordinary circumstances, the issue in the Regulation raised most frequently by enforcement bodies and other stakeholders as being unclear was the requirement in Article 8(1)(b) for rerouting ‘under comparable transport conditions... at the earliest opportunity’. In particular, stakeholders emphasised that it is not clear:

- whether this allows rerouting via surface transport, or requires this to be provided where it is faster than waiting for the next flight;
- whether this requires carriers to reroute passengers on the first available flight, even if it is on another carrier; and
- whether rerouting must be in the same cabin class (for example whether a carrier is required to offer rerouting in business class if no economy class ticket is available).

11.109 Although it might appear to be in consumers’ interests to require rerouting on the first flight whoever operates this, this could create a substantial economic burden on carriers only operating a small proportion of the flights on a route, as these would be far more likely to have to purchase tickets for their passengers on other carriers in order to ensure rerouting within a reasonable timescale. In addition, dominant incumbent carriers would have little or no incentive to offer tickets to their competitors for rerouting at anything other than the maximum price available to the public. This would not be in passengers’ best interests as it would create a barrier to market entry, limiting the scope for competition.

11.110 However, equally, it is not consistent with the policy objective of maintaining a good standard of passenger protection to limit rerouting solely to flights operated by the same carrier. In some cases this would imply a wait of several days, and many passengers would consider that they had no alternative but to accept a refund, buy new tickets with a different carrier, and then pay for any care or assistance required in the meantime. Carriers would also lose an incentive to set up reciprocal rerouting agreements. In addition, NEBs and consumer representatives pointed out that airlines sometimes discourage passengers from using their right to rerouting, for example by only mentioning that the option of a refund is available; this option might increase that risk.

***Reciprocal rerouting agreements***

11.111 Rerouting via other carriers is much less of a problem for IATA carriers, and other carriers that participate in multilateral interline traffic agreements (MITA). In total around 350 air carriers worldwide participate in MITA, of which approximately 110 are not IATA members. IATA resolution 735D governs the terms on which passengers can be rerouted in the event of disruption such as cancellations; it means that passengers can be rerouted for the original price paid for the ticket. For example, if a passenger paid Lufthansa €200 for a flight from Paris to Frankfurt and it needed to reroute the passenger on Air France, Air France would have to accept the passenger and it would receive the €200 originally paid.

- 11.112 Ryanair and easyJet also have a reciprocal agreement for rerouting for a fixed fee, but most non-IATA carriers do not have the benefit of equivalent agreements. As a result, if a non-IATA carrier wishes to reroute a passenger on another carrier it would have to pay the full, last minute, price - which might be several times higher than the passenger had initially paid.
- 11.113 One option might be to require airlines to accept rerouted passengers on the basis of the same terms they offer to other airlines. MITA carriers would therefore be required to accept passengers from non-MITA airlines on the basis of the fare they originally paid. However, the MITA airlines are likely to consider this unreasonable, as the passenger would on average have paid a lower fare than their own passengers would have done. The MITA airlines also may not wish to reroute their own passengers on the non-MITA low cost airlines - so would not benefit from the 'reciprocal' nature of the agreement. Therefore, the only way to address this would be for a regulatory authority to establish route-specific 'fair' rates at which airlines would have to accept rerouted passengers; this is unrealistic and we have not considered it further.

*Options considered*

- 11.114 It would be consistent with the objective of improving legal certainty if the Regulation clarified that rerouting by other carriers or surface transport is acceptable when both parties agree; in itself, this would not generate an economic burden as it would not be a requirement. We examine below the cost implications of a requirement to reroute passengers via other carriers or surface transport in particular circumstances, either:
- Option A5.2A: A general requirement to reroute via other carriers where there is no reasonable alternative.
  - Option A5.2B: A specific requirement to reroute via other carriers if the initial carrier cannot provide a service within a given amount of time and/or the time saving is more than a certain amount. The option we have tested is a requirement to reroute via other carriers if the waiting time would otherwise be more than 12 hours for all flights.
  - Option A5.2C: For comparison we also model an option by which the Regulation clarifies that there is no obligation to reroute on other carriers.

*Estimate of impacts: Option A5.2A*

- 11.115 The current Regulation refers to rerouting at the earliest opportunity under comparable transport conditions. Therefore, although it would be helpful clarify this by specifying that this means rerouting on other carriers where there is no reasonable alternative, this would not have any quantifiable impact in terms of economic burden or the amount of time passengers had to wait to be rerouted. The Regulation could currently be interpreted to mean this - or something either more or less onerous.

*Estimate of impacts: Option A5.2B and A5.2C*

- 11.116 The impact of an obligation to reroute on other carriers (or the removal of any obligation) clearly depends on what carriers are required to do currently - which is not clear, because as discussed above, the Regulation is not clear on this point. We have modelled options A5.2B and A5.2C relative to our baseline assumption for rerouting on other carriers - which is that carriers would currently be required to reroute via other carriers only where they

are unable to reroute on their own services within quite a long period - 24 hours (for long haul) and 12 hours (for short haul) - and also use of another carrier significantly reduces this time.

- 11.117 We have assessed the impacts on economic burden and waiting time of the specific requirement to reroute on other carriers by undertaking analysis of OAG schedule data. Details of the approach adopted in calculating the changes in overall passenger waiting time generated by this option are provided in Appendix B.
- 11.118 Taking denied boarding as an example (in which we assume that passengers could be rerouted on the next available flight), the data suggest that, on average (based on 2007-10 data), 27% of passengers on IATA carriers might have to wait more than 12 hours for rerouting on one of the carrier's own services, whereas the corresponding figure for LCCs would be 40%.
- 11.119 This, together with the fact that low cost carriers generally do not have reciprocal agreements on rerouting, would mean that the burden of any obligation to reroute on other carriers would fall disproportionately on these carriers. However, it is also important to note that, whilst the overall cost impact of rerouting via another carrier might be neutral across all IATA carriers, for an individual airline operating as a minority carrier across a number of routes the cost could become more significant; in contrast a dominant airline would probably be a net recipient of revenue from rerouting by other carriers.
- 11.120 Table 11.7 below shows the quantified results for option A5.2B. Although option A5.2B would generate substantial time savings for air passengers, this would be at the expense of higher rerouting costs for airlines. The relatively small increase in total rerouting costs hides substantial increases for airlines where they only operate a minority of services on a route, as they would be more likely to have to pay for rerouting on other carriers. However, it should be recognised that for this and similar options these rerouting costs would not be incremental at the industry-wide level, as a rerouting cost for one airline provides revenue for another. As noted above, the results are also strongly dependent on the assumption as to what airlines are currently required to do, which is not clear; given 12 hours is quite long the current Regulation could be considered to require rerouting on another carrier after 12 hours and therefore this option might not be considered to generate an incremental burden.



**TABLE 11.7 QUANTIFIED IMPACTS: OPTION A5.2B**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	-	-	-	-	-	-
Reimbursement / rerouting	145	1,048	0.1%	145	1,048	0.1%
Care	-	-	-	-	-	-
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>145</b>	<b>1,048</b>	<b>0.0%</b>	<b>145</b>	<b>1,048</b>	<b>0.0%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	145	1,048	0.0%	145	1,048	0.0%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>145</b>	<b>1,048</b>	<b>0.0%</b>	<b>145</b>	<b>1,048</b>	<b>0.0%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	-	-	-	-	-	-
EU charter	-	-	-	-	-	-
EU low cost	80	577	0.0%	80	577	0.0%
EU traditional scheduled	-	-	-	-	-	-
Non-EU	65	471	0.0%	65	471	0.0%
<b>Total airline</b>	<b>145</b>	<b>1,048</b>	<b>0.0%</b>	<b>145</b>	<b>1,048</b>	<b>0.0%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	0.0%	-	-	0.0%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	-	-	-	-	-	-
Waiting time	148,354	1,077,849	34.3%	148,354	1,077,849	34.3%
<b>Total</b>	<b>148,354</b>	<b>1,077,849</b>	<b>8.2%</b>	<b>148,354</b>	<b>1,077,849</b>	<b>4.1%</b>

11.121 All of the increase in the economic burden would be felt by low cost carriers, as rerouting via other carriers incurs no incremental cost for IATA airlines.

11.122 Conversely, clearly specifying in the Regulation that airlines are not required to reroute passengers onto other carriers' services would result in larger reduction in rerouting costs for low cost carriers, but also significant increases in passenger waiting time costs, as shown in Table 11.8 below.

TABLE 11.8 QUANTIFIED OPTIONS: OPTION A5.2C

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	-	-	-	-	-	-
Reimbursement / rerouting	- 54,233	- 392,139	-48.4%	- 54,233	- 392,139	-48.4%
Care	-	-	-	-	-	-
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>- 54,233</b>	<b>- 392,139</b>	<b>-3.7%</b>	<b>- 54,233</b>	<b>- 392,139</b>	<b>-1.6%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 54,233	- 392,139	-3.8%	- 54,233	- 392,139	-1.7%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>- 54,233</b>	<b>- 392,139</b>	<b>-3.7%</b>	<b>- 54,233</b>	<b>- 392,139</b>	<b>-1.6%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	-	-	-	-	-	-
EU charter	-	-	-	-	-	-
EU low cost	- 52,915	- 382,589	-10.9%	- 52,915	- 382,589	-5.3%
EU traditional scheduled	-	-	-	-	-	-
Non-EU	- 1,318	- 9,550	-0.6%	- 1,318	- 9,550	-0.2%
<b>Total airline</b>	<b>- 54,233</b>	<b>- 392,139</b>	<b>-3.8%</b>	<b>- 54,233</b>	<b>- 392,139</b>	<b>-1.7%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.0%	-	-	-0.0%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	-	-	-	-	-	-
Waiting time	- 432,326	- 3,141,016	-100.0%	- 432,326	- 3,141,016	-100.0%
<b>Total</b>	<b>- 432,326</b>	<b>- 3,141,016</b>	<b>-24.0%</b>	<b>- 432,326</b>	<b>- 3,141,016</b>	<b>-11.9%</b>

### Conclusions

- 11.123 Our analysis of the specific requirement to reroute via other carriers if the wait time is anticipated to be more than a given level suggests that the benefits accruing to passengers in the form of reduced waiting time would be substantial, and would more than outweigh the additional incremental rerouting cost incurred by non-IATA carriers.
- 11.124 However, the key issue with this option is the potential distortion of competition which could be created by imposing additional costs for a particular carrier type, and the barrier to entry created by an obligation which would be much more onerous for new entrants operating a small proportion of services on a route than for incumbent carriers.
- 11.125 The alternative approach of clearly specifying that rerouting on other carriers' services is not required would substantially reduce non-IATA carriers' rerouting costs, and would avoid any distortion of competition or creating a barrier to entry. However, it would result

in a far larger service quality impact in terms of additional waiting time. In addition, it might be considered undesirable because carriers would then have reduced incentive to try to arrange rerouting within a short period, and might be more likely to encourage passengers to accept a refund rather than rerouting, something which NEBs mentioned can already be a problem. For this reason it would not be consistent with the policy objective of ensuring that passengers are appropriately protected.

- 11.126 The option most consistent with the policy objectives would be to require rerouting on other carriers but only where the waiting time would otherwise be unreasonably long. This could either be achieved through option A5.2A (a general requirement to reroute on other carriers but only where there is no reasonable alternative), or through defining periods after which rerouting on other carriers would be required. There is a risk that, if the periods were not defined, this could lead to disputes between carriers, passengers and NEBs on what ‘reasonable’ meant and therefore, to be consistent with the objective of ensuring legal certainty, it might be better to define this. However, it is difficult to define in legislation what ‘reasonable’ periods would be, as this would depend on the circumstances (for example it might be less for an IATA carrier which benefits from reciprocal agreements on rerouting than a non-IATA carrier). We suggest that if a period was to be defined, it should be long, to minimise distortion of competition or creating a barrier to entry.

***Option A5.3: Define obligations for carriers when passenger notified of a delay in advance (advance rescheduling of flights)***

- 11.127 The Regulation is not clear at present what rights and obligations apply with respect to schedule changes, which would generally be notified in advance to passengers. In contrast, for package travel, Article 4(5) of the Package Travel Directive is clear that the passenger has a right to an alternative or a refund if the organiser makes a significant change (although it is not defined what a significant change is). Some NEBs considered that some advance schedule changes were in effect cancellations or long delays which were disguised as something else in order to avoid paying compensation. NEBs also considered that the lack of clear regulation of this issue was a barrier to effective enforcement and to passengers obtaining appropriate redress.
- 11.128 The issue of advance schedule changes could also be considered to raise issues of equal treatment: the Regulation is clear what rights passengers have if a cancellation is determined in advance, but not what rights they have if a change to the schedule is determined in advance. A cancellation notified in advance but with rerouting after a given number of hours has the same impact on passengers as a schedule change of the same number of hours notified the same amount of time in advance. Therefore, it would be consistent with the approach taken by the Court in the Sturgeon judgement to interpret the existing Regulation to mean that passengers with significant advance schedule changes should be treated in the same way as passengers with cancellations notified in advance.
- 11.129 It may also be considered that airlines are already obliged to offer passengers alternatives or a refund in the case of significant schedule changes, as a refusal to do so would conflict with Directive 93/13/EEC on unfair contract terms. The UK OFT took action on this basis in 2000 and 2003, requiring airlines to offer a refund in the event of significant schedule

changes<sup>36</sup>. However, as with other rights based on this Directive, this is a matter of interpretation, and we have not been able to identify any case law on this specific issue (cases would have been in local courts and therefore are not reported in legal databases).

- 11.130 **Therefore we recommend that the revised Regulation should clarify passengers rights in these circumstances.** Depending on the clarification adopted, this does not necessarily have to imply any increase in the economic burden on carriers but would help ensure appropriate passenger protection and legal certainty.
- 11.131 We suggest that for significant schedule changes the Regulation should specify that passengers should have the right to a refund if the change was not acceptable to them, but provided they were notified more than 2 weeks in advance, no right to compensation (as for cancellations now). There could be a benefit to defining what ‘significant’ means although as noted below this could be difficult and, for inclusive tours, raise issues of consistency with the Package Travel Directive. For schedule changes notified less than 2 weeks in advance, if there is a right to compensation for cancellations notified in advance and for delays, it would follow that there would also have to be a right to compensation for schedule changes of an equivalent amount - and any such right should apply in the same circumstances as far as possible.
- 11.132 This could be achieved either by:
- Amending Article 6 to specify that there was a right to a refund, and if the Sturgeon judgement was explicitly incorporated in the Regulation, defining within this that there was a right to compensation in accordance with Article 7 for scheduled changes of 3 hours or more, subject to the same provisions as in Article 5(1)(c); or
  - Replacing Articles 5 and 6 with an integrated article covering delays, schedule changes and cancellations (this is addressed by Option A8).
- 11.133 Both approaches would clarify the position with respect to schedule change.
- 11.134 As noted above, the Package Travel Directive defines a right to a refund or an alternative in cases of a significant change, but does not define what significant is. What type of change is significant depends on the context: if a passenger is going on holiday for two weeks, a change of 2-3 hours probably is not very significant in most cases, whereas if a passenger is going on a business day trip, a change of even 1 hour may be. Therefore we recommend that if there is a right to a refund for schedule changes notified well in advance, this should be defined as a right where this is ‘significant’ change as for the Package Travel Directive, but no time threshold specified. If there is a right to compensation for schedule changes notified less than 2 weeks in advance, the threshold for this would have to be defined and consistent with the principle of equal treatment would have to be the same as for delays and cancellations.
- 11.135 It is not possible to quantify any impact on passengers or economic burden arising from this, as the existing legal provisions are not clear (so it is not clear what the baseline position would be), and also we do not have data on the proportion of flights with significant advance schedule changes. Our suggestions described above are intended to define rights in line with a reasonable interpretation of the current provisions and

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<sup>36</sup> OFT (2000): Unfair contract terms case report bulletin 12

therefore to clarify but not change passengers' rights, and therefore not to change the economic burden.

***Option A5.4: Reduce length of delay before passenger can claim refund and not travel from current 5 hours to 1-2 hours as for other modes***

- 11.136 The Regulation gives passengers a right not to travel and receive a refund in cases of long delays of more than 5 hours. This is significantly longer than the equivalent right in the Regulations on passenger rights for other modes, which give passengers this right after a delay of 1 hour (rail), 90 minutes (maritime) and 2 hours (bus/coach).
- 11.137 Airlines emphasised that air journeys would tend to be longer than rail, maritime or bus/coach journeys, and therefore these figures should not necessarily be comparable. However, whilst air journeys on average would be longer in terms of distance covered, they are not necessarily longer in terms of elapsed time, and therefore the impact of a delay of a given amount in terms of the disruption to the passenger's journey is not necessarily different. Airlines also pointed out that a single threshold was not necessarily appropriate as a delay of 5 hours might be very disruptive for a day trip, but would be less disruptive for a 2 week holiday.

*Estimate of impacts*

- 11.138 We have tested the impact of passengers being eligible for a refund after a delay of 2 hours. This would be consistent with both the 2 hours proposed for care in Option A4.3, and the upper limit of the thresholds set out in the equivalent legislation for other modes.
- 11.139 Table 11.4 shows the quantified impacts of this option. The impact on the economic burden is quite substantial (a 20% increase) because granting a refund to a passenger at the time of travel represents a 'real' cost to the airline equivalent to the amount of the refund - as the seat cannot be resold to another passenger at this point. However, there would be a new benefit to passengers equivalent to the additional reimbursement costs incurred by airlines.

TABLE 11.9 QUANTIFIED IMPACTS: OPTION A5.4

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	-	-	-	-	-	-
Reimbursement / rerouting	298,800	2,167,666	267.5%	298,800	2,167,666	267.5%
Care	-	-	-	-	-	-
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>298,800</b>	<b>2,167,666</b>	<b>20.2%</b>	<b>298,800</b>	<b>2,167,666</b>	<b>9.1%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	298,800	2,167,666	20.8%	298,800	2,167,666	9.2%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>298,800</b>	<b>2,167,666</b>	<b>20.2%</b>	<b>298,800</b>	<b>2,167,666</b>	<b>9.1%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	1,503	10,985	5.1%	1,503	10,985	2.8%
EU charter	31,620	233,173	42.0%	31,620	233,173	12.8%
EU low cost	35,864	259,199	7.4%	35,864	259,199	3.6%
EU traditional scheduled	170,943	1,238,515	27.5%	170,943	1,238,515	12.3%
Non-EU	58,869	425,795	25.9%	58,869	425,795	10.4%
<b>Total airline</b>	<b>298,800</b>	<b>2,167,666</b>	<b>20.8%</b>	<b>298,800</b>	<b>2,167,666</b>	<b>9.2%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	0.1%	-	-	0.1%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	298,800	2,167,666	21.8%	298,800	2,167,666	9.4%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>298,800</b>	<b>2,167,666</b>	<b>16.6%</b>	<b>298,800</b>	<b>2,167,666</b>	<b>8.2%</b>

11.140 The increase is highest for longer distance services, given the higher fares for travel on these services - the burden for extra-EU flights of more than 3,500km would increase by 56%. The increase in economic burden is highest for charter (42%) and traditional scheduled carriers (27%) - the former caused by higher rates of delay, and the latter by the nature of the routes operated.

### Conclusions

11.141 This option would be consistent with the objective of maintaining and improving passenger protection and, as passenger rights legislation in other sectors defines a right to rerouting after a shorter delay, it could also be argued that the option would be consistent with the objective of minimising distortion of competition, by introducing consistent rights between modes. However, it is likely to result in a significant increase in the economic burden on airlines.

## **A6: Options to extend Regulation to cover areas of disruption not currently included**

### ***Option A6.1: Require provision of care and assistance during tarmac delays***

- 11.142 As discussed in section 3 above, airlines operating to, from and within the US are required to provide assistance to passengers during tarmac delays. Passengers must have the right to access toilet facilities; after 2 hours, passengers must be provided with food and water; and they must be given the right to disembark after 4 hours.
- 11.143 Airlines interviewed for this study emphasised that tarmac delays are much less common in the EU than in the US, and this is supported by the analysis in section 7. An explanation could be the European system of airport slot regulation, which ensures that the number of flights scheduled does not exceed the capacity of the airport infrastructure in normal circumstances. In contrast, at most US airports slots are not regulated.
- 11.144 Most airlines also said that they would at least provide free drinks during a long tarmac delay. They also emphasised that it might be impractical to provide food or allow passengers to disembark, because this might further delay the flight. However, one airline interviewed for the study did say that it would charge passengers for drinks during tarmac delays, and there have been press reports of airlines holding passengers on board aircraft for extended periods in high temperatures with no assistance.
- 11.145 Article 6(1) of the existing Regulation specifies that passengers' must be offered assistance if the airline expects a flight to be delayed by more than 2 hours (longer for flights over 1,500km). This could be considered to include tarmac delays of more than 2 hours on departure, although this is not completely clear because in some circumstances the aircraft might be considered to have departed by the point at which the tarmac delay occurs. This Article would not cover tarmac delays on arrival.
- 11.146 Given the rare nature of tarmac delays at EU airports, it may be considered unnecessary to regulate to address this issue. Nonetheless, as it would improve legal certainty by clarifying the existing Regulation, and would result in an improvement to passenger protection, we have undertaken an indicative assessment below.
- 11.147 As an alternative, the Commission could seek to agree a code of practice with airlines or their associations to address this issue, with the option of regulation in the future if this was not respected. At a minimum this code of practice should include provision of free drinking water and access to toilet facilities.

### ***Estimate of impacts***

- 11.148 In response to the public consultation, some stakeholders suggested that airlines should be required to provide passengers with refreshments during long tarmac delays, and allow them to disembark if necessary. We assume that, after a one hour tarmac delay, airlines are required to provide drinking water to passengers; and that after four hours they are allowed to disembark. In the absence of specific data we assume a nominal cost of offering drinking water of €1 per passenger.
- 11.149 Table 11.10 shows the quantified impacts of this option. The overall increase in economic burden is small (0.1%), occurring in the form of increased care costs for airlines.

TABLE 11.10 QUANTIFIED IMPACTS: OPTION A6.1

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	-	-	-	-	-	-
Reimbursement / rerouting	-	-	-	-	-	-
Care	1,377	10,002	0.1%	1,377	10,002	0.1%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>1,377</b>	<b>10,002</b>	<b>0.1%</b>	<b>1,377</b>	<b>10,002</b>	<b>0.0%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	1,377	10,002	0.1%	1,377	10,002	0.0%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>1,377</b>	<b>10,002</b>	<b>0.1%</b>	<b>1,377</b>	<b>10,002</b>	<b>0.0%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	13	93	0.0%	13	93	0.0%
EU charter	101	746	0.1%	101	746	0.0%
EU low cost	458	3,299	0.1%	458	3,299	0.0%
EU traditional scheduled	621	4,524	0.1%	621	4,524	0.0%
Non-EU	185	1,340	0.1%	185	1,340	0.0%
<b>Total airline</b>	<b>1,377</b>	<b>10,002</b>	<b>0.1%</b>	<b>1,377</b>	<b>10,002</b>	<b>0.0%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	0.0%	-	-	0.0%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	1,377	10,002	0.1%	1,377	10,002	0.0%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>1,377</b>	<b>10,002</b>	<b>0.1%</b>	<b>1,377</b>	<b>10,002</b>	<b>0.0%</b>

- 11.150 Although the consequent increases in total economic burden are very small overall, they are largest for the longest distance flights, and for traditional scheduled carriers. This is reflective of the types of airports served by these types of services - large congested hubs where tarmac delays would be more common. For example, the average increase in the incremental economic burden is only 0.04% for regional carriers, but between 0.09% and 0.13% for all other carrier types.
- 11.151 The cost could be higher than this if carriers' considered that they could only comply with this obligation by carrying additional drinking water on board all of their flights in case a long tarmac delay occurred. However, in our view this should not be necessary, as it should be possible to supply this from the airport provided appropriate contingency arrangements have been made with ground handlers. We also note that most carriers said they would provide this in any case, and therefore for most this would not represent an additional cost.



### *Conclusions*

- 11.152 This option would be consistent with all the policy objectives except for ensuring that the total cost of compliance to the industry is reasonable. However, our analysis suggests that any additional compliance costs would be minimal, largely because the proposed obligations are minimal and carriers said they were doing this anyhow. Depending on the requirements specified in any revision to the Regulation there may also be no additional cost where carriers are already providing assistance in line with the US legislation.

### ***Option A6.2: Require care during flight diversions***

- 11.153 The Regulation is not clear about what if any obligations there are during flight diversions. Some stakeholders argued that, applying the same principles in the Sturgeon judgement, these should be considered flight cancellations, or at least to give the same rights as cancellations. In addition, our legal advisors believe that given the principles established by the CJEU in the case *Rodríguez and others v Air France*<sup>37</sup>, it might follow that the Court would consider an unscheduled diversion to be a cancellation, although clearly this is not possible to predict with any certainty what the Court might decide.
- 11.154 Airlines interviewed for the study emphasised that diversions are rare and would almost always be for reasons outside the control of the air carrier, such as closure of the airport. They would provide onward transport, and care and assistance would usually be provided. Some also argued that any requirement to pay compensation in these cases would be contrary to the Montreal Convention, although it is not clear why this would be the case for diversions any more than for cancellations. Also, whilst it is unlikely in most circumstances that a carrier might divert a flight for reasons within their control, it is not impossible - for example if a carrier makes a commercial decision to cancel one flight which has relatively few reservations, and diverts another aircraft to collect the passengers.
- 11.155 **In order to improve legal certainty we suggest the Regulation should specify the treatment passengers receive in the case of diversions.** Passengers would have the right to rerouting to their final destination at the first opportunity and care in the meantime. Although rerouting would generally be exempt from compensation, as it would qualify as extraordinary circumstances, to avoid any issue of unequal treatment this possibility should exist, to cover any (rare) cases where this was due to a commercial decision.
- 11.156 The economic burden arising out of this is not possible to quantify as no information is available on unscheduled diversions, but in any case this may not be a change to the current position, as it appears possible that the Court might consider an unscheduled diversion to be a cancellation.

### ***Option A6.3: Missed connections due to delays***

- 11.157 We consider this issue separately depending on whether the passenger has a reservation which covers both flights, or has purchased separate tickets for each.
- 11.158 For passengers who have a reservation covering both flights, the Regulation is clear that, in the event of a missed connection due to a cancellation, the passenger must be rerouted to their final destination and care provided in the meantime. Although it is not clear what

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<sup>37</sup> Case C83/10

obligations carriers have if connections are missed due to delays, applying the principle of equal treatment would suggest that carriers are required to assist passengers who miss connecting flights due to delays. In addition, NEBs informed us that most carriers are offering the choice of a refund or rerouting as specified in IATA's Recommended Practice on Conditions of Carriage (RP1724), and are also generally offering assistance.

- 11.159 The Commission considers that, for these reasons, the obligation to provide assistance is already implicitly required by the Regulation. On this basis, this option would represent clarification only and consequently not generate any incremental cost. Clarification of this obligation would improve legal certainty, and would also be consistent with the objective of improving passenger protection.

### *Passengers with separate tickets for each flight*

- 11.160 In addition, some stakeholders consider it is not clear that there is no obligation to assist passengers who have bought two entirely separate tickets and miss a connection. However, it would seem to be an unreasonable economic burden on carriers to require them to provide any assistance in these cases, as there is a cost associated with handling transfer passengers, and as a result many decide not to do so; some low cost carriers have also started to offer connections but for an additional fee reflecting the cost and risk involved (for example Norwegian charges a fee of €8 per passenger). This appears to be a reasonable commercial decision for carriers' to take.

- 11.161 Therefore, it would be consistent with the policy objectives if any amendment to the Regulation to clarify the position with respect to missed connections also clarified that carriers have no obligation in cases where connections are missed if these are on separate reservations. These passengers may still have a claim against the airline under the Montreal Convention if the delay is the fault of the carrier.

## **A7: Options to extend the scope of the Regulation**

### ***Option A7.1: Define in which cases the Regulation should apply to flights to the EU***

- 11.162 At present the Regulation applies to flights operated by EU carriers to the EU, except where passengers are offered compensation or assistance in the third country. It is not clear whether any compensation or assistance in the third country is sufficient to meet this criteria, or whether this means compensation or assistance in line with local law requirements. Our legal advisors suggest that this should be clarified to state that it applies to flights to the EU except where assistance has been given 'in accordance with local law requirements'. This amendment would improve passenger protection and legal certainty by clarifying the current Regulation; it would not in itself generate any economic burden because it is the main current interpretation of the Regulation.
- 11.163 In addition, some consumer representatives and NEBs consider it unfair to exclude passengers travelling to the EU on non-EU carriers. Whilst airlines and their representative associations generally did not support extending the requirement to non-EU carriers, citing that they believed that such a requirement would be invalid on the grounds of extra-territoriality, they did highlight the potential distortion of competition. A minority of airlines (often, low cost airlines) did support extending the Regulation in their responses to the public consultation. Some argued that the CJEU's decision about the Emissions Trading Scheme (ETS) in the case *Air Transport Association of America and Others v Secretary of*

*State for Energy and Climate Change*<sup>38</sup> provided a precedent that this would not be extra-territorial.

- 11.164 Some airlines suggested that the distortion of competition be addressed by excluding flights to the EU operated by EU carriers. However, this would not be consistent with the objective of maintaining or improving passenger protection.
- 11.165 One NEB considered that the existing Regulation already applies to flights to the EU operated by non-EU carriers where they are codeshares with EU carriers, as a result of the second sentence of Article 3(5) ('Where an operating air carrier which has no contract with the passenger performs obligations under this Regulation, it shall be regarded as doing so on behalf of the person having a contract with that passenger.'). However, this is at best uncertain, and the Question and Answer document developed by the Commission with NEBs is clear that the Regulation does not apply.
- 11.166 Our legal advisors consider that application of the Regulation to flights to the EU could be argued to be extra-territorial. They also consider that the ETS decision does not provide a precedent which would apply in this case. In that judgment, the Court held that it is the act of arriving at or departing from airports located within the EU, which is conduct occurring within EU territory, that triggers the ETS scheme and it is irrelevant that part of the flight itself is carried out outside the EU. However, an event of denied boarding, cancellation and most delays in relation to flights to the EU by non-EU air carriers would occur whilst the passengers and aircraft were in a third country and it is difficult to see how the Court could find the same triggering event occurring within the EU.
- 11.167 However, as the flights concerned are to the EU, the requirement could be enforced in EU courts. In addition, there is international precedent for rules to apply to flights by foreign carriers into a territory: for example, the US legislation on passengers with reduced mobility<sup>39</sup> applies to flights to the US, and regulates the provision of services at foreign airports in relation to flights to the US.

#### *Options considered*

- 11.168 We have considered four sub-options:
- A7.1A: Simple clarification by amendment of Article 3(1)(b) to refer to benefits and compensation being provided in line with local law requirements
  - A7.1B: Extension to where the contracting carrier is an EU carrier
  - A7.1C: Extension to charter flights, where the tour was sold in the EU
  - A7.1D: Extension to all flights to the EU.
- 11.169 A7.1A would be clarification of the current position only and therefore would not generate any quantifiable impact on economic burden.
- 11.170 A7.1C would also not generate any quantifiable impact, because these passengers would already be covered by the Package Travel Directive, and therefore would already have a right to assistance arranged by the tour operator.

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<sup>38</sup> Case C-366/10

<sup>39</sup> 14 CFR part 382

- 11.171 Airlines strongly argued that A7.1B would be impractical, as different rights would then apply to different passengers on the same aircraft. This is particularly problematic for care and assistance which must be provided immediately, although might be less of an issue for compensation which is likely to be claimed after the flight.
- 11.172 We also do not have any data on the percentage of passenger travelling on codeshare flights with tickets issued by the marketing carrier and therefore cannot assess this option with any certainty. However, using OAG data we estimate that 39% of non-EU carrier flights to the EU are on routes where they codeshare with EU carriers, representing 43% of seats on these flights. Therefore, it might be expected that 10-20% of passengers on non-EU airline flights to the EU would benefit from this change.
- 11.173 As option A7.1B is likely to be difficult to implement with respect to care and assistance, which is the most significant benefit, and because there would be significant uncertainty about the proportion of passengers who would benefit, we have not quantified this option. Consequently, the only option for which we have undertaken a full quantified assessment is A7.1D, by which the Regulation is extended to apply to all flights operated into the EU by non-EU carriers.

*Estimate of impacts: Option A7.1D*

- 11.174 The combined effect of both factors would be to reduce the incremental economic burden in relation to our calculations, which are shown in Table 11.11 below. We estimate an average increase in the economic burden for airlines of 15%, in the form of additional payments for care, compensation and reimbursement or rerouting. There would be a similar increase in payments to passengers and a reduction in waiting time due to the obligation to reroute via other carriers in some circumstances.

**TABLE 11.11 QUANTIFIED IMPACTS: OPTION A7.1D**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	65,444	471,175	17.9%	390,852	2,848,164	18.0%
Reimbursement / rerouting	16,388	118,537	14.7%	16,388	118,537	14.7%
Care	133,727	965,667	13.9%	133,727	965,667	13.9%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>215,559</b>	<b>1,555,379</b>	<b>14.6%</b>	<b>540,967</b>	<b>3,932,368</b>	<b>16.5%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	215,559	1,555,379	15.0%	540,967	3,932,368	16.7%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>215,559</b>	<b>1,555,379</b>	<b>14.6%</b>	<b>540,967</b>	<b>3,932,368</b>	<b>16.5%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	-	-	-	-	-	-
EU charter	-	-	-	-	-	-
EU low cost	-	-	-	-	-	-
EU traditional scheduled	-	-	-	-	-	-
Non-EU	215,559	1,555,379	97.2%	540,967	3,932,368	97.4%
<b>Total airline</b>	<b>215,559</b>	<b>1,555,379</b>	<b>15.0%</b>	<b>540,967</b>	<b>3,932,368</b>	<b>16.7%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	0.1%	-	-	0.3%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	210,980	1,522,250	15.4%	536,388	3,899,239	16.9%
Waiting time	48,387	351,549	11.2%	48,387	351,549	11.2%
<b>Total</b>	<b>259,367</b>	<b>1,873,799</b>	<b>14.4%</b>	<b>584,775</b>	<b>4,250,788</b>	<b>16.2%</b>

11.175 As would be expected, the increase in economic burden is entirely for non-EU carriers, and for extra-EU flights. The increase is slightly less than 100% because there are a small number of non-EU carrier flights between EU airports (for example the Chilean airline LAN operates a flight between Frankfurt and Madrid, as an extension of its flight from Santiago).

### Conclusions

11.176 Given the potentially substantial economic burden and possible legal problems in extending the Regulation to apply to all flights into the EU, the most sensible approach may be to clarify that the Regulation applies to flights to the EU except where assistance has been given 'in accordance with local law requirements'. This would help clarify the current position and therefore ensure legal certainty, whilst ensuring that the economic burden of the Regulation is fair and proportionate. Alternatively, extending the Regulation

to all flights to the EU would improve passenger protection and, whilst it would increase the economic burden on non-EU carriers, it would reduce the current potential distortion of competition; therefore it is also at least to an extent consistent with the policy objectives.

***Option A7.2: Extend the Regulation to cover scheduled helicopter services***

- 11.177 In 2010 there were 7 scheduled helicopter services in the EEA, and one other has since started to operate (Tallinn-Helsinki). Of these, two are operated in direct competition with a scheduled fixed-wing air service. Some NEBs and consumer representatives believed that the Regulation should be extended to cover scheduled helicopter services, to ensure a consistent standard of consumer protection.
- 11.178 In contrast, the operator of one scheduled helicopter services strongly argued that it was impractical to apply the Regulation to helicopter services. It argued that the cost of compliance with the Regulation would be disproportionate and that it could not continue to operate if the Regulation was applied. Helicopters may be particularly prone to delay, given the weather and technical characteristics, and shuttle nature, of the service. This implies that the option would be an unreasonable economic burden on the operators.
- 11.179 We approached some helicopter operators to try to get figures for disruption which would have enabled us to quantify the impacts of this option, but none provided any.
- 11.180 There are few helicopter services within the EEA and only one of these operates between two Member States. If regulation is necessary for the domestic services Member States can achieve this themselves. There are readily available surface transport alternatives, albeit ones that (in some cases) may be disrupted at the same time. Our research indicates that helicopter fares are generally quite high compared to surface options, and therefore it might be expected that passengers would be in a position to take out insurance if they believed this necessary. Therefore it is not clear that there is a need for EU-level regulation and we suggest this option is not pursued further. Option D2.5 would be a better way to address the issue of the apparent inconsistency with scheduled fixed wing air services.

**A8: Options to ensure consistent treatment of different types of travel disruption**

***Option A8.1: Consistent rights regardless of cause***

- 11.181 If the Regulation needs to respect the principle of equal treatment on which the Sturgeon judgement was based, a clear way to do this would be to have a single Article covering delays and cancellations, replacing Articles 5 and 6, with equivalent rights specified as far as possible in all cases. In particular, this would define that there was a right to compensation if the delay to the passengers' journey was more than a certain amount, whether this was caused by delay, cancellation, or some other type of disruption. However, this would not apply if the passenger was either notified in advance of the disruption or change to the schedule, or rerouted to travel at a similar time to that originally booked, as under Article 5(1)(c).
- 11.182 As noted above, airlines and their representative strongly argued that the Sturgeon judgement was invalid, and also that delays and cancellations are inherently different.

Since they considered that the Sturgeon judgement infringed the Montreal Convention, they also argued that this option would infringe the Convention. Airlines further argued particular that rights should not be based on the time of arrival at the final destination as this could be impacted by other factors (for example the arrival time of a long haul flight may be significantly impacted by wind strength and direction).

*Estimate of impacts*

11.183 This option represents a change to the points at which assistance is required for delays and cancellations, but no change to the unit cost of this assistance. We have evaluated two sub-options:

- Option A8.1A: Replace current rights with rights applying for all travel disruption including delays and cancellations (except denied boarding and downgrading), with the assistance threshold set to 2 hours, and;
- Option A8.1B: Replace current rights with rights applying for all travel disruption including delays and cancellations (except denied boarding and downgrading), with the assistance threshold set to 3 hours.

11.184 Each is discussed in turn below.

*Option A8.1A: Replace current rights with rights applying for all travel disruption including delays and cancellations (except denied boarding and downgrading), with assistance threshold set to 2 hours*

11.185 We assume that, in the case of both delays and cancellations:

- Compensation is provided after a delay or a wait for rerouting of 2 hours or more, reflecting Article 5(1)(c). The provisions in Article 7(2) regarding reduction of compensation for shorter rerouting times are retained;
- Reimbursement and rerouting to the point of origin are offered after a delay of 2 hours, but the choice of reimbursement or rerouting is still offered immediately in the case of a cancellation;
- Care starts after 2 hours in both cases, regardless of the distance or origin / destination of the flight.

11.186 We also assume that, in the case of delays, the increased attractiveness of rerouting as opposed to reimbursement results in an increase in the claim rate, from 10% to 20%.

11.187 The main impact of the option is an increase in the burden for delays, as passengers would have the right to rerouting or a refund after 2 hours delay (instead of a right to a refund after 5 hours); a right to compensation after 2 hours instead of 3 hours; and a right to care after 2 hours (instead of 2-4 hours depending on flight length). This is partly offset by a small reduction in the burden for cancellations, as passengers now have to wait for 2 hours before being offered any care. Therefore the results are reflective of trends in the incidence of delay: charter carriers experience the greatest percentage increase in economic burden (140%) and regional carriers the least (12%). Impacts, in terms of the change in incremental economic burden, also increase by flight length - from an average of 10% for non-EU flights of less than 1,500km, to 146% for non-EU flights of over 3,500km.

11.188 Table 11.12 shows the quantified impacts for this option. The increase in economic burden is 58%, comprising airline care, compensation and reimbursement or rerouting costs. We also anticipate a passenger waiting time benefit, as passengers delayed more than 2 hours might experience a reduction in waiting times if they selected rerouting. However, the passengers which choose this option would also lose any reimbursement they currently receive.

**TABLE 11.12 QUANTIFIED IMPACTS: OPTION A8.1A**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	147,359	1,066,321	40.4%	978,180	7,175,539	45.2%
Reimbursement / rerouting	675,388	4,899,429	604.6%	675,388	4,899,429	604.6%
Care	14,649	107,426	1.5%	14,649	107,426	1.5%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>837,396</b>	<b>6,073,177</b>	<b>56.7%</b>	<b>1,668,218</b>	<b>12,182,395</b>	<b>50.9%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	837,396	6,073,177	58.2%	1,668,218	12,182,395	51.5%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>837,396</b>	<b>6,073,177</b>	<b>56.7%</b>	<b>1,668,218</b>	<b>12,182,395</b>	<b>50.9%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	3,669	26,753	12.4%	16,465	121,916	30.7%
EU charter	105,404	776,457	139.9%	221,634	1,642,669	90.3%
EU low cost	114,423	825,202	23.5%	360,766	2,619,060	36.0%
EU traditional scheduled	450,833	3,265,758	72.6%	832,996	6,084,434	60.4%
Non-EU	163,069	1,179,007	71.7%	236,358	1,714,315	41.9%
<b>Total airline</b>	<b>837,396</b>	<b>6,073,177</b>	<b>58.2%</b>	<b>1,668,218</b>	<b>12,182,395</b>	<b>51.5%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	0.4%	-	-	0.8%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	282,551	2,048,133	20.6%	1,113,373	8,157,351	35.2%
Waiting time	91,331	662,879	21.1%	91,331	662,879	21.1%
<b>Total</b>	<b>373,882</b>	<b>2,711,012</b>	<b>20.7%</b>	<b>1,204,703</b>	<b>8,820,230</b>	<b>33.5%</b>

*Option A8.1B: Replace current rights with rights applying for all travel disruption including delays and cancellations (except denied boarding and downgrading), with assistance threshold set to 3 hours*

11.189 The assumptions adopted for the quantification of this sub-option largely reflect those adopted for A8.1A, with the following changes:



- Compensation is in this case provided after a delay or a wait for rerouting of 3 hours or more. The provisions in Article 7(2) regarding reduction of compensation for shorter rerouting times are still retained, although their scope is reduced;
- Reimbursement and rerouting to the point of origin are offered after a delay of 3 hours, although the choice of reimbursement or rerouting is still offered immediately for cancellations; and
- Care starts after 3 hours in both cases.

11.190 Table 11.13 shows the quantified impacts of this option. The increase in the incremental economic burden is much lower, an average of 12%. This is because there would now be reductions in rights in several areas which partially offset the increases in others. For example, for delays of 2-3 hours on short flights, passengers would lose the right to assistance, and passengers with cancelled flights facing consequent delays of 2-3 hours would lose the right to compensation.

TABLE 11.13 QUANTIFIED IMPACTS: OPTION A8.1B

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	- 6,855	- 49,402	-1.9%	- 45,352	- 331,299	-2.1%
Reimbursement / rerouting	306,887	2,226,021	274.7%	306,887	2,226,021	274.7%
Care	- 120,419	- 874,168	-12.5%	- 120,419	- 874,168	-12.5%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>179,613</b>	<b>1,302,452</b>	<b>12.2%</b>	<b>141,117</b>	<b>1,020,555</b>	<b>4.3%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	179,613	1,302,452	12.5%	141,117	1,020,555	4.3%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>179,613</b>	<b>1,302,452</b>	<b>12.2%</b>	<b>141,117</b>	<b>1,020,555</b>	<b>4.3%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 2,123	- 15,669	-7.3%	- 2,702	- 19,990	-5.0%
EU charter	23,786	175,399	31.6%	24,004	177,030	9.7%
EU low cost	- 29,178	- 208,941	-5.9%	- 34,530	- 247,846	-3.4%
EU traditional scheduled	127,838	922,541	20.5%	123,613	891,032	8.8%
Non-EU	59,291	429,120	26.1%	30,732	220,328	5.4%
<b>Total airline</b>	<b>179,613</b>	<b>1,302,452</b>	<b>12.5%</b>	<b>141,117</b>	<b>1,020,555</b>	<b>4.3%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	0.1%	-	-	0.1%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 98,856	- 717,536	-7.2%	- 137,352	- 999,433	-4.3%
Waiting time	42,963	311,717	9.9%	42,963	311,717	9.9%
<b>Total</b>	<b>- 55,893</b>	<b>- 405,819</b>	<b>-3.1%</b>	<b>94,389</b>	<b>- 687,716</b>	<b>-2.6%</b>

11.191 The increase in economic burden is lower than for A8.1A because the reduction in the economic burden in relation to cancellations, due to the 3 hour threshold for care and compensation, becomes closer in magnitude to the increase in the burden generated for delays. The results in terms of carrier and route type vary depending on the rates of cancellations and the distance: whereas the incremental burden for intra-EU flights of less than 1,500km reduces by an average of 13%, the burden for Non-EU flights of more than 3,500km increases by 60%. Low cost carriers experience the greatest reduction (-6%) and charter carriers the most significant increases (32%).

### Conclusions

11.192 Option A8.1A would be consistent with a number of the policy objectives, particularly the objective of legal certainty, due to the requirement for equal treatment identified by the Sturgeon judgement; and the policy objective of improved passenger protection. However,

it would generate a substantial increase in the economic burden of the legislation and therefore not be consistent with the objective of minimising this. Although Option A8.1B would not offer the same level of passenger protection, it would deliver an improvement in some instances, whilst also helping ensure legal certainty and better satisfying the objectives to minimise the economic burden, although this would still increase by a lesser amount.

- 11.193 As for the other options which are dependent on Sturgeon, and designed partly to address the ‘equal treatment’ issue identified in this case, the adoption of either option would also depend on the conclusion of the CJEU in the outstanding referrals.

***Option A8.2: Consistent rights also covering denied boarding***

- 11.194 At present, the rights that passengers have in cases of denied boarding are more generous than those in the case of cancellations or delays. They have a right to be immediately offered compensation, and whilst this compensation can be reduced by 50% if the passenger is offered rerouting quickly, there is no equivalent to Article 5(1)(c), so some compensation would always be payable. There is also no equivalent to Article 5(3) - carriers cannot claim exemption on payment of compensation for denied boarding based on extraordinary circumstances, which could arise for example if there was a technical problem with the originally planned aircraft and it was replaced with a smaller aircraft.
- 11.195 In a recent opinion, the Advocate General has advised on whether the lack of an extraordinary circumstances exemption for denied boarding results in an infringement of the principle of equal treatment.<sup>40</sup> Denied boarding would often, although not always, be caused by overbooking. This is a deliberate commercial decision by airlines which the Regulation seeks to deter but not entirely prohibit. Depending on interpretation of Article 5(3), this covers more deliberate behaviour by carriers than cancellations. In addition, a passenger denied boarding has been selected by the air carrier and therefore the harm is still attributable to the air carrier even if the need to deny boarding is not. Therefore, the Advocate General concluded that there should not be an ‘equal treatment’ argument as to why denied boarding should be treated in the same way as cancellations.
- 11.196 In addition, even if it would arguably be fairer for airlines not to have to pay compensation in cases that the denied boarding is caused by extraordinary circumstances, given the significant difficulty this term has caused, it might be sensible not to extend its scope; doing so might make it much harder for passengers to obtain redress in any cases of denied boarding. As an alternative, there could be an extraordinary circumstances exemption but with a proviso that overbooking could never be considered extraordinary circumstances. There are other arguments as to why denied boarding should always be treated separately from delays and cancellations, particularly if changes such as defining compensation as a percentage of the ticket price are introduced (see Option D1.3 below).

*Estimate of impacts*

- 11.197 Option A8.2 extends the uniform provisions in Option A8.1 to denied boarding, by:

- amending the minimum care threshold to 2 hours; and

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<sup>40</sup> Case C-22/11 Finnair v Lassooy

- introducing an exemption on payment of compensation in the cases of extraordinary circumstances.
- 11.198 We do not have data on the proportion of cases of denied boarding that are outside airlines' control and therefore might be covered by the extraordinary circumstances exemption on payment of compensation. However, some indication of this can be obtained by comparing the average percentage of passengers denied boarding involuntarily by low cost carriers (which do not usually overbook) with the equivalent percentages for traditional scheduled carriers. This indicates that only a small percentage of involuntary denied boarding would be due to extraordinary circumstances, and therefore exempt the carriers from payment of compensation.
- 11.199 The assumptions regarding compensation and reimbursement / rerouting thresholds remain unchanged. We also continue to assume that the compensation to be provided for passengers denied boarding voluntarily is 50% of the involuntary compensation. The same assumptions are adopted for delays and cancellations as for Option A8.1.
- 11.200 The quantified impacts of this option are shown in Table 11.14 below. For the reasons above the increase in the economic burden is slightly lower than for A8.1 at 56%, but the difference is small because denied boarding accounts for a small proportion of the economic burden and few cases would be exempted from payment of compensation. Again, all costs are for airlines, and are a combination of care, compensation and reimbursement / rerouting costs.

**TABLE 11.14 QUANTIFIED IMPACTS: OPTION A8.2**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	143,617	1,038,711	39.4%	974,439	7,147,929	45.1%
Reimbursement / rerouting	675,388	4,899,429	604.6%	675,388	4,899,429	604.6%
Care	13,225	97,052	1.4%	13,225	97,052	1.4%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>832,231</b>	<b>6,035,193</b>	<b>56.3%</b>	<b>1,663,053</b>	<b>12,144,410</b>	<b>50.7%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	832,231	6,035,193	57.9%	1,663,053	12,144,410	51.3%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>832,231</b>	<b>6,035,193</b>	<b>56.3%</b>	<b>1,663,053</b>	<b>12,144,410</b>	<b>50.7%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	3,630	26,469	12.3%	16,426	121,633	30.6%
EU charter	105,404	776,457	139.9%	221,634	1,642,669	90.3%
EU low cost	114,365	824,785	23.5%	360,709	2,618,643	36.0%
EU traditional scheduled	446,412	3,233,186	71.8%	828,575	6,051,862	60.1%
Non-EU	162,420	1,174,296	71.4%	235,709	1,709,603	41.8%
<b>Total airline</b>	<b>832,231</b>	<b>6,035,193</b>	<b>57.9%</b>	<b>1,663,053</b>	<b>12,144,410</b>	<b>51.3%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	0.4%	-	-	0.8%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	277,386	2,010,149	20.2%	1,108,208	8,119,367	35.0%
Waiting time	91,331	662,879	21.1%	91,331	662,879	21.1%
<b>Total</b>	<b>368,716</b>	<b>2,673,028</b>	<b>20.4%</b>	<b>1,199,538</b>	<b>8,782,246</b>	<b>33.4%</b>

11.201 Whereas the incremental burden for departure delays again increases, denied boarding and cancellation experience a smaller reduction as a result of the shift in the minimum care threshold. Given the large share of delay in the overall change in the economic burden, the impact on economic burden by carrier and route type are again driven primarily by delay trends - charter carriers and non-EU flights experience the largest average increases (140% and 71% respectively).

#### Conclusions

11.202 Although this option might be preferable to A8.1A in light of the principle of equal treatment, it represents a worsening of passenger protection in cases of denied boarding. The extension of the extraordinary circumstances exemption to denied boarding might lead to additional disputes about whether compensation was payable, and as a result a loss of legal certainty.

11.203 Given there is only a small reduction in economic burden when compared with Option A8.1A, and the risk of extending the difficulties with ‘extraordinary circumstances’ from cancellations to denied boarding, we do not recommend this option.

### ***Option A8.3: Consistent rights also covering downgrading***

11.204 Article 10(2) specifies the compensation that carriers must pay if they involuntarily downgrade a passenger. However, in some cases this can be less than the additional cost the passenger will have paid to travel in the premium class. In addition, some passengers might prefer to be rerouted, or receive a full refund and not travel, instead of being downgraded. Since downgrading would generally be caused by overbooking, which is a deliberate commercial decision that the Regulation seeks to deter but not prohibit, it could be argued that passengers should be treated in the same way as passengers facing denied boarding. Although this would increase the economic burden on carriers, it may not be an ‘unreasonable’ economic burden because downgrading generally results from a decision to overbook (although there may be isolated exceptions - for example Cyprus Airlines tried to accelerate the repatriation of its passengers following the volcanic ash crisis by re-classifying entire planes as economy class, thus downgrading those passengers which had booked to travel in higher classes).

11.205 The number of complaints about downgrading is relatively low, but the number of cases is relatively high; on the basis of the information provided by airlines we estimate that there were approximately 120,000 passengers subject to involuntary downgrading in 2010. This is only slightly less than the number suffering involuntary denied boarding.

11.206 Therefore we have quantified the impact of treating downgrading in the same way as denied boarding. Passengers would be offered compensation and have the right to choose between rerouting and a refund, with care provided in the meantime. In addition passengers could offer travel in the lower class as an alternative, with the extra price for travel in the higher class refunded.

### ***Estimate of impacts***

11.207 Option A8.3 adopts the same assumptions regarding delays and cancellations and denied boarding as Option A8.1, but extends consistent assumptions to downgrading. The changes associated with this option therefore comprise:

- compensation has to be paid to all passengers not offered rerouting in the originally booked class within 2 hours, reduced by 50% for cases meeting the criteria in Article 7(2); and
- care has to be provided for passengers not rerouted within 2 hours.

11.208 The quantified impacts of this option are shown in Table 11.15 below. At 64%, the increase in the economic burden is higher than the 57% estimated for Option A8.1A. The increase is relatively significant despite the low incidence of downgrading, because of the new obligation to pay flat-rate compensation to passengers who are downgraded, and (to a lesser extent) due to the obligation to provide care to downgraded passengers who chose to wait for another flight rather than travel in the lower class.

**TABLE 11.15 QUANTIFIED IMPACTS: OPTION A8.3**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	231,241	1,677,735	63.6%	1,062,063	7,786,952	49.1%
Reimbursement / rerouting	675,388	4,899,429	604.6%	675,388	4,899,429	604.6%
Care	36,439	264,955	3.8%	36,439	264,955	3.8%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>943,069</b>	<b>6,842,119</b>	<b>63.9%</b>	<b>1,773,891</b>	<b>12,951,337</b>	<b>54.1%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	943,069	6,842,119	65.6%	1,773,891	12,951,337	54.8%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>943,069</b>	<b>6,842,119</b>	<b>63.9%</b>	<b>1,773,891</b>	<b>12,951,337</b>	<b>54.1%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	3,669	26,753	12.4%	16,465	121,916	30.7%
EU charter	105,404	776,457	139.9%	221,634	1,642,669	90.3%
EU low cost	114,423	825,202	23.5%	360,766	2,619,060	36.0%
EU traditional scheduled	520,113	3,769,979	83.8%	902,276	6,588,655	65.4%
Non-EU	199,461	1,443,729	87.8%	272,750	1,979,037	48.4%
<b>Total airline</b>	<b>943,069</b>	<b>6,842,119</b>	<b>65.6%</b>	<b>1,773,891</b>	<b>12,951,337</b>	<b>54.8%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	0.4%	-	-	0.8%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	388,224	2,817,075	28.3%	1,219,046	8,926,293	38.5%
Waiting time	91,331	662,879	21.1%	91,331	662,879	21.1%
<b>Total</b>	<b>479,555</b>	<b>3,479,954</b>	<b>26.6%</b>	<b>1,310,376</b>	<b>9,589,172</b>	<b>36.5%</b>

11.209 The results by carrier and route type are still dominated by the large change in the economic burden generated by delays, although the additional requirement for downgrading compensation means that the impact of delays on the overall result is more moderated than is the case under Option A8.2. Trends in the incidence of delays and downgrading mean that the percentage increases in the average incremental economic burden for Non-EU long haul and charter are higher than for Option A8.1A; at 169% and 138% respectively.

### Conclusions

11.210 The primary benefit of this option would be to improve the consistency of passenger treatment between downgrading and other types of disruption. The provisions in relation to downgrading are significantly less generous than the provisions in relation to other disruption and it could be argued that this generates an issue of 'equal treatment' similar

to that identified in the Sturgeon case, as downgrading is generally a result of the same factors as denied boarding.

- 11.211 However, it is questionable whether the limited benefits in relation to A8.1A justify the substantial increases in the economic burden generated. The low number of complaints about downgrading may indicate that airlines consider it to be in their own financial interests to provide adequate compensation and assistance to these premium passengers, which means that it may not be necessary to regulate to address this issue.



## 12 Impact assessment: options related to baggage and other additional services

### Introduction

12.1 In this section we set out the results of the impact assessment of the options relating to baggage and additional services. These options are beyond the scope of the existing Regulation, and concern either regulating or improving the transparency of airlines policies, or extending the scope of the compensation available in the event of loss, delay or damage to baggage beyond that already specified in the Montreal Convention. The options which we recommend are combined into packages, which are explained in section 17.

### B1: Options to improve the information provided to passengers

#### *Option B1.1 and B1.2: Define a minimum standard airline product, or include certain additional services in the initially presented price*

12.2 These two options are closely related and therefore we discuss these together:

- Option B1.1: Define a minimum standard airline product including check in, issue of a boarding pass, a certain amount of cabin baggage, and potentially also a certain amount of checked baggage.
- Option B1.2: Define a minimum standard airline product, which would be the basis for fares advertised and initially presented in the booking process, based partly on the proportion of passengers which actually selected 'optional' additional services.

12.3 Both of these options seek to address the risk of consumer confusion and reduced price transparency arising through additional fees for optional or semi-optional extra services, and 'drip pricing' through the booking process.

#### *Background*

12.4 Article 23 of Regulation 1008/2008 already requires advertised prices, and prices presented during the booking process, to include all unavoidable and foreseeable taxes, fees and charges. However, as identified in our recent evaluation of this Regulation on behalf of the Commission, there are some problems with this:

- Some airlines have introduced additional charges for services which are nominally avoidable, but are in practice very difficult to avoid. These are mostly charges for payment by debit/credit card which can be avoided only if the passenger has a rarely-used payment method, such as Visa Electron or Prepaid MasterCard. On some carriers, these charges represent a substantial proportion of the average total price.
- Many airlines have introduced additional charges for other services such as carriage of baggage. These may be confusing for passengers and make it difficult to compare prices between carriers.

- 12.5 Some of these incremental charges have been challenged in national courts, usually on the basis of inconsistency with legislation on unfair contract terms. For example, in January 2011 the Commercial Court of Barcelona ruled that Ryanair's fee for printing a boarding pass was unfair; however, this judgement was overturned on appeal.
- 12.6 As recommended in that study, different approaches should be used to address each of these issues. In our view the appropriate policy options to address this should distinguish between:
- charges that are theoretically optional, but in practice very difficult to avoid, which are principally payment charges; and
  - charges for genuinely additional, optional services.

### *Payment charges*

- 12.7 These charges were the most significant problem identified by the study. However, they may be addressed by Article 19 of Directive 2011/83/EU on consumer rights, which prohibits 'traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means'. Although some elements of the Directive do not apply to transport services providers, this Article does.
- 12.8 There may be difficulties in applying this: in particular, enforcement bodies would need access to information on the actual costs associated with payment in order to enforce this effectively. Nonetheless, this should significantly reduce the problem with disproportionate payment fees: the available evidence indicates that payment processing costs are much lower than the fees levied by many airlines and therefore these should be reduced by at least 90%. easyJet has recently changed its practice and now includes the fees for use of regular debit cards in its initially presented prices (previously the only free method was Visa Electron), and one other major airline which levies a payment fee which is only avoidable with a rarely-available payment card told us that it was also now considering including this within the initially presented price.
- 12.9 In addition, as identified in the study noted above, it may be possible to address the issue of payment charges through enforcement of existing legislation. It could be argued that these conflict with Article 23 of Regulation 1008/2008, depending on the interpretation of the word 'unavoidable', or that they are a misleading practice prohibited by Directive 2005/29/EC on unfair commercial practices. This is not clear and therefore only a court could determine this; there is to date no case law on this issue.
- 12.10 **Therefore we suggest that the existing legislation, including the new Consumer Rights Directive, should be enforced before any further action is taken in this regard.**

### *Other additional fees*

- 12.11 Consumer representatives and some NEBs strongly argued that the current situation was confusing for consumers. However, most stakeholders (including many consumer representatives) considered that additional charges for genuinely additional services such as checked baggage were reasonable, provided they were transparent, as many passengers did not want to use these services and should have the opportunity to travel at a lower

fare if they declined to buy them. Airlines also emphasised that differences in what was included could reflect either:

- legitimate differences in commercial offerings between airlines, which could be best addressed through competition; and
- differences arising from different operational characteristics - for example airlines with small aircraft or high seating densities may have to impose different cabin baggage restrictions.

12.12 Nonetheless independent research undertaken on behalf of the UK Office of Fair Trading has shown that the practice of 'drip pricing', with additional services gradually being offered, was the practice most likely to cause consumer detriment (of the pricing practices considered). This is partly due to an increased risk of errors being made by the consumer: for example if the consumer stops searching elsewhere for a cheaper product earlier than they would otherwise do.

12.13 In principle this could be addressed through either:

- a 'standard ticket price' (option B1.1);
- inclusion of all optional services in the advertised and initially presented price; and
- inclusion of optional services that the majority of passengers buy (option B1.2).

12.14 However, as identified in the study referenced above, a standard ticket price is not practical because it is not possible to define what should be included. Inclusion of all optional additional services would not improve transparency because many passengers would have to de-select these services (and pre-selection of optional services is currently prohibited by Regulation 1008/2008).

12.15 The study above identified that the most practical approach might be to include some optional services in advertised prices, depending on what passengers actually buy. This would be consistent with the objectives of improving passenger protection, and possibly also reducing distortions of competition arising from lack of transparency.

12.16 However, this would also generate significant issues and airline industry representatives have argued that it is impractical. Some of the issues associated with such an approach would comprise:

- The optional services used by passengers would vary by type of service - for example, whereas baggage might be checked in by most passengers travelling on a charter flight from the UK to the Mediterranean, the reverse would be true for an early morning flight between, say, Frankfurt and London.
- The variance in requirements might extend to different carrier types operating on the same route, which could lead to a distortion of competition if they had to present prices differently (for example between London and Madrid, it might be the case that most Iberia passengers would want to check baggage, whereas most Ryanair passengers would not).
- The definition of which services to include would have to be reviewed at regular intervals to keep pace with airline sales trends, and could entail significant work for enforcement authorities.

- 12.17 A sensible threshold (for example, 50%) would be adopted to determine the services which most passengers should buy, and which should therefore be included in the ticket price. The issue of variance between routes and particularly carrier types is more difficult to address, particularly given that the categorisation of airlines into traditional groupings has become more difficult given the blurring which has occurred in recent years.

### *Conclusions*

- 12.18 Drip pricing, through optional or semi-optional services which are offered in the course of the booking process, hampers price comparison between airlines and could potentially distort competition, and cause detriment to consumers. However, the most significant problem (payment fees that are very difficult for most consumers to avoid) should be largely addressed by the Consumer Rights Directive, when this takes effect, and may also be possible to address through existing legislation.
- 12.19 We have been unable to identify any approach to address potential consumer detriment arising from drip pricing of other fees that does not cause problems potentially more significant than those it addresses. In particular, it would not be in consumers interests to require genuinely optional services like baggage to be included in ticket prices - separation of these charges benefits consumers by allowing those who do not want the service to travel without paying for it.

### ***Option B1.3: Define minimum cabin baggage allowances***

- 12.20 Airport representatives also argued that the ‘one bag rule’ imposed by some low cost carriers was unfair on consumers and damaged their ability to generate revenue from airport retail, which would ultimately lead to higher airport charges and therefore higher fares for consumers. Some consumer representatives and NEBs also pointed out the potential for consumer confusion arising from different hand baggage rules.
- 12.21 We have assessed a specific option proposed by ETRC (the European Travel Retail Council), by which passengers would be permitted to carry:
- a standard piece of hand baggage, with the dimensions determined by the carrier;
  - various personal items, such as a handbag or laptop bag and coat; and
  - one bag of airport retail purchases, with dimensions at least 40x60cm.
- 12.22 Where this could not be carried due to safety or other restrictions, the carrier would be able to place the items in the hold, but would not be permitted to charge to do so.
- 12.23 Although we discuss below this specific option, much of the rationale would apply to any other regulatory requirement for carriers to allow a certain amount of cabin baggage.

### *Submission by ETRC*

- 12.24 ETRC have argued that the one bag rule results in a significant reduction in airport retail revenue. It has provided figures which show that ‘duty free’ sales are significantly lower at some airports for passengers of low cost carriers which apply the rule, compared to passengers travelling with other carriers. Although the difference might be explained by different passenger characteristics, it has stated that market research shows that there are no significant differences in terms of age, gender and social class between low cost carrier and network carrier passengers.

12.25 This reduces airport revenue and would ultimately result in higher airport charges and hence air fares, as airports would have reduced ability to offset airport charges with retail revenue.

12.26 ETRC argues that the result of the imposition of this rule is to increase ancillary revenue for airlines, both in the form of fees for additional baggage to be checked in, and revenue from on-board sales. Ancillary fees now account for around 20% of all revenue for some low cost carriers. It points out that the range of products available for purchase on board aircraft is much lower than the range of products available in airports, and therefore consumer choice is reduced. It also argues that, although the rule is not imposed by all carriers and at all airports, customers who are charged extra on one occasion are likely to be deterred from purchasing at airports in the future.

*Submission by airlines*

12.27 We have also received a detailed submission from a major low cost carrier regarding the one bag rule. It has argued that the rule has significant benefits. In particular:

- low cost carriers tend to operate with high seating density and high load factors, and there is not sufficient space on a typical aircraft for more cabin baggage - there is only space in the overhead lockers on a 189-seat aircraft for approximately 90 bags of the maximum permitted size, so anything else has to fit under the seats;
- since there is not space in the cabin, baggage would have to be transferred to the hold, increasing handling costs and resulting in either delay to flights or increased turnaround times (which would increase costs by reducing aircraft and staff utilisation);
- airport security processing times and costs would increase as passengers carried more baggage;
- as passengers would carry more on board the aircraft, fuel costs would increase; and
- by reducing the amount of checked baggage, in general its baggage policy has reduced handling costs and hence fares.

12.28 The airline said that at airports where it did not apply the one bag rule, delays to flights due to the need to transfer baggage to the hold were approximately five times higher.

*Our analysis*

12.29 We have undertaken our own analysis of trends in total retail/catering revenue at airports dominated by airlines which apply the one bag rule, compared to other airports. This showed that there has been some impact, although it is relatively limited. On average retail revenue per passenger has increased at airports dominated by the low cost carriers but at a slightly lower rate than at other airports: for example, retail/catering revenue per passenger has increased by 17% at Stansted between 2007 and 2010, compared to 25% at Heathrow<sup>41</sup>. Published research by the UK CAA confirm that there is no significant difference in passenger profile between low cost carriers and other carriers which would explain this trend.<sup>42</sup>

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<sup>41</sup> Source: airport regulatory accounts

<sup>42</sup> CAA (2006): No-Frills Carriers: Revolution or Evolution?

12.30 Our figures are not exactly comparable to the ETRC figures because they cover different airports, and at many of the airports ETRC has cited, figures for retail revenue are not available from public sources so we cannot validate them independently. In addition, ETRC's figures are generally for 'duty free' sales only, but it is possible that airports could obtain higher revenue from low cost carrier passengers from other sources (for example, catering).

### *Conclusions*

12.31 Whilst the imposition of the one bag rule clearly could reduce the ability of airports to raise income from retail, we have sought to validate independently that this has occurred, and whilst there is some evidence to support this, the impact is limited. Negative impacts on airport retail would need to be offset against positive impacts on air carriers, including reduced delays and baggage handling costs.

12.32 The proposal to allow more cabin baggage, and in particular airport retail, could have unintended consequences. If airlines were required to allow passengers to bring airport retail on to the aircraft, they would need to reduce the amount of other cabin baggage the passengers could carry to offset this, given limited space. Potentially, all passengers would have to carry less hand baggage (or pay to check additional baggage in to the hold), to accommodate those who wished to purchase from airport retail outlets. This would not be an improvement for most passengers.

12.33 In our view, this appears to be a commercial issue between airports and airlines. It might be reasonable for an airport to charge higher fees to an airline imposing a one bag policy, as the airport may have less opportunity to use retail income to offset the cost of processing the passengers of the airline concerned. It should not be necessary for there to be any change in European legislation to allow this, although it is possible that some Member States may need to adjust their national regulatory systems relating to airport charges. It is true that in some cases airlines are now in a stronger market position than airports, but the reverse is also true in other cases, and therefore it is not clear that one side needs protection from the other at EU level.

12.34 More generally, there would also be significant practical problems in imposing any single rule on cabin baggage covering all flights:

- smaller aircraft often have less space for cabin baggage, and therefore any cabin baggage allowance would have to be lower on these aircraft; and
- some airlines operate with higher seating densities and load factors than others, and therefore they might also need to have to have a lower cabin baggage allowance (unfortunately these also tend to be the airlines which charge for checked baggage and therefore are likely to have relatively high demand for cabin baggage).

12.35 Therefore, whatever rule was defined, there would need to be a number of exceptions and it would be hard to define any rule through legislation. For these reasons it appears that this option is not consistent with the policy objectives. Some NEBs and other stakeholders suggested that the priority should be to ensure that restrictions are transparent; this could be, for example, through a key facts document (see below). Another option might be to require that additional charges levied on passengers at the airport have some relationship

with the additional costs incurred, to avoid airlines exploiting the fact that passengers are 'captive' by this point.

**Option B1.4: Require presentation of a 'key facts' document**

- 12.36 Airlines generally require passengers to confirm that they have read, and agree to, the Conditions of Carriage and fare rules before making a booking. However, these are typically long and complex documents which many consumers might not understand fully. In addition, given the length of these documents, it is not clear that a consumer would be able to read them before any time-limit on the website expired.
- 12.37 If a passenger purchases a ticket from a travel agent, the Conditions of Carriage of the airline would usually not be provided at all, and the only airline or ticket-specific information on the applicable terms and conditions provided would be the fare rules. The passenger would need to confirm that he/she had read these, but these are not likely to be clearly comprehensible to the typical consumer: they are usually provided in English only, and even for an English speaker, the rules may not be clear as they are written in quite technical language. In any case these rules do not provide some key relevant information at all, such as information on baggage restrictions and fees; some online travel agents do provide this information but this is not consistent.

**Example of fare rules (for flight LHR-BKK)**

KFLEXEU

**Penalties**

FROM/TO UNITED KINGDOM FOR K- TYPE FARES CHANGES BEFORE DEPARTURE CHANGES PERMITTED FOR REISSUE/REVALIDATION. NOTE - CHILD DISCOUNT APPLIES IF APPLICABLE. INFANT WITHOUT A SEAT IS FREE OF CHARGE. ----- THE TICKET MUST BE REVALIDATED OR REISSUED AT THE SAME TIME WHEN THE BOOKING IS CHANGED. WHEN COMBINING ON A HALF ROUNDTrip BASIS THE PENALTY RULES FOR EACH FARE COMPONENT APPLY. WHEN MORE THAN ONE FARE COMPONENT IS CHANGED THE HIGHEST PENALTY OF ALL CHANGED FARE COMPONENTS APPLIES. NAME CHANGES ARE NOT PERMITTED. IF THE ONLY COUPONS REMAINING ARE FOR DOMESTIC TRAVEL THE TICKET MAY NOT BE REISSUED FOR FURTHER INTERNATIONAL TRAVEL. ONCE A FARE COMPONENT HAS BEEN COMPLETED FARE BREAK POINTS MAY NOT BE CHANGED. ALL CHANGE FEES MUST BE COLLECTED ON MCO OR IN THE FARE CALCULATION AS Q-SURCHARGE. MCO AND TICKET MUST BE CROSS-REFERENCED WITH EACH OTHER. Q-SURCHARGE IS APPLICABLE TO THE FIRST UNFLOWN FINNAIR OPERATED FLIGHT SEGMENT AND THIS PROCEDURE CAN BE APPLIED ONLY IN CASE THE ROUTING SUBJECT TO CHANGE HAS ONE OR MORE UNFLOWN FINNAIR OPERATED FLIGHT SEGMENTS. THE NEW FARE MUST BE RECALCULATED USING CURRENT FARES APPLICABLE AT THE DATE OF TICKET REISSUE. THE DIFFERENCE IN FARE AMOUNT MUST BE RECALCULATED AND CHARGED PER FARE COMPONENT. CHANGES MUST BE MADE BEFORE ORIGINAL SCHEDULED FLIGHT OTHERWISE PASSENGER WILL BE CONSIDERED A NO-SHOW. NO CHANGES PERMITTED FOR A PASSENGER WHO NO-SHOWS. ALL PROVISIONS OF NEW FARE MUST BE COMPLIED WITH INCLUDING ADVANCE PURCHASE IF APPLICABLE. HOWEVER THE NON-REFUNDABLE AMOUNT OF THE OLD TICKET WILL BE NON-REFUNDABLE AND HAS TO BE INSERTED IN THE ENDORSEMENT BOX OF THE NEW TICKET. THE NEW FARE TYPE MUST BE EQUAL OR HIGHER. EXCEPT WHEN CHANGE OF ORIGIN/DESTINATION/ ROUTING LEADS TO A LOWER FARE LEVEL REFUND APPLIES TICKET CAN BE UPGRADED TO HIGHER AY OR IATA FARE. IN CASE OF UPGRADING ONLY THE DIFFERENCE WILL BE COLLECTED. FARE DOWNGRADE IS NOT PERMITTED. SERVICE FEE WILL APPLY FOR ALL TICKETS RE-ISSUED BY WORLD AVIATION SYSTEMS - FINNAIR OFFICES ONLY. AFTER DEPARTURE THE NEW FARE MUST BE RECALCULATED USING HISTORICAL FARES APPLICABLE AT THE DATE OF ORIGINAL TICKET REISSUE. EXCLUDING ADVANCE PURCHASE IF APPLICABLE. ROUTING LEADS TO A LOWER FARE LEVEL NO REFUND APPLIES. CANCELLATIONS ANY TIME CANCELLATIONS PERMITTED. FOR PARTIAL USED TICKETS- REFUND THE DIFFERENCE BETWEEN THE FARES PAID AND THE NORMAL YY C/Y OR AY JFLEX/YFLEX FARE FOR THE SECTOR FLOWN. IN CASE OF NO SHOW TICKET IS NON-REFUNDABLE. A SERVICE FEE IS APPLIED FOR REFUND.

**Child Discount**

UNLESS OTHERWISE SPECIFIED NOTE - GENERAL RULE DOES NOT APPLY ACCOMPANIED CHILD 2-11 - CHARGE 75 PERCENT OF THE FARE. TICKETING CODE - BASE FARE CODE PLUS CH OR - 1<sup>ST</sup> INFANT UNDER 2 WITHOUT A SEAT - CHARGE 10 PERCENT OF THE FARE. NOTE - IF AN INFANT REACHES TWO YEARS OF AGE AFTER TRAVEL HAS COMMENCED BUT BEFORE TRAVEL IS COMPLETE A FULL CHILD FARE TICKET MUST BE PURCHASED FOR THE ENTIRE JOURNEY. OR - INFANT UNDER 2 WITH A SEAT - CHARGE 75 PERCENT OF THE FARE OR - UNACCOMPANIED CHILD 5-11 - NO DISCOUNT.

**Higher Intermediate Point**

UNLESS OTHERWISE SPECIFIED NOTE - MILEAGE SURCHARGE AND HIGHER INTERMEDIATE POINTS MAY BE IGNORED IF ROUTING IS NOT EXCEEDING 25M.

**Other Discount**

NONE UNLESS OTHERWISE SPECIFIED

**Ticket Endorsements**

FOR K- TYPE FARES THE ORIGINAL TICKET MUST BE ANNOTATED - REFUND/CHANGES RESTRICTED/ - IN THE ENDORSEMENT BOX.

Sales Restrictions

UNLESS OTHERWISE SPECIFIED EXTENSION OF TICKET VALIDITY IS NOT PERMITTED.

Travel Restrictions

UNLESS OTHERWISE SPECIFIED NOTE - IF THE PASSENGER IS NO SHOW ON THE FIRST OUTBOUND SECTOR THE REMAINING SECTORS WILL BE CANCELLED.

Agent Discount

NONE UNLESS OTHERWISE SPECIFIED

Combinability

UNLESS OTHERWISE SPECIFIED END-ON-END NOT PERMITTED. SIDE TRIPS NOT PERMITTED ADD-ON CONSTRUCTION IS ADDRESSED IN MISCELLANEOUS PROVISIONS - CATEGORY 23. OPEN JAWS/ROUND TRIPS/CIRCLE TRIPS FARES MAY BE COMBINED ON A HALF ROUND TRIP BASIS -TO FORM SINGLE OR DOUBLE OPEN JAWS. A MAXIMUM OF TWO INTERNATIONAL FARE COMPONENTS PERMITTED./ROUND TRIPS -TO FORM CIRCLE TRIPS PERMITTED. OPEN JAWS/ROUND TRIPS/CIRCLE TRIPS NOTE - THE MOST RESTRICTIVE CONDITIONS APPLY WHEN COMBINING HALF ROUND TRIP FARES. PROVIDED - COMBINATIONS ARE WITH ANY -FLEX/I/-ECO/-CMP TYPE FARES FOR CARRIER AY IN ANY RULE AND TARIFF. COMBINATIONS ARE WITH ANY C-/Y- TYPE FARES FOR CARRIER YY IN ANY RULE AND TARIFF.

Advance Reservations/Ticketing Restrictions

FROM/TO UNITED KINGDOM FOR K- TYPE FARES RESERVATIONS ARE REQUIRED FOR ALL SECTORS. WHEN RESERVATIONS ARE MADE AT LEAST 4 DAYS BEFORE DEPARTURE TICKETING MUST BE COMPLETED WITHIN 3 DAYS AFTER RESERVATIONS ARE MADE OR AT LEAST 4 DAYS BEFORE DEPARTURE WHICHEVER IS EARLIER. OR - RESERVATIONS FOR ALL SECTORS AND TICKETING MUST BE COMPLETED AT THE SAME TIME. NOTE - DUE TO AUTOMATED TICKETING DEADLINE CONTROL DIFFERENCE COULD EXIST BETWEEN THE FARE RULE LAST TICKETING DATE AND THE SYSTEM GENERATED TICKETING DEADLINE MESSAGE. THE MORE RESTRICTIVE TICKETING DEADLINE APPLIES.

Refunds/Reissues Carrier Processing Profile

UNLESS OTHERWISE SPECIFIED IN THE EVENT OF CHANGES TO TICKETED FLIGHTS ANYTIME CHANGES NOT PERMITTED.

Flight Applications

BETWEEN UNITED KINGDOM AND BKK THE FARE COMPONENT MUST BE ON ONE OR MORE OF THE FOLLOWING ANY AY FLIGHT ANY BA FLIGHT ANY CX FLIGHT.

Transfers

BETWEEN UNITED KINGDOM AND BKK UNLIMITED FREE TRANSFERS PERMITTED ON THE PRICING UNIT FREE ON AY ONLY IN EUROPE FREE BETWEEN AY AND BA IN LON/MAN FREE ON AY ONLY IN BJS/HKG/SHA/SIN FREE BETWEEN AY AND CX IN HKG FARE BREAK AND EMBEDDED SURFACE SECTORS NOT PERMITTED ON THE FARE COMPONENT.

Stoppers

UNLESS OTHERWISE SPECIFIED UNLIMITED FREE STOPOVERS PERMITTED ON THE PRICING UNIT.

- 12.38 This situation could be addressed through a standard-format Key Facts document similar to those that may be offered before customers confirm purchase of certain financial products, such as insurance. Although many airlines already provide something similar on their websites, there would be some benefit to a standard-format document to facilitate comparisons between airlines and ensure some critical information is displayed accurately. For example, as noted below, many airline websites misleadingly state that fares are not changeable or refundable, when taxes and airport charges can be refunded, and the whole ticket may be changeable if the passenger cannot travel due to force majeure.
- 12.39 Some stakeholders pointed out that passengers who did not read the Conditions of Carriage or Fare Rules might also not read the Key Facts. This appears a real risk, but at least they would have more opportunity to read and understand a Key Facts document than the Conditions of Carriage or Fare Rules.
- 12.40 In the bilateral interviews, the introduction of a standard Key Facts document was supported by virtually all stakeholders other than airlines and their representative associations.



#### *Content of a Key Facts document*

- 12.41 Stakeholders had a number of suggestions as to what a Key Facts document could contain, but the most common suggestions were:
- whether a ticket can be changed and at what fee;
  - whether a ticket can be refunded (and that the taxes/charges can be refunded), and at what fee;
  - conditions for check-in (for example if online check-in is required);
  - what hold baggage is included in the ticket;
  - what cabin baggage is included in the ticket; and
  - rights in the case of delay, cancellations, and loss/damage to baggage.
- 12.42 It might not be necessary for the contents of the Key Facts document to be specified in the Regulation. An alternative approach could be for the provision of the document to be required by the Regulation, but for its contents to be specified separately by the Commission. This would have the advantage of allowing greater flexibility to respond to changes in the market. Alternatively, if (as discussed below under option E4.3B) detailed provisions were in future defined in implementing rules or through a delegated act, the design of the Key Facts document could be included in this.

#### *Estimate of impacts*

- 12.43 The introduction of a requirement to show a standard format Key Facts document would result in costs being incurred by airlines, online travel agents, and the global distribution systems (GDS) if these were used to distribute the information for the documents. Costs have been estimated on the basis of information provided through interviews with one of the main GDS, and representatives of the online travel agents.
- 12.44 The airlines did not provide any equivalent cost information. We note that most of the airlines provide this information anyhow albeit in differing formats. In order to make an estimate of the total cost involved we have assumed each airline would incur costs equivalent to that of one of the online travel agents.
- 12.45 For the purpose of quantifying this option we have assumed it would only apply to airlines and travel agents with annual sales in the EU of at least 500,000 tickets; this is because the systems implementation costs of this option for airlines and travel agents would not vary significantly depending on their size, and therefore it would represent a disproportionate cost for smaller ticket vendors. On this basis we have estimated that a central case scenario for the one-off implementation cost of this option would be approximately €21 million NPV - although this is very uncertain at this stage as a detailed costing would ultimately need to be developed by the GDS and other industry partners. It is also unclear to what extent these costs would be incremental given that the GDS are already seeking to standardise and improve the presentation of ticket rules.

### *Conclusions*

- 12.46 The introduction of a standard-format 'Key Facts' document would have relatively significant costs, but these would be a one-off. In addition, the costs could be reduced depending on how the option was implemented:
- Airlines and online travel agents change their systems regularly. If the requirement for, and definition of, the 'Key Facts' document took effect a long time (at least 2-3 years) in advance of the document having to be displayed, the changes required could in some cases be made as part of another redesign of the website, and therefore might be achievable at lower cost.
  - A significant part of the cost relates to the changes that would have to be made by travel agents and through the GDS. If the key facts document only had to be displayed for direct sales by airlines, which account for around half of sales, this cost would be avoided. This might nonetheless allow many of the potential benefits of the option to be achieved, as the complaints that have been made relate disproportionately to low fare restrictive tickets which are most commonly sold directly by airlines.
  - The requirement to display the document in the specified format should only apply to airlines and travel agents with more than a specified volume of sales in the EU (for example 500,000 tickets per year). This would not exempt other sellers of their general obligations under consumer law to ensure that the purchaser was adequately informed about the relevant terms and conditions.
- 12.47 In addition, although this option would generate costs, over the impact assessment period the costs generated would be significantly lower than for other options which some stakeholders would consider alternatives to this, such as the legislation specifying particular entitlements to cabin or checked baggage, or prohibiting certain additional fees.
- 12.48 This option would be consistent with the policy objective of ensuring that passengers were adequately protected, specifically in situations not covered by the existing legislation, by ensuring that they were adequately informed of their rights (both their rights defined in law, and their rights given the specific ticket that they had purchased). It is also consistent with the objective of providing passengers with effective means of redress, as they are more likely to be able to claim what they are entitled to if it is transparent.
- 12.49 We recommend that if this option is implemented, the Regulation should specify that the document is required but that the format of the document, and standard terms to be used in it, should be defined separately by the Commission after consultation with the industry. These would then be defined through implementing rules or a delegated act, as discussed under option E4.3B below.

## **B2: Options to require provision of immediate help**

### ***Option B2.1: Require provision of an emergency kit if baggage delayed or lost***

- 12.50 Some airlines already provide passengers with an 'emergency kit' containing overnight items such as toiletries and a T-shirt if their baggage is delayed or lost. In principle this could be required of all airlines.

- 12.51 The Montreal Convention governs airlines liability in the case of lost, delayed or damaged baggage, and might be interpreted as preventing any other requirement for assistance. However, our legal advisors consider that a requirement to provide an emergency kit would probably be considered ‘standardised and immediate assistance’, which the CJEU found in the IATA/ELFAA case was not inconsistent with the Convention - although ultimately this could only be decided by a Court.
- 12.52 However, there are a number of issues with provision of an emergency pack:
- the necessary content would vary between different passengers, and what was considered necessary by some might be considered unnecessary by others, and therefore there is a high risk it would be wasted and not significantly contribute to the objective of protecting passengers;
  - it might be impractical for airlines to have supplies of emergency packs at each of the airports they serve, and to do so might be a substantial economic burden; and
  - some stakeholders were concerned that provision of this pack would limit airlines’ subsequent liability to reimburse the actual costs passengers’ incurred (which is subject only to the limit on liability in the Montreal Convention).
- 12.53 A requirement to provide an emergency pack was, unsurprisingly, opposed by most airlines and their representatives. However, many of the consumer representatives interviewed for the study also did not support this option, for the reasons described above. **Therefore we do not recommend this option.**
- Option B2.2: Require fixed-rate monetary compensation payments for delayed or damaged baggage***
- 12.54 There was greater support from consumer representatives for a fixed compensation payment in proportion to the amount of time the consumer was without baggage, to cover the inconvenience of being without baggage and the short term costs incurred.
- 12.55 However, our legal advisors believe that this option would conflict with the Montreal Convention, on the basis that Article 29 defines that the Convention is exclusive at least for the issues it covers, and prohibits non-compensatory damages. Although it could also be argued that B2.1 (provision of an emergency pack) conflicts with the Montreal Convention, our legal advisors consider it is easier to argue that B2.1 is ‘standardised and immediate assistance’ because it is non-monetary, whereas this option would amount to non-compensatory damages, which Article 29 of the Convention prohibits. If the CJEU finds in the outstanding cases that fixed-rate monetary compensation for delays is ‘standardised assistance’ in line with the opinion of the Advocate General, and therefore not in conflict with the Convention, this might also cover fixed-rate compensation for delayed or damaged baggage. However, even this is not clear: in the IATA/ELFAA case the Court referred to standardised *and immediate* assistance, but an assessment of liability to pay compensation for baggage can (by definition) only be after the flight, and therefore cannot be ‘immediate’. This is different from assistance in cases of delays which is (or at least should be) on-the-spot assistance provided before the flight.
- 12.56 Under the Montreal Convention, airlines are already liable for costs that passengers incur as a result of delay, damage or loss to their baggage. The advantage of a fixed payment is

that these costs may be difficult to prove. In addition, consumer associations and NEBs informed us that some airlines were inaccurately informing passengers that they could not claim more than a (low) fixed amount per day. This might unreasonably deter passengers from claiming back the costs they are caused. However, if this practice occurs, it seems to be an attempt to mislead passengers about their rights under the Convention and therefore would be best addressed through enforcement and improved passenger redress (see options E and F below).

- 12.57 We have discussed with our legal advisors whether the potential conflict with the Convention could be reduced if the payment was a standardised amount, not related to the amount of time that the passenger had to wait for the arrival of their baggage. However, their view was that (whilst clearly only a Court could determine this) any fixed rate monetary compensation would still amount to non-compensatory damages and therefore conflict with Article 29 of the Convention.
- 12.58 It could also be considered an unreasonable economic burden to require airlines to compensate passengers over and above the costs they actually incur. Actual costs incurred would vary significantly between passengers: for example a passenger travelling away on business may incur substantial costs as a result of delayed baggage, whereas a passenger returning home would typically incur much lower costs. However, this needs to be offset against the fact that at present it may be difficult for passengers to obtain any compensation (including compensation to which they are theoretically entitled) without court action.

### *Estimate of impacts*

- 12.59 Despite the legal difficulties likely to be encountered in pursuing this option, we have calculated the impact of a standard fixed-sum compensation of €50, to be paid for baggage which is lost or delayed overnight (assumed to be 12 hours). Although we do not have data for the length of time which luggage is delayed, we have assumed that delayed baggage is generally sent on the next flight operated by the same carrier on the same route, and therefore this will be equivalent to the times we have already calculated for passengers denied boarding. We also assume that this payment is on top of any other payments for lost, delayed or damaged baggage and that it is paid on the spot to all passengers (and therefore does not have to be actively claimed by the passenger in the same way as the compensation for delayed or cancelled flights).
- 12.60 Table 12.1 shows the quantified results. The increases in the incremental burden are highest for traditional scheduled carriers (12% on average), and on non-EU flights of over 3,500 km (20%). The increase in the economic burden is lowest for low cost carriers (an average of 2%), due to their lower rates of mishandled baggage.

**TABLE 12.1 QUANTIFIED IMPACTS: OPTION B2.2**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	-	-	-	-	-	-
Reimbursement / rerouting	-	-	-	-	-	-
Care	-	-	-	-	-	-
Montreal compensation	-	-	-	-	-	-
Other	124,097	900,354	-	124,097	900,354	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>124,097</b>	<b>900,354</b>	<b>8.4%</b>	<b>124,097</b>	<b>900,354</b>	<b>3.8%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	124,097	900,354	8.6%	124,097	900,354	3.8%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>124,097</b>	<b>900,354</b>	<b>8.4%</b>	<b>124,097</b>	<b>900,354</b>	<b>3.8%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	2,651	19,420	9.0%	2,651	19,420	4.9%
EU charter	8,934	65,883	11.9%	8,934	65,883	3.6%
EU low cost	8,598	62,106	1.8%	8,598	62,106	0.9%
EU traditional scheduled	72,711	527,380	11.7%	72,711	527,380	5.2%
Non-EU	31,203	225,565	13.7%	31,203	225,565	5.5%
<b>Total airline</b>	<b>124,097</b>	<b>900,354</b>	<b>8.6%</b>	<b>124,097</b>	<b>900,354</b>	<b>3.8%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	0.1%	-	-	0.1%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	124,097	900,354	9.1%	124,097	900,354	3.9%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>124,097</b>	<b>900,354</b>	<b>6.9%</b>	<b>124,097</b>	<b>900,354</b>	<b>3.4%</b>

### Conclusions

- 12.61 This option would be consistent with the objective of improving passenger protection in circumstances not covered by the existing Regulation, and it would provide a much more significant benefit for passengers than option B2.1 (provision of an emergency pack).
- 12.62 However, we have been advised that there is a clear conflict with the Montreal Convention, and therefore it could not be implemented unless the Convention was amended or renounced; therefore, this option is not consistent with the policy objective of ensuring legal certainty including through ensuring consistency with international law. In addition, it would create a potentially disproportionate economic burden if carriers had to compensate passengers without relation to the actual costs they incur as a result of delayed or damaged baggage.

***Option B2.3: Require free transport of delayed baggage to the passenger***

- 12.63 The Montreal Convention defines that airlines are liable for costs arising out of loss, delay or damage to baggage. Although the Convention has an exemption on liability for delay outside the control of the airline or its agents, it is hard to see how the airline could use this to exclude liability where it has failed to transport baggage on the same flights as the passenger, as almost all such mishandled baggage is due to actions or omissions by airlines, their groundhandling agents, or their other contractors<sup>43</sup>. This is distinct from delay to flights (and hence both passenger and baggage) which often would be partly or wholly outside airlines' control.
- 12.64 This liability would include costs a passenger incurred in collecting delayed baggage from the airport. Therefore, if a carrier did not already transport delayed baggage to the passenger, they would be liable for the costs. Perhaps for this reason, most airlines interviewed for the project said that they always or almost always transported the baggage to the passenger's address - although some consumer representatives stated that airlines were not willing to do so when the consumer lived in a remote location.
- 12.65 **Since airlines are already liable for the costs arising from delayed baggage, including the costs of transporting it, it appears that this option would not generate any change to the current position, and for this reason we suggest it should not be pursued further.** If some airlines are refusing to offer, or pay for the costs of, transporting delayed baggage, they appear to be infringing their obligations to passengers under the Convention and the problem is one of enforcement and redress (see options E and F below).

**B3: Options to increase level of compensation available**

***Option B3.1: Unlimited liability for mobility equipment***

- 12.66 Article 22(2) of the Montreal Convention limits airlines' liability for loss, delay and damage to baggage to 1,131 Special Drawing Rights (approximately €1,250). 'Baggage', in this context, is usually taken to include mobility equipment. This limit is far below the costs of some mobility equipment, particularly electric wheelchairs.

*Legal issues*

- 12.67 The Montreal Convention does not define baggage beyond the reference in Article 17(4) that it means both checked and unchecked baggage. However, our legal advisors and all airlines that expressed any view have confirmed that, although there is no case law on the issue, mobility equipment would be considered baggage and therefore subject to the limit on liability in Article 22(2). In any case, if mobility equipment was not considered baggage it might then be considered 'cargo', in which case the limit on liability would be defined as a much lower amount (17 SDR per kilogramme) under Article 22(3) of the Montreal Convention.
- 12.68 US legislation on transport of passengers with reduced mobility (14 CFR part 382) imposes unlimited liability for loss or damage to mobility equipment. However, unlike other elements of the US legislation, this does not apply to international flights (the Montreal Convention does not apply to US domestic flights). Whilst it is possible that US airlines may

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<sup>43</sup> SITA (2011): Baggage Report 2011, WorldTracer statistics

apply the same limits for all of their flights (for most of them, international flights represent a small proportion of the total), this is at their discretion. In contrast the Montreal Convention would apply to flights within the EU, except flights wholly within the same Member State.

- 12.69 The equivalent Canadian legislation also does not allow companies operating in Canada to impose a limit, but unlike the US legislation does not appear to be limited to domestic flights. Article 155(3) of the Air Transportation Regulations states that ‘Where an air carrier accepts a person’s aid... and the aid is damaged during carriage... notwithstanding the limits of liability respecting goods contained in any applicable tariff, [the air carrier shall] reimburse the person for the full replacement cost of the aid’. Research previously conducted for the Commission indicated that this had not been challenged by airlines.<sup>44</sup>
- 12.70 Nonetheless, given the very strong opposition expressed by EU airlines and their representatives to any requirements which in their view go beyond the Convention, it appears likely that a European airline would present a legal challenge to any legislation which imposed a limit for liability higher than the limit in Article 22(2) of the Convention. It should not make any difference if the compensation is limited to intra-EU journeys as this is still ‘international carriage’ for the purposes of the Convention, because individual Member States have signed the Convention and therefore are ‘States Party’ to it. Under Article 1(2) of the Convention, international carriage is defined as ‘any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties’.

#### *Options considered*

- 12.71 Despite expressing strong opposition in the public consultation and bilateral interviews to any change to the Montreal Convention limit, most airlines interviewed for this study said that they paid above the limit in the case of loss or damage to mobility equipment. However, some airlines confirmed that they adhere to the limit. Therefore we have considered how this could be addressed, without amendment to the Montreal Convention. Our legal advisors consider that the problem could be avoided in two ways:
- Firstly, by a requirement for airlines to provide, free of charge, insurance to all passengers with reduced mobility, covering the transport of their mobility equipment. The claim would then be against the insurance company rather than the airline and therefore the Montreal limit would not apply. An airline could be waived of this obligation if it voluntarily waived the Montreal Convention liability limit with respect to mobility equipment.
  - Secondly, by specifying that in the case of mobility equipment, if a ‘special declaration’ was made of its value under the second part of Article 22(2) of the Montreal Convention, no charge could be made for this declaration. Although this Article refers to payment of a sum ‘if the case so requires’, our legal advisors consider that this does not necessarily mean that the carrier has the right to require such a payment (although it is clearly possible a carrier might challenge this interpretation).

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<sup>44</sup> COM(2008) 510

12.72 A quantification of the potential impacts of this option is provided below. The costs of the two approaches should be approximately equivalent, as there is in effect only a difference in the mechanism by which the cost is covered, and therefore we do not calculate different costs for each approach.

### *Estimate of impacts*

12.73 Six airlines provided data on loss, delay or damage to mobility equipment, although none provided a disaggregation between loss, delay or damage, and none were able to provide any information on the costs incurred as a result. Therefore, we had to make a number of assumptions in order to obtain an estimate of the potential economic burden that could arise from this policy option.

12.74 We used the average rate of loss, delay or damage to mobility equipment per passenger carried for the airlines that provided this data, and assumed that the proportion of these incidents that related to equipment that was lost or damaged would be twice that for standard checked baggage, for two reasons:

- mobility equipment is fragile and therefore more likely to be damaged; and
- delay would be less likely given that the mobility equipment would normally be loaded on and off the aircraft with the passenger.

12.75 Given the likelihood that a replacement might be required in the event of loss or damage only, the replacement rate might be around 0.0032 per 1000 passengers carried, which would be equivalent to 3,800 items per year on average.

12.76 We understand that electric wheelchairs accounts for a significant proportion of damaged mobility equipment, as they are fragile. In order to estimate the average cost of an electric wheelchair, we checked the websites of four mobility equipment vendors (one in each of the UK, France, Spain and Germany), and two websites offering advice to disabled people. The average cost of around €3,500 was based on the prices of 32 electric wheelchair models, and the average prices suggested on the disability support websites.

12.77 Combining the assumptions on unit cost and number of items lost or damaged suggests a total burden of €69 million NPV, which would represent an increase in the economic burden of 0.6%. However, as noted above most carriers interviewed for this study told us they already waived the Montreal limits for mobility equipment. If it is assumed that 90% of carriers already waive the limit, consistent with the results of our interviews, the incremental burden in 2025 could be as low as €6.9 million NPV, an increase in the total economic burden of 0.06%.

### *Conclusions*

12.78 The Montreal Convention appears to limit liability for mobility equipment to far below the replacement cost of the equipment, a provision that appears particularly unfair to the passenger. This cannot be addressed directly without amending the Convention, but we have considered two options by which the limit could in effect be circumvented.

12.79 This option would meet the policy objective of ensuring passengers are appropriately protected, and the economic burden on airlines would be very small, particularly in incremental terms; as most airlines indicated that they already waive the Montreal limit for such items. The simplest way to implement this option would be to require airlines to



provide insurance for mobility equipment free of charge to passengers, with this requirement being waived where the airlines voluntarily waived the Montreal Convention limit.

***Option B3.2: Refund of baggage fees in the event of lost or delayed baggage***

- 12.80 Many airlines are now charging separately for transport of checked baggage. US legislation requires that baggage fees are reimbursed in the event the baggage is lost, although not if it is delayed. This option would provide an additional benefit to passengers whose baggage was delayed or lost.
- 12.81 Our legal advisors consider that any requirement to refund baggage fees would conflict with the Montreal Convention. Article 29 defines that the Convention is exclusive, at least for the issues that it covers, and prohibits punitive or non-compensatory damages. This does not appear to allow for any other remedy in the case of loss or damage to baggage. Although this element of the US legislation also appears to conflict with the Convention, as noted above the Convention only applies to international flights, which represent a small proportion of flights for most US carriers.
- 12.82 More generally, it is not clear why carriers' that charge separately for transport of checked baggage should reimburse this element of the price paid by the consumer, but carriers that 'bundle' transport of checked baggage with the rest of the ticket price should not have to reimburse any element of the ticket price. Arguably such a requirement would distort competition between these carriers. In addition, since the airline is already liable under the Montreal Convention for the costs arising from the loss or delay to the baggage, requiring it to further compensate the passengers may be an unreasonable economic burden.
- 12.83 For these reasons we recommend that this option should not be pursued further.

**B4: Options to address items missing from baggage**

***Option B4.1-4.2: Proof that items were missing from baggage***

- 12.84 This section covers two options:
- B4.1: a requirement that X-rays of baggage be retained, and provided as evidence; and
  - B4.2: a requirement that the weight of baggage be retained, and provided as evidence.
- 12.85 We have discussed with stakeholders how it is possible to prove that an item has gone missing from baggage. Stakeholders agreed that this was very difficult and both airlines and NEBs drew attention to the risk of fraudulent claims, and that these could be facilitated by any measures in this area.
- 12.86 In practice neither of these options are feasible:
- B4.1: It is not practical to require that X-rays of baggage be retained because not all baggage is subject to an X-ray, the system as set up may not be able to retain this, and even if it does, it may not be clear that a specific item was present. A requirement to X-ray all baggage would be a substantial economic burden for limited benefit (other than any security benefits, which are not within the scope of this study).

- B4.2: Scales used to record the weight of baggage at check in are not precise enough to establish the weight with enough certainty to verify that an item has gone missing. In any case, the consumer usually would not find out that an item had gone missing until he/she unpacked, by which point it would be impossible to prove what the weight of baggage was on arrival. If the airline had to accept apparent change in weight as evidence of loss, this could give rise to a substantial economic burden because it would be difficult to defend itself against fraudulent claims.

12.87 **For these reasons we recommend that these options are not pursued further.** They would not be practical and therefore would not contribute towards achieving the policy objectives.

***Option B4.3: Allow special declaration of individual items***

12.88 Article 22(2) of the Montreal Convention permits the passenger to make a special declaration of their interest in delivery of baggage, increasing the limit on liability applied to it, in return for a supplementary fee. However, this option is rarely if ever used: one airline interviewed for this study said it was not aware of any cases where it had been. This may be partly due to lack of awareness, but may also be because the fee is unattractive compared to the price of privately-contracted insurance: for example, one major low fares airline charges €100 for a special declaration.

12.89 It is not clear at present that passengers can make an advance declaration of an individual item, and that they should not necessarily have to pay a fee if they do not seek to increase the limit on liability above the level in the Convention. Our legal advisors believe that it would not conflict with the Convention to state that such a declaration could be made and no charge could be levied for it.

12.90 However, in our view there is a significant risk that, if a valuable item was declared, the airline would then refuse to accept it for check in. Many airline Conditions of Carriage prohibit carriage of valuable items (and many other common personal items) in checked baggage. Therefore, making such a declaration might not benefit the passenger, even if there was no corresponding fee.

12.91 **For this reason this option appears unlikely to meet the policy objectives for the study, and therefore we recommend it is not pursued further.**

## 13 Impact assessment: other options to enhance consumer protection in air transport

### Introduction

- 13.1 This section evaluates a number of general policy options, in most cases not related to issues covered by Regulation 261/2004, which would improve consumer protection when travelling by air. In several cases, these options cover issues which could be considered to be existing requirements of other European consumer legislation, particularly Directive 93/13/EEC on unfair contract terms. Several national courts and enforcement authorities have found that certain common airline practices conflict with national laws implementing this Directive - but there is no consistency in these decisions. The information obtained through our interviews confirms that some practices continue to be widespread despite enforcement bodies or national courts having found against them.
- 13.2 The analysis below discusses the individual options. Some of these may be addressed by national courts and enforcement bodies. However, given the uniquely international and technically complex nature of air transport, and the inconsistency in enforcement and interpretation of this Directive in the sector, it may not be sufficient to rely on this alone. The result appears to be significant inconsistency between Member States, and arguably distortion of the single market for air transport.
- 13.3 Improved consistency could be achieved in a number of ways:
- A Regulation could be introduced with specific requirements covering these issues. This would have the advantage of being hard to challenge, but could be undesirable because it would take a long time to introduce and, once agreed, would be difficult to change. Therefore, it could not readily be adapted to changes in the market.
  - Instead of a Regulation defining specific requirements, the Regulation could define that implementing rules will be prepared with specific requirements, possibly through the mechanism defined in Article 291 TFEU. This might allow greater flexibility and is discussed under policy option E4.3 below.
  - Interpretative guidelines could be issued through a Commission Communication or some other document. This might be a more flexible approach. A particular advantage would be that, given the level of detail that would be needed to regulate in respect of some of the options discussed below, it would be preferable for this to be agreed in collaboration with the industry, to ensure that what was determined was practical (although clearly the industry could not be given a veto over the proposals). The disadvantage is that some airlines might not follow the interpretation, or would challenge it.
  - The Commission could facilitate coordinated action by national enforcement bodies, where these exist. However, this would not succeed in addressing the issue of inconsistent decisions by national courts. In addition, not all States have bodies which

actively enforce this legislation; for example, Germany relies entirely on individual consumers enforcing this through civil court actions.

### **C1: Clarify passengers' rights not to use some or all flight segments**

#### ***Option C1.1: Sequential use of coupons***

- 13.4 Most network carrier Conditions of Carriage state that, if a passenger does not show up for a particular flight, return or onward reservations may be cancelled. IATA's recommended practice on Conditions of Carriage (RP1724) has an exception for force majeure or if the passenger advises in advance, but in interviews for this study several network carriers indicated that they applied the rule on sequential use of coupons with the only exception being that reservations would not be cancelled if the passenger paid any additional fare that was due.
- 13.5 Many consumer representatives have argued that this is unfair, and there have been several cases before national courts challenging Conditions of Carriage on the basis that they are inconsistent with national laws implementing Directive 93/13/EEC on unfair contract terms. Court decisions have not been consistent: for example, various courts in Belgium and Spain have found the rule to be unfair<sup>45</sup>, but the Bundesgerichtshof (the highest civil court in Germany) only partially upheld a case brought by a German consumer association; it found that carriers could not cancel onward bookings but could charge a higher fare<sup>46</sup>. This policy option would prohibit the rule on sequential use of coupons altogether, by defining that passengers could use any segment of a ticket even if they had not used previous segments.

#### ***Benefits of the rule***

- 13.6 Airlines argued that rules requiring the full and sequential use of coupons were necessary in order to reflect different levels of competition and protect their yield management systems. For example, a carrier may offer a lower fare for indirect transport from A via B to C than it does on the direct flight from B to C, because it has to offer lower fares for the indirect route in order to compete with other airlines serving the route; in contrast, it may face limited competition for direct flights from B to C and therefore be able to charge a higher price. The airline would not be able to do this if a passenger could buy a cheaper ticket from A to C, but then take the flight from B to C only.
- 13.7 For example, when we undertook our research in early March 2012, the cheapest price available for a direct flight from Frankfurt to São Paulo departing on 5 March and returning on 9 March was €1,600 (with TAM/Lufthansa, which are alliance and codeshare partners). However, if the passenger booked a ticket from London they could travel on the same flights between Frankfurt and São Paulo for only €750, less than half the price; overall, fares from London are lower, possibly because the market is more competitive (there are direct flights with two airlines which do not cooperate, and a direct flight was about €1,000). If the rule on sequential use of coupons was prohibited, the airlines would not be

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<sup>45</sup> Decision of the Namur Commercial Court, September 2010; Commercial Court n° 2 Palma de Mallorca, Judgment of 22 March 2010; Audiencia Provincial Madrid, Judgment of 27 November 2009; Commercial Court of Bilbao, Judgment of 7 July 2008; Commercial Court of Bilbao, Judgment of 3 July 2009

<sup>46</sup> Judgement of the Civil Division, 29 April 2010, cases Xa ZR 5/09, Xa ZR 101/09

able to offer such a low price for London-São Paulo without reducing their prices from Frankfurt, as passengers would be able to avoid paying the higher fare by buying a ticket from London and not using the first segment. The airlines would probably opt to increase their London prices rather than reduce their Frankfurt prices, as London would account for a small proportion of the originating passengers.

- 13.8 Airlines also pointed out that many carriers now sell tickets on a single segment, point-to-point basis. These airlines do not cancel subsequent segments if one segment is not used. On many short haul routes, passengers can chose to travel with these airlines instead. For example, a passenger wanting to travel from London to Rome and then on to Athens could travel on either easyJet or Alitalia; if the passenger believed there was a risk they might not take the London-Rome flight, they would be better off travelling with easyJet as, unlike Alitalia, it would not then cancel the subsequent flight. Some legacy carriers are also adopting this approach to pricing on intra-EU routes: for example on British Airways flights between London and Edinburgh or Manchester the return fare is equivalent to the sum of the two individual singles (however at present the sequential use of coupons rule still appears to apply).

*Disadvantages of the rule*

- 13.9 The potential disadvantages to the rule on sequential use of coupons are:
- The rule facilitates airlines in taking advantage of market power in those markets where they have it, whilst offering lower fares in more competitive markets. This appears undesirable.
  - The rule may increase the environmental impact of air transport, by encouraging passengers to use indirect flights, or travel by surface to less convenient airports in order to obtain lower priced indirect flights.
  - The rule clearly acts against the interests of consumers where they cannot take one segment for reasons outside their control, and hence buy another ticket or use alternative transport for that segment.
- 13.10 However, with respect to the first two of these points, it is not clear that a prohibition of the rule on sequential use of coupons would provide a net benefit:
- If airlines were not able to offer lower prices in competitive indirect markets whilst protecting their ability to charge higher fares in the direct markets in which they had market power, they might simply cease to offer competitive fares in the other markets, to the detriment of consumers. It is not clear that they would respond by reducing fares in the monopolistic markets.
  - Although the practice of offering lower fares in indirect markets does encourage more environmentally-damaging indirect routings, the net impact on emissions is not clear. As airlines would generally only sell cheaper tickets in indirect markets if they expected to have spare capacity available, the practice allows airlines to raise average load factors, which reduces emissions per passenger.

- 13.11 Therefore, except with respect to the case where passengers cannot travel for reasons outside their control, which is addressed by option C1.2 below, it is not clear that the rule on sequential use of coupons has a net negative impact.

### *Conclusions*

- 13.12 Although the rule on sequential use of coupons has some negative impacts for some passengers, it also has positive impacts, because it enables more effective revenue management. Prohibition of this rule seems more likely to lead to increased fares for (currently more competitive) indirect routes than lower fares on less competitive routes. It is not clear that there is a net negative impact. Therefore, option C1.1 does not appear to be consistent with the policy objectives of ensuring adequate passenger protection whilst avoiding an unreasonable economic burden on carriers, **and we do not recommend this option.**

### ***Option C1.2: Define that passengers could use any segment of a ticket even if they had not used previous segments, but only if this is due to reasons outside their control***

- 13.13 Option C1.2 would prohibit the rule on sequential use of coupons being applied in cases where the passenger could show that he/she did not take one flight due to force majeure.
- 13.14 As noted above, IATA recommended practice on Conditions of Carriage (RP1724) has a partial exception to the rule on sequential use of coupons where the passenger cannot travel on one of the flights due to force majeure. This was added further to the OFT's investigation as to whether these were consistent with Directive 93/13/EEC on unfair contract terms. Although many carriers base their Conditions of Carriage on this recommended practice, it is not usually used in its entirety, and many carriers did not indicate any exception for force majeure in the interviews for the study. This option would in effect require a similar term to be used for all carriers.
- 13.15 In contrast to option C1.1, option C1.2 should not have any impact on carriers' revenue management systems because it only relates to cases in which the passenger cannot travel due to force majeure, and therefore it should not generate any of the negative impacts of option C1.1. Since it may already be a requirement of the Directive on unfair contract terms, making the requirement explicit may serve as clarification only and in this case may not increase the economic burden on carriers. It is also consistent with the policy objectives of protecting passengers including in cases not currently covered by the legislation, and ensuring legal certainty by ensuring a consistent interpretation of the Directive.

### ***Option C1.3: Define that passengers could use the return segment of a ticket even if they had not used the outward segment, but without a more general right to use other segments***

- 13.16 Option C1.3 relates to a specific case of the sequential use of coupons rule, where the passenger does not take the outward flight of a simple return trip but does still want to take the return. The main argument presented by the airlines for why the rule may be in the public interest (by enabling indirect tickets which use up spare capacity to be sold at competitive prices) does not apply in this case. A rule such as this should not be necessary in most cases to protect airlines' revenue management systems: although some airlines

still require passengers to buy return tickets to obtain lower fares, this practice is becoming rarer, and in any case passengers can already circumvent it by buying a return ticket and not using the return segment.

- 13.17 Airlines said that some non-EU States only allow passengers to be carried to/from the State on return flights; this often applies to charter flights but can apply to other flights as well. In this case an airline might not be permitted to carry a passenger on a return segment if the passenger had not taken the outward segment, and so if option C1.3 was pursued, there would have to be an exemption for cases such as this. However, in contrast to option C1.1, it is not clear that an airline could have a legitimate reason to cancel a reservation or levy an additional fee in this case. It might however be reasonable to require the passenger to reconfirm the reservation, as in many cases a passenger not showing up for the outward flight would also not show up for the return.
- 13.18 This option appears to be consistent with the policy objective of ensuring adequate passenger protection, although in contrast to option C1.2, it is not clear that there is a strong case on consumer protection grounds for requiring this. It should have limited impact on the objective of avoiding an unreasonable economic burden - although it would have a negative impact on airline revenue management in some circumstances. There would need to be an exemption for transport to/from non-EU States where a rule to this effect is necessary to comply with local law; and to avoid undermining airlines' ability to offer lower fares on competitive indirect routes, any such provision should be clearly limited to a simple return flight where the origin and return points are the same.

## **C2: Require airlines to correct booking errors easily and/or without charge**

***Option C2.1: Introduce a 24 hour cooling off period in which the passenger can change the reservation without charge (except for bookings made shortly before departure)***

- 13.19 Most air tickets are partly or wholly non-changeable once booked. Although flexible fares are offered by certain airlines, as a result of the approach to yield management airlines adopt, the price of these tickets is generally very high (several times higher than the price of a fixed ticket or the average per-passenger cost the airlines incur). Therefore, flexible tickets are not an alternative for most consumers and they will generally have no realistic alternative but to buy partly or wholly inflexible tickets.
- 13.20 The equivalent US legislation allows passengers to hold a reservation for 24 hours without penalty, or cancel without penalty within 24 hours, except for bookings made within the last 7 days before the flight. In contrast, in Europe, the new Consumer Rights Directive requires a right of withdrawal from most consumer contracts within two weeks but exempts transport tickets from this provision.
- 13.21 Airlines argued that any such requirement would undermine their yield management systems, by allowing passengers to reserve multiple seats and then pick the one that suited them best, or by cancelling when they subsequently identified that a lower fare had become available. If a ticket has been held by one passenger, it could not be sold to another, and therefore might ultimately be unsold. They also highlighted that it is the customer's responsibility to check that the details they have entered are correct, and airline websites almost always prompt them to do so. However, consumer representatives highlighted that the sums of money involved in purchasing air tickets could be very large

and mistakes could easily be made. In addition, it is not clear that there would be a significant impact on airline's yield management systems if the cooling off period was relatively short and restricted to bookings made in advance, as in the US.

13.22 Although many stakeholders were supportive of the concept of a 24-hour cooling off period, it is unclear to what extent this is currently a significant enough problem to justify regulation. For example:

- Although a number of consumer associations reported instances where passengers had been charged high fees by airlines for changes to booking details, none provided complaint data to suggest that this was a widespread problem. We were informed by some consumer associations that certain airlines already offered 24-hour cooling off periods.
- The Czech NEB reported receiving only one complaint regarding airlines allowing passengers to correct booking errors (in contrast, 559 complaints regarding Regulation 261/2004 were received by the NEB over the period 2007-10), and the Dutch NEB had not received any.
- Several airlines reported that they already allow the correction of minor errors for no additional cost, and in some cases this was not restricted to the period immediately after booking.

13.23 However, if the Regulation is to be expanded to cover this type of issue or interpretative guidelines were to be produced as suggested above, this could be included. This would help protect consumers, particularly vulnerable consumers who may be more likely to make mistakes, and if restricted in scope and duration (in particular to exclude bookings made within the final 7 days before the flight as in the US) should not have a significant impact in terms of the economic burden on carriers.

13.24 It might also be necessary to require that the airline provided a reasonable means for passengers to contact them to make the change (i.e. not a premium rate phone number, and to include an email address in case it is impossible for the passenger to make contact by phone).

***Option C2.2: Allow clear mistakes to be corrected without fee***

13.25 Another option would be to allow clear mistakes to be corrected without a fee, even if not necessarily notified within 24 hours. It would be necessary to confirm what is a clear mistake: for example, a minor spelling mistake within a name may count, but use of the completely wrong name would not.

13.26 Airlines generally informed us that they would allow clear mistakes, such as minor spelling errors, to be corrected without any fee. However, consumer associations and some NEBs contradicted this, stating that substantial charges were levied even for minor mistakes, and passengers were often in effect required to buy a new ticket. It is not possible to check which position is accurate.

13.27 Airlines may already be prevented from levying large fees on passengers for making small mistakes, as a result of national law implementing Directive 93/13/EEC on unfair contract terms. Point e of the Annex specifically prohibits any term 'requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation'. We have been informed of one case where a national court has ruled that an airline had to return a



large fee paid for making a small change - however, this did not address the substantive issue of whether the fee was an unfair contract term as the airline acknowledged the claim.<sup>47</sup>

13.28 Airlines also said that many States now require submission of advance passenger information, in some cases immediately after a ticket is sold. For travel to these States, it may not be possible for changes to be made at short notice.

13.29 As for the previous option, our research does not indicate conclusively that there is a particularly significant problem with this, but if the Regulation was to be expanded or interpretative guidelines were to be produced as suggested above, this could be included. It would help protect consumers and the economic impact on airlines should be very limited. It might however also be necessary to provide an exemption from this where the requirement conflicted with the laws of the State to which the passenger was being transported. As for the previous option, it might also be necessary to require that the airline provided a reasonable means for passengers to contact them to make the change (i.e. not a premium rate phone number and preferably to include an email address).

### **C3: Clarify obligation to provide information on incidents at the airport**

13.30 We have assessed two options:

- C3.1: Define obligation for airline to provide information on incidents at the airport; and
- C3.2: Define obligation for airline to provide information on incidents at the airport and a contact person at the airport to assist in the event of disruption.

#### ***C3.1: Clarify existing obligation on information***

13.31 The existing Regulation already defines some requirements about provision of information during disruption. For example, Article 14(2) defines that a written notice has to be issued, and Article 5(2) requires provision of information on alternative travel arrangements. In addition, although this is not explicit, it is not clear that the other obligations in the Regulation (for example to offer passengers a choice of rerouting, refunds etc) could be properly complied with unless passengers were given adequate information on disruption.

13.32 Therefore, the Regulation could specifically state that there is an obligation for airlines to ensure passengers are provided with information on incidents at the airport, without defining how this would be provided. This does not go further than the existing Regulation and normal airline practice and therefore it should not generate any quantifiable costs.

#### ***C3.2: Define obligation for airline to provide information on incidents at the airport and a contact person at the airport to assist in the event of disruption***

13.33 As noted above, the existing Regulation already requires carriers to provide information in the event of disruption. Article 14(2) requires airlines to provide passengers with a notice specifying their rights, and Article 5(2) requires airlines to inform passengers whose flights

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<sup>47</sup> Case 4 C 331/11 Peters v Ryanair. A colleague of the passenger had made the booking in the name Heinz Peters, which was the name the passenger commonly used, but his passport had the more formal proper name 'Heinrich'. The airline charged the passenger €150.

are cancelled about alternative transport options. Articles 5, 6, 8 and 9 are all clear that passengers must be offered care and assistance. It is difficult to see how these requirements could be met without adequate staffing at the airport, although this might be third party ground handlers rather than their own staff.

- 13.34 Nonetheless, consumer representatives interviewed for the study indicated very strong support for this. Some highlighted that it can be difficult or impossible to contact anyone in the event of disruption who can arrange the care and assistance required; even if ticket desk or check-in staff are present, they are often third party contractors and may not have the authority to arrange any assistance. The option was also supported by most airport representatives, and NEBs. The option would improve passengers' ability to obtain the rights to which they are entitled whilst they are at the airport. It would therefore be consistent with the objective of improving passenger protection.
- 13.35 In contrast, airlines stated that this policy option would be an unreasonable economic burden on them. It was highlighted that they would usually have people available at the airport anyhow but that the cost of having people available all of the time, at all of the airports to which they operate, would be substantial.
- 13.36 In addition, airlines emphasised that there should be flexibility about how the obligation to provide information and offer assistance is delivered. For example, one carrier said it provides the information required through SMS messages and email. Since most passengers would have a mobile phone and the price of international mobile phone use has been reduced as a result of other Community action, this may be considered a reasonable approach for provision of information, which potentially ensures that passengers are adequately informed whilst minimising costs. Increased use of smartphones provides more opportunities, potentially allowing passengers to reroute or claim refunds, and provision of electronic vouchers for assistance, as well as provision of information. Smartphone penetration is already nearly 50% in some EU States and is increasing rapidly<sup>48</sup> - although as air travel is generally international, measures would have to be taken to reduce the cost of data roaming before this could be a sufficient alternative.
- 13.37 However, in pursuing such an approach it should also be remembered that:
- Although the Regulation's information requirements could be satisfied by the use of SMS notifications, it could be more difficult to offer more complex services - particularly the choice between a refund, rerouting or rebooking.
  - Not all passengers would have smartphones with internet access, and a small number may still not have mobile phones at all; therefore some alternative provisions might have to be defined for these groups.

### *Estimate of impacts*

- 13.38 We assume that 1 member of staff is required for all airlines at all airports within the EU at which they operate (on average) at least one daily departure, and that this obligation is extended for EU carriers to EU-bound departures from non-EU airports. We also assume an average shift to be 8 hours long, so if a carrier operates two daily flights 10 hours apart for example, two members of staff will be required. We used OAG schedule data for

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<sup>48</sup> Ofcom (2011): International Communications Market Report

September 2011 to estimate the average requirement. Finally, we also applied an uplift to reflect the need to cover weekends, annual leave, sickness, and so on. The uplift is 1.6, a value derived from a sample of HR websites.

- 13.39 We assume that, although in general airlines will use their existing ground staff or contractors (such as check-in agents), some issues would have to be taken into consideration:
- Given the financial significance of the decisions they would be making, the staff would probably need to be better qualified and hence higher paid than standard passenger service staff. Airlines indirectly referred to this as an issue in their responses to the public consultation. We have found that most passenger service jobs (check in etc.) at London airports are advertised at around £7 (€9) per hour, little more than the minimum wage, and increase up to around £10 (€12) per hour. We have allowed €3 per hour higher costs (pay and overheads such as social insurance) for the staff who would cover this role, which takes it towards the higher paid passenger service jobs advertised.
  - If they were to make decisions about assistance, rerouting etc. without necessarily checking with central control, they would need reasonably detailed training in the approach to follow - we have assumed 2 days per staff member per year. Given that this training time is additional to anything which would be required currently, a total rather than incremental salary rate is required to estimate the cost incurred. We have assumed an hourly wage of €14.89, based on advertised rates for check-in staff at London airports of £7; uplifted to reflect overheads, the additional €3 discussed above, and the average ratio between UK and EU average rates of pay for elementary occupations.
  - The airlines would need to allow some additional staffing as a result of this, as the staff would have to be assisting passengers some of the time and therefore could not do their regular jobs. We have estimated that (excluding the uplift of 1.6 for relief cover) this option would require 4,400 people to be on duty at EU airports each day. The Regulation creates obligations with respect to around 40,000 passengers per day. If it took 2 minutes to deal with each of these passengers, this would be 190 working days (4.3% of the total). Therefore an allowance of 5% might be sufficient. However, disruption can be grouped together around particular incidents (e.g. bad weather, strikes etc.) and therefore some margin would be required. Although it is not clear what margin airlines would allow, we have assumed 10%. Again, given that these staff are additional, the total rather than incremental wage rates are used to estimate the total cost.
- 13.40 On this basis we have estimated this option would generate an incremental economic burden of €340 million NPV.

#### *Conclusions*

- 13.41 Option C3.2 would be beneficial in addressing the policy objectives to maintain and improve passenger protection - primarily by providing a means for passengers to obtain the rights to which they are already entitled. However, this would be at the expense of a potentially relatively significant increase in the economic burden for airlines.

13.42 It may be possible to ensure that passengers have sufficient information and are offered the assistance required without such an increase in the economic burden, for example through use of new technology. Any regulatory change should not preclude this flexibility, particularly given the rapid pace of technological change - for example it is not inconceivable that SMS messages could be rendered obsolete by future new technology, and airlines may be able to provide information on disruption, vouchers for assistance, and opportunities for rebooking automatically to smartphones. As noted above further measures would need to be taken to reduce the costs of data roaming before smartphones became a feasible alternative for air passengers.

### **C4: Define that per-passenger taxes and airport charges must be refunded in the event a passenger decides not to travel, and limit fees**

13.43 At present, most carriers will allow passengers to claim a refund of per-passenger taxes and airport charges if they decide not to travel, even if they have a non-refundable ticket. The airlines collect these charges on behalf of governments and airports, and do not have to pay them for passengers that do not travel. However, our research indicates that:

- Some airlines do not make clear that this refund is available: very often, airline websites state during the booking process that the ticket is non-refundable, and the passenger would only find out that they were entitled to a refund if they checked the Conditions of Carriage.
- The fee for this refund is usually high (€20-30 per passenger), and particularly for short haul flights is often higher than the tax or charge that should be refunded. Airlines justified this on the basis that substantial costs were incurred in manually processing refunds.

13.44 In the bilateral interviews, one consumer organisation said that retention of taxes and charges by airlines was 'tantamount to theft', as they were not collected for airlines. In contrast airlines emphasised the significant operational costs in collecting taxes on behalf of governments. One low cost carrier also argued that airlines should not have to refund airport charges, as these were equivalent to any other element of their cost base, and the ticket is non-refundable - it also said that the actual amount of airport charge paid might be subject to commercial agreements with the airport and therefore the amount could not be disclosed without revealing commercially sensitive information.

13.45 Some enforcement authorities considered that a refusal to refund taxes and charges or an excessive charge for doing so would be an unfair contract term and therefore prohibited by the national laws implementing Directive 93/13/EEC, but there was no agreement about this. In addition, a court challenge by the Norwegian Consumer Ombudsman to Ryanair's fee for refunds of taxes and charges was not successful.

13.46 Whilst we agree with the airlines that significant costs may be incurred in manually processing refunds, the per-passenger cost could be substantially reduced if taxes and charges were automatically refunded to the card or other payment method used to purchase the ticket. Whilst this would require a one-off change to airline booking systems, which could incur substantial costs, the per-passenger cost would then be minimal. Similarly, if airlines allowed refunds of taxes and charges to be claimed online, as opposed to via call centres, processing costs could be substantially reduced. An efficient airline

seeking to minimise the costs of processing refunds ought to be able to do so for an amount which did not exceed the per-passenger cost of handling bookings (we have checked sales and reservation costs for a sample of airlines and found the average per-passenger cost to be €3.16<sup>49</sup>).

13.47 The current system means that many passengers probably do not know they are entitled to a refund, and even if they do, are likely to be deterred from claiming it by the substantial fees and the cost and inconvenience of contacting an airline call centre to request the refund. As a result, it is likely that airlines retain the large majority of taxes and charges for passengers that do not travel. It is not clear that it is fair for airlines to be able to do this, as they are collected on behalf of governments and airport operators, but never given to them if the passenger does not travel.

13.48 This could be addressed through either of the following options:

■ Option C4.1: Per-passenger taxes and charges should be automatically refunded to all passengers that do not use their tickets. The airline would be able to deduct reasonable administration costs, but would be prohibited from making a deduction that exceeded their actual cost. As airlines would not have a clear incentive to minimise the 'reasonable administration costs', this would need to be defined, we suggest as the cost an efficient airline seeking to minimise its costs would incur and not exceeding the per-passenger cost of taking a booking in the first place.

■ Option C4.2: Per-passenger taxes and charges should be refunded without any deduction when requested. Airlines would need to make clear during the booking process (for example in the Key Facts document discussed above) that this refund would be available. The revenue from the taxes/charges that were never refunded, because passengers did not request the refund, should more than offset the cost of processing the refunds to those that did request it.

13.49 We have not calculated the impact of these options, as it is not clear what the existing legislation requires in this respect, and therefore it is not clear what if any change these options represent relative to a position of full compliance with the existing legislation, which is the starting point for all of the quantified analysis. They would however represent a significant cost for airlines relative to the *de facto* current position, which is that airlines rarely refund taxes and charges for passengers that do not travel.

#### *Conclusions*

13.50 Both options would be beneficial in improving legal certainty by clarifying what is already required by Directive 93/13/EEC on unfair contract terms; and would be aligned with the policy objectives to maintain and improve passenger protection including in circumstances not addressed by the current Regulation.

13.51 Although being required to refund these amounts might be an economic burden for airlines, it is not clear that it is an incremental economic burden, because it may already be a requirement. It could also be argued that it is not an unreasonable one, as this

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<sup>49</sup> This is likely to be the maximum cost necessary to process a refund if it is done equivalently efficiently to selling a ticket, as in some cases reported sales and reservation costs would include other costs such as travel agent commissions which should not be incurred.

revenue is collected for governments and airport operators but not passed on to them because the passenger does not travel. However, as it appears that airlines usually do not refund these amounts at present, the net effect of these options would be to benefit passengers that do not travel at the cost of slightly higher fares for all passengers.

### **C5: Clarify that passengers can transfer the ticket to another person or claim a refund if they cannot travel for reasons outside their control**

- 13.52 As discussed above, most air tickets are partly or wholly non-refundable and cannot be transferred to another person. Airlines emphasised that this was necessary in order to protect their revenue management systems and avoid fraud. If tickets could be transferred, lower priced advance purchase tickets might be bought and then resold at a profit at a later date. However, arguably this is unfair to the consumer if he/she cannot travel due to force majeure.
- 13.53 As a result of action taken by the UK Office of Fair Trading, IATA RP1724 on Conditions of Carriage specifies that, if a consumer cannot travel due to force majeure and provides evidence of this, the carrier will provide a credit for future travel; the OFT was concerned that a failure to offer such a refund would be an unfair contract term<sup>50</sup>. Some national courts have also ruled that a refusal to transfer a ticket or provide a refund would constitute an unfair contract term, although these cases are generally from lower courts and therefore do not determine any precedent.<sup>51</sup>
- 13.54 However, research we undertook for the Commission in 2008 indicates that many carriers either do not specify in their Conditions of Carriage that such a credit is available, or in some cases specifically state that it is not.<sup>52</sup> Some airlines interviewed for this study argued that passengers should take out travel insurance to cover these circumstances. In addition, airlines usually state during the booking process that tickets are non-refundable and non-changeable, and do not mention that in some circumstances the passenger may be entitled to this credit.
- 13.55 As it is not clear what is required by the existing Directive on Unfair Contract Terms in this respect, if the Regulation was amended or interpretative guidance on the Directive was issued, this could be addressed through this. This would be consistent with the policy objectives of ensuring legal certainty and of protecting passengers. It is not possible to quantify any impact on the economic burden on airlines, as this depends what the Directive already requires.

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<sup>50</sup> OFT (2000): Unfair Contract Terms Case Report Bulletin 12

<sup>51</sup> Judgements of Namur Commercial Court in cases brought by Test Achats against Brussels Airlines, Ryanair and easyJet; Judgement of Audiencia Provincial of Madrid, 15 October 2010 in a case brought against Iberia

<sup>52</sup> Steer Davies Gleave (2008): Assessment of contract conditions and preferential tariff schemes

## 14 Impact assessment: options to limit economic burden on airlines

### Introduction

- 14.1 This section sets out various options which might limit the economic burden on airlines associated with Regulation 261/2004. Particularly in regard to the level of compensation, there is a link between some of these options and options relating to delay, cancellation and other travel disruption covered in part A. In section 17 below, we set out how some of these options might be combined.

### D1: Options relating to passenger compensation

#### *Option D1.1: Change compensation time threshold*

- 14.2 One relatively simple way to reduce the economic burden on airlines would be to extend the current time thresholds before which compensation for delays and cancellations becomes payable. Although most stakeholders did not raise any issues with these thresholds, instead focussing on the level of compensation (discussed below), some noted the apparent inconsistency between the time threshold for compensation for cancellations not notified in advance (rerouting not offered allowing the passenger to arrive within 2 hours of the originally planned time) and delays (delay of over 3 hours).
- 14.3 There are also other reasons why the threshold might be extended:
- The right to compensation after 3 hours delay appears inconsistent with the other rights specified in the Regulation. In particular, passengers are not entitled to refreshments until a delay of 4 hours (for flights over 3,500km), and not entitled to abandon their journey and claim a refund until a delay of 5 hours.
  - As discussed under option A3.4 above, it is theoretically possible (albeit in quite limited circumstances) that the requirement to pay compensation for delays of 3 hours could incentivise airlines to cancel flights that would otherwise have been operated in order to reduce compensation payments. Extending the threshold would reduce this possibility.
  - In the event of problems with an aircraft or a crew, particular at a non-base airport, a 3 hour threshold for compensation will not give the airline sufficient time to address the problem, for example by flying in a spare aircraft. If the threshold was 5 hours or longer, the airline would have more opportunity to rectify the problem in the meantime, and the compensation might provide an incentive. A longer threshold might be necessary for long haul flights as it could take longer to provide a replacement aircraft if it had to be flown to a non-EU airport to collect the passengers (therefore we have tested a differential threshold for short and long haul).
- 14.4 We have modelled three sub-options:
- Option D1.1A: Amend length of delay before compensation is payable for delays and cancellations to 5 hours;

- Option D1.1B: Amend length of delay before compensation is payable for delays and cancellations to 12 hours; and
- Option D1.1C: Amend length of delay before compensation is payable for delays and cancellations to 5 hours for flights under 3,500km and 12 hours for flights over 3,500km.

14.5 As in the rest of this report, in assessing these options we have assumed that the Sturgeon judgement is upheld by the CJEU and therefore that compensation is currently payable for delays.

*Estimate of impacts: Option D1.1A (5 hour threshold)*

14.6 Extending the threshold for compensation to 5 hours from 2 hours (cancellations) or 3 hours (delays) generates a 35% reduction in the amount of monetary compensation payable, and a 9% reduction in the incremental economic burden of the Regulation. For this and subsequent option relating to compensation, there is a larger proportionate reduction in the 'theoretical maximum' scenario where all passengers claim the compensation to which they are theoretically entitled.

14.7 The main impact of this option is on compensation paid for delays; the impact on compensation for cancellations is smaller, as many passengers on cancelled flights (particularly long haul flights) cannot be rerouted in less than 5 hours. Table 14.1 shows the quantified impacts of this option. All of the reduction in the burden is for the airlines, in the form of reduced compensation payments.



**TABLE 14.1 QUANTIFIED IMPACTS: OPTION D1.1A**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	- 127,784	- 923,672	-35.0%	- 847,487	- 6,210,020	-39.2%
Reimbursement / rerouting	-	-	-	-	-	-
Care	-	-	-	-	-	-
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>- 127,784</b>	<b>- 923,672</b>	<b>-8.6%</b>	<b>- 847,487</b>	<b>- 6,210,020</b>	<b>-25.9%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 127,784	- 923,672	-8.9%	- 847,487	- 6,210,020	-26.3%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>- 127,784</b>	<b>- 923,672</b>	<b>-8.6%</b>	<b>- 847,487</b>	<b>- 6,210,020</b>	<b>-25.9%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 1,321	- 9,660	-4.5%	- 8,845	- 65,572	-16.5%
EU charter	- 18,339	- 134,499	-24.2%	- 123,087	- 915,137	-50.3%
EU low cost	- 38,226	- 274,418	-7.8%	- 252,095	- 1,834,278	-25.2%
EU traditional scheduled	- 46,841	- 339,205	-7.5%	- 311,126	- 2,284,052	-22.7%
Non-EU	- 23,057	- 165,889	-10.1%	- 152,335	- 1,110,982	-27.2%
<b>Total airline</b>	<b>- 127,784</b>	<b>- 923,672</b>	<b>-8.9%</b>	<b>- 847,487</b>	<b>- 6,210,020</b>	<b>-26.3%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.1%	-	-	-0.4%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 127,784	- 923,672	-9.3%	- 847,487	- 6,210,020	-26.8%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>- 127,784</b>	<b>- 923,672</b>	<b>-7.1%</b>	<b>- 847,487</b>	<b>- 6,210,020</b>	<b>-23.6%</b>

14.8 The results by route and carrier type reflect trends in delays, with charter carriers and long haul flights experiencing the highest reductions in the incremental economic burden.

*Estimate of impacts: Option D1.1B (12 hour threshold)*

14.9 The reduction in incremental economic burden generated by this sub-option is approximately 60% higher than for Option D1.1A. The reduction in burden is again much higher for delays than for cancellations, and charter carrier and long haul flights are the most significantly affected, with regional and short haul flights the least significantly affected. However, the difference is less than for Option D1.1A, as relatively few flights of any type are delayed for more than 12 hours. Table 14.2 below summarises the results for this sub-option.

TABLE 14.2 QUANTIFIED IMPACTS: D1.1B

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	- 211,693	- 1,530,140	-58.0%	- 1,403,943	- 10,287,094	-64.9%
Reimbursement / rerouting	-	-	-	-	-	-
Care	-	-	-	-	-	-
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>- 211,693</b>	<b>- 1,530,140</b>	<b>-14.3%</b>	<b>- 1,403,943</b>	<b>-10,287,094</b>	<b>-43.0%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 211,693	- 1,530,140	-14.7%	- 1,403,943	- 10,287,094	-43.5%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>- 211,693</b>	<b>- 1,530,140</b>	<b>-14.3%</b>	<b>- 1,403,943</b>	<b>-10,287,094</b>	<b>-43.0%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 2,239	- 16,380	-7.6%	- 14,996	- 111,240	-28.0%
EU charter	- 27,442	- 201,263	-36.3%	- 184,185	- 1,369,400	-75.2%
EU low cost	- 63,306	- 454,519	-12.9%	- 417,535	- 3,038,452	-41.8%
EU traditional scheduled	- 81,471	- 590,094	-13.1%	- 541,228	- 3,974,018	-39.4%
Non-EU	- 37,235	- 267,884	-16.3%	- 245,998	- 1,793,984	-43.9%
<b>Total airline</b>	<b>- 211,693</b>	<b>- 1,530,140</b>	<b>-14.7%</b>	<b>- 1,403,943</b>	<b>-10,287,094</b>	<b>-43.5%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.1%	-	-	-0.7%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 211,693	- 1,530,140	-15.4%	- 1,403,943	- 10,287,094	-44.4%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>- 211,693</b>	<b>- 1,530,140</b>	<b>-11.7%</b>	<b>- 1,403,943</b>	<b>- 10,287,094</b>	<b>-39.1%</b>

*Estimate of impacts: Option D1.1C (5 hour threshold short haul, 12 hour threshold long haul)*

- 14.10 The impact of this option is shown in Table 14.3 below. As would be expected, the reduction in the economic burden is between that generated by options D1.1A and D1.1B, although closer to D1.1A as most flights are under 3,500km.

**TABLE 14.3 QUANTIFIED IMPACTS: D1.1C**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	- 155,725	- 1,125,075	-42.7%	- 1,032,372	- 7,560,948	-47.7%
Reimbursement / rerouting	-	-	-	-	-	-
Care	-	-	-	-	-	-
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>- 155,725</b>	<b>- 1,125,075</b>	<b>-10.5%</b>	<b>- 1,032,372</b>	<b>- 7,560,948</b>	<b>-31.6%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 155,725	- 1,125,075	-10.8%	- 1,032,372	- 7,560,948	-32.0%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>- 155,725</b>	<b>- 1,125,075</b>	<b>-10.5%</b>	<b>- 1,032,372</b>	<b>- 7,560,948</b>	<b>-31.6%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 1,323	- 9,673	-4.5%	- 8,857	- 65,659	-16.5%
EU charter	- 20,522	- 150,508	-27.1%	- 137,737	- 1,024,060	-56.3%
EU low cost	- 38,982	- 279,862	-8.0%	- 257,093	- 1,870,765	-25.7%
EU traditional scheduled	- 61,688	- 446,092	-9.9%	- 409,269	- 3,000,235	-29.8%
Non-EU	- 33,210	- 238,940	-14.5%	- 219,417	- 1,600,229	-39.1%
<b>Total airline</b>	<b>- 155,725</b>	<b>- 1,125,075</b>	<b>-10.8%</b>	<b>- 1,032,372</b>	<b>- 7,560,948</b>	<b>-32.0%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.1%	-	-	-0.5%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 155,725	- 1,125,075	-11.3%	- 1,032,372	- 7,560,948	-32.6%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>- 155,725</b>	<b>- 1,125,075</b>	<b>-8.6%</b>	<b>- 1,032,372</b>	<b>- 7,560,948</b>	<b>-28.7%</b>

### Conclusions

- 14.11 Option D1.1 would significantly contribute towards meeting the policy objective of limiting the economic burden, by ensuring that the total cost of compliance to industry was reasonable. Although it might not be consistent with the policy objective of ensuring that passenger protection is maintained or improved, arguably it would address a passenger benefit that is disproportionate - quite substantial compensation after a delay of only 3 hours.
- 14.12 If the threshold for payment of compensation was extended, there would clearly be a tradeoff between the amount of any extension and hence the reduction in economic burden, and the reduction in benefits to passengers. Extending the threshold to 12 hours rather than 5 hours would offer a greater reduction in the economic burden for air carriers but compensation would be payable to significantly fewer passengers.

- 14.13 Adopting the 12 hour threshold for long haul flights only, and a 5 hour threshold for short haul flights, achieves a reduction in the economic burden between these two options. It may also result in a compensation entitlement that is more proportionate, as a long delay is less significant in proportion to the length of a long haul flight; airlines may also need more time to address problems on a long haul flight (for example by flying in an alternative aircraft).

***Option D1.2: Introduce time threshold for denied boarding***

- 14.14 At present passengers who are involuntarily denied boarding are immediately entitled to compensation, even if they are rerouted immediately (although the compensation amount is reduced by 50% if certain time thresholds are met). It could be argued that a threshold should be introduced for denied boarding, to make this more consistent with cancellations.
- 14.15 However, denied boarding is different from delays or cancellations in that it usually arises from a deliberate commercial decision to overbook flights. In these circumstances it seems reasonable that airlines always have to pay compensation, albeit at a reduced level, even if the inconvenience is limited by the fact that rerouting is offered quickly. Introducing a time threshold for denied boarding compensation would significantly reduce the incentive for carriers operating high frequency routes (for example Madrid-Barcelona or London-Dublin) not to overbook. **For this reason we have not assessed this option further.**

***Option D1.3A: Compensation to be a function of ticket price***

- 14.16 Airlines and their representative associations argued that the current levels of compensation are too high, and are disproportionate to the price of many air tickets. Most supported changing any compensation to be a function of the price of the ticket, although some legacy carriers do not support this, partly because there could be an increase in compensation payable to holders of premium class and flexible economy tickets. Some airlines also highlighted that it could be difficult to identify what the ticket price for an individual flight was and that if this approach was adopted this would need to be clarified (this is discussed further below). The majority of NEBs supported changing compensation to be a function of the value of the ticket, adjusted for the length of delay and potentially subject to a minimum and a maximum.
- 14.17 In contrast, consumer representatives and some NEBs strongly argued that relating compensation to ticket price was not appropriate as the amount of inconvenience passengers suffer is not related to the amount they paid for the ticket. Some also noted that airlines tend to avoid paying the compensation anyhow.
- 14.18 There is a stronger argument that, in the case of denied boarding, compensation should not be linked to the value of the ticket, as this could create an incentive for airlines to deny boarding to passengers on the cheapest tickets first. Therefore, we have modelled this option in respect to delays and cancellations only.

***Legal issues***

- 14.19 As in the rest of this report, in analysing these options we assume that the Sturgeon judgement is reaffirmed by the CJEU and therefore that compensation is currently payable for delays. If the Court adopts a different view in future then this element of the compensation may cease to apply.

- 14.20 As discussed above, our legal advisors consider there is a conflict between fixed compensation for delays and the Montreal Convention, as the Convention already provides redress in case of delay, subject to proof of loss and specified defences for the carrier, and prohibits non-compensatory damages. However, if the Court did reconcile Sturgeon and the Convention in relation to compensation for delay, for example considering the compensation to be ‘standardised assistance’ in line with the recent opinion of the Advocate General<sup>53</sup>, our legal advisors consider it would not be a great leap for the Court also to consider compensation related to ticket price as being standardised, and therefore not inconsistent with the Convention. This view is supported by paragraph 46 of the IATA judgment which states that the measures in Article 6, including reimbursement of the ticket price (the amount of which can vary from passenger to passenger), are standardised assistance. However, it should also be noted that in paragraph 55 the Advocate General referred to the fact that compensation was ‘flat-rate’ contributed to the conclusion that this compensation was ‘standardised assistance’, and therefore it cannot be excluded that the Court could find compensation based on the ticket price to be inconsistent with the Convention even if flat-rate compensation was not.
- 14.21 There should be no equivalent issue of conflict with the Convention for cancellations or denied boarding, as these are usually not considered to be ‘delay’ in the context of the Convention, and reflecting this, the Court’s reference to ‘standardised assistance’ was primarily in the context of delays.

*Relation between compensation levels and circumstances when it is payable*

- 14.22 As discussed above, in evaluating the level and type of compensation which might be payable, we also need to consider the circumstances in which compensation is payable:
- If compensation is limited to circumstances where the airline is clearly at fault (such as overbooking or commercial cancellations), or negligent, in effect this partly serves as a sanction to discourage the behaviour concerned. In these circumstances it may be reasonable that the level of compensation is quite high. It may also be reasonable that there is no link to ticket price, partly because the inconvenience passengers suffer is not related to what passengers have paid for the ticket, but also to protect passengers who have paid lower fares (it might not be desirable for airlines to have an incentive to deny boarding to those who had bought the cheapest tickets, or to cancel flights when only cheaper tickets had been sold).
  - If compensation is intended to be payable for most delays and cancellations, with only an exemption where really exceptional circumstances are proven, the level of compensation in the current Regulation could be considered disproportionate. It is not clear why airlines should pay compensation that may be several times the price of the ticket when they have made reasonable efforts to operate the flight. The analysis in section 7 does not support the airline argument that compensation for delays and cancellations is an unsustainable economic burden at present; because in practice most carriers that provided information for the study rarely pay it. However as noted in section 9 this burden could increase in the future, also if application and enforcement of the Regulation improve over time.

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<sup>53</sup> Joined Cases C-581/10 and C-629/10

## Final report

14.23 Therefore, the argument for reducing the level of compensation and relating it to the price of the ticket is stronger if the circumstances in which compensation are payable are quite wide.

### *Calculation of flight price*

14.24 If this option was implemented, to avoid dispute the Regulation should define how the 'flight' price should be calculated, particularly to clarify how much compensation would be payable for bookings covering multiple sectors. This would also be helpful where there is a dispute about the proportion of a booking that has to be refunded.

14.25 We suggest that this should be calculated as follows:

- if the sector price paid can be clearly identified on the reservation issued to the passenger, this amount;
- if the sector price cannot be clearly identified on the reservation, the total price pro-rated by distance, using length of the sector divided by the total length of all of the sectors on the booking, both calculated using the great circle distance;
- if there are different classes for different sectors, weighting factors to be applied for each (e.g. economy 1.0, premium economy 1.5, business 2.0);
- any taxes, fees and charges or optional additional services (such as additional baggage) specifically related to the sector concerned;
- where there are other taxes, fees or charges or optional additional services which cannot be attributed to specific sectors, these should be pro-rated with rest of the booking.

14.26 However, this option would create difficulties with respect to flights sold as part of a package. In these cases it is not clear what the ticket price is, because there is a single price covering flights, accommodation and possibly other services. Indeed, where a package is sold by an integrated tour operator, which includes an airline, it may be almost impossible to identify what the price specifically of the flight is. This could cause significant disputes between consumers and tour operators/airlines. The only way to avoid this would be if the price of the part of the package accounted for by the flights was itemised separately, but this creates other difficulties:

- tour operators might be reluctant to do this, as they might consider the prices for components of the tour to be confidential; and
- it would be very difficult for consumers or enforcement bodies to verify whether the price listed for the flight component was a reasonable reflection of the proportion of the total cost accounted for by the flights.

### *Estimate of impacts*

14.27 In order to calculate the impact of this option, we assume that the compensation paid would be equivalent to the average fare for the carrier/route type, as used for our reimbursement and rerouting calculations. We have also assumed that compensation would be subject to a minimum of €50 and a maximum of €600. The maximum and minimum are applied by route/carrier type, as we do not have information on the range of fares sold by each type of route/carrier, and therefore this estimate is indicative only.

14.28 At around 11%, the reduction in economic burden generated by this option would lie somewhere between the reductions offered by D1.1A and D1.1B. The results reflect both trends in delays and carrier types for which the difference between average ticket prices and the current compensation levels thresholds is larger. The reductions in the economic burden are largest for charter carriers (26%) and low cost carriers (15%), as their average fares are lower. Similarly, this is reflected in the changes by route type - with the largest percentage reduction for routes within the EU of less than 1,500km.

**TABLE 14.4 QUANTIFIED IMPACTS: OPTION D1.3A**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	- 159,614	- 1,153,995	-43.8%	- 1,058,771	- 7,759,822	-48.9%
Reimbursement / rerouting	-	-	-	-	-	-
Care	-	-	-	-	-	-
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>- 159,614</b>	<b>- 1,153,995</b>	<b>-10.8%</b>	<b>- 1,058,771</b>	<b>- 7,759,822</b>	<b>-32.4%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 159,614	- 1,153,995	-11.1%	- 1,058,771	- 7,759,822	-32.8%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>- 159,614</b>	<b>- 1,153,995</b>	<b>-10.8%</b>	<b>- 1,058,771</b>	<b>- 7,759,822</b>	<b>-32.4%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 2,528	- 18,536	-8.6%	- 16,965	- 126,077	-31.7%
EU charter	- 19,887	- 145,854	-26.3%	- 133,478	- 992,395	-54.5%
EU low cost	- 71,212	- 511,272	-14.5%	- 469,671	- 3,417,805	-47.0%
EU traditional scheduled	- 45,561	- 331,446	-7.4%	- 303,760	- 2,240,242	-22.2%
Non-EU	- 20,426	- 146,887	-8.9%	- 134,898	- 983,303	-24.1%
<b>Total airline</b>	<b>- 159,614</b>	<b>- 1,153,995</b>	<b>-11.1%</b>	<b>- 1,058,771</b>	<b>- 7,759,822</b>	<b>-32.8%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.1%	-	-	-0.5%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 159,614	- 1,153,995	-11.6%	- 1,058,771	- 7,759,822	-33.5%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>- 159,614</b>	<b>- 1,153,995</b>	<b>-8.8%</b>	<b>- 1,058,771</b>	<b>- 7,759,822</b>	<b>-29.5%</b>

### Conclusions

14.29 Option D1.3A would achieve a similar reduction in the economic burden to option D1.1 discussed above. However, although it would also result in less compensation being received by passengers, it might be considered a less significant worsening in the level of protection offered, because the level of compensation would reduce, rather than the

proportion of passengers eligible to receive it. Therefore, it may be more consistent with the policy objective of maintaining passenger protection. It would also be more consistent with the approach adopted for other transport modes, for which compensation is a function of the ticket price.

- 14.30 However, for this option to be workable, some complementary measures would also be necessary in order to define the costs of individual flights. It could also cause significant difficulties for flights sold as part of a package, as it would not be clear what proportion of the price was accounted for by the flights. In addition, if the CJEU follows the recent opinion of the Advocate General and finds that monetary compensation for delays is consistent with the Convention partly on the basis that it is flat rate, this option could reduce legal certainty, by introducing a new potential for conflict with the Convention.

***Option D1.3B: Reduce compensation amounts by 50%***

- 14.31 As an alternative to options to extend the compensation threshold or make compensation a function of the ticket price, we have also tested an option by which compensation would continue to be flat rate but paid at 50% of the current rates. Therefore, for example, for a long haul flight the compensation entitlement would be €150 if the passenger was rerouted to arrive within 4 hours, and otherwise €300.
- 14.32 To be consistent with options D1.1 and D1.3A discussed above, it is assumed that the existing rates of compensation would be retained for involuntary denied boarding. The rationale for a different rate would be that denied boarding is more likely to be a deliberate commercial decision by the carrier.

***Estimate of impacts***

- 14.33 The estimated impacts of this option are shown in Table 14.3 below. We estimate that this option would reduce the amount of compensation payable by 44% and the total economic burden by 11%, slightly less than option D1.3A (compensation as a function of the ticket price). The amount of compensation payable in the theoretical maximum scenario, where all passengers claim the compensation to which they are entitled, reduces by a slightly greater proportion - because denied boarding compensation (which does not change) accounts for a smaller proportion of this as this is always assumed to be paid to all eligible passengers.



**TABLE 14.5 QUANTIFIED IMPACTS: OPTION D1.3B**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	- 160,129	- 1,156,277	-43.8%	- 1,061,104	- 7,767,152	-49.0%
Reimbursement / rerouting	-	-	-	-	-	-
Care	-	-	-	-	-	-
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>- 160,129</b>	<b>- 1,156,277</b>	<b>-10.8%</b>	<b>- 1,061,104</b>	<b>- 7,767,152</b>	<b>-32.5%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 160,129	- 1,156,277	-11.1%	- 1,061,104	- 7,767,152	-32.8%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>- 160,129</b>	<b>- 1,156,277</b>	<b>-10.8%</b>	<b>- 1,061,104</b>	<b>- 7,767,152</b>	<b>-32.5%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 2,158	- 15,767	-7.3%	- 14,438	- 106,967	-26.9%
EU charter	- 14,858	- 108,968	-19.6%	- 99,721	- 741,420	-40.7%
EU low cost	- 45,986	- 330,214	-9.4%	- 303,337	- 2,207,759	-30.4%
EU traditional scheduled	- 67,299	- 486,793	-10.8%	- 446,589	- 3,274,684	-32.5%
Non-EU	- 29,829	- 214,535	-13.0%	- 197,019	- 1,436,323	-35.1%
<b>Total airline</b>	<b>- 160,129</b>	<b>- 1,156,277</b>	<b>-11.1%</b>	<b>- 1,061,104</b>	<b>- 7,767,152</b>	<b>-32.8%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.1%	-	-	-0.5%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 160,129	- 1,156,277	-11.6%	- 1,061,104	- 7,767,152	-33.5%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>- 160,129</b>	<b>- 1,156,277</b>	<b>-8.8%</b>	<b>- 1,061,104</b>	<b>- 7,767,152</b>	<b>-29.5%</b>

***Option D1.4: Specify progressive compensation per hour of delay in arrival at the final destination***

- 14.34 As an alternative to either fixed-rate compensation or compensation based on the value of the ticket, compensation could be based on the length of the delay. For cancellations or denied boarding this would, in line with Article 5(1)(c) and Article 7(2), be based on the amount of delay in arrival at the destination, based on when the passenger is first offered rerouting.
- 14.35 Compensation based on the delay in arrival at the final destination would appear to be much fairer to the passenger. Airlines and their representative associations strongly argued against this. Their primary argument was that any such compensation would infringe the Montreal Convention, and we discuss this issue further below. However they also pointed out some important practical problems:

- It may be very difficult to determine when a passenger was offered rerouting, and this may also depend in part on actions taken by the passenger. Many airlines will email or send SMS messages to passengers whose flights are cancelled and invite them to go to the website to rebook, rather than come to the airport. The passenger may not do so immediately and therefore may lose the opportunity to be rerouted at the first opportunity.
  - The actual time of rerouting is not a helpful alternative to the time when the passenger was first offered rerouting, because passengers do not always prefer to be rerouted on the first flight. For example, if a passenger is required to stay overnight as a result of a cancellation, and the first available flight departs at 6am, the passenger might prefer to wait longer for a flight later in the day.
  - The actual time of arrival at the final destination of the flight on which passengers' are rerouted may also be impacted by other factors, including factors wholly outside the carrier's control. For example, the time of arrival for a long haul flight can be significantly impacted by the wind strength and direction. For this reason, carriers argued that it would never be appropriate to base compensation on the actual time of arrival.
- 14.36 Our legal advisors consider that, if applied to delay, this proposal would infringe the Montreal Convention, as this specifies airlines' liability for damage caused by delay. Even if the court were to consider fixed-rate compensation to be in line with the Montreal Convention as 'standardised assistance' or something similar, there could be a stronger argument that per-hour compensation conflicts, as it is less standardised and a closer proxy to the actual damage that the passenger has suffered.
- 14.37 **As a result of the potential conflict with the Montreal Convention and the practical difficulties of applying this option, we suggest it is not pursued further.**
- Option D1.5: Introduce right to automatic compensation if carrier fails to provide care when required by the Regulation***
- 14.38 As discussed in section 8, the available evidence indicates that in some cases carriers do not provide the care and assistance that the Regulation requires them to offer. Whilst passengers may be expected to seek to recover costs after the incident if the amount concerned is substantial, and in some cases may complain to the NEB, it is less likely they would do so if the amounts involved are small, for example if refreshments are not provided. Airlines could be incentivised to offer these in the first place, in accordance with their existing legal requirements, if there was an automatic entitlement to compensation if they did not. The amount could be quite low (€10-20 per passenger) whilst still giving an incentive to offer these and also to encourage passengers to claim these subsequently if they were not provided.
- 14.39 As might be expected, airlines argued strongly against this. One airline association argued that this would infringe the Montreal Convention, although it is not clear why, as this would be compensation for a failure to meet an explicit legal requirements which was upheld by the CJEU in the IATA/ELFAA case as not being inconsistent with the Convention. However, airlines raised a number of other issues with this proposal:

- The NEBs should be enforcing the Regulation and imposing sanctions where required. The Regulation requires that sanctions are dissuasive. Therefore, there should not be a need to introduce any further economic incentive.
- It is impossible to prove that an individual passenger was not offered assistance. In the event of a delay not all passengers will follow a request to go to the ticket desk or gate to be issued with meal vouchers. In addition, airlines will not always keep a record of who has been issued with refreshments or meal vouchers, and to do so would be a significant administrative burden.
- In the event of a cancellation, some airlines will send passengers an email or SMS, so many passengers will not come to the airport at all - however, in our view, on the basis of Article 14(2) this email should contain a statement that the passenger has a right to this assistance.
- In the event of mass disruption, it can be physically impossible to comply with the requirement to offer assistance, and the most an airline can reasonably do is refund costs afterwards.

14.40 Consumer representatives considered that this measure would be effective in giving airlines an incentive to comply with the Regulation. However, most NEBs considered that it should be sufficient to enforce the requirements of the existing Regulation; some identified similar practical problems to those identified by the airlines.

14.41 This option might be successful in incentivising compliance with the Regulation, which meets several of the policy objectives. However, there would be significant practical difficulties in applying this, and there could be a substantial administrative burden. **Therefore, we suggest this option is not considered further.**

***Option D1.6: Introduce right to claim interest if compensation or care/rerouting costs not paid***

14.42 Some national law already allows passengers to claim interest in certain circumstances, in particular once legal proceedings have commenced, but the Regulation does not provide a general right to claim interest.

14.43 In principle this could be addressed by amending the Regulation to allow a specific right to claim interest. However, in most cases, the amounts involved would be small. For example, if a carrier fails to pay an assistance cost of €100 for 3 months, with a 5% interest rate this would lead to it having to reimburse a further €1.25. This is unlikely to form a significant economic incentive to pay when required, and it would add an administrative burden to have to calculate this.

14.44 As this option is unlikely to be successful in incentivising carriers to comply with their obligations under the Regulation, and therefore does not meet the objectives of improving passenger protection or legal certainty, and is also likely to have significant implementation costs, **we suggest that should not be pursued further.**

***Conclusions***

14.45 This option represents an alternative to options D1.1 (extend the thresholds for compensation) or D1.3 (compensation to be a function of the ticket price), which would

also reduce the obligation to pay monetary compensation. As for these options, this option is consistent with the policy objective of minimising the economic burden on airlines. The reduction in the compensation paid to passengers means it might not be consistent with the policy objective of ensuring that passenger protection is maintained or improved, although it could be considered to make the compensation level more proportionate than now.

14.46 This option has some advantages relative to options D1.1 and D1.3:

- it does not reduce the number of people entitled to compensation (unlike D1.1);
- it does not create difficulties for flights sold as part of a package for which the flight price is unclear (unlike D1.3); and
- it does not generate any potential for a further legal challenge (unlike D1.3).

### ***Option D1.7: Adjust compensation by inflation***

14.47 Currently compensation levels are as specified in the Regulation and therefore remain constant in nominal terms. This means that their value in real terms reduces each year, and that the current value of the compensation required by the Regulation is less than when the Regulation was originally drafted.

14.48 This option would introduce an annual inflation adjustment, allowing the level of the compensation to be fixed in real terms. We assume that the Regulation would specify the amount of the compensation in the first year and then specify that the Commission would calculate revised amounts of compensation each year to reflect the effect of inflation, and the measure of inflation that is to be used for this adjustment (we would suggest euro-area inflation measured by the Harmonised Index of Consumer Prices, as published by Eurostat). The Regulation itself would then not specify the actual amount of compensation applying each year, but this could be published on the Commission's website. As an alternative, indexation could be applied by periodic amendments to the Regulation.

14.49 To assess the impacts of this option, we assume that, from 2015 onwards, compensation for delays, cancellation and denied boarding is increased annually in line with our assumed inflation rate of 2% and therefore remains constant in real terms. Table 14.6 shows the quantified impacts of this option. At around 3%, the overall increase in the economic burden is small, although increases each year as the difference between the fixed and inflation-adjusted compensation levels widens. The largest increases would be felt by charter carriers (4%), and on extra-EU flights of more than 3,500km (5%), as compensation represents a larger proportion of the incremental economic burden for these carriers.

**TABLE 14.6 QUANTIFIED IMPACTS: OPTION D1.7**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	49,869	333,538	12.6%	250,426	1,684,529	10.6%
Reimbursement / rerouting	-	-	-	-	-	-
Care	-	-	-	-	-	-
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>49,869</b>	<b>333,538</b>	<b>3.1%</b>	<b>250,426</b>	<b>1,684,529</b>	<b>7.0%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	49,869	333,538	3.2%	250,426	1,684,529	7.1%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>49,869</b>	<b>333,538</b>	<b>3.1%</b>	<b>250,426</b>	<b>1,684,529</b>	<b>7.0%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	544	3,657	1.7%	3,115	21,105	5.3%
EU charter	3,314	22,325	4.0%	20,749	140,914	7.7%
EU low cost	11,419	76,022	2.2%	70,304	471,467	6.5%
EU traditional scheduled	23,761	159,219	3.5%	107,469	723,636	7.2%
Non-EU	10,830	72,315	4.4%	48,789	327,407	8.0%
<b>Total airline</b>	<b>49,869</b>	<b>333,538</b>	<b>3.2%</b>	<b>250,426</b>	<b>1,684,529</b>	<b>7.1%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	0.0%	-	-	0.1%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	49,869	333,538	3.4%	250,426	1,684,529	7.3%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>49,869</b>	<b>333,538</b>	<b>2.5%</b>	<b>250,426</b>	<b>1,684,529</b>	<b>6.4%</b>

- 14.50 This option would be consistent with the policy objective of maintaining and improving the standard of passenger protection (specifically by ensuring that passengers receive adequate care and compensation in the event of delay, cancellation or denied boarding), but the small increase in the economic burden would not be consistent with the objective of ensuring that the burden is fair and proportionate.

***Option D1.8: Stronger progressivity of flat rate compensation plus inflation adjustment***

- 14.51 This option would change the levels of compensation specified in the Regulation and the distance thresholds at which they would apply. The amended thresholds would be as shown below, and are assumed to apply to passengers affected by delays, cancellations or denied boarding.

- €75 for all flights of 750 km or less (currently €250 for all flights of 1,500km or less);

- €150 for all flights of between 750km and 1,500km (currently €250);
- €300 for all intra-Community flights of more than 1,500 km, and for all other flights between 1,500 and 3,500 kilometres (currently €400); and
- €500 for all other flights (currently €600).

14.52 In addition, as in Option D1.7, the compensation levels would be inflation-adjusted from the time that the revised Regulation took effect (assumed to be 2015), and therefore no longer fixed in nominal terms.

14.53 The estimated impacts of this option are shown in Table 14.7 below. This shows that the reduction to the amount of compensation more than offsets the impact of the introduction of the inflation adjustment, and therefore this option results in a 29% reduction in the amount of compensation payable and a 7% reduction in the economic burden.

**TABLE 14.7 QUANTIFIED IMPACTS: OPTION D1.8**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	- 101,050	- 752,475	-28.5%	- 568,826	- 4,268,453	-26.9%
Reimbursement / rerouting	-	-	-	-	-	-
Care	-	-	-	-	-	-
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>- 101,050</b>	<b>- 752,475</b>	<b>-7.0%</b>	<b>- 568,826</b>	<b>- 4,268,453</b>	<b>-17.8%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 101,050	- 752,475	-7.2%	- 568,826	- 4,268,453	-18.0%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>- 101,050</b>	<b>- 752,475</b>	<b>-7.0%</b>	<b>- 568,826</b>	<b>- 4,268,453</b>	<b>-17.8%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 2,290	- 16,943	-7.9%	- 14,032	- 105,079	-26.4%
EU charter	- 7,841	- 58,815	-10.6%	- 53,613	- 407,453	-22.4%
EU low cost	- 35,645	- 258,686	-7.4%	- 235,101	- 1,729,188	-23.8%
EU traditional scheduled	- 47,644	- 358,202	-8.0%	- 217,781	- 1,651,927	-16.4%
Non-EU	- 7,631	- 59,830	-3.6%	- 48,299	- 374,806	-9.2%
<b>Total airline</b>	<b>- 101,050</b>	<b>- 752,475</b>	<b>-7.2%</b>	<b>- 568,826</b>	<b>- 4,268,453</b>	<b>-18.0%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.0%	-	-	-0.3%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 101,050	- 752,475	-7.6%	- 568,826	- 4,268,453	-18.4%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>- 101,050</b>	<b>- 752,475</b>	<b>-5.8%</b>	<b>- 568,826</b>	<b>- 4,268,453</b>	<b>-16.2%</b>

- 14.54 Option D1.8 would be consistent with the policy objective of ensuring the economic burden is fair and proportionate, by reducing the cost for air carriers; it may also be considered more proportionate as a result of the fact that the compensation would be more closely related to the length of the flight and hence the amount paid. The introduction of an inflationary adjustment would slightly offset the negative impact on passenger protection, although for the majority of passengers in the short term the disbenefit of the reduced compensation would outweigh the benefit of the inflation adjustment.
- 14.55 This option would reduce the level of compensation without generating any of the same practical complications as option D1.3A (compensation to be a function of the ticket price). A potential issue is that the introduction of an additional distance band would increase the complexity of applying the Regulation. However, in practice this is unlikely to be a significant issue, as compensation is usually calculated and paid after the incident, and therefore does not have to be determined on the spot at the airport, which is where complexity would be most likely to generate problems.

## **D2: Options to limit or transfer the economic burden on airlines**

### ***Option D2.1: Apply obligation to marketing carrier as well as operating carrier***

- 14.56 The Regulation currently applies to the operating carrier. The passenger has no claim against the marketing carrier for a codeshare flight, and enforcement bodies would not be able to take action against the marketing carrier. However, from a passenger perspective it may be easier to take civil action against the marketing carrier, particularly in relation to a connecting flight, and therefore allowing claims against either would facilitate passengers in terms of providing an effective means of redress.
- 14.57 There would be practical problems extending the Regulation to cover the marketing carrier, as it will not have a direct influence over the events that are regulated, and will be remote from them. For example, a marketing carrier cannot influence if a flight is delayed or cancelled, and would not directly influence whether a flight is overbooked (in some circumstances codeshare carriers may be able to sell capacity directly on the operating carrier's flights but the operating carrier will always control the inventory). If the passenger could claim against the marketing carrier, it could face difficulties in defending the claim, because it would not have direct access to information about what had happened.
- 14.58 For this reason this option appears likely to generate practical problems which would offset the consumer benefits. However, one exception may be for flights to the EU operated by non-EU carriers where the marketing carrier is an EU carrier (option A7.1). If it is considered that the Regulation cannot be extended to cover these, on the basis that this might be extra-territorial, an alternative might be to place the obligation on the EU marketing carrier; this would avoid an extra-territorial requirement because the Regulation would apply to the EU carrier only. The EU carrier would have to ensure, through its code share agreement, that the Regulation was applied with respect to its passengers. There is a parallel for this in the US legislation on passengers with reduced mobility, which applies to flights which connect to/from flights to the US; this appears to be extra-territorial but is achieved by placing the obligation on the US marketing carrier.

***Option D2.2: Further specify the right to claim from responsible third parties***

- 14.59 Article 13 specifies that the Regulation does not prevent carriers claiming from third parties. However, as discussed in section 7 above, in itself Article 13 does not grant any such right and it is very difficult for airlines to claim from the main third parties who could be responsible for disruption, principally airports, air navigation service providers (ANSPs), ground handlers, and trade unions.
- 14.60 Airlines often have no scope to negotiate the contractual terms imposed by airports, and these may preclude claims except where it can be proven that the airport was negligent, which is difficult. Airlines often do not have contracts at all with ANSPs, and ANSPs and some airports might also have State or other immunity from claims. Some attempts have been made to try to reclaim costs from airports and ANSPs under national laws but to date these have not been successful. Airlines have more scope to negotiate commercial terms with ground handlers but most adopt the IATA Standard Ground Handling Agreement (SGHA), which limits ground handlers' liability, and at many airports there is limited competition so airlines have limited choice.
- 14.61 Since there is often no effective means for airlines to recover costs from these third parties, in effect the airlines bear the sole responsibility for the costs of assisting passengers. Many airlines and airline associations argued that they should be able to claim these costs back from third parties. Some suggested that the Regulation should grant them a specific right to do so, notwithstanding the lack of any contractual liability, and without any need to prove negligence by the third party.
- 14.62 We have analysed this option with respect to ground handlers, airports and ANSPs. The other main responsible party is the trade unions, but giving a right to recover costs from trade unions would conflict with the right to strike, which is a basic legal right in most States.
- 14.63 Since many airports and ANSPs operate on a cost-recovery basis, one consequence of such a change would be to increase charges to the airline. Although, as part of the Single European Sky II initiative, ANSPs now set charges on the basis of predetermined costs, under Article 11a(8)(c)(iii) of the revised Charging Scheme Regulation 1794/2006, the introduction of a requirement to refund these costs would be considered an unforeseen cost and therefore it could be passed through to users. Therefore this would not necessarily result in a reduction in the economic burden on airlines. Ground handlers do not operate on a cost-recovery basis but operate in a competitive market with relatively low margins, and therefore we assume that they could not absorb the additional costs and would have to increase their charges to airlines. Ultimately, most industry costs must be covered by the fares paid by passengers to airlines, part of which cover airport, ANS and ground handling charges.
- 14.64 Nonetheless, even where airlines accepted that this regulatory change might lead to higher airport, ground handling and ANSP charges, they argued that overall costs could be reduced, because airports, ground handlers and ANSPs would have an incentive to improve their service quality.
- 14.65 However, in our view there is a risk that in other respects industry costs might be increased. Airlines would probably still have to be responsible for providing assistance to consumers, who could not practically become involved in a dispute over who was



responsible. If airlines were able to claim against other parties to try to recover these costs:

- legal and other costs would be incurred in making and contesting claims; and
- airlines could also have a reduced incentive to minimise care and assistance costs, for example by arranging rerouting at the first opportunity.

*Estimate of impacts*

- 14.66 We used Eurocontrol eCODA data to calculate the number of delays and cancellations which might, in a typical year, be attributable to either aircraft and ramp handling, airports or ANSPs. There would be no impact with respect to ground handling where airlines self-handle, so we have combined the figure for delays caused by aircraft and ramp handling with data for the average market share of airline self-handling, airports and independent ground handlers. Assuming the proportion of reactionary delays attributable to these entities is equivalent to the proportion of primary delays, delays caused by third party organisations could be equivalent to an average of 33.4% of delays and 44.4% of cancellations.
- 14.67 At present, the classification of delays or cancellations as being due to ground handling, airports or ANSPs can be undertaken by operational staff without any particular commercial pressure, and therefore can be undertaken quickly and without disputes. However, if ground handlers, airports and ANSPs became potentially liable for disruption costs as a result, there is potential for dispute over:
- which party was responsible for an incident;
  - what costs could be attributed to this incident;
  - whether these costs were reasonable, and in particular, where a third party was responsible, whether the airline had then done everything it reasonably could to minimise the impact of the incident.
- 14.68 In many cases this could be agreed quickly (in say 1 hour of time) but in a few cases could result in substantial disputes - potentially involving legal action and many days or weeks of staff and lawyer time.
- 14.69 In order to calculate how much of the economic burden of the Regulation is transferred to other parties, we have used our estimates of total economic burden per delayed or cancelled flight. The party which was responsible for the delay or cancellation (where appropriate, the party which loses any legal dispute) would be required to ultimately pay this amount. We assume that 90% of cases which are ground handler/ airport/ANSP responsibility are easily allocated to them, and the amount to be refunded is decided, within 1 hour of staff time. The remaining 10%, plus another 10%, are contested either on the grounds of who was responsible or whether the costs incurred were reasonable. These are assumed to take an average of five days, with each side winning 50% of cases.
- 14.70 For the cases that an airline wins, it would experience a reduction in the economic burden generated by the Regulation, to be offset against the additional operational and legal costs incurred. Ground handlers, airports and ANSPs would experience a universal increase, comprising costs under the Regulation which they did not previously have to pay,

and the additional operational costs (including legal costs) as a result of contesting claims for compensation from airlines.

- 14.71 We estimate that the cost transfer from airlines to ground handlers, airports or ANSPs in the baseline scenario would be €3.3 billion NPV. When the costs associated with disputing each case are also taken into account, this would result in an average saving for airlines of €3.1 billion NPV, and additional costs for ground handlers of €0.4 billion, airports of €1.6 billion, and for ANSPs of €1.5 billion. However, this would be charged back to airlines in the form of higher fees. This would be immediate for ANSPs and for some airports and ground handlers; at other airports where the airline had stronger negotiating power, higher costs would probably not be charged back immediately, but ultimately would be, as the airport / ground handler would still have to cover its costs. Therefore, although there would be a reduction in the direct economic burden on airlines of 30%, either immediately or in the longer term these costs would be charged back to airlines, and overall the economic burden would increase by 4%, as shown in Table 14.8 below.

**TABLE 14.8 QUANTIFIED IMPACTS: OPTION D2.2**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	-	-	-	-	-	-
Reimbursement / rerouting	-	-	-	-	-	-
Care	-	-	-	-	-	-
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	56,192	408,257	145.0%	56,192	408,257	145.0%
<b>Total</b>	<b>56,192</b>	<b>408,257</b>	<b>3.8%</b>	<b>56,192</b>	<b>408,257</b>	<b>1.7%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 429,362	- 3,119,480	-29.9%	- 429,362	- 3,119,480	-13.2%
Ground handler	54,251	394,151	-	54,251	394,151	-
Airport	221,758	1,611,159	-	221,758	1,611,159	-
ANSP	209,545	1,522,428	-	209,545	1,522,428	-
State	-	-	-	-	-	-
<b>Total</b>	<b>56,192</b>	<b>408,257</b>	<b>3.8%</b>	<b>56,192</b>	<b>408,257</b>	<b>1.7%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 15,177	- 110,268	-51.3%	- 15,177	- 110,268	-27.7%
EU charter	- 25,235	- 183,343	-33.0%	- 25,235	- 183,343	-10.1%
EU low cost	- 106,652	- 774,871	-22.0%	- 106,652	- 774,871	-10.7%
EU traditional scheduled	- 216,619	- 1,573,824	-35.0%	- 216,619	- 1,573,824	-15.6%
Non-EU	- 65,678	- 477,174	-29.0%	- 65,678	- 477,174	-11.7%
<b>Total airline</b>	<b>- 429,362</b>	<b>- 3,119,480</b>	<b>-29.9%</b>	<b>- 429,362</b>	<b>- 3,119,480</b>	<b>-13.2%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	0.0%	-	-	0.0%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	-	-	-	-	-	-
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

14.72 Although this could be reduced if ground handlers, airports and ANSPs improved their operational performance as a result of the improved marginal incentive, the per-passenger costs of assistance might also increase, as airlines would no longer have an incentive to minimise these costs, for example by offering rerouting quickly. Therefore, it is not clear that there actually would be any reduction in the economic burden.

14.73 In calculating this we have assumed that only Article 9 care and assistance costs could be charged back to ground handlers, airports and ANSPs. Although following the same principle other costs such as refunds arguably should also be charged back, the amounts owed could be quite difficult to calculate, and therefore this would further increase the risk of (potentially costly) disputes. For example, if a flight was cancelled as a result of a failure by a ground handler, ANSP or airport, and consequently refunds were paid, if the ground handler, airport or ANSP was expected to cover these it might legitimately argue that the variable operating costs of the flight concerned should be offset from this

amount. Similarly, if a passenger was rerouted at a later date it might be difficult to determine whether this had actually cost the airline anything (as this would depend on whether the airline would have been able to sell the seat to another passenger).

### *Conclusions*

- 14.74 At present airlines are almost entirely responsible for covering costs of the assistance required by the Regulation, even though they often may not be responsible. Article 13 does not help them to recover these costs from responsible third parties.
- 14.75 This could be strengthened to define that airlines do have such a right to recover costs, at least from ground handlers, airports and ANSPs. In effect a change to the Regulation to give a right to recover costs would be a regulation of the contractual terms that ground handlers, airports and ANSPs are permitted to offer. Most ANSPs and some airports are monopoly service providers and airlines have no choice but to accept the contractual terms that they apply. For example, if an airline wishes to serve Madrid, there is no commercial airport other than Barajas within the region, and so it has a choice between accepting the commercial terms offered or not serving the city. The fact that ANSPs and airports (in these cases) may have market power provides some rationale for regulation of their contractual terms. However, in some other cases airports are in competition with each other for business, and it is the airlines are in a stronger market position: for example, small regional airports compete to win the business of low cost carriers, offering significant inducements to them. In these cases if anyone has market power it is the airline.
- 14.76 In our view this issue is less relevant to the ground handling market, which is competitive (at least at larger airports) and will become more so as a result of the Commission's recent proposed new Regulation on ground handling, so airlines should have more flexibility to negotiate contractual terms. It should not be necessary to, in effect, impose regulation of ground handlers contractual terms where the market is competitive. If this option was pursued there would be an argument for excluding ground handlers from its scope.
- 14.77 However, the more significant issue with this option is that any costs passed through to third parties would in most cases have to be recovered from airlines through higher charges, and airlines (and ultimately passengers) would still have to pay these. They would also have to pay operational and legal costs associated with disputing cases. For these reasons, overall, this option appears unlikely to be consistent with the policy objective of reducing the economic burden on the industry and might actually increase the overall economic burden.
- 14.78 A system of financial incentives (through a performance regime) would be a more cost-effective means of encouraging airports and ANSPs to improve service quality and reflect the cost impacts of poor service quality. Financial performance incentives can be set at a level which reflects the costs airlines incur as a result of poor performance, including the costs of care and assistance. Financial performance regimes for service quality already apply at several large European airports, although despite the introduction of the SESII Performance Scheme, only one European ANSP (the UK ANSP, NATS) has these incentives to date. The introduction of performance regimes for service quality is not within the scope of this study but should be considered by Member States (and potentially the

Commission) for ANSPs and for airports, particularly airports which are local monopolies and where, as a result, airlines are not able to negotiate contractual terms.

***Option D2.3A: Limit airline liability in cases of mass disruption via insurance***

- 14.79 The Regulation imposes unlimited liability on airlines for care and assistance, regardless of whether the airline is responsible for the event concerned. During the volcanic ash crisis, airlines incurred substantial costs (see section 7 above). Many airlines argued that this should be addressed by limiting or excluding their obligations in these cases, which is discussed further below. However, an alternative would be to address this through insurance.
- 14.80 There is nothing in the Regulation which would prevent airlines from insuring against these events if they wish, and can find an insurance provider willing to offer the insurance. However, an event such as volcanic ash could impact flights throughout Europe for a prolonged period and therefore potential claims would be exceptionally large. In their submission to the study, the insurers association CEA informed us that its members shared the view that it would not be possible to offer insurance to cover the risk of these events, in part because their frequency and severity are difficult to properly assess. Further, cover under aviation insurance is linked to an ‘occurrence’ which will be defined in the insurance contract. The term ‘occurrence’ within aviation insurance tends to refer to ‘bodily injury’ or ‘property damage’, neither of which are likely to arise as a result of these types of mass disruption.
- 14.81 In addition, airlines (and airports) are not generally insured for losses caused by the suspension of air traffic, even where the suspension has been enforced by public authorities, as these are considered by insurers entrepreneurial losses for which the airlines themselves are responsible. Entrepreneurial losses are not insured because they result from actions that cannot be reasonably risk-assessed by insurers, meaning that insurers are unable to make adequate provisions for potential cover. Finally, the limited scope of the aviation insurance market means that it would be difficult to maintain an adequate insurance capacity without charging very high premiums.
- 14.82 Since airlines and insurance providers could agree this insurance without any regulatory change, but insurers could not be required to offer it, **we suggest this option is not pursued**. The same conclusions would apply even if a cap was imposed in the case of mass disruptions - although the potential sums would be reduced, it would still be impossible for insurers to adequately assess the potential risks; and the issue regarding the limited scope of the aviation insurance market is still relevant.

***Option D2.3B: Limit airline liability in cases of mass disruption via an industry fund which intervenes after 4 days***

- 14.83 The alternative to private insurance would be some sort of general reserve fund similar to those used in some States to provide the guarantee required by the Package Travel Directive, with a contribution made through a levy on every airline ticket.
- 14.84 General reserve funds work well with respect to package travel, and in principle there is no reason why a general reserve fund could not be established to cover exceptional events. Funds could be established either at national level or EU level. However, the key issue is that this fund or funds would need to build up very substantial reserves in order to

cover all of the costs of an event such as volcanic ash, and as events such as this are so rare (and even another volcanic eruption might not cause similar disruption due to changes in safety regulations) this fund might not be paid out in years or potentially at all. It is likely that airlines would strongly oppose a levy on each ticket in order to build up a fund which might never be paid out.

- 14.85 In spite of the likely difficulties in establishing a general reserve fund noted above, we have evaluated an option which would entail such a fund paying for the costs of care and rerouting after a mass disruption event has lasted more than 4 days. Applying a 4-day cap to the volcanic-ash style event modelled in this study would reduce its total cost from €1.14 billion to €0.75 billion (both figures assume that the event occurs in 2015). On this basis, the costs to be covered by a reserve fund if a similar event were to occur could be in the order of €0.39 billion.
- 14.86 The rate of contributions to the general reserve fund would depend on the frequency of exceptional mass disruption events and the management costs it incurred. For indicative modelling purposes, we have assumed that contributions would need to be built up over 10 years. We have estimated overheads on the basis of financial information from general reserve funds which cover tour operator insolvencies: information from the UK (the Air Travel Trust) and Denmark (the Rejsegarantifonden) indicates that these could add 85% to the cost of the fund. However, in practice we would expect the management costs of this fund to be significantly lower - the general reserve funds which handle insolvencies also have to cover the costs of dealing with hoteliers and other service providers, arranging alternative transport and so on; whereas in this case, the industry fund would merely reimburse airlines for the costs they incurred. Therefore, we have indicatively assumed that the management cost would be half (42.5% instead of 85%).
- 14.87 We assume that the annual cost of contributing the fund would be shared on a per-passenger basis between all airlines operating to, from and within the EU. On the basis of the analysis above, this would equate to a per-passenger charge of €0.06.
- 14.88 There may be some difficulties in applying such a charge to non-EU carriers, as this could be considered an extra-territorial requirement, although this should be less of a problem if it is limited to journeys from the EU. If the requirement to offer insurance was restricted to EU carriers then this could distort competition between EU-registered carriers and those based outside the EU and therefore we have assumed that the fund would apply to all flights within the scope of the Regulation.
- 14.89 Table 14.9 shows the quantified impacts of this option. This reflects only the cost of the fund, and does not assume an extraordinary event actually occurs within the period of the impact assessment.

**TABLE 14.9 QUANTIFIED IMPACTS: OPTION D2.3B**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	-	-	-	-	-	-
Reimbursement / rerouting	-	-	-	-	-	-
Care	-	-	-	-	-	-
Montreal compensation	-	-	-	-	-	-
Other	55,427	408,731	-	55,427	408,731	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>55,427</b>	<b>408,731</b>	<b>3.8%</b>	<b>55,427</b>	<b>408,731</b>	<b>1.7%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	55,427	408,731	3.9%	55,427	408,731	1.7%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>55,427</b>	<b>408,731</b>	<b>3.8%</b>	<b>55,427</b>	<b>408,731</b>	<b>1.7%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	1,001	7,378	3.4%	1,001	7,378	1.9%
EU charter	5,505	40,594	7.3%	5,505	40,594	2.2%
EU low cost	17,583	129,660	3.7%	17,583	129,660	1.8%
EU traditional scheduled	22,944	169,194	3.8%	22,944	169,194	1.7%
Non-EU	8,395	61,905	3.8%	8,395	61,905	1.5%
<b>Total airline</b>	<b>55,427</b>	<b>408,731</b>	<b>3.9%</b>	<b>55,427</b>	<b>408,731</b>	<b>1.7%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	0.0%	-	-	0.0%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	-	-	-	-	-	-
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

### Conclusions

- 14.90 The key problem with this option is that airlines are likely to strongly oppose contributions being required for a fund which, if an event on the scale of the volcanic ash crisis did not occur again in the near future, might never pay out. If the fund had a wider scope and mass disruption was defined more widely, this might partly address this concern - but it would also mean that the level of contributions would have to be higher to build up sufficient reserves.
- 14.91 If there was an exceptional event, this option should in principle have no impact on the standard of passenger protection - passengers would continue to receive the same level of care, but it would be financed differently. It might also improve compliance in these situations. Although the imposition of an annual levy to pay for care during mass disruption would be an additional cost for passengers, it is also not clear that this would represent a

significant departure from the current situation, given that passengers already ultimately pay (through ticket prices) for any costs incurred by the airlines.

### ***Option D2.4: Limit the right of care in cases of exceptional circumstances***

- 14.92 Most airlines, and their representative associations, strongly argued that the right to care should be limited or excluded in exceptional circumstances. In particular, they pointed out that the costs could be extremely high in a situation such as volcanic ash.
- 14.93 In contrast, most consumer representatives argued that there should be no limit, and considered that the volcanic ash crisis demonstrated the need for consumers to be assisted, as travel insurance often has exclusions for such exceptional events (for similar reasons to those discussed under option D2.3 above). In addition, a limit could reduce the incentive for airlines to offer prompt rerouting, including rerouting by surface transport if there is no other option available. As noted above, the airspace closure in the volcanic ash crisis was a unique event; there may be nothing similar for many years, or at all.

### *Legal position*

- 14.94 Airlines interviewed for the study emphasised that the two most recent passenger rights Regulations impose some limits on care and assistance costs:
- The recent bus/coach and maritime Regulations allow carriers to limit the cost of accommodation provided to passengers in the event of delay or cancellation. Both limit the cost of accommodation to €80 per night, with the number of nights limited to two in the case of Regulation 181/2011 and three under 1177/2010.
  - These Regulations also exempt carriers from providing accommodation if it can be proven that weather conditions (and in the case of Regulation 181/2011, natural disasters) endangered the safe operation of services.
- 14.95 There appears to be no such limitation in Regulation 1371/2007 on rail passenger rights although the interpretation of this is not completely clear and is subject to a pending reference to the CJEU<sup>54</sup>; the Annex to this Regulation could be read as limiting rights to assistance in exceptional circumstances.
- 14.96 One airline has sought to claim that liability for care and assistance during the volcanic ash crisis should already be limited, on the basis that there should be a further category of truly exceptional event beyond ‘extraordinary circumstances’, and if not, that Article 5 and Article 9 of the Regulation are invalid on the basis that they are contrary to the principles of proportionality and non-discrimination, the principle of an ‘equitable balance of interests’ enshrined in the Montreal Convention, and Articles 16 and 17 of the Charter of Fundamental Rights of the European Union<sup>55</sup>. The CJEU has not issued a judgement in this case but the Advocate General has recommended that this claim be dismissed. The Advocate General recommended that:
- passengers are particularly vulnerable and in need of assistance during extraordinary circumstances, and the Community legislature had clearly intended not to limit care

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<sup>54</sup> Case C-509/11

<sup>55</sup> Case C-12/11



and assistance in these cases, therefore there is no limit required by the existing Regulation;

- there is no infringement of the principles of proportionality and an equitable balance of interests, because the carrier can pass on the costs of provision of care and assistance through higher ticket prices and indeed Ryanair has explicitly done so;
- there is no conflict with the principle of non-discrimination because the Court has already held in the IATA-ELFAA case that the positions of passengers using different modes of transport are objectively different; and
- there can be no conflict with the Charter because this allows for rights to be limited by law in accordance with the principles of proportionality, and it also requires a high level of consumer protection.

#### *Options considered*

14.97 Although airlines argued that an exemption should cover any circumstances outside their control, in our view there is a high risk that such a general exemption would lead to care being excluded in a significant proportion of cases, which would not be consistent with the policy objective of maintaining appropriate passenger protection. The significant problems there have been with the Article 5(3) exemption on payment of compensation show the potential risks associated with this. In particular:

- it is difficult for consumers to prove that a particular event was within the control of the carrier, or to contest technical evidence provided by an airline; and
- as noted in section 7 above, airlines' interpretation of the Article 5(3) exemption is much wider than that of many NEBs, and the information provided by airlines to this study indicates that in practice compensation for cancellations is rarely paid.

14.98 However, it is reasonable that airlines' obligations should not be completely unlimited, as for the reasons discussed above they may not be able to insure against the risk of a crisis such as volcanic ash. Unlike other disruption, some level of which can be predicted and therefore budgeted for and reflected in fares, a crisis such as volcanic ash cannot be budgeted for. In an extreme case this could drive a carrier to insolvency. Imposing a limit is also necessary to meet the policy objective of ensuring that the burden on the industry is fair and proportionate.

14.99 For these reasons, it might be more consistent with the policy objectives for any exemption or limitation to only apply in the case of a natural disaster or other major exceptional event causing mass disruption, such as a prolonged closure of airspace. These circumstances should be defined in detail in the Regulation - we discuss below how this could be defined. An alternative would be for the event to be declared by an independent body such as the Commission, but there would be political difficulties for such an organisation in declaring that stranded passengers would have to care for themselves from that point, so this might not be feasible.

14.100 To mitigate potential concerns about vulnerable passengers being stranded, we have also evaluated the impact of exempting vulnerable groups from the cap, particularly PRMs.

14.101 In light of the discussion above we have sub-divided this option into four sub-options:

- Option D2.4A: Limit the right of care to 3 nights in all cases, with the cost of accommodation capped at €100 per passenger per night (a higher value was tested than the €80 used for the other modes to reflect the fact that accommodation in the vicinity of airports tends to be more expensive);
- Option D2.4B: Limit the right of care as for D2.4A, but only in cases of exceptional mass disruption;
- Option D2.4C: Limit the right of care to 4 nights, but only in cases of exceptional mass disruption, and with an exemption for PRMs (to avoid abuse, possibly only PRMs who had notified a need for assistance in advance); and
- Option D2.4D: Limit airline obligation for care in cases of exceptional mass disruption, with the remaining costs borne by government

### Definition of mass disruption

If the intention is to impose a limit on care in exceptional mass disruption such as the volcanic ash crisis, but not in more common circumstances such as weather disruption or strikes which may nonetheless be sufficient to confer exemption from payment of compensation under Article 5(3), a definition of exceptional mass disruption would need to be added to the Regulation.

To limit the potential for dispute between airlines, passengers and NEBs, this would have to be defined on the basis of objective and verifiable facts, for example:

- the number of flights which did not operate; or
- periods of partial or complete closure of airspace or an airport.

We have researched some figures for flight cancellations to inform this analysis:

- At the peak of the volcanic ash crisis, around 20,000 flights per day were cancelled and between 15 and 22 April 2010, approximately 102,000 flights were cancelled (though a small proportion of these would be business aviation flights, not commercial flights)<sup>56</sup>
- The exceptional snow in the UK during December 2010 caused 8,000 flight cancellations<sup>57</sup>. Flights were also cancelled at other airports in northeastern Europe but to a lesser extent (we have not been able to find equivalent figures).
- During the air traffic controllers strike in Spain on 3 and 4 December 2010, which resulted in partial closure of airspace for approximately 6 hours and then complete closure for around 18 hours, approximately 4,500 flights were cancelled.
- Complete closure of a large hub airport such as London Heathrow or Madrid for 1 day would lead to around 1,300 flight cancellations

This further indicates that the volcanic ash crisis was of a completely different scale to other events. There is clearly a political judgement about the level of the threshold, given the extent of protection it is intended to provide to airlines. However, if the intention is to cover events of a comparable scale to volcanic ash but not smaller-scale (but significant) incidents such as the December 2010 strikes in Spain and snow crisis in the UK, we suggest exceptional mass disruption should be defined as 20,000 flights cancelled EU-wide as a result of a single incident. Any exemption should only apply if the air carrier concerned had taken all reasonable measures to operate the flights concerned.

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<sup>56</sup> Source: Eurocontrol

<sup>57</sup> CAA (2011): Aviation's response to major disruption

*Estimate of impacts: Option D2.4A*

- 14.102 This option would apply both during an exceptional event and in normal circumstances. However, in normal circumstances, the impact would be limited.
- 14.103 In assessing this option, we assume that passengers travelling for leisure would typically share hotel rooms, as holiday passengers rarely travel alone. Therefore, a limit of €100 per passenger equates to a limit of €200 per room for leisure passengers. Given the average hotel room data we have collected, this suggests that the cap would generally only affect business travellers, as the average per-passenger cost of accommodation for leisure passengers would be significantly less than the cap. We have therefore recalculated the EU-wide average hotel price on the basis that in any States where the average rate exceeds €100 this will now be capped at €100 for business passengers only.
- 14.104 The 3 night limit on accommodation should have no impact in normal circumstances as it should almost always be possible to reroute passengers within 3 days. As discussed above, we assume some passengers would if necessary be rerouted on other airlines if the delay exceeded 12-24 hours depending on flight length.
- 14.105 Table 14.10 shows the quantified impacts for this option covering normal circumstances (i.e. not an exceptional event such as volcanic ash). The total burden reduces by 1% overall, with all of this reduction being for airlines in the form of reduced care costs. There would be offsetting costs for passengers who would have to pay the difference where accommodation was not available within the €100 limit. The impact in cases of exceptional mass disruption is discussed under option D2.4B below.

TABLE 14.10 QUANTIFIED IMPACTS: OPTION D2.4A

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	-	-	-	-	-	-
Reimbursement / rerouting	-	-	-	-	-	-
Care	- 10,153	- 73,628	-1.1%	- 10,153	- 73,628	-1.1%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>- 10,153</b>	<b>- 73,628</b>	<b>-0.7%</b>	<b>- 10,153</b>	<b>- 73,628</b>	<b>-0.3%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 10,153	- 73,628	-0.7%	- 10,153	- 73,628	-0.3%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>- 10,153</b>	<b>- 73,628</b>	<b>-0.7%</b>	<b>- 10,153</b>	<b>- 73,628</b>	<b>-0.3%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 261	- 1,918	-0.9%	- 261	- 1,918	-0.5%
EU charter	-	-	-	-	-	-
EU low cost	- 1,747	- 12,600	-0.4%	- 1,747	- 12,600	-0.2%
EU traditional scheduled	- 6,029	- 43,825	-1.0%	- 6,029	- 43,825	-0.4%
Non-EU	- 2,116	- 15,284	-0.9%	- 2,116	- 15,284	-0.4%
<b>Total airline</b>	<b>- 10,153</b>	<b>- 73,628</b>	<b>-0.7%</b>	<b>- 10,153</b>	<b>- 73,628</b>	<b>-0.3%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.0%	-	-	-0.0%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 10,153	- 73,628	-0.7%	- 10,153	- 73,628	-0.3%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>- 10,153</b>	<b>- 73,628</b>	<b>-0.6%</b>	<b>- 10,153</b>	<b>- 73,628</b>	<b>-0.3%</b>

- 14.106 We estimate the percentage reductions in economic burden to reflect trends in cancellations and the proportion of business as opposed to leisure passengers, being therefore largest for regional carriers (0.9% on average), and zero for charter carriers. No particular trends emerge in terms of the types of route most affected.

*Estimate of impacts: Options D2.4B-D*

- 14.107 Many stakeholders emphasised that the 2010 volcanic ash crisis was an exceptional event and due to the changes to safety regulation there may never be an equivalent airspace closure in the future. If mass disruption was defined narrowly, to include only an event such as the volcanic ash crisis, it is quite likely that options D2.4B-D2.4D would never have any impact - and on the basis of the standard approach we have used for quantification of options, there is no impact, as this assumes no equivalent crisis during the impact assessment period.

- 14.108 However, in order to show the potential impact, we have calculated the impacts of options D2.4B-D2.4D on the basis of our cost estimate for a crisis equivalent in scale to the 2010 volcanic ash crisis, on the assumption that the crisis occurs in 2015. It should be noted that our calculation of the reduction in cost is highly dependent on the specific circumstances of any event which might occur, particularly in terms of its duration.
- 14.109 We assume that the same proportion of airspace is affected as during the 2010 volcanic ash crisis, and for the same duration. Given our assumptions on traffic growth, the total cost incurred, and hence the absolute reduction in economic burden generated by any cap on liability, will increase over time. For example, our analysis suggests that a similar event in 2015 would incur total costs 19% higher than in 2010.
- 14.110 If an exceptional event equivalent in scale to the volcanic ash crisis occurred in 2015, Option D2.4B would reduce the assistance costs incurred by airlines by €481.8 million, a large reduction of 42.2%. On the basis of information obtained from airports, which indicates that PRMs account for 0.44% of passengers, including the PRM exemption specified in Option D2.4C and retaining a 3-day cap would make only a small difference, reducing the cost by €480.9 million, or 42.1%. However, including the effect of the 4-night cap gives a smaller reduction of €387.5 million, or 33.9%.
- 14.111 If, instead of limiting passengers' rights, governments were required to reimburse airlines for any costs incurred above the caps, the total cost to the Member States would be €481.8 million.

#### *Conclusions*

- 14.112 This group of options would not be consistent with the policy objective of maintaining and improving passenger protection. However, the options would be consistent with the objective of limiting the economic burden on airlines, particularly in exceptional circumstances of mass disruption outside their control. Unlike other incidents of disruption which could be considered part of the normal operations of an air carrier (even if outside its control) and therefore budgeted for and reflected in fares, an event such as volcanic ash cannot be predicted or budgeted for, and therefore there is a much stronger argument that carriers' liabilities should be limited. In particular this would reduce the risk of causing insolvency of a carrier. In the event of a crisis similar to volcanic ash recurring, the savings these options could deliver would be among the most substantial of any of the options considered, although this would clearly depend on the scale of the event in question.
- 14.113 We suggest therefore that options D2.4B or D2.4C would be most consistent with the policy objectives. Although from the passenger perspective D2.4D would be preferable, given constraints on public budgets it may be unrealistic to expect States to commit to compensate air passengers in exceptional events when they do not always compensate others in comparable circumstances. Some States did step in to assist passengers during the crisis, and have done so during other crises such as following the insolvency of major air carriers; the issue is that they have not always done so and could not be required to do so.

***Option D2.5: Fully or partially exempt flights with small aircraft***

- 14.114 In our previous study, it was argued that there should be an option to exempt flights with small aircraft where it was not practical or excessively burdensome for them to comply with the Regulation, given the specific operational characteristics of the routes concerned. This might include, for example, flights operating to airports in remote locations which do not have the same equipment as larger airports (in an extreme case, Barra airport in Scotland, where scheduled flights land on the beach). The Regulation may impose unreasonable or disproportionate economic burdens on the operators of these services.
- 14.115 For this study we have evaluated the impact of derogations based on three possible criteria:
- Option D2.5A: aircraft of less than 10 tonnes maximum take-off mass and/or less than 20 seats (based on the definition used in Article 5(3) of Regulation 1008/2008);
  - Option D2.5B: routes of less than 500km served by aircraft with an average of less than 100 seats for which one of the airports served has less than 250,000 annual passengers; and
  - Option D2.5C: routes of less than 250km served by aircraft with an average of less than 75 seats.
- 14.116 The high cancellation rates (and low delay rates) for regional services shown in section 7 suggest that these types of operation may be more subject to severe disruption, although the relativity between the nature of the operations and deliberate policies by carriers to isolate disruption by cancelling services is not clear.

***Conditions for exemptions***

- 14.117 We suggest that, if this option was pursued, the derogations should also be subject to other conditions and criteria.
- 14.118 In addition to the criteria set out for each of the derogations above, we also suggest that derogations should only be available if both of the following additional criteria are met:
- to avoid distorting competition, the service is not operated on the same route as a regular air service which is not eligible for a derogation (including routes to different airports serving the same city); and
  - due to the specific operational characteristics of the route, it is impractical to comply with some or all of the obligations of the Regulation, or impractical to comply except at significantly greater cost than would apply for most air services.
- 14.119 We also recommend that the derogations should not be automatic but should be applied on a case-by-case basis by NEBs, or another authority designated by the State concerned for this purpose. Most of the services likely to be eligible for derogations are domestic, but in the event that the air service concerned operated between two States, the derogation would have to be granted by both authorities.
- 14.120 Finally, we recommend that the derogation should also be made subject to conditions to protect passengers, for example:
- clearly informing passengers about the derogation before the sale of the ticket; and

- application of other, more limited, safeguard of passengers' rights, not least to ensure consistency of the contract of carriage with Directive 93/13/EEC on unfair contract terms (at a minimum this should include the right to a refund or rerouting if the flight is cancelled, and more generous rights if the flight is delayed or cancelled for reasons within the control of the carrier).

14.121 If these additional criteria and conditions were also applied the scope of the derogation would be more limited. It is not possible to test their impact in quantitative terms because the effect would depend on route-specific decisions taken by national authorities; therefore, the qualitative assessment below assumes that all routes that meet the requirements in terms of aircraft size, airport size, distance etc would be exempted.

*Estimate of impacts: Option D2.5A*

14.122 Routes with aircraft which could be subject to this derogation account for a small but not insignificant proportion of European air services: according to OAG data, 1.2% of routes from European airports have services with aircraft below 20 seats. Almost 40% of these routes are from UK airports, mostly to the Scottish or Channel Islands. Table 14.11 shows the largest flows within this category.

**TABLE 14.11 ROUTES WITH FEWER THAN 20 SEATS PER AIRCRAFT, 2010**

Flow type	Number of routes	Main destinations served
UK domestic	49	Within and mainland to/from Channel Islands, Isle of Man, Orkney Islands, Isles of Scilly, Hebrides, Anglesey and Shetland
France domestic	20	Paris - Bergerac / Périgueux ; Marseille - Toulouse / Mulhouse / Metz / Geneva
Sweden domestic	14	Stockholm, Borlänge, Mora, Lulea, Hagfors
Poland domestic	9	Gdansk, Krakow, Poznan, Warsaw, Bydgoszcz
Germany domestic	5	Hamburg - Westerland / Helgoland / Erfurt, Bremen - Nuremberg
Spain - Portugal	4	Lisbon - Valencia / Malaga / A Coruña / Pamplona
Greece domestic	4	Thira - Mikonos / Rhodes / Heraklion, Heraklion - Ikira
Norway domestic	3	Bodo - Vaeroy, Oslo - Orland, Bergen - Stavanger
Italy domestic	3	Pescara - Milan / Turin
Ireland - UK	3	Belfast - Cork / Galway
Germany - Poland	3	Dresden - Babimost, Poznan - Braunschweig / Münster
Iceland domestic	3	Akureyri - Grimsey / Thorshofn, Thorshofn - Vopnafjordur

14.123 If the other general criteria we have suggested set out above were also applied, this would exclude some of the routes listed in the table. For example, easyJet and Air France

operate on some of the domestic routes in France on which other airlines use aircraft with fewer than 20 seats, and therefore exemptions should not be available for these routes. The impact of this option would also depend on how many services national authorities decided to exempt, and in addition, we do not have quantified data on the disruption rates for these services; therefore, any calculation of the impact of this option will be uncertain.

- 14.124 However, to provide an indication of the potential scale of the impact on economic burden, we have assumed that care costs for 50% of services with small aircraft would be exempted, and have used the same disruption rates as for other regional services. On this basis, the reduction in the EU-wide incremental economic burden would be approximately €6.6 million NPV (0.1%). This would nonetheless be a significant reduction on those routes concerned.
- 14.125 A limitation to this option is that the eligibility criteria are quite restrictive and would not allow exemption of some routes which are to remote airports and which are likely to be particularly vulnerable to disruption. For example, most of the routes within the Azores would not meet these criteria and so could not be exempted because the aircraft size used is too large. We have therefore also tested two options which would allow for a wider exemption.

### *Estimate of impacts: Option D2.5B*

- 14.126 This option would allow a wider exemption from the Regulation. Analysis of OAG schedule data for 2010 suggests that this option could allow Member States to grant derogations for up to 2.9% of flights within and to/from the EU, representing 1.1% of total seats; although the actual percentages eligible for exemption would be lower if the criterion regarding operation on the same route as a regular air service which is not eligible for a derogation was also included. The 10 largest flows within this category (measured in terms of exempted seats) comprise:
- Dublin - Galway (Ireland domestic)
  - Bornholm - Copenhagen (Denmark domestic)
  - Helsinki - Joensuu (Finland domestic)
  - Tenerife North - Valverde (Spain domestic)
  - Helsinki - Jyväskylä (Finland domestic)
  - Amsterdam (Netherlands) - Durham Tees Valley (UK)
  - Helsinki - Kokkola/Pietarsaari (Finland domestic)
  - Athens - Ioannina (Greece domestic)
  - Lorient - Paris Orly (France domestic)
  - Galway (Ireland) - Manchester (UK)
- 14.127 Note that this does not include routes where insufficient data are available - for example, Eurostat does not provide passenger data for airports in the Channel Islands.
- 14.128 As with the previous option, we have made an indicative quantitative assessment of the impact of this option, but this does not include the impact of the other criteria we have suggested could be applied or differences in disruption rates for these services, as there is not sufficient information available to quantify the impact of these and it would in any



case depend on decisions taken by national authorities. However, we note that, of these routes, other airlines also operate on the Bornholm - Copenhagen route and therefore it might not be eligible for any exemption.

- 14.129 The quantitative assessment shows that EU regional carriers would be the main beneficiaries of this option - approximately 15% of seats provided by these carriers could be eligible for exemptions, compared with 0.4% of seats operated by EU low cost carriers and 0.5% of EU traditional scheduled carriers' seats. Table 14.12 shows the quantified impacts of this option.

**TABLE 14.12 QUANTIFIED IMPACTS: OPTION D2.5B**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	-	-	-	-	-	-
Reimbursement / rerouting	-	-	-	-	-	-
Care	- 5,855	- 43,176	-0.6%	- 5,855	- 43,176	-0.6%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>- 5,855</b>	<b>- 43,176</b>	<b>-0.4%</b>	<b>- 5,855</b>	<b>- 43,176</b>	<b>-0.2%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 5,855	- 43,176	-0.4%	- 5,855	- 43,176	-0.2%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>- 5,855</b>	<b>- 43,176</b>	<b>-0.4%</b>	<b>- 5,855</b>	<b>- 43,176</b>	<b>-0.2%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 3,451	- 25,443	-11.8%	- 3,451	- 25,443	-6.4%
EU charter	- 0	-	-	- 0	-	-
EU low cost	- 659	- 4,862	-0.1%	- 659	- 4,862	-0.1%
EU traditional scheduled	- 1,746	- 12,871	-0.3%	- 1,746	- 12,871	-0.1%
Non-EU	-	-	-	-	-	-
<b>Total airline</b>	<b>- 5,855</b>	<b>- 43,176</b>	<b>-0.4%</b>	<b>- 5,855</b>	<b>- 43,176</b>	<b>-0.2%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.0%	-	-	-0.0%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 5,855	- 43,176	-0.4%	- 5,855	- 43,176	-0.2%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>- 5,855</b>	<b>- 43,176</b>	<b>-0.3%</b>	<b>- 5,855</b>	<b>- 43,176</b>	<b>-0.2%</b>

*Estimate of impacts: Option D2.4C*

- 14.130 This option uses a lower aircraft size and maximum route length than the previous option, but actually allows a wider exemption from the Regulation, because it removes the requirement for one of the airports to have 250,000 passengers or fewer, and therefore

would cover routes between much larger airports than D2.4B. In terms of potential exempted seats the largest routes affected by this option comprise:

- Las Palmas - Tenerife North (Spain domestic)
- Santa Cruz de la Palma - Tenerife North (Spain domestic)
- Fuerteventura - Las Palmas (Spain domestic)
- Lanzarote - Las Palmas (Spain domestic)
- Dublin - Galway (Ireland domestic)
- Cork - Dublin (Ireland domestic)
- Aalborg - Copenhagen (Denmark domestic)
- Ibiza - Palma de Mallorca (Spain domestic)
- Menorca - Palma de Mallorca (Spain domestic)
- Bornholm - Copenhagen (Denmark domestic).

14.131 Again, this list only includes routes where sufficient data are available, and does not consider the impact of the additional criteria we have suggested such as whether the route is shared with non-exempted services. On this basis, the quantitative assessment shows that EU regional carriers would again be the main beneficiaries of this option, with exemptions potentially applying to 36% of seats; 1.2% of seats provided by traditional scheduled carriers could also be exempted. Table 14.13 shows the quantified impacts of this option.

**TABLE 14.13 QUANTIFIED IMPACTS: OPTION D2.5C**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	-	-	-	-	-	-
Reimbursement / rerouting	-	-	-	-	-	-
Care	- 12,587	- 92,806	-1.3%	- 12,587	- 92,806	-1.3%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>- 12,587</b>	<b>- 92,806</b>	<b>-0.9%</b>	<b>- 12,587</b>	<b>- 92,806</b>	<b>-0.4%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 12,587	- 92,806	-0.9%	- 12,587	- 92,806	-0.4%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>- 12,587</b>	<b>- 92,806</b>	<b>-0.9%</b>	<b>- 12,587</b>	<b>- 92,806</b>	<b>-0.4%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 8,215	- 60,577	-28.2%	- 8,215	- 60,577	-15.2%
EU charter	-	-	-	-	-	-
EU low cost	- 334	- 2,467	-0.1%	- 334	- 2,467	-0.0%
EU traditional scheduled	- 4,037	- 29,763	-0.7%	- 4,037	- 29,763	-0.3%
Non-EU	-	-	-	-	-	-
<b>Total airline</b>	<b>- 12,587</b>	<b>- 92,806</b>	<b>-0.9%</b>	<b>- 12,587</b>	<b>- 92,806</b>	<b>-0.4%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.0%	-	-	-0.0%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 12,587	- 92,806	-0.9%	- 12,587	- 92,806	-0.4%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>- 12,587</b>	<b>- 92,806</b>	<b>-0.7%</b>	<b>- 12,587</b>	<b>- 92,806</b>	<b>-0.4%</b>

### Conclusions

- 14.132 Although introduction of a derogation would not be consistent with the policy objective of maintaining or improving passenger protection, it would remove a relatively disproportionate economic burden for certain types of carrier and route, and therefore would be consistent with the policy objective of minimising the economic burden and ensuring that the costs of compliance for the industry are reasonable.
- 14.133 The overall impact on passenger protection would be limited because only a small proportion of routes would be eligible for derogations, although this would depend on which of the individual variants was adopted and whether the additional conditions for derogations we have suggested were also applied.
- 14.134 We recommend that if this option was implemented, derogations should not be automatic but should be decided by national authorities, who would be in the best position to decide

whether this was appropriate in the specific circumstances of the route concerned. There should also be safeguards to avoid distorting competition and to ensure that passengers are adequately informed before purchasing tickets.

***Option D2.6: Define when travel agents should be liable to passenger***

14.135 We have considered whether the travel agent, instead of the airline, should be liable to the passenger in the event that they fail to pass on information about cancellations or other disruption and the passenger incurs costs as a result.

14.136 However, in our view this is impractical. The passenger needs to have a clear right of recourse against a single party; this is essential if the passenger is to have an effective means of redress. It would not be possible for the passenger to prove whether the travel agent was responsible for failing to pass on information or not (for example, whether the agent really had been informed by the airline) - this is a matter between the travel agent and the airline. Airlines already could define in their contracts with their agents that the agents are liable for the consequences of their actions or omissions; no regulation is needed to address this. **Therefore we suggest this proposal is not pursued.**

***Option D2.7: Define obligation for travel agents to pass information to airlines***

14.137 As an alternative, we have considered a requirement for travel agents to have to provide passenger contact details to airlines, so that:

- the airline can notify the passenger in advance if the flight is cancelled or rescheduled; and
- potentially, the airline can use electronic means to provide information or assistance in the event of disruption (see in particular discussion under option C3 above).

***Data protection issues***

14.138 Our legal advisors have informed us that any such requirement would have to comply with Directive 95/46/EC on data protection. As contact details would be considered personal data, the travel agent would need to seek the passenger's consent to pass the details to the airline. This consent would have to be specific: it would not be sufficient for travel agents' Terms and Conditions to state that the data would be passed on, although a 'tick box' on the booking page of the website should be sufficient.

14.139 If the data was to be transferred to carriers based in non-EEA States, this would raise issues with respect to those based in States that do not have equivalent levels of data protection. In these cases the passenger would have to provide enhanced consent. This would mean that the travel agent would have to inform the passenger of the specific State that the data was to be transferred to, and obtain specific agreement to transfer the data to that State.

14.140 This issue could be avoided by restricting the requirement on data transfer to EEA airlines. This might still enable most of the benefits to be generated, as airlines operating non-EU services would usually have more extensive staffing at each airport to inform and assist passengers in cases of disruption. This requirement also could not apply to travel agents based outside the EU.

### *Stakeholder views*

- 14.141 This option is strongly opposed by travel agents, primarily because they are concerned that airlines would use the passenger contact details for commercial purposes, and therefore undermine their market position. However, ECTAA informed us that IATA travel agents are already required to provide this information; IATA Resolution 830d on Reservations Procedures for Automated Accredited Agents requires the travel agent to provide passengers' contact details to airlines. However ECTAA also informed us that many travel agents enter their own contact details rather than those of the passenger.
- 14.142 If the Regulation was revised to require travel agents to pass this information to airlines, this concern could be partly addressed if the Regulation also prohibited the airlines from using the information for other commercial purposes. It should only be used for contacting the passenger in the event of disruption. However, some travel agent representatives were not confident that airlines would comply with such a restriction, and considered that it would be difficult to enforce, partly due to the difficulty of monitoring use of information within the systems concerned.
- 14.143 Travel agent representatives have suggested that as an alternative the travel agent could be responsible for contacting the passenger to inform them about disruption. Many already do this in any case, in the event of advance schedule changes or planned cancellations. However, it is not clear this would be sufficient to allow passengers to be contacted in the event of last-minute disruption, or to allow use of SMS or in the future smartphones for airlines to provide information and vouchers for assistance to passengers in the event of disruption. Travel agent representatives have said that the big online travel agents could potentially develop systems that would do this, but it would be dependent on airlines passing the information that had to be transmitted to the passenger via the GDS.

### *Estimate of impacts*

- 14.144 This option would require a one-off change to be made to the global distribution systems (GDS), to give the airline access to personal data subject a consent field, which would need to be added. Information provided by one of the GDS suggests that this cost would be quite significant, but would be one-off, and therefore the annual cost over the impact assessment period would be relatively low.
- 14.145 This option would also require a one-off change to be made to travel agent websites to introduce a 'tick box' consent to transfer of data. The costs of this should be relatively low as the consent is quite simple. In total we estimate as a central case scenario a one-off cost for all GDS and travel agents of approximately €28 million NPV - although as with option B1.4 this should be considered as very uncertain because detailed project costings would need to be prepared by the GDS and other industry partners.

### *Conclusions*

- 14.146 In combination with wider use of new technology by airlines, and measures taken to reduce the price of international data roaming, this option would allow airlines to comply with the obligations in the Regulation on providing information and assistance at lower cost than other options such as provision of extensive staff at the airport (option C3 above). Therefore, it appears to be consistent with the policy objective of minimising the economic burden of the legislation.

14.147 However, if this option was introduced it would have to be limited to carriers and travel agents based in the EEA, and airlines should be specifically prohibited from using the personal information for any other commercial purpose. There would also be some one-off costs for the GDS to adapt their systems. Even with this restriction, the option is likely to face strong opposition from travel agents and their representatives. In addition, airlines should only be able to require provision of this information from travel agents if they actually set up systems to use the data to notify passengers of disruption and their rights under the Regulation as part of their processes to implement their obligations.

***Option D2.8: Airlines obliged to offer insurance instead of care***

14.148 Most airlines already offer travel insurance to their passengers, and the scope of travel insurance could in principle be extended to cover the provision of assistance in the event of disruption. This could replace the requirement for airlines to provide this assistance. Airlines might still have some liability to passengers where they are responsible for the disruption as a result of Directive 93/13/EEC and the Montreal Convention, but the Regulation itself would not impose any incremental obligation.

14.149 In calculating the impact of this option we assume that care costs are no longer incurred, as these would instead be covered by private insurance if the passenger chose to contract it; if they did not, they would be liable for these costs themselves. For the reasons discussed under option D2.3A above, it is likely that insurance would exclude coverage of mass disruption events and therefore even if passengers contracted insurance they would not be covered in these situations.

14.150 Table 14.14 shows the quantified impacts of this option. As the most significant economic burden currently arises from the obligation to provide care, this results in a substantial reduction in the economic burden. Carrier and route types for which care forms the largest component of the burden would experience the most significant overall reductions; namely regional carriers (-85%) and extra-EU flights of less than 1,500km (-84%).

**TABLE 14.14 QUANTIFIED IMPACTS: OPTION D2.8**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	-	-	-	-	-	-
Reimbursement / rerouting	-	-	-	-	-	-
Care	- 963,060	- 6,984,018	-100.0%	- 963,060	- 6,984,018	-100.0%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	-	-	-	-	-	-
<b>Total</b>	<b>- 963,060</b>	<b>- 6,984,018</b>	<b>-65.2%</b>	<b>- 963,060</b>	<b>- 6,984,018</b>	<b>-29.2%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 963,060	- 6,984,018	-66.9%	- 963,060	- 6,984,018	-29.5%
Ground handler	-	-	-	-	-	-
Airport	-	-	-	-	-	-
ANSP	-	-	-	-	-	-
State	-	-	-	-	-	-
<b>Total</b>	<b>- 963,060</b>	<b>- 6,984,018</b>	<b>-65.2%</b>	<b>- 963,060</b>	<b>- 6,984,018</b>	<b>-29.2%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 24,523	- 180,161	-83.8%	- 24,523	- 180,161	-45.3%
EU charter	- 39,277	- 289,639	-52.2%	- 39,277	- 289,639	-15.9%
EU low cost	- 337,243	- 2,432,031	-69.2%	- 337,243	- 2,432,031	-33.4%
EU traditional scheduled	- 418,336	- 3,044,093	-67.6%	- 418,336	- 3,044,093	-30.2%
Non-EU	- 143,680	- 1,038,095	-63.1%	- 143,680	- 1,038,095	-25.4%
<b>Total airline</b>	<b>- 963,060</b>	<b>- 6,984,018</b>	<b>-66.9%</b>	<b>- 963,060</b>	<b>- 6,984,018</b>	<b>-29.5%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.5%	-	-	-0.5%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 963,060	- 6,984,018	-70.2%	- 963,060	- 6,984,018	-30.1%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>- 963,060</b>	<b>- 6,984,018</b>	<b>-53.4%</b>	<b>- 963,060</b>	<b>- 6,984,018</b>	<b>-26.5%</b>

- 14.151 This option would not be consistent with the objective of maintaining and improving the standard of passenger protection, but would be aligned with the objective of ensuring that the burden is fair and proportionate given the substantial reduction in the economic burden it would deliver.

## 15 Impact assessment: options relating to enforcement and operation of the Regulation

### Introduction

- 15.1 This section provides the qualitative and quantitative analysis of options relating to complaint handling and enforcement. As for the other options, a two-stage approach was adopted, with some options excluded on the basis of an initial qualitative assessment, if they clearly did not meet the policy objectives; could not be implemented due to conflict with international law; or appeared to be impractical. The options excluded at the initial stage are still included within this section but less detail is provided as these options have not been analysed further.
- 15.2 In evaluating these options, it is necessary to take into account that the current Regulation is inherently difficult to enforce. It regulates behaviour by airlines in response to incidents involving large numbers of passengers that occur on a daily basis at airports throughout (and beyond) the EU. It requires provision of assistance, albeit often of small quantities, in thousands of cases each day. Where passengers do not travel frequently with an airline, or a route has limited competition, the airline may not believe it has a commercial incentive (in terms of increased possibility of repeat business) to provide the assistance or compensation that the Regulation requires. Therefore, only enforcement can provide this incentive. However, it is not practical for enforcement bodies to be present at all airports to check compliance all of the time, and therefore they must ensure airlines comply through some other means, for example by imposing dissuasive sanctions and/or ensuring each airline puts in place and then follows appropriate procedures to ensure consistent compliance.

### Options not assessed

- 15.3 Two of the initially defined list of options have not been considered, because on further evaluation they appeared to be identical to other options:
- Option E3.4 (NEBs or licensing authorities to have the right to suspend traffic rights or ground aircraft): This is in effect the same as option E5.3 (compliance to be a license condition), because the carrier would be grounded if it did not meet the criteria.
  - Option E4.6 (define a role for licensing authorities): This is also equivalent to E5.3, because the only way for the licensing authority to have a role would be if compliance became a license condition.
- 15.4 Option E3.5 (NEBs to investigate all complaints where there is a *prima facie* case of an infringement) was also not assessed, as the Commission advised that its interpretation of the current Regulation and NEB-NEB agreement was that this was an existing requirement and therefore this would not represent any change.
- 15.5 In addition, option E4.1 (which was initially NEBs and/or licensing authorities to be required to check carriers' operating manuals and ground handling agreements) has been redefined as NEBs and/or licensing authorities to have the power to require provision of



information of this nature. The requirement for the appropriate authorities to check this information is in effect the same as options E5.2 (airlines to define and provide procedures to ensure they comply with the Regulation) and E5.3.

### **E1: No further action by Commission**

15.6 We are required to consider a ‘do nothing’ option by which no further action is taken by the Commission and enforcement is left to the States. Although we are required to consider this option, it is unlikely to meet the policy objectives, because:

- one of the problems with the Regulation raised most often by stakeholders was inconsistent and (in some cases) ineffective enforcement, which may lead to distortion of the single internal market for air transport;
- our analysis in section 5 above shows that, despite significant improvements in some States, there are still problems with enforcement; and
- although some States might be expected to further improve enforcement, it may deteriorate in other States due to resource limitations caused by the financial crisis.

15.7 Therefore, a policy of no further action would not meet the policy objectives of ensuring legal certainty through effective enforcement, or remove distortions of competition.

### **E2: More systematic infringement proceedings and further strengthening of NEB coordination**

15.8 The analysis in section 5 above shows that there are still significant problems with enforcement in certain Member States. In principle the Commission may be able to take measures to encourage improvements.

#### *Requirements of Member States and potential for infringement proceedings*

15.9 The obligations in the Regulation with respect to enforcement are relatively limited. Article 16(1) requires States to designate enforcement bodies but only that they should ‘where appropriate’ take necessary measures to ensure that the rights of passengers are respected. Article 16(3) is slightly stronger, requiring sanctions which are effective, proportionate and dissuasive. However, the equivalent terms in other passenger rights Regulations are stronger. For example, Regulation 1371/2007 on rail passenger rights specifies ‘Each [enforcement] body shall take the measures necessary to ensure that the rights of passengers are respected’; requires that enforcement bodies cooperate with each other; and requires Member States to ‘lay down the rules on penalties applicable to infringements of the provisions of this Regulation and... take all measures necessary to ensure that they are implemented’.

15.10 We note that the sanctions in some States clearly fail to meet even the limited criteria in Regulation 261/2004, because they are less than the costs which can be avoided by failure to comply in an individual case. In addition, as discussed in section 5, in our view the sanction systems in many other States fail to meet this criteria, because (taking into account the possibility that a sanction may be imposed), there is not an economic incentive to comply with the Regulation - although this is harder to demonstrate. However, we also note that the Commission has not taken infringement proceedings

against States with suspected inadequate sanctions, although it has undertaken initial enquiries and informal contacts which in principle can lead to infringement proceedings.

- 15.11 The Commission has advised that the fact that the current text of the Regulation is not very precise or specific about the obligations for NEBs and Member States means that it is difficult for it to take infringement proceedings; several of the options discussed in this section would address this issue by defining more precisely what NEBs had to do. In addition, the Commission may be hampered by lack of information from States on complaints and sanctions - a problem which would be addressed by option E3.8 below. We also understand that infringement proceedings use significant resources and therefore the Commission cannot use these unless there is a relatively strong case.
- 15.12 On this basis, we understand that it would be possible to take infringement proceedings against a State which had not introduced penalties, or the penalties were clearly below the cost avoided through non-compliance. However, it would be difficult to take infringement proceedings against a State where the policy on how penalties were applied meant that in practice penalties were not an effective incentive. On the basis of our research it appears therefore that it might be possible to undertake infringement proceedings with respect to Sweden (for failure to have penalties except for Article 14) or a State such as Latvia or Poland (for maximum penalties being too low) but it would be difficult with respect to UK or Italy (where penalties are ineffective, but for other more complex reasons).
- 15.13 However, even if the sanctions system could be improved, this would not guarantee the active enforcement of the Regulation by States. In addition, infringement proceedings relating to sanctions would not address the inconsistency in interpretation or other activities between different NEBs.

### *Other measures*

- 15.14 In its 2011 Communication, the Commission proposed a number of other measures which could address problems with enforcement. These included:
- establishing a clearer mandate for the informal 'NEB Network' group it had established;
  - encouraging NEBs to work closer together and exchange information more;
  - establish a Consultative Group on Air Passenger Rights; and
  - encourage better coordination between licencing authorities and NEBs.
- 15.15 Whilst these measures may result in some improvement to the effectiveness of the enforcement system, they do ultimately depend on States being willing to revise national laws and deploy appropriate resources to enforce the Regulation. As noted above, the Regulation is inherently difficult to enforce. In addition, whilst NEBs can be encouraged to work together more effectively, this will not necessarily ensure that they all do so, or that they will adopt more consistent approaches to enforcement, given differences in their own national legal and organisational frameworks.
- 15.16 Given this, it is not clear that these measures will be sufficient to ensure consistent and effective enforcement of the Regulation, and therefore may not be sufficient to meet the policy objectives.

### **E3: Options to make sanctions more effective**

#### ***Option E3.1: Commission to have the power to impose sanctions directly***

15.17 For most legislation, the Commission relies on individual Member States to create enforcement bodies and impose sanctions if necessary. Other than competition law, the main exception to this we have identified in the transport sector is Regulation 2289/89 on Computer Reservation Systems, which allows the Commission to impose administrative sanctions itself through a Commission decision process (we understand this power has not actually been used to date). The Commission can also impose sanctions directly for some infringements in other sectors.

15.18 Some of the problems identified with the enforcement system could be addressed by the Commission undertaking certain enforcement activities itself. In particular:

- this could ensure that an appropriately dissuasive penalty could be applied, which it could not otherwise be in all States;
- the Commission is better equipped than individual NEBs to deal with information and correspondence in multiple European languages; and
- this could avoid inconsistencies in interpretation and enforcement.

15.19 However, the Commission would have limited resources and it may not be practical for it to replace the entire enforcement activities of NEBs. We have therefore assessed three related options:

- Option E3.1A: Complete replacement of the powers and activities of NEBs by an EU-level agency;
- Option E3.1B: A limited power for the Commission to impose sanctions, working in parallel with the current NEBs; and
- Option E3.1C: A combination of E3.1A and E3.1B, with a central agency but the existing NEBs retained as local agents or ‘antennae’ of the central agency.

#### ***Option E3.1A: Replacement of NEBs with EU-level agency***

15.20 There could be significant benefits to replacing complaint handling and enforcement by NEBs in Member States with enforcement by an EU-level agency. In particular this would:

- remove any difficulties associated with inconsistency between NEBs;
- address the language problems that are currently faced in dealings with both complainants and airlines, as the agency (unlike NEBs) could employ staff which spoke all major EU languages;
- achieve operational efficiencies, as there would be no need to forward complaints or seek coordination between NEBs; and
- achieve economies of scale, as the agency would be larger and therefore have more flexibility to deploy its staff as effectively as possible, recruit staff who could undertake specific specialised roles, adopt common systems, etc.

15.21 However, there would also be some disadvantages:

- there would be costs associated with the transition to a new agency - including redundancy or retraining costs for some existing NEB staff, and setup costs for the new agency;
- the agency would face higher costs in undertaking inspections than the existing NEBs, as its staff would need to travel within the EU rather than just within Member States;
- as the agency would be based at a central location, it would be harder for it to conduct ad hoc inspections in response to specific events; and
- if enforcement of other legislation (particularly Regulation 1107/2006 and the price transparency provisions of Regulation 1008/2008) did not also transfer to the new agency, there could be some inefficiencies as a result of these residual tasks being left with NEBs.

15.22 We have also considered whether this could be considered to be incompatible with the principle of subsidiarity, as complaint handling and enforcement could also be undertaken by NEBs. This is clearly a matter of judgement but in our view Community action could be justified on the basis that that action by some national NEBs appears to have been ineffective; and that the differences in process, interpretation and authority between NEBs and States may lead to distortion of the single market for air transport. There would also be some operational efficiencies and economies of scale through Community action although as discussed below the overall costs are likely to be higher because of higher salaries and one-off transitional costs, and therefore this probably cannot be a justification for this measure.

### *Estimate of impacts*

15.23 We have estimated the costs that the agency would incur as follows:

- the agency would need approximately 20% less staff than the current NEBs, due to the efficiencies discussed above (therefore, for calculation purposes we have assumed it would need 210 full time staff<sup>58</sup>);
- the ongoing costs of the agency would be based on those incurred by existing EU-level executive agencies, and we have based our estimate on a sample of 5 agencies, comprising ACER, TEN-T, ERA, ECHA and EDA - we applied staff-related costs using an average from this sample and assumed that 50% of the average technical costs, which are specific to the mission of the agency, would be replaced by the inspection costs detailed below;
- setup costs would be incurred, with values calculated on a per staff member basis using the first-year accounts of EBA, ESMA, TEN-T and ACER;
- costs would be incurred travelling to visit airports to carry out inspections - we assume 100 inspections per year would be undertaken, each involving travel, accommodation and subsistence costs of €500 each for two staff; and

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<sup>58</sup> Note this is 20% less than 50% of the staff we estimate NEBs would need to fully investigate all complaints where there was a prima facie case of an infringement, not 20% less than 50% of the NEBs actual current staffing (see section 10 above)

- existing NEB staff might require retraining to undertake other functions and if no roles were available would be made redundant - redundancy costs would vary substantially between Member States depending on national legislation and the terms and conditions of public servants in each Member State, and other factors such as their length of service; we have assumed €25,000 per current NEB employee. We have assumed that the transfer of staff from NEBs to the new agency would be very limited, partly due to practical considerations such as the need for relocation, so most existing NEB staff would be made redundant if they could not be redeployed.

15.24 However, the current operating costs of NEBs would be avoided. We estimated these as €26.7 million per year, assuming full complaint handling (see section 5 above), and at 2010 levels of complaints; this cost would increase over time as the number of complaints is assumed to increase in proportion to passenger numbers.

15.25 We estimate the one-off costs of establishing the new agency to be €8.3 million, comprising €3.1 million in NEB redundancy costs, and €5.2 million in setup costs, based on the benchmarking of other EU agencies. The ongoing operating cost of the new agency could be €30.6 million per year, although when offset against the NEB cost saved of €26.9 million this results in a net annual cost of €3.7 million. The NPV of the cost of implementing this option is €46.6 million.

#### *Conclusions*

15.26 Transfer of competency for complaint handling and enforcement to an EU-level agency could generate significant benefits in terms of meeting the policy objective of ensuring enforcement of the legislation is sufficient to achieve consistently high rates of compliance; it would also be consistent with the policy objective of minimising distortion of competition. However, it might increase costs, due to the one-off setup and redundancy costs associated with the establishment of the new agency, and because the staff costs of an EU-level agency would exceed the staff costs of the NEBs. For these reasons it may be unrealistic.

#### ***Option E3.1B: Commission to have the power to impose sanctions directly***

15.27 The Commission has advised that, unless a separate agency was set up, it could not be expected to commit more than 2-3 FTEs to enforcement of the Regulation. In comparison, we estimate that over 100 FTEs work on complaint handling and enforcement in the Member States, and that 262 FTEs would be needed if NEBs fully investigated and responded to all complaints. Therefore, even if the Commission was granted power to impose sanctions, it would have to work in parallel with the existing NEBs and there would need to be some criteria to justify when it should become involved.

15.28 At present, the Regulation primarily relates to behaviour in response to individual incidents, and it would be difficult to prove the pattern or policy of non-compliance that would be necessary to justify the Commission's involvement. Nonetheless, there could still be some benefit in the Commission being able to take action if a particular incident covered a large number of States, for example if a carrier overtly stated that it was not going to apply the Regulation in a particular incident or type of incident. For example, during the volcanic ash crisis some carriers stated publicly that they would limit the right to care, and several carriers have explicitly stated that they will not pay compensation for

delays, which the Commission considers (although the airlines dispute) is a requirement of the Regulation. In these cases the Commission could take action itself if the incident covered more than a certain number of States and a certain number of passengers.

15.29 A policy of penalties being imposed by the Commission would be much more effective if the emphasis of enforcement changed towards enforcement in relation to the general policies and practices of carriers (as discussed under option E5.2 below), which is not possible under the current Regulation. The Commission could impose penalties where, for example, a carrier with significant operations in more than two States:

- committed a serious and repeated infringement of the Regulation, impacting passengers in two or more States;
- did not have sufficient or appropriate procedures to implement the Regulation;
- repeatedly failed to comply with procedures put in place to implement the Regulation; or
- did not reflect the Regulation in other relevant policies, documents, or contracts - for example if the Conditions of Carriage were non-compliant or ground handling agreements were inconsistent with the implementing procedures).

15.30 In this case there should be no issue with the principle of subsidiarity: Community-level action would only be taken where it was more effective, either because NEBs were not capable of taking action effectively themselves, or because the nature of the infringement was such that it had a significant impact on passengers in multiple Member States.

### *Estimate of impacts*

15.31 On the basis of information provided by the Commission, we estimate that, if it committed 3 FTEs to enforcement, the cost it would incur including salaries and overheads would be €2.8 million NPV including overheads. However, this would not entirely be an additional cost as it might enable NEBs to reduce some complaint handling and enforcement activity.

15.32 This estimate does not include legal costs which might be incurred if an airline appealed a sanction imposed by the Commission.

### *Conclusions*

15.33 Transfer of complaint handling and enforcement to an EU-level agency could bring about significant benefits, but may be unrealistic due to the scale and budget of the agency that would need to be established. Nonetheless, particularly in the event that option E5.2 is pursued, granting the Commission the power to impose sanctions could help meet the policy objective of improving legal certainty through improved enforcement and compliance. Even if option E5.2 was not pursued, it could in some cases improve enforcement if the Commission was able to impose sanctions. The costs associated with the option are relatively low and would partly replace costs incurred by Member States.

### ***Option E3.1C: Partial replacement of NEBs with a central agency but with NEBs retained as local agents***

15.34 As set out above, there are a number of potential advantages from integrating all complaint handling and enforcement in a central agency, but there are also some

disadvantages and practical problems. An potentially effective means to reconcile these advantages and disadvantages could be to adopt a hybrid system, with the NEBs retained in a reduced form to act as local ‘antennae’ or agents for the new EU-wide agency.

- 15.35 The scale of the potential benefits might be reduced by such an approach because of the need to coordinate the central agency with the national NEBs; this might also generate practical difficulties given the significant differences in structure, powers and approach of the current NEBs. Some NEBs might not have the skills or powers necessary to follow the instructions from the central agency. There would also be a risk of duplication of activities between NEBs and the central agency.
- 15.36 However, if these issues could be resolved, this option might be more realistic than option E3.1A above: in particular, lower setup costs (such as redundancies) would be required, and the operating costs of the central agency would be lower. Another potential advantage of this combined ‘hub and spoke’ system is that it would allow NEB staff to continue to conduct inspections within the State, thereby potentially improving responsiveness and avoiding increasing travel costs.
- 15.37 In order to assess this option, we assume that all enforcement powers are vested with the central agency (including the power to impose sanctions), but that NEBs continue to undertake tasks such as complaint handling and inspections, coordinated by the central agency.

#### *Estimate of impacts*

- 15.38 We have estimated the costs impact of this option as follows:
- 50% of current NEB staff will remain, with the remaining 50% being replaced by staff at the new EU agency;
  - The setup and operational costs associated with the new agency are assumed to be 50% of those for option E3.1A above; and
  - The ongoing running costs of NEBs are assumed to be reduced by 50%.
- 15.39 On this basis we estimate that the net cost impact of the establishment of the central agency would be €23.3 million NPV.

#### *Conclusions*

- 15.40 As discussed under option E3.1A above, transfer of competency for complaint handling and enforcement to an EU-level agency could generate significant benefits in terms of meeting the policy objective of ensuring enforcement of the legislation is sufficient to achieve consistently high rates of compliance and it would also be consistent with the policy objective of minimising distortion of competition. However it would also generate significant one-off costs and may be unrealistic.
- 15.41 A more realistic alternative may be to establish a central agency but retain the current NEBs to undertake some complaint handling and inspection activities, coordinated by the central agency. This would incur lower one-off costs than the establishment of a central agency. It could also, in some respects, be more effective - in particular because there would continue to be staff in each Member State who could more easily undertake inspections and discuss cases with organisations within the State. However, the key

challenge would be to ensure that the activities of the national NEBs could be coordinated effectively and efficiently by the central agency, without activities being duplicated.

### ***Option E3.2: Commission to require NEBs to investigate individual cases***

- 15.42 An alternative to the option of granting the Commission powers to impose sanctions itself would be to allow the Commission to require NEBs to investigate a specific case and possibly also to require them impose sanctions. The option of the Commission being able to require sanctions to be imposed is discussed under E3.3 below.
- 15.43 There are some parallels to a requirement to investigate in Regulation 1008/2008. Article 15(3) gives the Commission the right to state to a licensing authority that it has evidence that a carrier is not in compliance with the Regulation; the licensing authority can then investigate and report back, and if necessary, the Commission can then request that the authority take corrective measures or suspend or revoke the license.
- 15.44 As for the previous option, the power to require investigations would potentially be useful in the case of major problems with a particular carrier, but as the Regulation relates to behaviour in response to individual incidents, it may be hard to prove the pattern of non-compliance EU-wide that would be necessary to justify Commission involvement. However, if option E5.2 was implemented, the power to require NEBs to investigate could be much more useful.
- 15.45 At present, not all NEBs would have the powers under national laws, or the technical capability, to undertake such an investigation. However, if option E5.2 was implemented, failure to have and implement appropriate procedures to implement the Regulation would be an infringement, and if it impacted consumers in multiple Member States, it would be an intra-Community infringement as defined in Article 3(b) of Regulation 2006/2004 on Consumer Protection Cooperation. If there was evidence of an intra-Community infringement, the provisions in Article 4(6) of Regulation 2006/2004 would then be relevant. This requires competent authorities to have the power to require access to documents, carry out inspections, and require cessation and prohibition of infringements. If the Commission considers necessary, it could be specifically stated in the Regulation that failure to comply with the requirement to have and implement appropriate policies should be considered an intra-Community infringement.

### ***Estimate of impacts***

- 15.46 Although there could be costs arising from investigations undertaken by NEBs in response to a request from the Commission, it is not possible to quantify these as it is not clear how often the power would be used. In addition, this option would be of benefit primarily to enforcement in relation to policies and procedures as proposed by option E5.2, which would partly replace enforcement in response to individual incidents. Therefore, this does not necessarily have to generate additional costs for NEBs. There would be no additional costs for the Commission as no additional resources would be taken on.

### ***Conclusions***

- 15.47 In the event that option E5.2 is pursued, this option could generate benefits in terms of improved legal certainty through improved enforcement and compliance. This option would be of more limited benefit if option E5.2 was not pursued.



***Option E3.3: Commission to have powers to require NEBs to impose fines***

- 15.48 This option would give the Commission the powers to require NEBs to impose an administrative sanction in a particular case.
- 15.49 However, this is not practical, because:
- If States impose sanctions themselves, they have to follow their own legal and administrative procedure, which may be very different in terms of the process and standard of proof required. Many NEBs might not be able to follow such an instruction from the Commission.
  - Even if all States that could impose administrative sanctions followed the instruction from the Commission, some States cannot have administrative sanctions for constitutional or other reasons and therefore could not do so.
  - The sanctions imposed would vary substantially between States, reflecting differences in national law. Therefore this would not address the inconsistency between States.
- 15.50 The option of the Commission imposing sanctions itself seems to be a much more practical way of achieving the same result. **Therefore, we suggest this option is not pursued.**

***Option E3.6: Require sanctions to exceed a particular level to ensure they can be dissuasive***

- 15.51 As identified in section 5 above, in several States sanctions are too low and too rarely applied to provide an incentive to comply with the Regulation. This could be addressed by requiring that particular levels of fine be available. If this made enforcement more effective, it would help achieve several of the policy objectives – although it would still depend on States actually applying sanctions, which several have still not done, and having the ability to apply and collect sanctions in respect of all carriers and infringements.
- 15.52 It would be difficult to define at EU-wide level what level of fine is required in each State, because this would reflect the practice of each State in imposing fines. For example, in Ireland, a fine can only be imposed for non-compliance with a Direction to comply in a particular case. Even an unlimited fine for non-compliance with a Direction might be inadequate to provide a financial incentive to comply in other cases, because a carrier could always avoid fines by complying whenever it received a Direction but not in other cases. In contrast, in some other States a fine is imposed whenever an infringement is identified. In these cases, a much lower fine might be sufficient to provide an incentive.
- 15.53 Nonetheless, the current ‘effective, proportionate and dissuasive’ criteria in Article 16(3) does not appear to have been sufficient. For this reason we suggest that the Regulation should not specify a level of fines, but wording could be added to this to clarify that the enforcement regime must be sufficient to provide carriers with a financial incentive to comply consistently with the Regulation.
- 15.54 Making this change would not generate any quantifiable impacts.

***Option E3.7: Require airlines to designate a person or body in each State on which notifications of sanctions can be served***

- 15.55 As noted in section 5 and in our 2010 report, a problem for NEBs in certain States is that they are not able to impose fines where the carrier does not have legal representation

within the State. The issue does not arise with non-EU carriers as they are required to have representation within the States that they operate, as a consequence of bilateral air service agreements.

- 15.56 This problem has partly been addressed: the largest State which previously said it had this problem (Germany) has now told us that it has no such problem. Of the States with the largest aviation markets in the EU, all can in principle now serve sanctions on non-national, EU carriers even if they do not have legal representation within the State (Italy has difficulties in collecting sanctions but this is not limited to non-national carriers).
- 15.57 In our view, the remaining States should be able to address this problem themselves, as others have, and therefore the economic burden this would impose on airlines should not be necessary. Where States fail to do this, they clearly fail to meet the criteria to have effective and dissuasive sanctions, and therefore the Commission should consider infringement proceedings. In addition, a requirement for carriers to have legal representation within each State would not be consistent with the wider objective of minimising impediments to market entry and competition within the single market.
- 15.58 However, many NEBs said that a requirement to provide up-to-date contact details would significantly facilitate enforcement. Therefore, we suggest this option should be replaced with an option to provide the Commission with a contact email address and address for NEB contacts; the Commission would circulate this to NEBs although not more widely. We have categorised this as option E3.7A.

***Option E3.7A: Require airlines to provide contact details to the Commission***

- 15.59 As noted above, many NEBs said that a requirement to provide up-to-date contact details would significantly facilitate complaint handling and enforcement. The Commission maintains a contact list but we were told that many airlines do not provide up-to-date information. There is no sanction at present for failure to provide accurate information.
- 15.60 Airlines operating in the EU would be required to provide the Commission with:
- a named contact person;
  - an address within the EU (not necessarily in every State) at which notifications could be served; and
  - a general email address for contacts from the Commission and NEBs, which would be monitored (including when the named contact person was on holiday).
- 15.61 The Commission would maintain this list and distribute it to NEBs.

***Estimate of impacts***

- 15.62 The only cost this option should generate is the cost of providing, and updating, the list. The requirement to have an address within the EU should not impose any additional costs - non-EU airlines are already required to have representation as a condition of operations; and EU airlines could use their main headquarters address.
- 15.63 To estimate the costs we have assumed that:
- each airline would provide a contact once every year and it would take 1 hour to do this; and

- the Commission would update the list monthly with new information provided and provide this to NEBs, and it would take 1 day to do this.

15.64 This would be an administrative cost and therefore is estimated using the Standard Cost Model (SCM). We estimate the administrative cost as €18,011 and the administrative burden as €12,608, assuming 30% of the costs are ‘business as usual’, which reflects the fact that the Commission and the majority of NEBs do have contact lists, although these may be updated only sporadically. This is equivalent to an NPV of €93,000.

#### *Conclusions*

15.65 This option would have very moderate operational costs and NEBs said that it would significantly facilitate the complaint handling and enforcement process.

#### ***Option E3.8: Require NEBs to provide information to the Commission to demonstrate that sanctions effective***

15.66 This option would:

- require NEBs to provide the Commission with information on the number of complaints received, sanctions processes started, and sanctions ultimately collected; and
- require NEBs to demonstrate that the sanction scheme has been effective in ensuring compliance with the Regulation.

15.67 Several of the options considered envisage a more active role for the Commission in enforcement, either in terms of having enforcement powers itself, or in terms of coordinating NEBs. The Commission cannot realistically achieve this if it does not have access to good information on the complaints handled, and sanctions imposed, in each State. We were also quite surprised, in the course of our research, to find that some NEBs were not able to provide detailed or precise figures, and therefore a requirement to do this would be beneficial.

15.68 If this option was introduced the Regulation would need to specify what information should be provided. The report could include statistics for:

- number of complaints, at a minimum split by cause (delay, cancellation etc);
- the outcome of complaints submitted during the year;
- number of formal enforcement orders made, where these exist (such as Directions in Ireland or enforcement orders in the UK);
- number of sanctions processes started;
- number and value of sanctions imposed/confirmed; and
- number and value of sanctions collected.

15.69 The report should also provide a commentary on any issues with the operation of the enforcement system, and actions taken to address any problems. It should also explain why and how the sanction scheme in the State was sufficient to ensure compliance with the Regulation, although this will be inherently subjective, and is therefore only likely to

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be useful in the most extreme cases, where a State clearly is not complying with the obligation in Article 16(3) or any strengthened obligation in the revised Regulation.

### *Estimate of impacts*

- 15.70 The production of this report would be an administrative burden for NEBs and is therefore assessed using the Standard Cost Model (SCM).
- 15.71 Some NEBs already retain the information necessary to produce this report, and therefore most of this cost would be incurred anyhow. In other cases, some effort would be needed to improve the data handling and record keeping within the NEB. In particular, in many States confirmation and collection of sanctions is undertaken by another body and this information is not necessarily provided to the NEB, and therefore this would take some time/effort to collect.
- 15.72 In order to estimate this cost we have assumed that:
- it would take on average 1 day per NEB to collect the data on complaints and sanctions required from its own databases;
  - it would take on average 3 days per NEB to check information with other sources (for example the authority responsible for collecting fines);
  - it would take 2 days per NEB to write, and 1 day to review, the document; and
  - it would then take 1 day to provide this to the Commission and answer any questions.
- 15.73 These amounts would clearly vary by NEB: an NEB such as Spain or Italy which has a high volume of complaints and imposes a large number of sanctions would need more time to prepare the document, but NEBs for other States would need less. In addition, some NEBs already publish information or reports which would meet some of these criteria and therefore not all of this administrative cost is considered an administrative burden.
- 15.74 On this basis we estimate that the annual administrative cost of this measure would be €68,641. Not all of the cost would be administrative burden, as some NEBs publish similar information anyhow. We have estimated administrative burden would be €48,049, assuming that 30% of costs would be incurred without this option. Although 6 out of 14 case study States (43%) do currently publish complaint data in some form, the level of detail and disaggregation might have to be improved in some cases. The net burden of this option is €354,300 NPV.

### *Conclusions*

- 15.75 An obligation to report on complaints and sanctions would significantly facilitate the Commission in ensuring that the Regulation was implemented. Therefore, it would be consistent with the policy objective of ensuring legal certainty through effective enforcement. For those NEBs that already keep adequate records, the administrative burden of complying with this obligation would be low.

#### **E4: Other options to improve effectiveness of enforcement**

##### ***Option E4.1: NEBs and/or licensing authorities to have power to require provision of information, such as operating manuals and ground handling agreements.***

- 15.76 If option E5.2 or E5.3 were implemented, NEBs would need to have the power to require provision of information from carriers. Even if these options were not implemented, it would assist NEBs in the investigation of complaints if they had the power to require provision of information - although in itself the impact might be relatively limited as certain NEBs would not have the capability or resources to utilise this power effectively.
- 15.77 Many NEBs already have the power under national law to require provision of information, and some can impose sanctions for failure to provide the information required (for example, the Spanish NEB regularly does this). In addition, most NEBs are designated enforcement bodies under Regulation 2006/2004 on consumer protection co-operation, Article 4 of which requires them to have powers in relation to intra-Community infringements to have access to relevant documents, conduct inspections, enter premises etc. This power is almost never used at present in relation to Regulation 261/2004 as infringements of this Regulation would rarely count as an intra-Community infringement, but if the emphasis of enforcement changed towards carriers' general procedures as discussed under options E5.2 and E5.3 below, this would be much more likely to be relevant.
- 15.78 Introducing this requirement at EU level would be useful for those NEBs that do not already have this power, or where they only have this power in relation to intra-Community infringements. If the Commission was given powers to impose sanctions it would also need the power to require provision of information. Therefore we recommend that this option should be implemented, particularly (but not only) if options E5.2 or E5.3 are pursued.
- 15.79 It is not possible to quantify how often a power to require provision of information would be used and therefore what cost implications it would have, although we do quantify under option E5.2 and E5.3 below the cost implications of a requirement to check procedures, which would be dependent on this power.

##### ***Option E4.2: NEBs to publish statistics on complaints, sanctions and other actions taken***

- 15.80 Some NEBs already publish information on complaints and sanctions, and the Commission has published information it has collected from NEBs. We have suggested (option E3.8 above) that NEBs should at a minimum provide information on complaints and sanctions to the Commission. In principle, this information could also be published by NEBs, and this could be useful in helping demonstrate the effectiveness (or otherwise) of complaint handling in each NEB.
- 15.81 We raised with stakeholders whether airline-specific information could be published. Airlines strongly opposed this because they said that airlines would appear to have far more complaints if they operated in States where it was easier to complain to the NEB, or where commercial claims organisations were active and forwarded complaints to the NEB. For these reasons we agree that the complaint data should not necessarily be airline specific, to avoid distorting competition. In principle, there is no reason why airline-

specific information on sanctions could not be published, once any legal process is complete, although this could create problems in some States (for example Belgium) due to secrecy provisions in national criminal or administrative law.

### *Estimate of impacts*

- 15.82 We estimate under option E3.8 above the cost of NEBs providing an annual report to the Commission. If this report was produced, the additional cost of publishing this report on the website would be negligible and therefore we have not quantified this.

### *Conclusions*

- 15.83 We recommend that the reports on enforcement produced for the Commission should also be published by the NEBs on their website. This would improve transparency and the cost of doing this would be negligible. The information in the report on complaints would not have to be airline-specific but information on confirmed sanctions should be, except where this is impossible due to national law.

### ***Option E4.3: NEB meetings to be able to issue binding rulings***

- 15.84 Some of the issues with the Regulation have arisen partly because it was adopted through a conciliation process between the Council and the Parliament, and some of the text is subject to different interpretations. Whilst this is a risk with any legislation, it has been a particular issue with this Regulation, and is exacerbated by the particular operational and technical complexity, and international nature, of the air transport sector. Judgements by the CJEU have addressed some of the grey zones in the legislation but many remain. The requirement for a legislative process also means it is difficult to make amendments to the Regulation to address these issues. If it was possible to issue interpretations or make (even relatively minor) changes through a non-legislative process, this could be a significant benefit in terms of meeting the policy objectives of ensuring effective enforcement, and minimising distortion of competition (through inconsistent application).
- 15.85 We have considered if this could be addressed through the NEB meetings being able to issue binding rulings. However, our legal advisors have said that there is no precedent for a meeting of this nature being able to interpret legislation, and only the CJEU could issue such a binding ruling. It would be possible to agree guidance at an NEB meeting and publish it (as was done in the past with the Q&A document) but there could be no requirement for either NEBs or national courts to follow the guidance. This may be a particular problem with those States where sanctions can only be imposed through a criminal process (such as the UK) or subject to criminal standards (such as Germany).
- 15.86 **Therefore this option is not recommended.** However, we have considered an alternative option by which some of the more detailed and technical provisions of the Regulation are transferred to either implementing rules or a delegated act (we have defined this as option E4.3A).

### ***Option E4.3A: Detailed provisions to be defined in implementing rules***

- 15.87 An alternative approach would be for detailed requirements to be defined outside the main text of the Regulation, with the Regulation itself defining general principles to be followed. This approach has been adopted in some other legislation in the transport sector. For example, the Single European Sky II (SESII) programme was introduced through

Regulation 1070/2009 amending the initial SES Regulations, but important elements of the programme are defined in implementing rules, such as Commission Regulation 691/2010 defining the performance scheme. These Regulations are approved by the (specialist) Single Sky Committee through a comitology procedure. There is also provision for a comitology procedure in Regulation 1371/2007 on rail passenger rights, although this Regulation is nonetheless relatively detailed and prescriptive in terms of operators' obligations.

- 15.88 We understand that the approach necessary will have changed as a result of the Lisbon Treaty, as this replaced the comitology procedure for new or amended legislation. The approach could now be through either:
- powers delegated to the Commission, using the mechanism in Article 290 TFEU; or
  - implementing rules determined by the Commission, using the mechanism in Article 291 TFEU.
- 15.89 We are not in a position to advise on which of these is most appropriate as this relates to issues of EU constitutional law rather than air transport regulation. However, we discuss further below how provisions could be divided between the main Regulation and the delegated powers or implementing rules.
- 15.90 The main advantage of detailed provisions being defined in delegated or implementing rules are:
- provisions could be changed more easily than provisions in the main Regulation, if they turned out in practice to be unclear or to cause other problems;
  - provisions could be defined in more detail than it is practical to do in primary legislation - a significant advantage of the US rules on issues such as denied boarding, tarmac delay and transport of PRMs is that they are far more detailed than any comparable EU Regulations; and
  - it would be easier to consult with the industry about the detailed provisions if these were defined outside the main legislative process - clearly the industry could not be given a veto (and the airline associations are a vocal lobby, so care would need to be taken not to give their opinions disproportionate weight) but it can advise on practical and implementation issues that will arise with particular provisions.
- 15.91 These benefits are not of a type which can be quantified.

*Division between main Regulation and delegated/implementing rules*

- 15.92 This section sets out a suggested division between the main Regulation and the detailed delegated/implementing rules, from an operational and practical perspective. The objective is to ensure that the Regulation specifies clear principles but that detailed provisions are defined in implementing or delegated rules. It is clearly subject to any constraints arising from EU constitutional law and precedent; we are not qualified to advise on this and therefore this is not taken into account. However, we note there is precedent in some other areas of transport regulation, such as the SES II performance scheme, for important provisions being defined in implementing rules.

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- 15.93 Subject to any such constraints, we suggest that the main Regulation should specify that there should be rules to protect air passengers in the event of travel disruption, the scope of the flights it should cover (as currently defined in Article 3), and the basic scope of these rules. It would specify that:
- the rules would protect passengers in the event of delay, cancellation, denied boarding, downgrading and other similar or related disruption to their journeys (to allow other less common issues such as diversions to be covered in the delegated/implementing rules if necessary);
  - passenger protection should take the form of standard assistance (such as refreshments, hotel accommodation, rerouting etc) and where appropriate also monetary compensation;
  - States would be required to designate NEBs and introduce effective, proportionate and dissuasive sanctions into national law; and
  - detailed provisions would be defined in the implementing/delegated rules.
- 15.94 The delegated/implementing rules would define:
- when each type of assistance would be provided - for example, after how many hours of delay;
  - how each type of circumstance should be defined - for example, how a missed connection or advance schedule change could be defined;
  - the criteria for any exemptions, for example the extraordinary circumstances exemption from payment of compensation;
  - where necessary, detailed provisions on how assistance should be calculated and provided (for example, how refunds could be calculated for multi-segment flights); and
  - detailed procedures to be followed in complaint handling and enforcement.
- 15.95 The scope of the Regulation and delegated/implementing rules might be slightly different to this if other policy options discussed in this study were also implemented.

### *Conclusions*

- 15.96 Some of the problems with the Regulation have arisen because the text contains grey zones. Air transport is a technically and operationally complex industry and it is difficult to define sufficiently clear and detailed provisions in a Regulation agreed purely through a political process. For this reason, subject to any constraints of EU constitutional law, we recommend that some of the detailed provisions should be moved to a delegated act or implementing rules. This could significantly contribute towards the objective of ensuring legal certainty by ensuring that the legislation is clear and that its requirements are explicit in the text.
- Option E4.4: Airlines to be required to prove that they have complied with respect to all passengers***
- 15.97 A weakness in the complaint handling and enforcement system at present is that, even if a carrier is found not to have complied with the Regulation in one individual case, and is



required to do so or given a sanction for failure to do so, there is never any requirement on it to demonstrate that it complied with respect to other passengers on the same flight.

15.98 With respect to the rights to assistance and information, this could be quite hard to prove: carriers may issue leaflets and vouchers (particularly meal vouchers), or distribute food/drink packages directly to a group of passengers, without necessarily recording who they are issued to. It would be a significant administrative burden to require that carriers keep records of which individual passengers received this, and it is always possible that some would not, for example because they had not followed a request to go to the gate or information desk. However, this should be possible with respect to compensation, rerouting and refunds: these would always be recorded in the carriers' ticketing and/or accounting systems.

15.99 If carriers had to demonstrate that they had complied with respect to other passengers when an infringement was found for one, this would contribute towards meeting some of the policy objectives in particular that passengers receive appropriate assistance and compensation. This needs to be set against the administrative costs of applying this measure, for both NEBs and carriers. Therefore we suggest that if this option was implemented it should be limited to the rights to:

- payment of compensation in cases of denied boarding and, where requested, in the cases of cancellations and long delays not caused by extraordinary circumstances;
- provision of refunds and rerouting in cases of cancellations and denied boarding; and
- provision of overnight accommodation.

#### *Estimate of impacts*

15.100 In order to assess the administrative burden that this would generate for carriers, we have assumed that:

- 20% of the total number of complaints to NEBs are valid and upheld;
- in 50% of these cases, the airline has to compile proof that it has provided accommodation or compensation to the other passengers on the aircraft concerned;
- it takes 1 person day for the airline to compile this information in each case, and 0.5 person days for the NEB to check it.

15.101 This would be an administrative burden and so is assessed using the Standard Cost Model (SCM). Using this model we estimate the administrative burden as being €1.5 million and the NPV of the burden as €11.3 million. The administrative cost of this option would be entirely an administrative burden as carriers do not have this obligation at present.

15.102 There is no impact on the calculated economic burden of providing assistance. This is because our calculations of economic burden assume full compliance with the Regulation, and therefore the introduction of this option makes no difference.

#### *Conclusions*

15.103 This option would have some benefit in terms of meeting the policy objective of maintaining passenger protection by ensuring passengers receive adequate care and compensation, and the objective of ensuring legal certainty by improving compliance.

However, the administrative burden of this option is high, and it is not consistent with the policy objective of minimising economic burden including by minimising operational and administrative costs. In our view other options provide a more cost-effective means of meeting the objective of improved compliance and therefore we do not recommend that there should be an EU-wide requirement for NEBs to require this in every case. Nonetheless, there is nothing to prevent NEBs doing this in individual cases where they believe it is appropriate and in accordance with national law.

### *Option E4.5: Improve CPC system*

- 15.104 NEBs are designated enforcement bodies under Regulation 2006/2004 on consumer protection (with a few exceptions such as Belgium). However, as identified in section 5 above, most NEBs have made little or no use of the CPC system. We have discussed with NEBs what, if any, improvements could be made to the CPC system to make it more effective with respect to the Regulation.
- 15.105 The key issue appears to be that NEBs only take action in response to individual incidents identified through individual complaints or (in a few cases) through inspections. NEBs are competent to enforce in relation to these individual incidents if they occur within their State, and therefore they do not need to involve other NEBs through the CPC system in responding to them. As noted above, NEBs do not take action in response to general practices such as a failure to have appropriate policies or procedures in place, which might involve multiple enforcement bodies. NEBs also generally would not have a legal mandate under Article 16(1) or national law to undertake or assist with enforcement in relation to an incident that occurred in another State. Regulation 2006/2004 may provide such a mandate but only in response to cases of collective consumer interest, not individual infringements.
- 15.106 Some NEBs are designated enforcers under the CPC system for other issues. They said that the CPC system was primarily useful where there was a need to force a one-off change to a particular practice (such as to change an unfair contract term), rather than respond to an individual incident. Therefore, if the Regulation were to be revised to require NEBs or licensing authorities to ensure general practices of carriers were compliant, the CPC system could be more useful.
- 15.107 Some also said that there were technical problems with the CPC IT system which precluded them from using it; however, we assume that these can be addressed without any regulatory change.
- 15.108 We asked NEBs if any further change to the CPC system would make it more useful with respect to this Regulation but they were not able to identify any. The system would become more relevant and useful automatically if the role of NEBs was changed to address general practices, rather than respond to individual events, as proposed by options E5.2 and E5.3. **Therefore we suggest this option does not in itself add any value and should not be pursued.**

## E5: Other options to encourage good service quality

### *Option E5.1: Publish service quality statistics for EU carriers*

15.109 At present, in most Member States, little reliable airline-specific information is publicly available on most service quality issues such as delays, cancellations, denied boarding, and mishandled baggage. This has two implications:

- Passengers cannot take into account the different performance of different airlines when they decide which to book travel with.
- Policymakers and regulators do not have access to reliable data on which to make decisions.

#### *Potential impacts*

15.110 Some, mostly low cost, carriers argued that data should be available. In contrast other, mostly traditional, air carriers strongly argued against publication of service quality data, arguing that the data would be misleading and/or not useful, because:

- it could be impacted by factors outside the direct control of the carrier concerned (such as poor service or congestion at its main hub);
- it could be impacted by the business model of the airlines (for example, since the majority of mishandled baggage issues relate to transfer baggage, those airlines with connections would probably appear to have a poorer record);
- if the data was published, it could be used negatively by competitors or the press (this appears to be the reason that AEA has stopped publishing the data for its member airlines);
- the data would be of no interest to consumers; and
- how airlines handle disruption is at least as important as the level of disruption, and the data would not show this.

15.111 In our view these arguments explain why some airlines may not want this data to be in the public domain, but do not provide any reason why it would not be in the public interest for the data to be published:

- It is true that disruption can occur for reasons outside individual carriers' control and may be more likely with particular business models and at some congested hubs, but that is not a reason why consumers should not be made aware of this and take this into account when deciding with whom to travel. The data could be more representative if it was available in a disaggregated form so performance on a specific route could be checked. It may be, for example, that whilst network carrier punctuality is in aggregate worse than some low cost carriers, this is not the case when they compete directly on the same airport pair, as they often do. Disaggregate data could show this.
- The arguments that the data is of no interest and that it could be used by the press or competitors are contradictory: if the data was of no interest to consumers it would not be publicised by the press or competitors. More generally, the argument that the data could be used negatively really appears to be an objection to it being publicised at all,

as a key way this would be used is to make comparisons between carriers, which will inevitably be negative for some of them and positive for others.

- It is clearly true that it is important how carriers handle disruption as well as how much disruption occurs. However, that does not mean that the actual level of disruption is not relevant. Clearly it is not possible to show statistically how well carriers handle disruption, but several widely-used websites are available where passengers can report their (subjective) experiences of carriers, and some of these provide average scores for particular airlines.

15.112 Airline and route-specific performance data is already published in the UK by the CAA (covering delays and unmatched flights, which are similar to cancellations); in Norway by Avinor (covering delays and cancellations); and in the US by the Department of Transportation (covering a wider scope). US carriers even provide flight-specific punctuality and reliability information during the booking process. The publication of this information does not appear to have had negative impacts on the functioning of the aviation markets in these States. One airline with large operations in one of these markets interviewed for the study said that the publicity given to its performance data was a significant factor incentivising it to maintain high operational performance.

15.113 Delay and cancellation data is already collected by Eurocontrol as a requirement of the implementing rule for the performance scheme (Regulation 691/2010). Other data would have to be collected specifically for this purpose. Therefore we have divided this option into two:

- Option E5.1A: Publication of delay and cancellation data
- Option E5.1B: Publication of other service quality data

***Option E5.1A: Publication of delay and cancellation data***

15.114 Eurocontrol eCODA already collects performance data and a general summary is published. Although submission of data was in the past voluntary and was limited to delays only, further to Regulation 691/2010 on a performance scheme for air navigation services, this data is now collected for all significant EU airports and carriers, and covers delays and cancellations. Eurocontrol has confirmed that the cost of publishing this data on an airline-specific basis is likely to be low (see discussion below).

15.115 Eurocontrol has advised that the definition of cancellations used in the data it collects is different to the definition in the Regulation. The Regulation defines a cancellation to be non-operation of a flight on which at least one seat has been reserved, whereas Eurocontrol only collects data on operational cancellations, which are generally those made in the last 36-48 hours before a flight is operated. However, this should cover the large majority of cancellations, and in particular those that cause most inconvenience to passengers. In addition, Eurocontrol has advised that a relatively small change to the data specification in Regulation 691/2010 could significantly improve the cancellation data, and

enable data to be extracted that was closer to, albeit not exactly the same as, the definition of cancellation in the Regulation.<sup>59</sup>

- 15.116 At present Eurocontrol’s agreements with the airlines prohibit it from publishing the data on an airline-specific basis. However, this would be addressed by a regulatory requirement that airlines must supply the data and Eurocontrol must publish it.

*Specification of data to be published*

- 15.117 We suggest a summary monthly and annual report should be published, probably by Eurocontrol, showing for each airline with significant operations in the EU:

- the number of flights scheduled;
- the percentage of flights on time;
- the percentage delayed by more than 15 minutes;
- the percentage delayed by more than one hour; and
- the percentage of flights cancelled.

- 15.118 However, in order for the data to be as representative as possible, we suggest that in addition to this summary report, a spreadsheet with more disaggregate performance data should be published on a route and month specific basis. This would mean that, for each airline and route, a table such as the following could be populated (this table is similar to the information available from the UK CAA). Although few individual consumers might access the spreadsheet, provision of this data would enable stakeholders to extract the most relevant data for a particular comparison - for example if they wanted to compare performance on a specific route. Availability of detailed raw data would help airlines counter inaccurate or misleading comparisons: for example, if an airline announced that it achieved high punctuality, but did not mention that this was because it mostly used uncongested airports, another airline could use the detailed data to show that its punctuality was the same when it operated on equivalent routes. The publication of the raw data would not be an additional administrative burden because this data would need to be compiled in order to produce the summary results.

**TABLE 15.1 EXAMPLE DATA FOR ONE ROUTE/AIRLINE COMBINATION**

Route	LGW-MAD
Month	September 2011
Airline	UX
Flights scheduled	120
Flights operated	120
Flights early to 15 minutes late	66

<sup>59</sup> Eurocontrol advises that instead of air carriers identifying which cancellations are ‘operational’ as at present, which raises issues because air carrier have some flexibility to define what ‘operational’ cancellations means, carriers should simply provide the time/date at which a flight was moved from ‘active’ to ‘deactivated’ on its system.

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Flights 16-60 minutes late	41
Flights 61-120 minutes late	11
Flights 121-180 minutes late	0
Flights 181-240 minutes late	2
Flights over 240 minutes late	0
Average delay minutes	26

### *Estimate of impacts*

15.119 Production and publication of this report would be an administrative burden for Eurocontrol or whatever other body published it, and so is assessed using the Standard Cost Model (SCM). In order to calculate this we have assumed:

- It is Eurocontrol which collects this data;
- On the basis of an estimate provided by Eurocontrol, the resource cost would be approximately 0.5 FTE if the data was limited to delays and cancellations, which Eurocontrol already collects; and
- Eurocontrol staff costs are equivalent to those of the Commission.

15.120 Using this model we estimate the administrative burden would be €40,454, and the NPV of the total burden would be €298.3 million. There would be no administrative burden for airlines as they are already required under Regulation 691/2010 to provide this data to Eurocontrol.

### *Conclusions*

15.121 We recommend that disaggregate and summary airline-specific delay and cancellation data should be published by Eurocontrol. This would be consistent with the policy objective of minimising distortion of competition, as competition cannot be effective if consumers do not have adequate information on which to make choices between carriers, and it would also provide a more general incentive to improve service quality at very low cost.

### ***Option E5.1B: Other service quality data to be published***

15.122 Other performance data (such as denied boarding or mishandled baggage) is not collated at present and therefore, if there was to be a requirement for this to be published:

- air carriers would have to be required to disclose this information to a central body, probably the Commission or possibly Eurocontrol (this would not be within Eurocontrol's normal mandate but nonetheless might be consistent if it was required to publish the delay and cancellation data);
- the central body would need to be given rights to check or audit the data to ensure its accuracy, and penalties or other incentives would have to be available for provision of inaccurate or misleading data; and

- the Commission or another central body would have to be given the right to publish the data.

#### *Specification of data to be published*

15.123 Although airlines should already have this data, it is not collected, and therefore it would have to be collected for this purpose. Therefore, we suggest that the scope of the data should be more limited, without the same disaggregation into monthly periods and routes suggested for delay and cancellation data.

15.124 Airlines would be required to provide annual data for the following:

- number of items of checked baggage delayed, damaged or lost (total and as a percentage of all items of checked baggage);
- number of passengers denied boarding involuntarily and voluntarily (totals and as a percentage of all passengers); and
- number of passengers downgraded (totals and as a percentage of all premium class passengers).

15.125 To avoid an excessive economic burden we suggest that there should be a threshold for size of operations within the EU below which airlines would not have to provide this data. For example, if the threshold was set at 500,000 seats per year from an EU airport, 119 airlines would be required to submit data, comprising 97% of all seats. If the threshold was set at 100,000, the number of airlines would almost double to 204, whilst the percentage of seats would increase only slightly to 99%. Given the limited incremental benefits in lowering the threshold, we assume for the purposes of this assessment that the higher value of 500,000 is adopted.

#### *Estimate of impacts*

15.126 Production and publication of this report would be an administrative burden for both the airlines that had to supply the data, and for Eurocontrol or whatever other body published it, and so is assessed using the Standard Cost Model (SCM). In order to calculate this we have assumed:

- the data would be provided annually by 119 airlines;
- it would take 1 day per airline to compile and check the data;
- given the fact that the data is not currently collected, but greater simplicity of this data in comparison with delays and cancellations and the requirement to produce this only annually, the input required by Eurocontrol (or an equivalent agency) is 163 days per year (0.7 FTE); and
- again, Eurocontrol staff costs are equivalent to those of the Commission.

15.127 Using this model we estimate the administrative burden would be €89,071, and the total NPV would be €656,800.

#### *Conclusions*

15.128 As for the delay and cancellation data, publication of this service quality data would be consistent with the policy objective of minimising distortion of competition, as

competition cannot be effective if consumers do not have adequate information on which to make choices. Although it would slightly increase the economic burden of the legislation, the impact is low if as we have suggested the data is only provided annually and there is no requirement to disaggregate this. Therefore, we recommend that this data should be collected and published by Eurocontrol or another EU-level agency.

***Option E5.2: Airlines to develop and apply procedures to comply consistently with the Regulation, including contingency plans***

- 15.129 This policy option would require airlines to put in place and then follow procedures which are sufficient to ensure that they comply with the Regulation effectively and consistently, including during periods of major disruption. On request, airlines would have to provide these procedures, evidence that they followed them, and all other information necessary to the appropriate authority (we discuss below the scope of this information and what the appropriate authority should be). It would therefore be an infringement of the Regulation if these procedures were not provided, were not compliant with the Regulation, were not sufficient to ensure compliance, or were not properly followed by the carrier.
- 15.130 As noted above, enforcement at present consists almost entirely of investigation and (potentially) sanctioning of individual incidents. NEBs do not ensure that carriers have appropriate policies or procedures in place to comply consistently with the Regulation. Whilst this would not in itself be enough to ensure compliance and could not wholly replace investigation of individual incidents, relying entirely on investigation of individual incidents is resource-intensive and appears not to be effective. The limited survey and other evidence available indicates that airline compliance with the Regulation is at best mixed, despite substantial resources being devoted to complaint handling and enforcement by NEBs (see section 5 above).
- 15.131 The Regulation is inherently difficult to enforce through investigation of individual incidents, because it creates obligations in respect of approximately 40,000 passengers on 700 flights each day at airports across the EU and beyond. It is very difficult for NEBs to ensure compliance in respect of each of these cases, and it is difficult to determine definitively on the basis of individual incidents that an airline has non-compliant or insufficient operational procedures in place, or a policy of consistent non-compliance. In addition most NEBs do not have the resources available to investigate each alleged infringement thoroughly, and (as discussed above) it is unrealistic to expect that they could do so at a time of constrained public resources.
- 15.132 Although there is no specific obligation on carriers to have compliant procedures at present, it is hard to see how they could consistently comply with the Regulation if they did not. Research we have undertaken for previous studies indicates that some carriers in fact do not have appropriate procedures to implement the Regulation. Our 2010 study found that the procedures in several carriers' operations or ground handling manuals were not compliant with the Regulation, and most carriers surveyed were not willing to provide this information at all. Our previous analysis of Conditions of Carriage also found that 39% of carriers' Conditions stated terms which were non-compliant and 12% were misleading in that they implied the carrier had fewer obligations than it would<sup>60</sup>.

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<sup>60</sup> Steer Davies Gleave (2008): Study of contract conditions and preferential tariff schemes



15.133 This requirement would build on the proposed requirement in the draft Regulation on ground handling for minimum quality standards (including on approach to application of the Regulation) and contingency plans by ground handlers. It would also have some similarity to requirements in US passenger rights' legislation, particularly the requirement in 14 CFR 259.5 for each carrier to adopt and adhere to a customer service plan (which covers issues such as denied boarding), and the requirement in 14 CFR 259.4 for each carrier to adopt a tarmac delay contingency plan.

*Content of procedure to be established*

15.134 The procedure that the airline was required to put in place would set out the process the airline would follow in cases of delay, cancellation, denied boarding, and any other type of disruption covered by the revised Regulation. In particular, the procedure would include:

- in what circumstances assistance, rerouting/refunds and compensation would be provided (this must be at least consistent with the requirements in Articles 4-6 and 10);
- who should be responsible, at each airport, for arranging the assistance required under Article 8, and how they should arrange this assistance;
- how assistance under Articles 8 and 9 should be arranged where passengers are notified in advance of coming to an airport of a cancellation, and hence do not come to the airport;
- how rerouting and refunds required by Article 7 would be arranged, in particular when rerouting by surface transport or on other carriers would be allowed;
- how assistance, rerouting and refunds required under Articles 8 and 9 should be provided during periods of mass disruption;
- any levels of approval required (for example from an operational control centre) and what to do in situations where it was not possible to contact this, for some reason;
- how information required by Article 14 would be provided to passengers, including during periods of mass disruption and where the passenger is notified in advance and therefore does not come to the airport;
- how customer claims would be handled, and in particular how the airline would establish whether compensation was payable in a particular case; and
- any relevant supporting policies or documents.

15.135 These supporting policies and documents could include, but not be limited to:

- ground handling manuals or agreements, which should specify what the ground handler should do in the event of disruption;
- the relevant parts of its operations manual;
- training material used to brief staff on their obligations under the Regulation and how these should be complied with;
- contingency plans and procedures for handling mass disruption;

- legal documents, such as Conditions of Carriage; and
- other internal policies, such as the procedure for handling complaints.

### *Authority to validate the procedure*

- 15.136 The procedure and supporting documents would have to be provided on request to an appropriate authority. The Regulation would need to specify to which authority the procedure would have to be provided. The appropriate authority to validate the procedures could be:
- NEBs for each State to which the airline operates services (or operates services above a given frequency);
  - the licensing authority, if compliance was to become a license condition as discussed under option E5.3 below; and/or
  - the Commission, if the Commission were to obtain powers to impose sanctions itself, as discussed under option E3.1 above, and potentially even if this was not the case (as the Commission would always have a role of ensuring EU legislation was implemented).
- 15.137 The Regulation would also need to specify which authority was competent to impose sanctions for infringements of this requirement, as the current Regulation only specifies competence to impose sanctions in relation to incidents. We suggest that any authority for a Member State from which the carrier operates regular services should be competent to impose sanctions but (as most carriers operate in multiple States) NEBs should co-operate in implementing this requirement and the Commission should facilitate this. Where carriers operate in multiple States, a failure to comply with the requirement should be an intra-Community infringement, and therefore co-operation between NEBs would in any case be required by Regulation 2006/2004 on consumer protection cooperation, where NEBs are the designated body with respect to this Regulation (most, but not all, are).
- 15.138 An alternative would be for the NEB for the State licensing the carrier to undertake the checks. However, it is likely that some NEBs would undertake these checks, and enforcement on the basis of these checks, more rigorously than others. Therefore, this would not be consistent with the objective of avoiding distortion of competition. If one NEB is to be designated to take the lead on the checking policies of a carrier, to reduce the risk of distortion of competition we suggest it should be the NEB for the State from which the carrier has the most departing services. Whilst this would often be the same as the NEB for the State licensing the carrier, there are some exceptions.
- 15.139 The Regulation should also specify how frequently the checks have to be carried out. We suggest this should be annual where a carrier has a large number of flights from the State concerned, but to minimise the administrative burden on NEBs and airlines, less frequently in other cases.

### *Estimate of impacts*

- 15.140 We are required to undertake the assessment of economic burden on the assumption that the Regulation is already fully complied with. Therefore, we have to assume that airlines would already have operational procedures which were sufficient to ensure that they implemented the Regulation. Therefore, although there would be some costs for airlines

associated with compiling this information into a single document, showing that the procedures were followed, and providing information to the appropriate enforcement body, we assume there is no cost in terms of producing the information (for example amending the operations manual and ensuring ground handling agreements are consistent with the Regulation). There would also be some costs for NEBs in validating this information.

- 15.141 It should be noted that, although there would be costs for airlines and NEBs, these costs would not necessarily be incremental. Enforcement based on analysis of policies and procedures could partly replace enforcement based on investigation of individual incidents, and the costs associated with this for both airlines and NEBs could be reduced.
- 15.142 Provision and analysis of this information would be an administrative burden for airlines and NEBs, and so is assessed using the Standard Cost Model (SCM). In order to calculate this we have assumed:
- The requirement would apply to every airline operating at least one daily scheduled or charter flight from an EU airport (245 airlines);
  - It would take an average of 5 working days in the first year per airline to compile the information required, and then 1 day per year to ensure this was up-to-date;
  - For EU airlines, the NEB for the airline's base State, and any other State from which it had more than 10 departing flights per day, would check the information every year;
  - For non-EU airlines, one NEB would check this once per year; and
  - The check of this information would take 1 day of the NEB's time per airline, and 0.5 days of the airline's time to answer any questions.
- 15.143 On the basis of these assumptions we estimate that the administrative burden of this policy is €545,000 in the first year, and €216,000 for each subsequent year. Although this is classified as entirely administrative burden (because NEBs do not do these checks at present), as noted above it might partly replace some investigation of individual complaints, and therefore is not necessarily an incremental cost. This translates to an NPV of €1.9 million.

#### *Conclusions*

- 15.144 At present, enforcement of the Regulation is based almost entirely on investigation and (potentially) sanctioning of individual incidents. However, this is resource intensive for both carriers and NEBs, and appears to have been at best partially effective. Although some of the problems with enforcement are due to specific problems with the operation of NEBs or national legal systems, some of the problems arise from the inherent difficulty in enforcing a Regulation of this nature, which creates (individually small but in aggregate quite onerous) obligations in respect to a very large number of incidents. Enforcement based on ensuring carriers have, and then follow, appropriate procedures may be more effective and less resource-intensive.
- 15.145 This option may be more effective than the current complaints-based approach in ensuring that the Regulation is respected; and although it would have some direct costs for enforcement bodies and airlines, it could offset some of the costs related to complaint

handling and investigation. Therefore it is consistent with the policy objectives of ensuring legal certainty by ensuring enforcement is sufficient to ensure compliance; and ensuring the economic burden is fair and proportionate by minimising operational costs.

- 15.146 Some other changes would be required to the enforcement regime. In particular, in order to be dissuasive, the level of fines for not adopting and following appropriate procedures would have to be far higher than the fines in certain Member States for individual infringements. Either unlimited fines, or fines which were a proportion of turnover for travel to/from the State, would be required to provide an adequate incentive.
- 15.147 In addition, it might be necessary to require NEBs to do regular checks of the procedures. This should be quite frequent (probably annually) for the States in which the carrier is registered and others in which it has significant operations, and less frequently (every 3-4 years) for other States to which it operates. One NEB could be designated to lead the checks of each carrier; if it was, this should be the NEB for the State from which the carrier has the most operations.

### ***Option E5.3: Compliance to become a license condition***

- 15.148 Regulation 1008/2008 specifies the conditions for obtaining an operating license, including that the carrier meets ownership, insurance and financial conditions, as well as the safety and other requirements necessary to obtain an air operator certificate (AOC). At present, there is no requirement to comply with other legislation, such as consumer protection legislation.
- 15.149 Airlines strongly argued that they should not have to show that they comply with consumer protection legislation in order to obtain an operating license. They argued that:
- licensing authorities should concentrate on their core, safety-related tasks and anything else would be a distraction;
  - compliance with consumer protection legislation is inherently more subjective than compliance with the other conditions for issue of an alliance;
  - the proposal would be discriminatory because it could only apply to EU carriers; and
  - it was not credible that an operating license would be withdrawn for failure to meet consumer protection legislation, as if it was, the carrier would immediately stop operating, become insolvent and its passengers would be stranded.
- 15.150 NEBs, most of whom are also licensing authorities, had mixed views on this proposal. Some believed that this might be effective as the 'ultimate sanction', and they did not raise the issue advanced by the airlines and airline associations of this being a distraction from enforcing safety requirements, or too subjective. However, many were concerned that it was not credible to threaten to withdraw a license on the basis of non-compliance, as the impacts on passengers would be so severe.
- 15.151 As discussed above, enforcement is currently based entirely around investigation of individual incidents, and it would not be appropriate or proportionate for a license to be withdrawn for individual infringements. However, as discussed under option E5.2, carriers could be required to show that they have relevant policies and procedures in place to comply with the Regulation and other consumer protection legislation, and that they

follow them. Under this policy option an operating license could be refused or withdrawn if a carrier did not do this.

*Information to be provided to the licensing authority*

- 15.152 The carrier would be required to put in place and then follow procedures to ensure that they complied with the Regulation, including during periods of mass disruption. The content of these procedures and the necessary supporting information would be equivalent to those specified under option E5.2 above.

*Estimate of impacts - operational cost*

- 15.153 We assume that the information that would have to be provided to the licensing authority would be equivalent to that for option E5.2 above, and therefore the administrative burden of this policy option would be similar. However, instead of it being checked by an NEB from a State from which it operated, it would be checked by a licensing authority. The obligation would only apply to EU carriers.
- 15.154 Provision and analysis of this information would be an administrative burden for airlines and NEBs, and so is assessed using the Standard Cost Model (SCM). The time taken to compile and check the procedures would be similar to E5.2 but slightly higher as additional checking and verification would be required if compliance was a license condition; however, this is offset by the fact that only the licensing authority would then check the information. In order to calculate this we have assumed:
- The requirement would apply to every EU airline operating scheduled or charter services (172 airlines);
  - It would take an average of 6 working days in the first year per airline to compile the information required, and then 1.5 days per year to ensure this was up-to-date; and
  - It would take the licensing authority 1 working day per airline to check this information, and the airline would need to spend 1 working day explaining this to the licensing authority and answering any questions.
- 15.155 On this basis we estimate the administrative burden to be €438,000 in the first year, and €161,000 in each subsequent year; or €1.4 million in NPV terms. As for option E5.2 above, this would not necessarily be an incremental cost, as it could partly replace the investigation and sanction of individual incidents.

*Estimate of impacts - passengers stranded if license withdrawn*

- 15.156 A key problem with this option is that if a license was withdrawn due to failure to meet passenger rights legislation, the carrier would immediately stop operations and would rapidly become insolvent. In order to illustrate the potential impact of this, we have calculated how many passengers would be impacted if a license was withdrawn from one of the top 5 EU carriers, in terms of passengers booked to travel and passengers who might be stranded away from home<sup>61</sup>. On average, if the license was withdrawn from one of these carriers, we estimate:

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<sup>61</sup> easyJet, Ryanair, British Airways, Air France-KLM, Lufthansa. Calculation is made by comparing revenue in advance (from the airline balance sheet) with total passenger revenue.

- 8 million passengers would have bookings which would not be honoured; and
- 750,000 passengers would be stranded away from home.

15.157 Although some airlines might have sufficient cash resources to ensure that these passengers were reimbursed and assisted as necessary, many would not. Otherwise, passengers who had purchased their tickets with a credit card or had purchased scheduled airline failure insurance would be partially covered against the costs they had incurred - but most would incur substantial costs.

### *Conclusions*

15.158 The threat of withdrawal of an operating license would be very effective in persuading airlines to comply with the legislation, whatever the cost, as the alternative would be insolvency, and therefore it is consistent with the policy objective of ensuring legal certainty by ensuring compliance. However, it is not consistent with the other policy objectives:

- in the event a license was withdrawn, a large number of passengers would be stranded and lose outstanding bookings - the negative impact on these passengers could outweigh the positive benefits for other passengers in terms of improved compliance;
- the requirement might be enforced more rigorously by some EU licensing authorities than others, which would distort competition between EU carriers;
- the requirement could only apply to EU carriers, which would distort competition with non-EU carriers; and
- because the threat of withdrawal of a license would be so catastrophic for the carrier concerned, it might potentially incur disproportionate costs to ensure this did not occur, which would not be consistent with the objective of ensuring the economic burden is fair and proportionate.

## **E6: Options to extend the scope of enforcement activity**

### ***Option E6.1: Expand scope of NEBs to cover baggage issues***

15.159 At present, Regulation 889/2002 and the Montreal Convention define air carrier obligations with respect to baggage, but there is no requirement to have sanctions in national law or to ensure that the legislation is respected. Some States have undertaken enforcement: for example, in Spain, AESA has imposed sanctions for provision of inaccurate information on liability; and in the UK, the OFT has required various carriers to change their Conditions of Carriage. However, in most cases there is no enforcement.

15.160 Some NEBs including those for the UK and Spain do handle complaints about baggage issues. Their scope is however limited to informing passengers of their rights. Passengers must take civil court action themselves to obtain redress.

15.161 There is limited evidence available on compliance with these requirements. This was not generally raised as a significant issue by consumer representatives interviewed for this study, but our research does indicate (at best) mixed compliance: our 2008 study of airline Conditions of Carriage found that around 40% of carriers' Conditions of Carriage were significantly inconsistent with the Convention.

15.162 We have considered two sub-options:

- Option E6.1A: Expand scope of NEBs to cover baggage issues (including complaint handling); and
- Option E6.1B: Expand scope of NEBs to cover baggage issues (no complaint handling).

*Estimate of impacts: Option E6.1A*

15.163 In order to estimate the potential cost of complaint handling and enforcement, we need to estimate the number of complaints NEBs might receive about baggage if they also enforced this legislation. Although some already do receive complaints, their role is limited to providing information, and so the number of complaints is probably much lower than it would be if they actively enforced the legislation. To estimate what the comparable number of complaints would be, we have examined data for complaints to the UK AUC from before Regulation 261/2004 came into effect, to compare the number of complaints relating to baggage with the number of complaints relating to delays, cancellations etc. At that time, there was no obligation to enforce with respect to either, and therefore this is an indicator of the relative number of complaints that might be received.

15.164 The number of baggage complaints was 71% of the number of complaints relating to delays, cancellations and denied boarding. This implies that NEBs might now receive around 25,000 complaints relating to baggage if they enforced the baggage legislation in the same way as they enforced Regulation 261/2004. Based on NEBs' current costs but assuming full handling and investigation of all complaints, this would imply additional costs for NEBs of €199.4 million NPV.

*Estimate of impacts: Option E6.1B*

15.165 Costs would be much lower if NEBs limited their activity to review of carriers' general policies and procedures on baggage and Conditions of Carriage, undertaking spot checks and inspections where appropriate. This is similar to the approach proposed for complaints relating to delays, cancellations and denied boarding under option E5.2 above, using the SCM model. We have assumed that each NEB would be required to check the policies of 12 airlines, and that each inspection would take half a day. In this case the cost to NEBs will be €50,149, or €0.4 million NPV.

*Conclusions*

15.166 There would clearly be benefits for passengers in more effective enforcement of these provisions, but this would generate additional costs for NEBs. Therefore, this would help meet the policy objective of maintaining and improving passenger protection including by protecting passengers in situations not covered by the existing Regulation. However, given the significant increase in costs for NEBs, it would not be consistent with the policy objective of minimising operational costs.

15.167 It is essentially a political judgement whether this spending would be worthwhile or not and therefore we neither recommend or do not recommend this option. As many of the benefits might be achieved by checking carriers' Conditions of Carriage and policies and some spot checks or inspections to ensure these are actually applied, but the costs of

doing this would be far lower, this may be a more feasible way of improving compliance and more realistic given current constraints on public budgets.

### ***Option E6.2: Expand scope of NEBs to cover other consumer issues in air transport***

- 15.168 In principle the role of NEBs could be defined more widely, to cover other consumer rights legislation applying in air transport, in particular Directive 93/13/EEC on unfair contract terms, and the price transparency provisions of Regulation 1008/2008.
- 15.169 States are already required to ensure compliance with the price transparency provisions of Regulation 1008/2008 and introduce sanctions into national law. There is no specific requirement for an enforcement body but it would be very difficult to meet the requirement to ensure compliance unless there was such a body. Therefore, there seems to be a potential benefit in such a requirement being made explicit.
- 15.170 There is no equivalent requirement to enforce the other legislation. As identified in section 5, enforcement activity varies significantly between States but is often quite limited. In addition, enforcement is often undertaken by a general consumer authority, rather than the NEB for Regulation 261/2004 which is usually the CAA or similar. In Spain, enforcement is undertaken by local/regional government and this may be the case in Belgium and possibly also the UK in future. In general, we are concerned that a general consumer authority, and in particular a local/regional government authority, will not have the specialist capability necessary to enforce this legislation effectively in air transport, given its technical complexity, and the fact that the legislation specifies general principles which can be quite hard to apply in the sector. A single enforcement body for the aviation sector in each State is likely to have more appropriate expertise and therefore may be more effective.
- 15.171 Again, we have considered two possible approaches as separate sub-options:
- Option E6.2A: Expand scope of NEBs to cover other consumer issues in air transport (including complaint handling); and
  - Option E6.2B: Expand scope of NEBs to cover other consumer issues in air transport (no complaint handling).

### *Estimate of impacts*

- 15.172 On the basis of the same approach as used for option E6.1 above, we estimate that the costs to NEBs under Option E6.2A of undertaking enforcement for other consumer issues in air transport in the same way as for Regulation 261/2004 might be €225.2 million NPV.
- 15.173 However, as these issues mostly relate to their contract terms and general policies, handling these issues through addressing the policies but not necessarily dealing with individual complaints would generate much lower costs and potentially achieve similar benefits. The average annual cost of the alternative option E6.2B would be €100,298 (or €0.7 million NPV), on the assumption that it would take an NEB 1 day per year to check the Conditions of Carriage and other policies of an airline.

### *Conclusions*

- 15.174 As for the requirements on baggage, there would clearly be benefits for passengers in more effective enforcement of these provisions, but this would generate additional costs



for NEBs; it is essentially a political judgement whether and to what extent this is worthwhile.

**Comparison of costs for States of options E6**

15.175 Table 15.2 summarises the quantified costs for NEBs of these options.

**TABLE 15.2 QUANTIFIED IMPACTS: OPTIONS E6.1A - E6.2B**

Option		NPV of burden (€ millions)
E6.1A	Expand scope of NEBs to cover baggage issues (including complaint handling)	199.5
E6.1B	Expand scope of NEBs to cover baggage issues (no complaint handling)	0.4
E6.2A	Expand scope of NEBs to cover other consumer issues in air transport (including complaint handling)	225.2
E6.2B	Expand scope of NEBs to cover other consumer issues in air transport (no complaint handling)	0.7

## 16 Impact assessment: options relating to means of redress

### Introduction

16.1 This section provides the qualitative and quantitative analysis of options relating to means of redress. As for the other options, a two-stage approach was adopted, with some options excluded on the basis of an initial qualitative assessment, if they clearly did not meet the policy objectives; could not be implemented due to conflict with international law; or appeared to be impractical. The options excluded at the initial stage are still included within this section but less detail is provided as these options have not been analysed further.

16.2 Options F6 and F8, which related to full handling of all complaints by NEBs, have been deleted as these did not represent any change relative to the current position required by the Regulation and the NEB-NEB Agreement.

### F1: No action

16.3 As for the other policy areas, we are required to assess a 'no action' option. As identified in section 6 above, in many Member States passengers do not currently have effective means of redress where their rights are infringed, and this situation would continue.

16.4 However, the scope for passengers to obtain redress may nonetheless improve even without specific policy measures, as a result of:

- measures to provide means of redress which may be introduced in certain States (for example, Germany stated that it was planning to introduce an ADR system);
- general measures which may be taken at EU level (in November 2011 the Commission brought forward a proposal for alternative dispute resolution systems to be available for all consumer complaints); and
- wider use of the European small claims procedure, as awareness of this procedure improves.

16.5 However, in some States where NEBs assist passengers in individual cases, the resources available for NEBs may be limited in the future due to the financial crisis. This may mean that one of the existing means of redress may become less effective.

### F2-F3 and F5: Carriers to provide adequate means for accepting complaints, and approach to be clarified in Conditions of Carriage

16.6 This section covers several options which are strongly linked:

- F2: Complaint handling procedure to be specified, for example in Conditions of Carriage
- F3A: Carriers to provide adequate means of receiving complaints
- F3B: Carriers to handle complaints in the languages of the States they operate to
- F5: Carriers to respond within fixed timescales

### *Current position*

- 16.7 Many consumer organisations and NEBs interviewed for the study highlighted that it could be difficult to submit complaints to air carriers, and some survey evidence indicates serious dissatisfaction with air carrier complaint handling:
- A survey by the German national consumer association found that only 3% of passengers were satisfied with the airline responses to their complaints, and 22% received no reply.<sup>62</sup>
  - A survey by the UK CAA after the snow disruption in December 2010 found that only in a small proportion of cases did passengers who complained receive reimbursement of expenses or a refund, and in most cases they had either received no response, the complaint was refused, or the claim was still ongoing.<sup>63</sup>
- 16.8 In some cases, it is difficult to find information on carriers' websites about how to complain, and although the E-Commerce Directive requires all service providers to have an email address, it does not specifically require complaints to be accepted through the email address. Some stakeholders highlighted the issue of use of premium rate phone numbers being required in order to submit complaints, or that passengers may have to wait for a prolonged period for any response, which may then not address the substantive issue. In contrast, air carriers argued that any attempt to define their complaint handling procedure would be micro-management and over-regulation.
- 16.9 Most carriers said that they already had adequate means for processing complaints and responded within a relatively short timescale in most circumstances (where any processing time was mentioned, it was usually 7-14 days). In this case, the introduction of such a requirement should not impose any new costs or obligations on them.

### *Policy options*

- 16.10 The Regulations on passenger rights for the bus/coach, maritime and rail sectors all require carriers to set up a means to handle complaints about the rights and obligations specified in the Regulation, to respond within 1 month, and to provide a substantive response within either 2 months (maritime) or 3 months (rail and bus/coach). There is no such requirement in the air transport sector. The lack of an equivalent requirement seems inconsistent and may hamper passengers from obtaining their rights under the Regulation.
- 16.11 Several consumer representatives also said that there should be:
- A requirement for a free-phone and email address number to submit complaints:
  - A requirement to handle complaints in multiple languages: Some carriers will only accept and reply to complaints in their own language, despite marketing and selling tickets in the national language. This may deter passengers from making complaints.

### *Means of accepting complaints*

- 16.12 A requirement to receive complaints by email should not generate any additional costs; in fact, it is likely to be easier and cheaper to store than a postal complaint. We agree that

<sup>62</sup> Verbraucherzentralen (2010): Fluggastrechte - Anspruch und Wirklichkeit

<sup>63</sup> UK CAA (2011): Aviation's response to major disruption

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there should be an email address for receipt of complaints, as a requirement to send a letter by traditional post, often to a different State, adds a cost which may deter passengers from complaining.

16.13 Research we have undertaken for the Commission shows that many carriers provide an online contact form instead of an email address. In our view this is not an adequate substitute, because:

- complainants usually cannot attach files;
- the complainant does not necessarily have a record of what was sent; and
- in some cases there are additional conditions put on these by airlines (for example limits to how much text can be added).

16.14 However, since a complaint could ultimately lead to enforcement or legal action, there needs to be a clear record, and therefore it could be legitimate to refuse to accept complaints by phone.

### *Languages for complaints*

16.15 Many consumer representatives argued that carriers should have to accept complaints in the languages of all the States they operate from.

16.16 If a passenger complained in their own national language to an airline about an alleged infringement with respect to a flight to/from their State, and they were dissatisfied with or did not receive a response from the airline, the passenger could take legal action in that State<sup>64</sup>. That legal action would take place in the language of the State concerned. Therefore, airlines may in effect already have to handle complaints in the national languages of States they operate to. However, it is likely to deter passengers from complaining if the only way that they can get a response in their national language is by initiating legal action. This could be addressed by requiring carriers to accept and respond to all complaints about alleged infringements of the Regulation in the languages of the States they operate from.

16.17 To avoid an excessive economic burden, any new requirement to accept and respond to complaints in multiple languages should not be unlimited. For example, it could be an excessive economic burden to require carriers to accept complaints in the language of every State they operate to - and this would in any case be pointless in some cases (for example for charter flights where all of the passengers are from the origin country).

16.18 Therefore, to avoid an excessive economic burden, there could either be a general obligation to handle complaints relating to the Regulation in the main languages of the airline's customers; or a threshold above which there would be an obligation to handle complaints in the main language of a specific State. If there was a threshold, we suggest this should be based on sale of tickets for journeys originating in a particular State. It should not be based on departing passengers, as a carrier (particularly those operating charter or leisure services) could have a high volume of operations to a State but almost no passengers who spoke the language concerned.

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<sup>64</sup> See judgement in case *Rehder v Air Baltic* (C-204/08)

16.19 To estimate the potential scale of the obligation we have estimated how many languages the five largest EU airlines would need to handle complaints in if the threshold was either 100,000 or 500,000 departing journeys from a State.

**TABLE 16.1 NUMBER OF LANGUAGES TO BE USED FOR HANDLING COMPLAINTS**

	Number of languages to be covered if threshold	
	100,000 journeys	500,000 journeys
Lufthansa	19	8
Ryanair	19	11
Air France	16	5
easyJet	18	8
British Airways	15	5

*Timescale*

16.20 We have also considered whether a timescale should be specified. Carriers emphasised that it was difficult to commit to any timescale because the volume of complaints would increase markedly after a period of mass disruption such as snow. However, carriers can put measures in place to allow for this: for example one large airline informed us that it had agreed a facility with a third party provider to keep staff trained to handle complaints who could then be provided to the airline in the event of a crisis which resulted in a temporary increase in the number of claims.

16.21 In addition, carriers emphasised that some cases could be complex and take some time to process, for example because it is necessary to check information with a technical department, or possibly even with a third party such as a ground handling provider. We agree that this could be an issue if the deadline was very short (7-14 days), but this should not be a problem if the deadline is relatively long (2-3 months).

*Estimate of impacts*

16.22 We do not have detailed data for carrier’s costs in handling complaints relating to the Regulation, or the drivers of these costs, and therefore it is not possible to do estimate the costs associated with these requirements with any certainty. The obligations we suggest above are quite minimal and in most cases we would expect these should not exceed the minimum carriers would need to do as part of their regular business practice. For example, if a carrier refused to handle complaints in a language used by many of its passengers, or did not respond to complaints within 3 months, this would seem to prevent passengers obtaining the rights to which they are entitled, and as noted above, the passenger could generally take legal action in their State which would use their own language.

16.23 We were provided with information on complaint handling costs by some of the airlines that participated in the study. If other airlines serving the EU incur similar per-passenger complaint handling costs, total complaint handling costs would be approximately €66

million per year. Indicatively, if these measures resulted in an increase to carrier complaint handling costs of 5%, this would equate to an annual increase in their operating costs of €3.3 million per year (a 0.005% increase in airlines' total operating costs).

- 16.24 We do not have information on the drivers of airlines complaint handling costs and therefore this can only be indicative. It provides an indication of the extent to which complaint handling costs could change if a relatively small improvement in complaint handling processes was required. The change is small (in proportionate terms) because most airlines already do most of what this option would require.

### *Conclusions*

- 16.25 It would be consistent with the policy objective of providing passengers with effective means of redress if carriers were required to:
- clearly publish an email address and postal address which can be used to submit complaints;
  - accept complaints in the main languages of their passengers, although to avoid an excessive economic burden on carriers, this should be subject to a threshold in terms of the number of tickets sold to residents of each country; and
  - provide an acknowledgement of complaints within 1 month and a full response to complaints within 3 months.
- 16.26 These obligations are relatively limited and represent what we would expect carriers to adopt as a reasonable minimum practice in any case.

### **F4: Extend deadlines for passengers to complain about delay or damage to baggage**

- 16.27 Article 31 of the Montreal Convention defines quite short limits for complaints about delay or damage to baggage: there is a 7 day time limit from receipt for claims regarding damage to baggage, and a 21 day limit for delay. There is no limit for claims about loss of baggage, other than the general 2 year limitation period for claims in the Convention.
- 16.28 Consumer representatives and many NEBs argued that the current deadlines are unfair on consumers. They identified that there was a particular issue when:
- passengers are on holiday and there is a problem on the outward flight, they may not try to complain until they have returned home, by which time the deadline may have expired; or
  - passengers submit a PIR (Property Irregularity Report) at the airport and therefore believe that they have submitted a claim, but do not realise that this is not always considered sufficient to constitute a claim under the Convention (one airline association said that airlines would always accept a PIR as a claim but an airline interviewed for the study confirmed that it would not).
- 16.29 Air carriers emphasised that passengers must complain within a short timescale, particularly about damage, and that in most cases they should complain at the airport. Our legal advisors have also confirmed that it is not possible to extend the deadline without infringing the Montreal Convention. **Therefore this option is not considered further, but**

we considered an alternative option below (F4A) which we believe would generate most of the benefits of this option whilst not infringing the Convention.

#### **F4A: Require PIR to be issued and accepted as a claim for the purpose of the Montreal Convention**

- 16.30 We have considered an alternative option which would in our view generate many of the same benefits as the previous option whilst, in the view of our legal advisors, not conflicting with the Montreal Convention.
- 16.31 Carriers would be required in the event of lost, delayed or damaged baggage, reported at the airport, to issue a PIR to the passenger to complete at the airport, and then to accept this PIR as a claim which meets the time limits for the purposes of the Convention. If a carrier did not issue such a document and as a result the passenger failed to claim before the time limit in the Montreal Convention, the passenger could take action against the carrier for the damage he/she suffered from the carrier's failure to issue the PIR.
- 16.32 In order to estimate the potential impact of this option, we assume that all passengers having lost, delayed or damaged baggage are issued with a PIR, and that issuing the PIR to each passenger requires 5 minutes of staff time. This translates to a recurring annual cost for airlines of €24.1 million, or €252.9 million NPV. The provision of the PIR would be an information obligation and therefore this would be classified as an administrative cost. However, in reality there should also not be any administrative burden (or any incremental economic burden) associated with this option, as carriers should already issue passengers with a PIR at the airport in the event of delayed or damaged baggage and therefore this would not represent any change to the current position.
- 16.33 This option is consistent with the policy objectives of maintaining and improving the standard of passenger protection, including in situations not covered by the existing legislation. As there has been some debate in the past about whether a PIR is sufficient to constitute a claim under the Montreal Convention, clarifying this would also appear to be consistent with the objective of improving legal certainty. Finally, given the lack of an incremental cost this option would also be consistent with the objective of ensuring the economic burden is fair and proportionate.

#### **F7 and F7A: Alternative dispute resolution systems for air transport**

##### *Benefits of an ADR system*

- 16.34 Legislation in some other market segments requires there to be a system for resolving complaints, which as far as possible should comply with the Commission's criteria on an alternative dispute resolution (ADR)<sup>65</sup>. Many consumer representatives interviewed for the study strongly believed that there should be a requirement for an ADR in air transport. It was noted that, although many Member States already have either general or transport-specific ADR systems, airlines generally refuse to participate in these - in contrast to other service providers.
- 16.35 Some airlines opposed ADR in principle as being an unnecessary bureaucracy, argued that the costs of the ADR system would ultimately end up being paid by the airlines, and

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<sup>65</sup> For example Directive 2009/72/EC on the internal market for electricity

therefore it would be an excessive economic burden on them. They also argued that this was a matter for individual Member States, and that there are significant differences in judicial systems between States so it could be difficult to impose an EU-wide solution.

- 16.36 An ADR is likely to be of significant benefit to consumers who are at a disadvantage in any legal dispute with airlines. Although this also applies to an extent in other market sectors, it is exacerbated by the international nature, and technical and operational complexity, of air transport. Therefore there is a strong argument that some sort of mechanism should be put in place in order to ensure passengers can obtain redress. The analysis in section 6 shows that civil court procedures are not an attractive option for consumers in most cases.
- 16.37 An ADR is most likely to be of benefit to consumers if it can be binding. As noted above, where there are non-binding ADR systems, it appears that airlines usually refuse to use them. Evidence from Sweden, where the NEB is in effect an ADR but its decisions are not binding, is that a significant proportion of airlines do not respect its rulings. However, there are legal problems with having a binding ADR system in some States: in both Germany and the Netherlands, the Constitution provides a right for either party to go to court, and therefore an ADR cannot be binding. As a result, the form of any ADR would have to vary between States.

### *Impact of Commission proposals on ADR and ODR*

- 16.38 Further to the start of this study, the Commission has brought forward proposals for ADR systems to cover all market sectors, and for an ODR (online dispute resolution) system covering cross-border e-commerce transactions<sup>66</sup>. As a result it is not necessary to assess for this study proposals to introduce ADR in the air transport sector. However, we do need to consider whether the system of complaint handling by NEBs would need to be revised where ADR is introduced. We have considered this as option F7A.
- 16.39 We note that the proposed Directive on ADR states that the participation of traders in the ADR would not be mandatory. As discussed above, information provided for this study indicates that airlines (unlike many other traders) often refuse to participate in ADRs where this is optional. Therefore, there is a risk that the proposal on ADRs will have limited impact in the air transport sector.

### *Roles of ADR, NEB and ECCs*

- 16.40 We have been asked to comment on the relative roles of each of the ADR, the NEB and the ECCs. The role of these should be as follows:
- **ADR:** The purpose of the ADR is to rule on claims by passengers against airlines, in accordance with the civil law of the Member State concerned and relevant EU law. This ruling may or may not be binding, depending the specific legal arrangements in that Member State. Particularly where it is binding, the ADR provides an alternative to a civil court process, but it may have the advantages of having specialist skills and experience (see below) as well as being cheaper and easier for the claimant.
  - **NEB:** The purpose of the NEB is to ensure that in general airlines comply with the Regulation, through enforcement action or the threat of enforcement action, in

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<sup>66</sup> COM(2011) 791/2



accordance with the administrative law of the Member State concerned. Some of the NEB's activities may be in response to passenger complaints but the NEB should also undertake pro-active measures such as inspections. The Commission considers that NEBs should investigate all complaints, and NEBs may also help passengers with individual complaints, although the Regulation does not explicitly require them to do so provided they take other measures to ensure that the Regulation is complied with.

- **ECC:** The purpose of the ECC is to assist passengers with cross-border claims, where they may be at a relative disadvantage due to language issues and lack of familiarity with the legal system in the Member State concerned. This may involve assisting them with a complaint through the appropriate ADR, and in some cases could also involve assisting them with a complaint to the relevant NEB.

16.41 Where a State establishes an ADR which covers complaints against airlines, and if airlines do agree to use this system, this may partly replace the need for NEBs to assist passengers with individual complaints. However, even where there is an ADR, NEBs will need to take measures to enforce the Regulation. This could include investigation of individual complaints, as now, but as discussed under option E5.2 and E5.3 above, could also include other measures to ensure that carriers put in place and then follow appropriate arrangements to ensure that they comply. These may partly replace investigation of individual complaints.

16.42 Although the ADR and NEB would operate separately, they should cooperate where appropriate. In particular, where the ADR finds evidence which indicates a deliberate or systematic infringement of the Regulation by an airline, this should be passed to the appropriate NEB so that it can investigate and, if appropriate, take enforcement action. For data protection reasons, this might need to be subject to the consent of the complainant. The revised Regulation could therefore specify a general obligation for ADRs to co-operate with and where appropriate provide information to NEBs on cases they handle relating to the Regulation.

#### *Skills required*

16.43 To be effective in the air transport sector, ADRs would need to have access to staff with appropriate skills, including both:

- **Technical skills:** In many cases, the decision as to whether to uphold a claim would be based on an assessment of whether a delay or cancellation was due to extraordinary circumstances, and particularly where the alleged extraordinary circumstance was a technical problem, appropriate technical skills would be necessary to advise on this.
- **Legal skills:** In addition, given the complexity of the various legal issues in the sector, the ADR would have to have appropriate legal skills to determine cases, including specialism in consumer law (unfair contract terms etc) as well as aviation-specific law.

16.44 This is particularly important as the ADR would need to interpret - and where appropriate challenge - statements made by airlines, their lawyers, and their technical departments. The importance of the ADR having access to appropriate skills was emphasised by one ADR body which responded to the public consultation.

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- 16.45 ADRs would not necessarily have to be dedicated to handling aviation cases but would need to have access to these skills. Access to specialist skills could be obtained either through the ADR having skilled staff of its own, or the national aviation authority providing skilled staff to assist where necessary. However in this case, it would be necessary to ensure that the ADR could actually obtain access to these staff when it needed to do so.

### *Conclusions*

- 16.46 It is not necessary to make any changes to the Regulation to accommodate the establishment of ADRs. Nothing in the existing Regulation has prevented the operation of ADRs in some Member States in relation to the rights established in it.
- 16.47 Member States may decide that, where an ADR is established covering the air transport sector and airlines co-operate with it, this partly replaces the need for handling of individual complaints by NEBs, but no change to the Regulation is required to allow this. However, where they do this, they must take other measures to ensure that the Regulation is enforced. In addition, it could be helpful for the Regulation to specify that ADRs set up by States to handle complaints relating to airlines should cooperate with NEBs, and where appropriate pass information to them on cases.
- 16.48 If ADRs are established in the aviation sector, it is important that they have appropriate specialist technical and legal skills to determine cases. However, this does not require any amendment to the Regulation.

## 17 Summary of option assessment and packages

### Introduction

- 17.1 This section sets out the conclusions of the impact assessment and recommendations for changes which should be made to the Regulation, and summarises the results of the quantitative and qualitative impact assessment for each of the options, on the basis of the criteria agreed with the Commission (and shown below). At the end of this section there is a summary of how the proposed actions map against the policy objectives.

### Conclusions on the current operation of the Regulation

#### *The economic burden of the legislation on carriers*

- 17.2 We have assessed the economic burden Regulation 261/2004 imposes on air carriers, both in order to understand its current effects, and as a key input to the assessment of options for revisions to the Regulation. The assessment is based on data for flight disruption provided by Eurocontrol and directly from airlines, and research on the costs necessary to provide the services the Regulation requires, such as refreshments at airports and hotel accommodation.
- 17.3 In accordance with the Commission's impact assessment guidance, the assessments of economic burden and of the policy options are undertaken on the basis that the Regulation is fully complied with. Where the Regulation contains grey zones of ambiguous meaning, we have had to make assumptions for what the current requirements are in order to assess the economic burden. We assume in particular that the right to compensation for delays identified in the Sturgeon judgement applies. Airlines do not accept this judgement, and it is subject to outstanding references to the CJEU<sup>67</sup>, but as it represents the current legal position, it has to be the basis for our analysis.
- 17.4 Our assessment is of the incremental economic burden caused by the Regulation, relative to a situation in which it did not exist. Therefore, we needed to make assumptions about what policies carriers would then apply. To assess this, we have taken into account:
- EU air carriers' policies from before the Regulation was introduced;
  - the policies of carriers based in third countries where the Regulation does not apply;
  - information collected from airlines in bilateral interviews as to what their policies would be; and
  - legal advice on the minimum acceptable policies necessary to comply with other EU legislation, particularly Directive 93/13/EEC on unfair contract terms.
- 17.5 Our assumptions for the policies carriers would apply if Regulation 261/2004 did not exist are based mostly on the legal advice as to the minimum airlines would still have to offer, but with some additions, primarily that some monetary compensation would still be paid in

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<sup>67</sup> Joined cases C 581/10 and C-629/10. The CJEU had not ruled on these cases by the time this report was drafted although we have taken into account the Opinion of the Advocate General issued on 15 May 2012.

the case of involuntary denied boarding, albeit at a lower rate than required by the Regulation.

- 17.6 Our analysis indicates that, for a year with typical levels of flight disruption, Regulation 261/2004 should impose an incremental economic burden on airlines of between €821 and €1,007 million per year (central case estimate €907 million). Approximately 12% of this is accounted for by the right to compensation for delays identified in the Sturgeon judgement. The Regulation does not require airlines to actively offer monetary compensation to the passengers who are entitled to it (except for denied boarding), and we estimate that the economic burden would be almost three times this level if all passengers claimed the compensation to which they are theoretically entitled.
- 17.7 The incremental economic burden is between 0.58% and 0.71% of airlines' total passenger revenue (central case scenario 0.64%), again for a year with typical levels of disruption. Expressed as a share of revenue, costs are much higher for low cost and regional carriers than other carriers, because most of the incremental costs are not related to flight length or revenue, and their ticket prices are lower. There is some evidence that costs are particularly high for airlines operating regional services to remote airports that have higher risks of weather-related disruption.
- 17.8 As these costs apply to all airlines, they are likely to be passed on to passengers in the form of higher fares, in the same way as any other airline operating cost increase, such as increased fuel prices. The main exception to this is for routes to the EU, where the Regulation only applies to EU carriers, who may then find it difficult to pass on the costs due to price competition with non-EU carriers. However in practice the impact of this is likely to be small, because implementation of the Regulation accounts for a significantly smaller proportion of operating costs on long haul routes. Carriers may also find it hard to pass on costs on the relatively small proportion of routes where they compete directly with other modes of transport, particularly rail. However, in practice this only impacts a small proportion of routes, and Regulation 1371/2007 and national rail passenger rights legislation imposes similar obligations on rail operators.
- 17.9 Costs were significantly higher during 2010 due to the volcanic ash crisis and other exceptional disruption. If the Regulation had been fully complied with during the crisis, we estimate it would have increased airlines costs by approximately €960 million. However, the actual cost figures provided by airlines directly to this study are significantly lower than this.
- 17.10 Article 13 of the Regulation states that carriers are not prevented from claiming the costs of compliance from responsible third parties. However, in itself, it does not provide a mechanism for them to do so. There are limited legal means for airlines to claim against the third parties most likely to be responsible for disruption (airports, ANSPs, and trade unions). Some airlines are nonetheless trying to do so through national courts; at the time of our research these cases had not been decided.

### ***Airline compliance with the legislation***

- 17.11 None of the evidence on airline compliance with the Regulation is conclusive, but it all indicates that compliance is partial. In order to assess this, we have taken into account:

- Survey estimates: Some consumer associations and NEBs have undertaken surveys of passengers' experiences. All indicate widespread non-compliance, although the respondents to some of the surveys were self-selecting, so they may overstate the issue.
- Cost data: We have compared our estimates of the economic burden of the legislation with actual cost data provided by airlines. Even excluding the cost of compensation for delays (which most airlines explicitly stated they are not paying at present), the costs airlines say they have incurred are approximately one quarter of our estimates of the costs necessary to comply. However, this is uncertain for several reasons, in particular because only a small sample of airlines provided us with data detailed enough to allow us to make this comparison.
- Stakeholder views: Most NEBs, consumer representatives and also other stakeholders such as airports pointed towards non-compliance being a significant issue.

17.12 In some cases airlines have incurred substantial costs in order to comply with the Regulation. However, they appear not to consider that they have a commercial incentive to provide the full range of rights that the Regulation requires (if they thought they did have such an incentive, they would not object so strongly to the Regulation). Therefore, only enforcement can provide this incentive, but as discussed below, it does not always do so.

#### ***Enforcement***

17.13 Despite significant efforts in many Member States and substantial human and financial resources being committed to the enforcement of the Regulation, it still does not appear to be sufficient. Some Member States have taken measures to address the issues with enforcement identified in the study we undertook for the Commission in 2009/10, but in several others where we identified serious shortcomings, the position has not improved. The problems we have identified generally do not arise from failings by the NEB, but from wider legal or administrative issues in the State concerned, such as:

- legal or procedural impediments to imposition of sanctions (such as a requirement for a criminal prosecution in the UK, or time limits in Belgium), which means that the sanctions regime cannot provide a sufficient incentive for carriers to comply with the Regulation;
- difficulties in either imposing or collecting sanctions in relation to carriers not based in the State, meaning that sanctions cannot provide an incentive for these carriers to comply with the Regulation (although some States have now addressed this issue); and
- sanctions which are too low to provide an economic incentive for carriers to comply with the Regulation, taking into account that only a very small proportion of passengers impacted by an infringement are likely to complain to the NEB.

17.14 Enforcement is still based almost entirely on retrospective investigation of individual incidents, based on passenger complaints. Although many NEBs undertake inspections, these are in most cases limited to checking compliance with the requirements on information provision in Article 14. The complaints-based approach to enforcement is resource intensive and appears only to be partially effective.

***Airline policies in areas not covered by the Regulation***

- 17.15 We asked airlines about their policies for several areas not explicitly covered by the Regulation, including policies on booking errors, tarmac delays, advance rescheduling of flights, non-sequential use of tickets, and loss or damage to mobility equipment. There were significant differences between carriers on these issues, and in some cases, consumer representatives and NEBs said airlines policies were less generous to the passenger than the airlines said they were.
- 17.16 Some enforcement bodies consider that some of these issues are addressed indirectly by Directive 93/13/EEC on unfair contract terms, but this is not always clear, and national court decisions in these areas are not consistent. Practices which some enforcement bodies or national courts have ruled against continue to be widespread.

***Passenger redress***

- 17.17 Given the limited effectiveness of some of the NEBs, and that many focus on enforcement rather than assisting passengers with individual claims, it is not surprising that passengers have used alternative processes to obtain redress, usually simplified procedures for small claims in the civil courts.
- 17.18 However, these have a number of important weaknesses: the procedures can be slow, expensive and in some cases arbitrary, and in several Member States, there are no such processes or the maximum claim that can be made is set at a level which excludes some claims under the Regulation and other passenger rights legislation. Similar issues may also apply to consumer claims in some other sectors although the technical complexity of the air transport sector means that it is likely to be particularly problematic. Alternative dispute resolution (ADR) systems provide an alternative in a few States, but these also have significant weaknesses, and where the systems are not mandatory and binding, airlines may refuse to participate or do not follow the conclusions. The gap is being filled by commercial claims services in some States.

***Conclusions***

- 17.19 The factual research undertaken for this study confirms and where possible quantifies the problems with the Regulation that the Commission has identified:
- the Regulation contains grey zones of ambiguous meaning which can lead to divergent interpretations, which gives airlines an opportunity to try to interpret it in ways which minimise their obligations;
  - there is no clear guidance on a number of issues/situations which frequently arise but are not covered by the existing Regulation, particularly with regard to baggage procedures, and types of travel disruption which are not explicitly addressed within the Regulation, such as missed connections due to delays;
  - the Regulation's obligations may lead to considerable economic burden on airlines, which is likely to be passed on to passengers in the form of higher fares;
  - the Regulation is not enforced effectively in all Member States; and
  - passengers means to obtain redress are limited and vary between States.

17.20 We discuss below the potential revisions to the Regulation that could address these issues.

### **Conclusions of the option assessment**

17.21 We have evaluated a large number of options, ranging from repeal of the Regulation through to options that would significantly extend its scope. Some of the options can be clearly recommended, for example because they would clarify the Regulation or improve its operation, without negative consequences such as significantly increasing the economic burden on air carriers or reducing passenger protection. Similarly, some of the options can be clearly rejected, because they are impractical to implement, do not meet the policy objectives, or because they conflict with the Montreal Convention - although this point is not always clear, because it is not always clear what a Court would decide, and ultimately the Community could decide to seek amendment to the Convention if it considered it to be an unacceptable constraint to policy.

17.22 However, many of the options meet some policy objectives but conflict with others. This is partly because some of the policy objectives inherently conflict - particularly, the objective of maintaining or improving passenger protection, and the objective of minimising the economic burden on the industry. We discuss below how the options could be combined into a series of coherent packages, but ultimately a political judgement will be necessary as to the tradeoff between objectives and hence the selection of these options and packages. This study provides a quantification of the impacts of these options and packages which can inform this political judgement.

17.23 This section summarises the conclusion of the assessment of each category of option.

#### ***Options relating to travel disruption***

17.24 We recommend several options which would clarify the Regulation:

- several key terms should be defined, including ‘flight’, ‘connecting flight’ and ‘delay’ (option A3.1);
- the exemption on payment of compensation in cases of extraordinary circumstances should be clarified, to list within the Regulation circumstances when compensation never would be payable, when it always would, and criteria to be followed in other cases (option A3.2);
- the Regulation should clearly specify whether compensation is payable for long delays and if it is in what circumstances (option A3.4); and
- the Regulation should clarify whether re-routing on other carriers or surface transport is permitted and in what if any circumstances carriers are required to offer this (option A5.2);
- the Regulation should clarify what rights passengers have in case of advance rescheduling, diversions, or missed connections due to delays (options A5.3, A6.2 and A6.3);
- the Regulation should clarify when it applies to EU carriers flights to the EU from third countries (option A7.1A);
- the Regulation should clarify what rights passengers have in the rare cases where an aircraft is delayed for a prolonged period on the tarmac (A6.1); and

- the Regulation should clarify that if carriers do not comply with their obligation to arrange care and assistance, passengers may do this themselves and reclaim reasonable costs from the carrier (option A4.4).
- 17.25 In some cases, where there are grey zones in the Regulation, it is not possible to clarify it without making a decision as to what carriers obligations should be - and in order to evaluate it, we have had to make assumptions for what their obligations currently are. Particularly important decisions need to be made in the following areas:
- With respect to the right to compensation for delays identified in the Sturgeon case, any policy decision will have to take into account the decision of the CJEU in the pending cases. The Court could find either that there must be compensation for delays (due to the principle of equal treatment) or there cannot be (due to potential conflict with the Montreal Convention). As this is now a decision for the Court we do not make any recommendations in this respect, other than if the right identified in Sturgeon is confirmed, this should be clearly defined within the text of the Regulation, to improve legal certainty (option A3.4).
  - With respect to the exemption on payment of compensation in cases of extraordinary circumstances, there may be a case for adopting a wider exemption than implied by the Wallentin judgement, as this implicitly requires carriers to pay compensation in some cases which are not really their responsibility (option A3.3). This option could be considered as an alternative to other options which reduce the scope or level of compensation (discussed further below).
  - With respect to any right to rerouting on other carriers, we recommend that there should be such a right but it should be limited to extreme cases where the carrier cannot provide rerouting on its own services within a reasonable period. Although it might appear in consumers' interests for there to be a more general right, it is not, because this would be much more onerous for new entrants operating a small proportion of flights than other carriers, and non-IATA carriers that do not have access to reciprocal rerouting agreements - and therefore it would create a barrier to entry and potential distortion of competition.
- 17.26 We have considered if some of the responsibility to provide care should be transferred to airports. We recommend that airports should have some minimal obligations including a shared responsibility for providing information on the rights defined in the Regulation. and a requirement to provide free drinking water to passengers airside. Larger airports should also be required to prepare contingency plans for mass disruption, including for how to handle transfer passengers stranded airside as a result. We do not recommend any wider switch in responsibility to airports although carriers and airports could agree between themselves to contract airports to provide some services if they believed that this was an efficient way of delivering the services required by the Regulation.
- 17.27 We have also considered a number of other options which would change the obligations in the Regulation, for example to change when passengers should be entitled to care or rerouting. There is no clear case for or against these options because they are usually consistent with one but not both of the objectives of improving passenger protection and minimising economic burden. Therefore, a political decision needs to be made about these options. We suggest there would be a stronger case for an option which adopts a common



threshold for the right to care provided at airports, regardless of flight length or the type of disruption (option A4.3B); this does not have to imply an increase in economic burden, depending on what the threshold is set at, but would make the Regulation clearer and more consistent. Although a wider equalisation of passengers rights in different circumstances might be attractive for the same reasons (options A8), these are likely to imply a substantial increase in the economic burden on carriers, mostly due to the significant costs which could arise from giving passengers the right to rerouting or a refund in case of relatively short flight delays.

- 17.28 The Regulation does not at present apply to non-EU carriers on flights to the EU. Many consumer representatives argued that this was unfair, and some airlines also said it potentially distorted competition. Extension to non-EU carriers (option A7.1D) may be considered extra-territorial, but there is precedent for this in the passenger rights' legislation in other countries. This would significantly increase the total economic burden on airlines although it might actually reduce the burden on EU airlines by removing a distortion of competition. Again, the study quantifies the impacts of this option but neither recommends nor does not recommend it, as it is a political decision whether it is appropriate or not.

***Options relating to baggage and additional fees***

- 17.29 Several of the submissions to the study argued that there should be common rules on (particularly cabin) baggage, and we have considered whether this could be standardised (option B1.3). However, it would be impossible to define a rule which would be suitable for all carriers - carriers with higher seating densities and load factors have to restrict cabin baggage more than other carriers, due to space constraints. If carriers were required to allow more cabin baggage than there was space available, bags would have to be transferred to the hold, causing delay and increasing handling costs. If, as airport retail representatives have suggested, carriers were required to allow airport retail purchases on board in addition to other baggage, carriers might have to reduce the amount of other baggage passengers could carry, given the space constraints.
- 17.30 We have also considered options which would introduce standardised compensation for passengers in the event of delayed or lost baggage (option B2.2). However, this would significantly increase costs for air carriers, and we have been advised it would conflict with the Montreal Convention. As we understand there is strong political support for this option we include it nonetheless in one of the option packages below, but we understand it could not be implemented unless the Convention was amended. An alternative of requiring provision of an 'emergency pack' might avoid conflict with the Convention as it might be considered 'standardised assistance', but it is not clear how useful this would actually be for many passengers, and most consumer representatives did not support it for this reason.
- 17.31 To address potential consumer detriment and confusion resulting from the wide range of different rules and charges applied by different carriers, rather than attempting to standardise these we recommend a 'key facts' document should be provided by carriers and agents to passengers before confirming flight bookings, to provide information on (for example) whether a ticket can be changed or refunded and at what fee; what cabin baggage is permitted; and what check-in requirements are (option B1.4). To facilitate

comparisons between carriers this should use a standardised format and terms, to be defined by the Commission after consultation with the industry. There would be a one-off cost in implementing this but there would then be little or no ongoing cost. However, this option is not included in the proposed packages of revisions to the Regulation set out below, as it does not relate directly to travel disruption, and therefore would be considered (potentially with other options) in relation to price transparency.

17.32 As noted above, the Montreal Convention defines carriers' liability for baggage. Consumer representatives and some other stakeholders consider two aspects of the Convention to be particularly unfair for passengers:

- Mobility equipment is considered baggage and therefore subject to a limit on liability which is much lower than the cost of some mobility equipment, particularly electric wheelchairs.
- The deadlines for complaints about damaged or delayed baggage are very short, and a passenger may not always realise until it is too late that a Property Irregularity Report submitted at the airport may not be counted as a claim for the purpose of the Convention.

17.33 We have been advised that the limit on liability for mobility equipment could not be removed without amending the Convention. A similar result could however be achieved by a requirement for carriers to provide insurance. We recommend that carriers should be required to provide passengers, free of charge, with insurance against loss or damage to mobility equipment (option B3.1). They should be exempted from this requirement if they voluntarily waive the limit to their liability, as most (but not all) said that they already do.

17.34 Similarly, it is also not possible to change the deadlines for complaints without amending the Convention, but to address this issue, the Regulation could require carriers to issue a Property Irregularity Report (PIR) or other similar claim form at the airport where passengers complain about delayed or damaged baggage, and then to accept this as a claim for the purposes of the Convention (option F4A). This would address the main consumer detriment in this issue.

### *Options relating to other consumer issues in air transport*

17.35 We also evaluated a number of general policy options, in most cases not related to issues covered by Regulation 261/2004, which would improve consumer protection when travelling by air. In several cases, these options cover issues which could be considered to be existing requirements of other European consumer legislation, particularly Directive 93/13/EEC on unfair contract terms. Several national courts and enforcement authorities have found that certain common airline practices conflict with national laws implementing this Directive, but these decisions are not consistent. The information obtained through our interviews confirms that some practices continue to be widespread despite some enforcement bodies or national courts having found against them.

17.36 Given the uniquely international and technically complex nature of air transport, and the inconsistency in enforcement and interpretation of this Directive in the sector, it may not be sufficient to rely on this alone. The result appears to be significant inconsistency between Member States, and arguably distortion of the single market for air transport.

Therefore there could be an argument for clarifying and defining these rights more clearly in a Regulation.

17.37 If this was done, it should include:

- definition of whether it is acceptable for carriers to cancel the rest of a booking if a passenger does not take one flight, and we recommend that this should be prohibited where the passenger cannot travel due to ‘force majeure’ and potentially also on the return flight of a simple outward-return booking, but not in other circumstances (option C1.1-1.3);
- a requirement for carriers to correct clear mistakes on bookings such as spelling mistakes in a name free of charge (option C2.2); and
- a requirement to allow a passenger to transfer a ticket or receive a credit if they cannot travel due to ‘force majeure’ (option C5).

17.38 We have also considered an option by which carriers would be required to have staff at the airports they serve who are responsible for, and authorised to, arrange the assistance required by the Regulation (option C3). However, we do not recommend this, because it would be a substantial economic burden on carriers, and does not in itself generate benefits if carriers can find other means of complying with the Regulation. It might be possible for carriers to meet the obligations in the Regulation at lower cost than this - for example, given the rapid growth of smartphone usage, in the future these could be used to provide information, and vouchers for refreshments and hotels, without staff necessarily being presented. This would be facilitated by a requirement for travel agents to provide passengers’ contact details to airlines, although for commercial reasons travel agents strongly oppose this (option D2.7).

***Options to reduce or transfer the economic burden***

17.39 Passengers may currently be entitled to receive significant amounts of compensation (potentially much more than they paid for the ticket) in cases which are not clearly within carriers control and/or where the delay to their journey is only 2-3 hours. This may be considered disproportionate, and we have considered a number of options which would reduce carriers’ liability to pay compensation. This could be achieved by either:

- reducing the circumstances in which it is payable, for example by widening the extraordinary circumstances exemption (option A3.3);
- increasing the time thresholds after which compensation is payable (option D1.1); or
- reducing the amount of compensation, for example to make it a function of the ticket price as for other modes, possibly with maximum and minimum values (option D1.3), or to retain flat rate amounts but at a lower level (option D1.8).

17.40 The adoption of one or more of these options would result in a significant reduction in the amount of compensation which was payable and hence reduce the economic burden on carriers. Although more than one of these options could be applied, to an extent they may be considered alternatives: there is a stronger argument for a high and fixed rate of compensation (as now) if payment is limited to circumstances which are more clearly within carriers’ control and/or which cause substantial inconvenience to passengers. It is clearly a political decision which of these options is best, but in our view the stronger case is for D1.8 (potentially combined with A3.3 or D1.1), as this would make compensation

more proportionate whilst avoiding the practical problems that could arise from making compensation a function of the ticket price.

- 17.41 At present, Article 13 states that the Regulation does not prevent airlines claiming against responsible third parties, but in itself does not provide any such right. We have considered an option by which the economic burden could be shared between airlines and other responsible parties, principally ground handlers, airports and ANSPs. This would appear fair. However, ultimately ground handler, airport and ANSP costs must be recovered through charges levied on airlines, and therefore these would have to increase. There could also be substantial costs incurred disputing responsibility in some cases, and/or disputing whether the amounts claimed by airlines from airports and ANSPs were reasonable. Therefore, this option might ultimately increase rather than reduce the economic burden, and for this reason we do not recommend it.
- 17.42 We have considered several options which would reduce carriers' liability for care costs in exceptional circumstances, as some of the equivalent Regulations in other sectors do. Carriers can budget for an expected level of disruption (for example due to occasional exceptional weather), and reflect the costs of this in fares. However, they clearly cannot budget for an event such as the volcanic ash crisis, and it is also not practical to insure against such an event. We recommend that there should be a limit, but only in exceptional cases of mass disruption defined narrowly so that an event such as volcanic ash would be covered but not other events such as occasional bad weather which a carrier should be able to budget for. A limit of 4 nights and a maximum cost of €100 per person per night would have reduced the economic burden on carriers during the volcanic ash crisis by about 34%.
- 17.43 We also recommend that Member States should have the option of partially exempting, on a non-discriminatory basis, regional flights with small aircraft where the costs of complying with the Regulation would be disproportionate due to the specific operational characteristics of the route concerned. The study has evaluated a number of potential criteria on which this exemption could be based.

### ***Options to improve enforcement and the operation of the Regulation***

- 17.44 The analysis undertaken for this study shows that despite significant resources being committed to it, in several Member States enforcement of the Regulation is still not effective. In part, this reflects that it is inherently difficult to enforce: it creates obligations in respect of approximately 40,000 passengers on 700 disrupted flights each day at airports across the EU and beyond. Carriers do not think they have a commercial incentive to provide the full range of rights the Regulation requires in each case, and price competition gives them a strong incentive to minimise costs, including costs of compliance. NEBs cannot practically monitor the provision of assistance and compensation on many of the disrupted flights, and to date enforcement has relied almost entirely on retrospective investigation and potentially sanctioning of individual incidents in response to consumer complaints.
- 17.45 Enforcement solely through investigation of individual incidents is resource-intensive and appears to be only partially effective. We recommend the emphasis should change towards an approach based on ensuring airlines apply appropriate procedures to implement the Regulation (option E5.2). The Regulation should require airlines to put in place and then

follow procedures sufficient to ensure that they comply with the Regulation effectively and consistently, including during periods of major disruption when this may be most challenging. Airlines should also have to provide these procedures and any supporting information to NEBs or the Commission, and NEBs would have to check these procedures and that carriers followed them. It would therefore be an infringement of the Regulation if these procedures were not provided, were not compliant with the Regulation, were not sufficient to ensure compliance, or were not properly followed by the carrier. This could partly (although not wholly) replace investigation of individual incidents and complaints.

- 17.46 We have considered also whether compliance with these procedures could become a license condition (option E5.3) but recommend it should not, for several reasons but primarily because it is not credible or proportionate that an operating license would be withdrawn for non-compliance. If it was, the carrier would become insolvent and potentially a large number of passengers would be stranded, potentially causing more consumer detriment than the infringements of the Regulation.
- 17.47 Some of the problems with enforcement arise from the fact that it is divided between NEBs for each State, and that some States have still not introduced effective enforcement procedures, partly due to constraints in national law. This might be best solved by partly or wholly transferring responsibility from Member States to a new EU-level agency (E3.1), but this may be unrealistic. As an alternative, we recommend that the Commission could have a formal role to coordinate actions by NEBs, for example by requesting investigations (E3.2), and NEBs should report on their activities to it.
- 17.48 We also recommend some minor changes be made to the Regulation, to:
- strengthen the term on sanctions being dissuasive (E3.6);
  - require airlines to provide up-to-date contact details to the Commission to distribute to NEBs (E3.7A);
  - require NEBs to produce an annual report to the Commission on their activities (E3.8) and preferably to publish it (E4.2); and
  - specify that NEBs have the power to require provision of information from carriers (option E4.1).
- 17.49 We have considered if NEBs should also be given responsibility for handling complaints and ensuring compliance with other Community legislation impacting the air transport sector, such as Regulation 889/2002 and Directive 93/13/EEC on unfair contract terms (E6.1). Although this would improve compliance it would also generate significant operational costs for NEBs and may be unrealistic given constraints on public budgets. Many of the benefits could be achieved at much lower cost if NEBs ensured at least that carriers policies and published information (such as Conditions of Carriage) were consistent.

#### ***Options to improve passenger redress***

- 17.50 We have considered several options which would improve passengers' ability to obtain redress. In part, this is addressed by the Commission's separate proposal on Alternative and Online Dispute Resolution (ADR and ODR), and so we have not considered new ADR mechanisms. The Regulation should however be amended to require NEBs and ADRs to cooperate, and for ADRs to pass relevant information to NEBs, particularly if they identify what appear to be deliberate or systematic infringements (option F7A).

17.51 Some of the passenger rights' Regulations in other sectors place minimum requirements on operator complaint handling procedures. Although airlines strongly argued that this should be left to the market, to ensure consumers are not unreasonably deterred from claiming their rights, some relatively minimal requirements could be defined in the Regulation, including:

- carriers should clearly publish an email address and postal address which can be used to submit complaints (option F3A);
- carriers should accept complaints in the main languages of their passengers (option F3B); and
- carriers should provide an acknowledgement of complaints within 1 month and a full response to complaints within 3 months (option F5).

17.52 Other than the requirement to publish an email address, which in itself should not generate costs as receiving complaints by email should cost no more than receiving complaints by post, most airlines do this anyhow and so it would not generate any significant incremental economic burden on them.

### ***Other measures***

#### *Define detailed provisions in implementing rules or a delegated act*

17.53 Some of the issues with the Regulation have arisen partly because it was adopted through a conciliation process between the Council and the Parliament and some of the text that resulted is subject to different interpretations. Whilst this is a risk with any legislation, it has been a particular issue with this Regulation, and is exacerbated by the particular operational and technical complexity, and international nature, of the air transport sector. Judgements by the CJEU have addressed some of the grey zones in the legislation but many remain.

17.54 We recommend that to address this, the Regulation should be reorganised to specify general principles, with the detailed requirements transferred to, and defined in much more detail in, implementing rules or a delegated act (option E4.3A). There is precedent from several other areas of transport legislation for detailed provisions to be defined in implementing rules (for example, the details of the Single European Sky II are defined in the implementing rules). The advantages would be provisions could be changed more easily than provisions in the main Regulation, if they turned out in practice to unclear or to have unintended consequences; provisions could be defined in more detail than it is practical to do in primary legislation; and it would be easier to consult with stakeholders about the design of the detailed provisions if these were defined outside the main legislative process.

#### *Improved information for passengers*

17.55 In order for a competitive market to function properly, good information has to be available to all participants in the market. However, at present consumers in the EU (in contrast to consumers in the US) have little or no factual information available on the performance of different air carriers.

17.56 Eurocontrol already collects and analyses carrier and route specific delay and cancellation data, and has advised that it could publish it at minimal additional cost; we recommend

that it should be required to do so (option E5.1A). If other service quality data was to be published, this would have to be specifically collected, but the costs could also be quite low if the level of disaggregation required was less, and we recommend that this should also be required (option E5.1B). This would help consumers make an informed decision about which carrier to travel with, and hence improve operation of the market.

### **Summary of the quantitative assessment**

- 17.57 In this section we present the results of the assessment for the quantified options, starting with costs and passenger benefits, which have been estimated using the process discussed in the preceding text, and in Appendix B. It is assumed that all ground handler, airport and ANSP costs are passed through to airlines, and that all direct and indirect costs for airlines are recovered from passengers through higher fares. Changes in fares are calculated on the basis of the percentage of total airline turnover which these costs would represent.
- 17.58 Changes in fares are then assumed to result in changes to passenger numbers, which in turn have employment, economic and social impacts.

#### ***Individual options***

- 17.59 Table 17.1 below summarises our estimates of the Europe-wide impacts on economic burden of each of the policy options which we assessed in quantitative terms. For options relating to flight disruption, we have also quantified passenger benefits or disbenefits of options and therefore we show this and the net impact of the option. For options which do not directly relate to compensation or assistance in cases of flight disruption, the passenger benefits are generally not of a nature which can be quantified (for example, the transparency benefit from introduction of a Key Facts document) and therefore we do not show a net impact. For options D2.4B-D, which would only impact airlines' obligations with respect to incidents of exceptional mass disruption, the table shows the impact in the event of one such incident, of equivalent scale to the volcanic ash crisis.
- 17.60 Later in this section we present a separate table of the wider economic and environmental impacts of the options.

TABLE 17.1 QUANTITATIVE ASSESSMENT OF OPTIONS: COSTS AND PASSENGER BENEFITS

Option		NPV of burden (€ millions)				NPV of passenger benefits (€ millions)	Net NPV (€ millions)	Impact on air fares (%)
		Airline	State	Other	Total			
A1	Repeal of Regulation 261/2004	-10,431.9	-281.5	-	-10,713.4	-13,084.6	-2,371.2	-0.7%
A3.3	Limit circumstances in which compensation payable to those within the control of the carrier	-1,079.0	-28.2	-	-1,107.2	-1,079.0	28.2	-0.1%
A4.1	Require airports to have particular obligations towards passengers with regard to the provision of information and/or of care	-	-	0.2	0.2	n/a	-0.2	0.0%
A4.2	Require airports to develop contingency plans for mass disruption	-	-	1.8	1.8	n/a	-1.8	0.0%
A4.3A	Consistent time thresholds for care for delays, regardless of flight length	563.6	-	-	563.6	563.6	n/a	0.0%
A4.3B	Consistent time thresholds for care for delays, cancellations and denied boarding, regardless of flight length	97.5	-	-	97.5	97.5	0.0	0.0%
A5.1	Airlines to be obliged to offer rerouting in case of long delays	563.7	-	-	563.7	234.8	-328.9	0.0%
A5.2B	A specific requirement to reroute via other carriers if the delay would otherwise exceed 12 hours	1.0	-	-	1.0	1,077.8	1,076.8	0.0%
A5.2C	Regulation clarifies that there is no obligation to reroute on other carriers	-392.1	-	-	-392.1	-3,141.0	-2,748.9	-0.0%
A5.4	Reduce length of delay before passenger can claim refund and not travel from current 5 hours to 1-2 hours as for other modes	2,167.7	-	-	2,167.7	2,167.7	n/a	0.1%
A6.1	Require provision of care and assistance during tarmac delays	10.0	-	-	10.0	10.0	-0.0	0.0%
A7.1D	Extension to all flights to the EU	1,555.4	-	-	1,555.4	1,873.8	318.4	0.1%
A8.1A	Replace current rights with rights applying for all travel disruption including delays and cancellations (except denied boarding and downgrading), with the assistance threshold set to 2 hours	6,073.2	-	-	6,073.2	2,711.0	-3,362.2	0.4%
A8.1B	Replace current rights with rights applying for all travel disruption including delays and cancellations (except denied boarding and downgrading), with the assistance threshold set to 3 hours	1,302.5	-	-	1,302.5	-405.8	-1,708.3	0.1%



Option		NPV of burden (€ millions)				NPV of passenger benefits (€ millions)	Net NPV (€ millions)	Impact on air fares (%)
		Airline	State	Other	Total			
A8.2	Consistent rights also covering denied boarding	6,035.2	-	-	6,035.2	2,673.0	-3,362.2	0.4%
A8.3	Consistent rights also covering downgrading	6,842.1	-	-	6,842.1	3,480.0	-3,362.2	0.4%
B1.4	Require presentation of a 'key facts' document	21.1	-	-	21.1	n/a	-21.1	0.0%
B2.2	Require fixed-rate monetary compensation payments for delayed or damaged baggage	900.4	-	-	900.4	900.4	n/a	0.1%
B3.1	Unlimited liability for mobility equipment	6.9	-	-	6.9	n/a	-6.9	0.0%
C3.2	Define obligation for airline to provide information on incidents at the airport and a contact person at the airport to assist in the event of disruption	340.1	-	-	340.1	n/a	-340.1	0.0%
C4.1	Per-passenger taxes and charges should be automatically refunded to all passengers that do not use their tickets	10,912.3	-	-	10,912.3	n/a	-10,912.3	0.7%
C4.2	Per-passenger taxes and charges should be refunded without any deduction when requested	5,818.8	-	-	5,818.8	n/a	-5,818.8	0.4%
D1.1A	Amend length of delay before compensation is payable for delays and cancellations to 5 hours	-923.7	-	-	-923.7	-923.7	n/a	-0.1%
D1.1B	Amend length of delay before compensation is payable for delays and cancellations to 12 hours	-1,530.1	-	-	-1,530.1	-1,530.1	n/a	-0.1%
D1.1C	Amend length of delay before compensation is payable for delays and cancellations to 5 or 12 hours	-1,125.1	-	-	-1,125.1	-1,125.1	n/a	-0.1%
D1.3A	Compensation to be a function of ticket price	-1,154.0	-	-	-1,154.0	-1,154.0	n/a	-0.1%
D1.3B	Compensation reduced by 50%	-1,156.3	-	-	-1,156.3	-1,156.3	n/a	-0.1%
D1.7	Adjust compensation by inflation	333.5	-	-	333.5	333.5	n/a	0.0%
D1.8	Stronger progressivity of flat rate compensation plus inflation adjustment	-752.5	-	-	-752.5	-752.5	n/a	-0.0%
D2.2	Further specify the right to claim from responsible third parties	-3,119.5	-	3,527.7	408.3	n/a	-408.3	0.0%
D2.4A	Limit the right of care to 3 nights in all cases, with the cost of accommodation	-73.6	-	-	-73.6	-73.6	0.0	-0.0%

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Option		NPV of burden (€ millions)				NPV of passenger benefits (€ millions)	Net NPV (€ millions)	Impact on air fares (%)
		Airline	State	Other	Total			
	capped at €100 per passenger per night							
D2.4B	Limit the right of care as for D2.4A, but only in cases of exceptional mass disruption	-392.9	-	-	-392.9	n/a	392.9	-0.0%
D2.4C	Limit the right of care as for D2.4A, but to 4 nights with the cost of accommodation capped at €100, in cases of exceptional mass disruption, and with exception for PRMs	-316.0	-	-	-316.0	n/a	316.0	-0.0%
D2.4D	Limit airline obligation for care in cases of exceptional mass disruption, with the remaining costs borne by government	-392.9	392.9	-	-	n/a	n/a	-0.0%
D2.5A	Fully or partially exempt flights with small aircraft based on the definition in Regulation 1008/2008 (less than 20 seats)	-6.6	-	-	-6.6	n/a	6.6	-0.0%
D2.5B	Exempt flights operated by aircraft of less than 100 seats, distance of less than 500 km and airports with less than 250,000 passengers	-43.2	-	-	-43.2	n/a	43.2	-0.0%
D2.5C	Exempt flights operated by aircraft of less than 75 seats and distance of less than 250 km	-92.8	-	-	-92.8	n/a	92.8	-0.0%
D2.7	Define obligation for travel agents to pass information to airlines	27.9	-	-	27.9	n/a	-27.9	0.0%
D2.8	Airlines obliged to offer insurance instead of care	-6,984.0	-	-	-6,984.0	-6,984.0	n/a	-0.5%
E3.1A	Replacement of NEBs with EU-level agency	-	46.6	-	46.6	n/a	-46.6	-
E3.1B	Commission to have the power to impose sanctions directly	-	2.8	-	2.8	n/a	-2.8	-
E3.1C	NEBs retained as local agents or 'antennae' of the EU-level agency	-	23.3	-	23.3	n/a	-23.3	-
E3.7A	Require airlines to provide contact details to the Commission	0.1	0.0	-	0.1	n/a	-0.1	0.0%
E3.8	Require NEBs to provide information to the Commission to demonstrate that sanctions effective	-	0.4	-	0.4	n/a	-0.4	-
E4.4	Airlines to be required to prove that they have complied with respect to all passengers	7.5	3.8	-	11.3	n/a	-11.3	0.0%
E5.1A	Publication of delay and cancellation data	-	0.3	-	0.3	n/a	-0.3	-

Option		NPV of burden (€ millions)				NPV of passenger benefits (€ millions)	Net NPV (€ millions)	Impact on air fares (%)
		Airline	State	Other	Total			
E5.1B	Other service quality data to be published	0.2	0.4	-	0.7	n/a	-0.7	0.0%
E5.2	Airlines to develop and apply procedures to comply consistently with the Regulation, including contingency plans	1.1	0.7	-	1.9	n/a	-1.9	0.0%
E5.3	Compliance to become a license condition	1.1	0.3	-	1.4	n/a	-1.4	0.0%
E6.1A	Expand scope of NEBs to cover baggage issues (including complaint handling)	-	199.5	-	199.5	n/a	-199.5	-
E6.1B	Expand scope of NEBs to cover baggage issues (no complaint handling)	-	0.4	-	0.4	n/a	-0.4	-
E6.2A	Expand scope of NEBs to cover other consumer issues in air transport (including complaint handling)	-	225.2	-	225.2	n/a	-225.2	-
E6.2B	Expand scope of NEBs to cover other consumer issues in air transport (no complaint handling)	-	0.7	-	0.7	n/a	-0.7	-
F3A	Carriers to provide adequate means of receiving complaints	24.3	-	-	24.3	n/a	-24.3	0.0%
F3.B	Carriers to handle complaints in the languages of the States they operate to							
F5	Carriers to respond within fixed timescales							

***Packages of options***

- 17.61 The preceding sections have evaluated which of the policy options appear most likely to meet the objectives defined for the study. Although in most respects these options are independent from each other, we have proposed an approach by which they could be formed into ‘packages’ of options. Four packages, defined after discussion with the Commission, have been assessed.
- 17.62 In defining the first three packages, we have taken as a constraint that the total economic burden of the Regulation should not significantly increase and ideally should reduce; therefore, measures which increase airlines obligations in some areas have to be offset by savings in others. Although each package has a specific emphasis, the majority of options are common to all. Many of these core options address the remaining grey zones, reduce inconsistencies, and ensure the obligations are clear in the text, whilst not changing the main rights and obligations or generating a quantifiable burden; however, some are more substantial in scope. All of the core options are either cost-neutral or generate small increases in economic burden. Corresponding reductions in economic burden are derived from the package-specific options discussed below.
- 17.63 The packages are as follows:
- **Package 1 - A market mechanism approach:** The most significant change would be that the obligation to provide meals, refreshments and other care would be replaced with a requirement to offer optional insurance (Option D2.8). The economic burden would be further reduced by extending the length of delay before compensation is payable for delays and cancellations to 5 hours (Option D1.1A), and reducing the amount of compensation and making it more related to flight length (Option D1.8).
  - **Package 2:** This package focuses on reinforcing airlines’ obligations to provide care and assistance, in particular adopting a common 2 hour threshold after which assistance would have to be provided (Option A4.3). The cost of this would be offset by allowing exemptions for some regional flights (Option D2.5C), and reducing the level and scope of monetary compensation, by reducing the amount of compensation and making it more related to flight length (Option D1.8), plus either:
    - **Package 2a:** Extending the compensation threshold to 5 hours (Option D1.1A); or
    - **Package 2b:** By adopting a narrower definition of the exceptional circumstances exemption than defined in the Wallentin judgement, limited to the situations more clearly under the control of the carrier (Option A3.3), but with unchanged thresholds for compensation including the same 3 hour threshold specified in the Sturgeon judgment.
  - **Package 3:** This package focuses on passenger protection. Although the compensation levels would also be reduced (as for the previous packages), there would be no change to the circumstances in which it was paid. Enforcement would be enhanced by the establishment of an EU-level enforcement body with the current NEBs as local ‘antennae’ (Option E3.1C).
- 17.64 Table 17.2 shows the composition of each of the packages. We also consider separately the impact on the packages of the following options:

- Option D2.2: Further specify the right to claim from responsible third parties;
- Option D2.4C: Limit airline liability in cases of mass disruption by introducing a limit of 4 nights for assistance and a cap of €100 per passenger per night
- Option D2.3B: An industry fund is set up which would intervene after 4 days.

17.65 Other options which are not incorporated into any of the packages fall into one of the following categories:

- options which are not recommended;
- options which may be recommended in principle, but which do not primarily relate to travel disruption and the problems identified with this Regulation, and therefore if appropriate should be considered (and compared against other options) through a separate process; or
- mutually exclusive or alternative options for which their counterparts have been selected, for example some of the D2.4 series of sub-options.

TABLE 17.2 COMPOSITION OF OPTION PACKAGES

Option		1	2a	3b	3
A1	Repeal of Regulation 261/2004	Not recommended			
A2	No policy action	Not recommended			
A3.1	Define or clarify key terms within the Regulation such as 'flight' and 'delay'	✓	✓	✓	✓
A3.2	Define extraordinary circumstances, taking into account the Wallentin ruling and definitions used for other modes	✓	✓	✓	✓
A3.3	Limit circumstances in which compensation payable to those within the control of the carrier	-	-	✓	-
A3.4	Incorporate Court of Justice judgements, particularly Wallentin and Sturgeon, into the main text of the Regulation	✓	✓	✓	✓
A3.5	Clarify the Regulation to specifically reject the Sturgeon judgement	Not recommended			
A3.6	Define rights in the case of multi-cause incidents	Not recommended			
A3.7	Define rights in the case of combined carriage	Not recommended			
A4.1	Require airports to have particular obligations towards passengers with regard to the provision of information and/or of care	-	✓	✓	✓
A4.2	Require airports to develop contingency plans for mass disruption	✓	✓	✓	✓
A4.3A	Consistent time thresholds for care for delays, regardless of flight length	Packages use alternative (A4.3B)			
A4.3B	Consistent time thresholds for care for delays, cancellations and denied boarding, regardless of flight length	-	✓	✓	✓
A4.4	Clarify that carrier is responsible for arranging care, and that if it fails to do so, the passenger can arrange it themselves and claim back costs from the carrier	-	✓	✓	✓
A5.1	Airlines to be obliged to offer rerouting in case of long delays over 5 hours (including rerouting on other carriers)	-	-	-	✓
A5.2A	A general requirement to reroute via other carriers where there is no reasonable alternative	Packages use alternative (A5.2B)			
A5.2B	A specific requirement to reroute via other carriers if the initial carrier cannot provide a service within 12 hours	✓	✓	✓	-
A5.2C	Regulation clarifies that there is no obligation to reroute on other carriers	Not recommended			
A5.3	Define obligations for carriers when passenger notified of a delay in advance (advance rescheduling of flights)	✓	✓	✓	✓
A5.4	Reduce length of delay before passenger can claim refund and not travel from current 5 hours to 1-2 hours as for other modes	Not recommended			
A6.1	Require provision of care and assistance during tarmac delays	✓	✓	✓	✓
A6.2	Require care during flight diversions	✓	✓	✓	✓
A6.3	Clarify that there is an obligation to provide care when there are missed connections due to delays	✓	✓	✓	✓

Option		1	2a	3b	3
A7.1A	Simple clarification by amendment of Article 3(1)(b) to refer to benefits and compensation being provided in line with local law requirements	✓	✓	✓	✓
A7.1B	Extension to where the contracting carrier is an EU carrier	Not recommended			
A7.1C	Extension to charter flights, where tickets have been sold in the EU	Not recommended			
A7.1D	Extension to all flights to the EU	Not recommended			
A7.2	Extend the Regulation to cover scheduled helicopter services	Not recommended			
A8.1A	Replace current rights with rights applying for all travel disruption including delays and cancellations (except denied boarding and downgrading), with the assistance threshold set to 2 hours	Packages include alternative options (such as A4.3) which include some but not all elements of these options			
A8.1B	Replace current rights with rights applying for all travel disruption including delays and cancellations (except denied boarding and downgrading), with the assistance threshold set to 3 hours				
A8.2	Consistent rights also covering denied boarding	Not recommended			
A8.3	Consistent rights also covering downgrading	Not recommended			
B1.1	Define a minimum standard airline product including check in, issue of a boarding pass, a certain amount of cabin baggage, and potentially also a certain amount of checked baggage	Not recommended			
B1.2	Define a minimum standard airline product, which would be the basis for fares advertised and initially presented in the booking process, based partly on the proportion of passengers which actually selected "optional" additional services	Not recommended			
B1.3	Define minimum cabin baggage allowances	Not recommended			
B1.4	Require presentation of a 'key facts' document	Not included in packages as not primarily related to travel disruption			
B2.1	Require provision of an emergency kit if baggage delayed or lost	Not recommended			
B2.2	Require fixed-rate monetary compensation payments for delayed or damaged baggage	Not recommended			
B2.3	Require free transport of delayed luggage to the passenger	Not recommended			
B3.1	Unlimited liability for mobility equipment (via obligation to provide insurance if limit not waived)	✓	✓	✓	✓
B3.2	Refund of baggage fees in the event of lost or delayed baggage	Not recommended			
B4.1	Requirement that X-rays of baggage be retained, and provided as evidence	Not recommended			
B4.2	Requirement that the weight of baggage be retained, and provided as evidence	Not recommended			
B4.3	Allow special declaration of individual items	Not recommended			
C1.1	Define that passengers could use any segment of a ticket even if they had not used previous segments, without any conditions	Not recommended			
C1.2	Define that passengers could use any segment of a ticket even if they had not used previous segments, but only if this is due to reasons outside their control	✓	✓	✓	✓
C1.3	Define that passengers could use the return segment of a ticket even if they had	✓	✓	✓	✓

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Option	1	2a	3b	3
	not used the outward segment, but without a more general right to use other segments			
C2.1	Introduce a 24 hour cooling off period in which the passenger can change the reservation without charge (except for bookings made shortly before departure)			Not included in packages as not primarily related to travel disruption
C2.2	✓	✓	✓	✓
C3.1	✓	✓	✓	✓
C3.2	Define obligation for airline to provide information on incidents at the airport and a contact person at the airport to assist in the event of disruption			Not recommended
C4.1	Per-passenger taxes and charges should be automatically refunded to all passengers that do not use their tickets			Not included in packages as not primarily related to travel disruption
C4.2	Per-passenger taxes and charges should be refunded without any deduction when requested			
C5	✓	✓	✓	✓
D1.1A	✓	✓	-	-
D1.1B	Amend length of delay before compensation is payable for delays and cancellations to 12 hours			Packages use alternative (D1.1A)
D1.1C	Amend length of delay before compensation is payable for delays and cancellations to 5 or 12 hours depending on flight length			Packages use alternative (D1.1A)
D1.2	Introduce time threshold for denied boarding			Not recommended
D1.3A	Compensation to be a function of ticket price			Packages use alternative (D1.8)
D1.3B	Compensation reduced by 50%			Packages use alternative (D1.8)
D1.4	Specify progressive compensation per hour of delay in arrival at the final destination			Not recommended
D1.5	Introduce right to automatic compensation if carrier fails to provide care when required by the Regulation			Not recommended
D1.6	Introduce right to claim interest if compensation or care/rerouting costs not paid			Not recommended
D1.7	Adjust compensation by inflation			Packages use alternative (D1.8)
D1.8	✓	✓	✓	✓
D2.1	Apply obligation to marketing carrier as well as operating carrier			Not recommended
D2.2	Further specify the right to claim from responsible third parties			Considered as addition to packages
D2.3A	Limit airline liability in cases of mass disruption via insurance			Not recommended
D2.3B	Limit airline liability in cases of mass disruption via an industry fund which intervenes after 4 days			Considered as addition to package P3



Option		1	2a	3b	3
D2.4A	Limit the right of care to 3 nights in all cases, with the cost of accommodation capped at €100 per passenger per night	Packages use alternative (D2.4C)			
D2.4B	Limit the right of care as for D2.4A, but only in cases of exceptional mass disruption	Packages use alternative (D2.4C)			
D2.4C	Limit the right of care to 4 nights with the cost of accommodation capped at €100, but only in cases of exceptional mass disruption with exception for PRMs	Considered as addition to packages			
D2.4D	Limit airline obligation for care in cases of exceptional mass disruption, with the remaining costs borne by government	Packages use alternative (D2.4C)			
D2.5A	Partially exempt flights with small aircraft using definition from Regulation 1008/2008 (less than 20 seats)	Packages use alternative (D2.5C)			
D2.5B	Partially exempt flights operated by aircraft of less than 100 seats, distance of less than 500 km and airports with less than 250,000 passengers	Packages use alternative (D2.5C)			
D2.5C	Partially exempt flights operated by aircraft of less than 75 seats and distance of less than 250 km	-	✓	✓	-
D2.6	Define when travel agents should be liable to passenger	Not recommended			
D2.7	Define obligation for travel agents to pass information to airlines	✓	✓	✓	✓
D2.8	Airlines obliged to offer insurance instead of care	✓	-	-	-
E1	No further action by Commission	Not recommended			
E2	More systematic infringement proceedings and further strengthening of NEB coordination	✓	✓	✓	✓
E3.1A	Replacement of NEBs with EU-level agency	Packages use alternative (E3.1C)			
E3.1B	Commission to have the power to impose sanctions directly	Packages use alternative (E3.1C)			
E3.1C	EU-level agency with NEBs retained as local agents or 'antennae'	-	-	-	✓
E3.2	Commission to require NEBs to investigate individual cases	-	✓	✓	-
E3.3	Commission to have powers to require NEBs to impose fines	Not recommended			
E3.4	Give NEBs or licensing authorities the right to suspend traffic rights or ground aircraft	Not recommended			
E3.6	Require sanctions to exceed a particular level to ensure they can be dissuasive (clarification of need to provide a financial incentive only)	✓	✓	✓	✓
E3.7	Require airlines to designate a person or body in each State on which notifications of sanctions can be served	Not recommended			
E3.7A	Require airlines to provide contact details to the Commission	✓	✓	✓	✓
E3.8	Require NEBs to provide information to the Commission to demonstrate that sanctions effective	✓	✓	✓	-
E4.1	NEBs and/or licensing authorities to have power to require provision of information, such as operating manuals and ground handling agreements	✓	✓	✓	✓
E4.2	NEBs to publish statistics on complaints, sanctions and other actions taken	✓	✓	✓	✓

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Option		1	2a	3b	3
E4.3	NEB meetings to be able to issue binding rulings	Packages use alternative (E4.3A)			
E4.3A	Detailed provisions to be defined in implementing rules or delegated act	-	✓	✓	-
E4.4	Airlines to be required to prove that they have complied with respect to all passengers	Not recommended			
E4.5	Improve CPC system	Not recommended			
E4.6	Define role for licensing authority in passenger rights, and clarify relative responsibilities of NEB and licensing authority	Not recommended			
E5.1A	Publication of delay and cancellation data	✓	✓	✓	✓
E5.1B	Other service quality data to be published	✓	✓	✓	✓
E5.2	Airlines to develop and apply procedures to comply consistently with the Regulation, including contingency plans	✓	✓	✓	✓
E5.3	Compliance to become a license condition	Not recommended			
E6.1A	Expand scope of NEBs to cover baggage issues (including complaint handling)	-	-	-	✓
E6.1B	Expand scope of NEBs to cover baggage issues (no complaint handling)	✓	✓	✓	-
E6.2A	Expand scope of NEBs to cover other consumer issues in air transport (including complaint handling)	Not included in packages as not primarily related to travel disruption			
E6.2B	Expand scope of NEBs to cover other consumer issues in air transport (no complaint handling)				
F1	No action	Not recommended			
F2	Complaint handling procedure to be specified, for example in Conditions of Carriage	✓	✓	✓	✓
F3A	Carriers to provide adequate means of receiving complaints	✓	✓	✓	✓
F3B	Carriers to handle complaints in the languages of the States they operate to	✓	✓	✓	✓
F4	Extend deadlines for passengers to complain about delay or damage to baggage	Not recommended			
F4A	Require PIR to be issued and accepted as a claim for the purpose of the Montreal Convention	✓	✓	✓	✓
F5	Carriers to respond within fixed timescales	✓	✓	✓	✓
F7	All States to have ADR in place	Packages use alternative (F7A)			
F7A	Amendment of complaint handling system to reflect proposal on ADRs	✓	✓	✓	✓

### *Estimates of the impact of the packages*

- 17.66 The subsequent tables show the complete results for each of the four ‘core’ packages (i.e. not including the additional burden sharing or airline industry fund elements).
- 17.67 Package P1 results in a 78% reduction in the economic burden. This is mostly due to the fact that the obligation to provide care is replaced by private insurance, but monetary

compensation is also significantly reduced, as a result of reductions in the absolute amounts of compensation and the increase in the time threshold before which it is payable. There are large reductions in the economic burden for all carrier types although the reduction is greater for regional carriers as care accounts for a higher proportion of the burden for these carriers, and because the reduction in monetary compensation is greatest for the shortest flights. There would be some increase in operational costs due to the definition of minimum standards for airline complaint handling procedures.

**TABLE 17.3 QUANTIFIED IMPACTS: PACKAGE P1**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	- 194,554	- 1,422,635	-53.9%	- 1,184,663	- 8,742,350	-55.1%
Reimbursement / rerouting	-	-	-	-	-	-
Care	- 963,060	- 6,984,018	-100.0%	- 963,060	- 6,984,018	-100.0%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	8,033	64,462	22.9%	8,033	64,462	22.9%
<b>Total</b>	<b>- 1,149,581</b>	<b>- 8,342,191</b>	<b>-77.9%</b>	<b>- 2,139,690</b>	<b>-15,661,906</b>	<b>-65.4%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 1,150,076	- 8,346,154	-80.0%	- 2,140,185	- 15,665,869	-66.2%
Ground handler	-	-	-	-	-	-
Airport	196	1,757	-	196	1,757	-
ANSP	-	-	-	-	-	-
State	299	2,205	0.8%	299	2,205	0.8%
<b>Total</b>	<b>- 1,149,581</b>	<b>- 8,342,191</b>	<b>-77.9%</b>	<b>- 2,139,690</b>	<b>-15,661,906</b>	<b>-65.4%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 25,978	- 189,863	-88.3%	- 41,558	- 306,252	-77.1%
EU charter	- 60,203	- 443,495	-79.9%	- 181,198	- 1,348,170	-74.1%
EU low cost	- 395,522	- 2,851,568	-81.1%	- 724,322	- 5,259,166	-72.3%
EU traditional scheduled	- 500,335	- 3,647,293	-81.0%	- 870,385	- 6,396,818	-63.5%
Non-EU	- 168,038	- 1,213,934	-73.8%	- 322,723	- 2,355,462	-57.6%
<b>Total airline</b>	<b>- 1,150,076</b>	<b>- 8,346,154</b>	<b>-80.0%</b>	<b>- 2,140,185</b>	<b>-15,665,869</b>	<b>-66.2%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.5%	-	-	-1.0%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 1,157,614	- 8,406,653	-84.5%	- 2,147,723	- 15,726,368	-67.9%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>- 1,157,614</b>	<b>- 8,406,653</b>	<b>-64.2%</b>	<b>- 2,147,723</b>	<b>-15,726,368</b>	<b>-59.8%</b>

17.68 Package P2A results in a -13% reduction in economic burden, mostly due to reduction in the amount of compensation payable (as for P1). There is an increase in the cost for provision of care due to the introduction of a common 2 hour threshold after which care would have to be provided, but this is offset by the introduction of a partial exemption for some short-distance regional services. All carrier types have a reduction in economic burden but the largest proportionate reduction is for regional carriers, because of the exemption of some short-distance routes and the proportionately greater reduction in compensation on routes of less than 750km.

**TABLE 17.4 QUANTIFIED IMPACTS: PACKAGE P2A**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	- 194,554	- 1,422,635	-53.9%	- 1,184,663	- 8,742,350	-55.1%
Reimbursement / rerouting	-	-	-	-	-	-
Care	2,082	14,724	0.2%	2,082	14,724	0.2%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	8,005	64,288	22.8%	8,005	64,288	22.8%
<b>Total</b>	<b>- 184,467</b>	<b>- 1,343,623</b>	<b>-12.5%</b>	<b>- 1,174,576</b>	<b>- 8,663,338</b>	<b>-36.2%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 184,934	- 1,347,412	-12.9%	- 1,175,043	- 8,667,127	-36.6%
Ground handler	-	-	-	-	-	-
Airport	216	1,938	-	216	1,938	-
ANSP	-	-	-	-	-	-
State	251	1,851	0.7%	251	1,851	0.7%
<b>Total</b>	<b>- 184,467</b>	<b>- 1,343,623</b>	<b>-12.5%</b>	<b>- 1,174,576</b>	<b>- 8,663,338</b>	<b>-36.2%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 11,421	- 83,160	-38.7%	- 27,002	- 199,549	-50.2%
EU charter	- 7,108	- 51,960	-9.4%	- 128,103	- 956,635	-52.6%
EU low cost	- 66,660	- 479,358	-13.6%	- 395,459	- 2,886,956	-39.7%
EU traditional scheduled	- 83,809	- 618,124	-13.7%	- 453,859	- 3,367,649	-33.4%
Non-EU	- 15,936	- 114,810	-7.0%	- 170,620	- 1,256,338	-30.7%
<b>Total airline</b>	<b>- 184,934</b>	<b>- 1,347,412</b>	<b>-12.9%</b>	<b>- 1,175,043</b>	<b>- 8,667,127</b>	<b>-36.6%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.1%	-	-	-0.6%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 192,472	- 1,407,911	-14.2%	- 1,182,582	- 8,727,627	-37.7%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>- 192,472</b>	<b>- 1,407,911</b>	<b>-10.8%</b>	<b>- 1,182,582</b>	<b>- 8,727,627</b>	<b>-33.2%</b>

17.69 Package P2b results in a similar reduction in economic burden (-14%), for largely the same reasons. The reduction in monetary compensation and hence economic burden is slightly greater than for P2a, because the impact of limiting compensation to events clearly within the control of the carrier is greater than the impact of extending the threshold for compensation to 5 hours.

**TABLE 17.5 QUANTIFIED IMPACTS: PACKAGE P2B**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	- 212,597	- 1,551,155	-58.8%	- 1,302,899	- 9,595,851	-60.5%
Reimbursement / rerouting	-	-	-	-	-	-
Care	2,082	14,724	0.2%	2,082	14,724	0.2%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	4,130	36,135	12.8%	4,130	36,135	12.8%
<b>Total</b>	<b>- 206,385</b>	<b>- 1,500,296</b>	<b>-14.0%</b>	<b>- 1,296,687</b>	<b>- 9,544,992</b>	<b>-39.9%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 202,977	- 1,475,932	-14.1%	- 1,293,279	- 9,520,628	-40.3%
Ground handler	-	-	-	-	-	-
Airport	216	1,938	-	216	1,938	-
ANSP	-	-	-	-	-	-
State	- 3,624	- 26,302	-9.3%	- 3,624	- 26,302	-9.3%
<b>Total</b>	<b>- 206,385</b>	<b>- 1,500,296</b>	<b>-14.0%</b>	<b>- 1,296,687</b>	<b>- 9,544,992</b>	<b>-39.9%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 11,802	- 85,910	-40.0%	- 29,526	- 218,030	-54.9%
EU charter	- 4,040	- 29,643	-5.3%	- 107,650	- 805,811	-44.3%
EU low cost	- 69,845	- 502,129	-14.3%	- 416,395	- 3,038,620	-41.8%
EU traditional scheduled	- 97,207	- 713,898	-15.9%	- 541,911	- 4,005,633	-39.8%
Non-EU	- 20,083	- 144,351	-8.8%	- 197,797	- 1,452,533	-35.5%
<b>Total airline</b>	<b>- 202,977</b>	<b>- 1,475,932</b>	<b>-14.1%</b>	<b>- 1,293,279</b>	<b>- 9,520,628</b>	<b>-40.3%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.1%	-	-	-0.6%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 210,515	- 1,536,431	-15.5%	- 1,300,817	- 9,581,127	-41.4%
Waiting time	-	-	-	-	-	-
<b>Total</b>	<b>- 210,515</b>	<b>- 1,536,431</b>	<b>-11.7%</b>	<b>- 1,300,817</b>	<b>- 9,581,127</b>	<b>-36.4%</b>

17.70 Package P3 results in a small increase to the economic burden. Although there is still a reduction in monetary compensation, this is less than for P2a or P2b as in this case the only change to compensation is the reduction in the amounts payable, and this is offset by increases in other costs. In particular, there is a large increase in the costs of rerouting and refunds as passengers delayed for more than 5 hours would have a right to rerouting (not just to refunds as now), including rerouting on other carriers. For this reason, charter carriers experience a relatively significant increase in economic burden, reflecting their

relatively high number of delays over 5 hours; most other carrier types still experience a moderate reduction in economic burden. There is a significant increase in operational costs, mostly as a result of the role of NEBs being extended to handle complaints relating to baggage.

**TABLE 17.6 QUANTIFIED IMPACTS: PACKAGE P3**

Impact on economic burden by type (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
261/2004 compensation	- 101,050	- 752,475	-28.5%	- 568,826	- 4,268,453	-26.9%
Reimbursement / rerouting	77,789	564,097	69.6%	77,789	564,097	69.6%
Care	14,603	107,055	1.5%	14,603	107,055	1.5%
Montreal compensation	-	-	-	-	-	-
Other	-	-	-	-	-	-
Administrative/operational costs	38,516	286,724	101.8%	38,516	286,724	101.8%
<b>Total</b>	<b>29,857</b>	<b>205,401</b>	<b>1.9%</b>	<b>- 437,919</b>	<b>- 3,310,577</b>	<b>-13.8%</b>

Impact on economic burden by organisation	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Airline	- 1,121	- 20,824	-0.2%	- 468,896	- 3,536,802	-15.0%
Ground handler	-	-	-	-	-	-
Airport	216	1,938	-	216	1,938	-
ANSP	-	-	-	-	-	-
State	30,762	224,287	79.7%	30,762	224,287	79.7%
<b>Total</b>	<b>29,857</b>	<b>205,401</b>	<b>1.9%</b>	<b>- 437,919</b>	<b>- 3,310,577</b>	<b>-13.8%</b>

Impact on economic burden by carrier type	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
EU regional	- 2,353	- 16,398	-7.6%	- 14,095	- 104,535	-26.3%
EU charter	14,265	104,320	18.8%	- 31,508	- 244,319	-13.4%
EU low cost	- 35,975	- 259,701	-7.4%	- 235,431	- 1,730,203	-23.8%
EU traditional scheduled	- 5,350	- 52,159	-1.2%	- 175,486	- 1,345,884	-13.4%
Non-EU	28,292	203,115	12.3%	- 12,377	- 111,861	-2.7%
<b>Total airline</b>	<b>- 1,121</b>	<b>- 20,824</b>	<b>-0.2%</b>	<b>- 468,896</b>	<b>- 3,536,802</b>	<b>-15.0%</b>

Ratios	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Impact on air fares (%)	-0.0%	-	-	-0.2%	-	-

Service quality impacts (€000)	Current claim rate			All passengers claim		
	Average 2015-2025	NPV 2015-2025	% change	Average 2015-2025	NPV 2015-2025	% change
Care, refunds and compensation	- 115,304	- 854,868	-8.6%	- 583,080	- 4,370,846	-18.9%
Waiting time	61,294	444,617	14.2%	61,294	444,617	14.2%
<b>Total</b>	<b>- 54,011</b>	<b>- 410,251</b>	<b>-3.1%</b>	<b>- 521,786</b>	<b>- 3,926,228</b>	<b>-14.9%</b>

17.71 Table 17.7 shows the combined quantified impacts of each of the four packages, and the two main variants to these which have been tested (a strengthened right for airlines to claim costs from third parties, and an industry fund to cover mass disruption).

**TABLE 17.7 QUANTIFIED IMPACTS OF PACKAGES: COSTS AND PASSENGER BENEFITS**

Package		NPV of burden (€ millions)				Impact on burden (%)	Impact on air fares (%)	NPV with 100% claim rate (€ millions)
		Airline	State	Other	Total			
P1	Market mechanisms	-8,346.2	2.2	1.8	-8,342.2	-77.9%	-0.5%	-15,661.9
P2a	Reinforced care, reduced compensation (1)	-1,347.4	1.9	1.9	-1,343.6	-12.5%	-0.1%	-8,663.3
P2b	Reinforced care, reduced compensation (2)	-1,475.9	-26.3	1.9	-1,500.3	-14.0%	-0.1%	-9,545.0
P3	Passenger package	-20.8	224.3	1.9	205.4	1.9%	-0.0%	-3,310.6
<b>Impact if the Regulation also specifies the right to claim from responsible third parties:</b>								
P2a	Reinforced care, reduced compensation (1)	-4,467.2	1.9	3,530.0	-935.4	-8.7%	-0.1%	-8,255.0
P2b	Reinforced care, reduced compensation (2)	-4,595.7	-26.3	3,530.0	-1,092.0	-10.2%	-0.1%	-9,136.7
P3	Passenger package	-3,140.4	224.3	3,529.8	613.7	5.7%	0.0%	-2,902.3
<b>Impact if the cost of an airline industry fund is included:</b>								
P3	Passenger package	387.9	224.3	1.9	614.1	5.7%	0.0%	-2,901.8

17.72 The figures presented in this table do not include the reduction in economic burden from the proposal to limit airlines' obligations in cases of exceptional mass disruption (option D2.4C), because the impact assessment assumes that no such exceptional event similar to the volcanic ash crisis would occur during the impact assessment period. If such an event did occur, the additional economic burden on airlines would be reduced by 34% by these proposals.

#### **Sensitivity tests**

17.73 We have undertaken a number of sensitivity tests on the packages, and the percentage by which the impact of the packages on the economic burden is higher or lower with each of the sensitivity tests is shown below. For example, this shows that if Article 5(3) is interpreted to mean that airlines are required to pay compensation in a higher proportion of cases, packages P2a and P2b would reduce the economic burden by proportionately more, as the obligation to pay compensation is substantially reduced by these packages; and for the same reason, package P3 would cause a small reduction in the economic burden rather than an increase. In contrast, the percentage reduction in the economic burden caused by P1 would be less in this case, because compensation is the main remaining cost if this package is implemented, and this would then be a higher amount.

**TABLE 17.8 IMPACT OF SENSITIVITY TESTS ON THE NPV OF THE ECONOMIC BURDEN, FOR EACH PACKAGE**

	P1	P2a	P2b	P3	Impact	Uncertainty	Total importance
Base case impact on economic burden	-77.9%	-12.5%	-14.0%	+1.9%			
<b>Impact of sensitivity tests on these figures:</b>							
50% higher denied boarding rate	+0.5%	-0.5%	-0.5%	-0.8%	Low	Medium	Low
50% higher downgrading rate	0.0%	0.0%	0.0%	0.0%	Low	Medium	Low
50% higher cancellations rate	-1.8%	0.0%	-0.6%	-3.1%	Medium	Low	Low
50% higher hotel costs	-1.8%	+0.9%	+1.0%	-0.2%	Low	Medium	Low
50% higher refreshments costs	-3.8%	+1.8%	+2.0%	-0.5%	Medium	Medium	Medium
50% higher compensation claim rate (15% instead of 10%)	+1.5%	-2.9%	-3.2%	-1.9%	Medium	High	High
Compensation claim rate increases by 0.75% per year instead of 0.5%	+0.8%	-1.4%	-1.6%	-0.9%	Low	High	Medium
Extraordinary circumstances exemption	High	2.6%	-4.7%	-9.5%	-3.1%	High	High
	Low	-2.5%	4.7%	9.6%	3.1%		

- 17.74 The sensitivity tests on the packages show that the results are most sensitive to the assumptions about the extent to which airlines are exempted from payment of compensation by Article 5(3), and the compensation claim rate. Most of the other assumptions have a relatively limited effect on the percentage impact the packages have on the incremental economic burden because, even where there is significant uncertainty about an assumption, it generally impacts in a similar way both on the incremental economic burden with the package, and what the incremental economic burden would be if the package was not implemented. Therefore, the other assumptions would not have a material impact on the conclusions about the packages.
- 17.75 Even the assumptions about Article 5(3) and the compensation claim rate do not significantly impact the ranking of the packages in terms of the impact on the economic burden. Therefore, although we could have adopted different assumptions in some areas and this would have impacted the estimates of the economic burden, it would not have impacted the conclusions of this study.
- 17.76 Full details of these sensitivity tests, and the other sensitivity tests we have undertaken, are provided in Appendix D.

***Wider impacts of options and packages***

- 17.77 In addition to costs and passenger benefits we have also estimated the wider social, economic and environmental impacts of the quantified policy options, together with the packages of which they form a part. These impacts result from changes in air fares as a result of the options, and hence changes in demand for air transport.



- 17.78 As noted in section 10, these estimates depend on the extent to which air passengers are aware of, and value, the services the Regulation requires carriers to provide. If passengers were fully aware of the requirements and placed a value on them equivalent to their cost, the options would have no impact on passenger demand, as the value the passengers placed on the services would be equivalent to the impact of the change in fares. However, this appears unlikely: if passengers were fully aware of their rights the claim rates for compensation would probably be much higher than they currently are; and if they placed a value on the services equivalent to their cost, carriers might provide them without a regulatory requirement.
- 17.79 There is no clear evidence for the extent to which these services are understood and valued, and therefore these estimates should be treated as indicative only. To present indicative values, we have assumed that 50% of any change in costs would be valued by passengers, and we then use a price elasticity to convert this to an impact on demand. Changes in passenger demand generate changes in airline and airport employment, emissions, and wider economic benefits. The sources used to guide these assumptions are described in Appendix B.
- 17.80 The wider impacts are shown in Table 17.9 below. We have included wider impacts for Options D2.4B-D on the assumption that an exceptional event has occurred in 2015.

TABLE 17.9 QUANTITATIVE WIDER IMPACTS OF OPTIONS AND PACKAGES

Option / Package		Passengers (%)	Employment (FTEs)	Economic benefits (€ 000s)	CO2 emissions (000s tonnes of CO2)
A1	Repeal of Regulation 261/2004	0.4%	12,616	363,716	1,136
A3.3	Limit circumstances in which compensation payable to those within the control of the carrier	0.0%	1,264	34,986	117
A4.1	Require airports to have particular obligations towards passengers with regard to the provision of information and/or of care	-0.0%	-0	-3	-0
A4.2	Require airports to develop contingency plans for mass disruption	-0.0%	-1	-30	-0
A4.3A	Consistent time thresholds for care for delays, regardless of flight length	-0.0%	-605	-15,209	-60
A4.3B	Consistent time thresholds for care for delays, cancellations and denied boarding, regardless of flight length	-0.0%	-46	1,222	-10
A5.1	Airlines to be obliged to offer rerouting in case of long delays	-0.0%	-521	-11,495	-56
A5.2B	A specific requirement to reroute via other carriers if the initial carrier cannot provide a service within a given amount of time and/or the time saving is more than a certain amount	-0.0%	-1	-38	-0
A5.2C	Regulation clarifies that there is no obligation to reroute on other carriers	0.0%	781	27,059	57
A5.4	Reduce length of delay before passenger can claim refund and not travel from current 5 hours to 1-2 hours as for other modes	-0.1%	-2,059	-49,028	-213
A6.1	Require provision of care and assistance during tarmac delays	-0.0%	-12	-343	-1
A7.1D	Extension to all flights to the EU	-0.1%	-1,302	-17,624	-172
A8.1A	Replace current rights with rights applying for all travel disruption including delays and cancellations (except denied boarding and downgrading), with the assistance threshold set to 2 hours	-0.2%	-5,970	-144,860	-609
A8.1B	Replace current rights with rights applying for all travel disruption including delays and cancellations (except denied boarding and downgrading), with the assistance threshold set to 3 hours	-0.0%	-782	-7,433	-112
A8.2	Consistent rights also covering denied boarding	-0.2%	-5,942	-144,304	-605
A8.3	Consistent rights also covering downgrading	-0.2%	-6,540	-154,828	-678
B1.4	Require presentation of a 'key facts' document	-0.0%	-16	-354	-2

Option / Package		Passengers (%)	Employment (FTEs)	Economic benefits (€ 000s)	CO2 emissions (000s tonnes of CO2)
B2.2	Require fixed-rate monetary compensation payments for delayed or damaged baggage	-0.0%	-784	-17,361	-86
B3.1	Unlimited liability for mobility equipment	-0.0%	-6	-139	-1
C3.2	Define obligation for airline to provide information on incidents at the airport and a contact person at the airport to assist in the event of disruption	-0.0%	-304	-6,781	-33
C4.1	Per-passenger taxes and charges should be automatically refunded to all passengers that do not use their tickets	-0.4%	-9,905	-220,365	-1,073
C4.2	Per-passenger taxes and charges should be refunded without any deduction when requested	-0.2%	-5,281	-117,506	-572
D1.1A	Amend length of delay before compensation is payable for delays and cancellations to 5 hours	0.0%	1,121	31,244	103
D1.1B	Amend length of delay before compensation is payable for delays and cancellations to 12 hours	0.1%	1,847	51,641	169
D1.1C	Amend length of delay before compensation is payable for delays and cancellations to 5 or 12 hours	0.0%	1,289	34,478	122
D1.1D	Sturgeon delay dependent on distance	0.0%	1,163	30,216	112
D1.3A	Compensation to be a function of ticket price	0.0%	1,609	48,922	136
D1.3B	Compensation reduced by 50%	0.0%	1,354	37,491	125
D1.7	Adjust compensation by inflation	-0.0%	-388	-10,168	-37
D1.8	Stronger progressivity of flat rate compensation plus inflation adjustment	0.0%	906	26,931	80
D2.2	Further specify the right to claim from responsible third parties	-0.0%	-13	-285	-1
D2.3A	Limit airline liability in cases of mass disruption via an industry fund which intervenes after 4 days	-0.0%	-366	-8,148	-40
D2.4A	Limit the right of care to 3 nights in all cases, with the cost of accommodation capped at €100 per passenger per night	0.0%	71	1,791	7
D2.4B	Limit the right of care as for D2.4A, but only in cases of exceptional mass disruption	0.0%	291	6,608	33
D2.4C	Limit the right of care as for D2.4A to 4 nights with the cost of accommodation capped at €100, but only in cases of exceptional mass disruption with exception for PRMs	0.0%	234	5,314	26
D2.4D	Limit airline obligation for care in cases of exceptional mass disruption, with the remaining costs borne by government	0.0%	291	6,608	33
D2.5A	Fully or partially exempt flights with small aircraft	0.0%	6	132	1

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Option / Package		Passengers (%)	Employment (FTEs)	Economic benefits (€ 000s)	CO2 emissions (000s tonnes of CO2)
D2.5B	Exempt flights operated by aircraft of less than 100 seats, distance of less than 500 km and airports with less than 250000 pax	0.0%	39	861	4
D2.5C	Exempt flights operated by aircraft of less than 75 seats and distance of less than 250 km	0.0%	83	1,850	9
D2.5D	Exempt flights operated by aircraft of less than 50 seats and distance of less than 250 km	0.0%	15	327	2
D2.7	Define obligation for travel agents to pass information to airlines	-0.0%	-21	-470	-2
D2.8	Airline compelled to offer insurance for care (meals, refreshments, accomodation) - no care provided anymore	0.3%	8,503	248,307	759
E3.7A	Require airlines to provide contact details to the Commission	-0.0%	-0	-1	-0
E4.4	Airlines to be required to prove that they have complied with respect to all passengers	-0.0%	-7	-150	-1
E5.1B	Other service quality data to be published	-0.0%	-0	-5	-0
E5.2	Airlines to develop and apply procedures to comply consistently with the Regulation, including contingency plans	-0.0%	-1	-22	-0
E5.3	Compliance to become a license condition	-0.0%	-1	-21	-0
F2	Complaint handling procedure to be specified, for example in Conditions of Carriage	-0.0%	-22	-484	-2
F3A	Carriers to provide adequate means of receiving complaints				
F3B	Carriers to handle complaints in the languages of the States they operate to	-0.0%	-22	-484	-2
F5	Carriers to respond within fixed timescales				
<b>Option packages:</b>					
P1	Market mechanisms	0.3%	10,134	294,751	907
P2a	Reinforced care, reduced compensation (1)	0.0%	1,655	49,171	146
P2b	Reinforced care, reduced compensation (2)	0.1%	1,770	52,001	158
P3	Passenger package	0.0%	276	15,167	7

## Recommendations on packages

- 17.81 We recommend that, given the problems that have been identified with this Regulation, it should be significantly revised. It is clearly a political decision which of these packages to adopt, if any, but in our view the objectives which the Commission has defined would be best met through package P2, combined with a limit on the obligation to provide care in cases of exceptional events. In particular, this would:
- address the grey zones in the existing Regulation and ensure that its requirements are explicit;
  - allow the Regulation to be revised more easily if operational problems or unintended consequences arose in the future;
  - ensure passengers were provided with appropriate care and assistance including in circumstances not addressed by the current Regulation;
  - make monetary compensation more proportionate;
  - reduce the economic burden on carriers;
  - ensure airlines' terms and conditions were fairer;
  - improve the transparency of information about airline performance, so consumers can make a more informed decision about which airline to fly with;
  - improve compliance with the Regulation, by improving enforcement; and
  - provide passengers with improved means of redress by imposing some minimum standards on airline complaint handling procedures.
- 17.82 Packages P2a and P2b reduce the amount of monetary compensation in partly different ways - P2a by extending the threshold to 5 hours, and P2b by adopting a wider definition of the circumstances in which carriers are exempt than the interpretation of Article 5(3) adopted by the CJEU in the Wallentin judgement. The impact assessment has to assume full compliance with the Regulation and on this basis there would be little difference in the impact of these packages, and indeed P2b may appear fairer, because at present airlines could in principle have to pay compensation in circumstances which are not fully within their control. However, in practice, taking into account the difficulties that passengers have experienced in claiming compensation from airlines, there could be some risks with the adoption of a wider exemption and therefore extending the threshold (P2a) may fit better with the policy objectives.
- 17.83 Although package P3 contains many of the same elements we do not recommend it, primarily because the requirement to reroute on other carriers after a delay of 5 hours could create a barrier to market entry and distort competition.
- 17.84 The option of an airline industry fund to cover costs during exceptional mass disruption has been considered separately from the packages. We do not recommend this, because substantial contributions would have to be collected and there would be a possibility that the fund might never need to pay out.

**Summary evaluation of options against policy objectives**

17.85 This section summarises the qualitative impact assessment in terms of how each option meets the policy objectives defined for the study (Table 2.1 below).

**TABLE 17.10 SPECIFIC POLICY OBJECTIVES**

Specific objective	Specific sub-objective
Maintain and improve the standard of passenger protection	Ensure passengers receive adequate care and compensation in the event of delay, cancellation or denied boarding
	Ensure passengers are adequately protected in situations not already covered by the legislation
	Provide passengers with effective means of redress
Ensure legal certainty	Ensure the legislation is clear and that its requirements are explicit in the text
	Ensure passengers rights are equivalent in equivalent circumstances (principle of equal treatment)
	Ensure enforcement of the legislation is sufficient to achieve consistently high rates of compliance
	Ensure consistency with international law
Ensure the economic burden is fair and proportionate	Ensure that the total cost of compliance to the industry are reasonable
	Ensure that the costs of compliance are shared appropriately within the industry
	Minimise any distortion of competition
	Minimise operational costs (including administrative costs)

17.86 There is some overlap between the objective of ensuring the total cost of compliance is reasonable, and minimising operational costs. We have adopted the following approach to differentiate these:

- I Total cost of compliance:** This is considered to be the economic burden to airlines of meeting the obligations that directly provide passenger benefits (for example payment of compensation), but excluding the direct management and administrative costs of compliance with the Regulation, even where these indirectly generates passenger benefits.
- I Operational costs:** This refers to costs for the industry and NEBs in managing the processes necessary to implement the Regulation (for example complaint handling and enforcement), including administrative costs.

17.87 For each criteria, and for each option, impacts are categorised as follows:

**TABLE 17.11 QUALITATIVE CATEGORISATION OF IMPACTS**

Category	Explanation
✓✓✓	Strong positive impact
✓✓	Positive impact
✓	Weak positive impact
✓?	Any impact positive - but probably no impact
-	No impact
✓*	Positive and negative impacts
*?	Any impact negative - but probably no impact
*	Weak negative impact
**	Negative impact
***	Strong negative impact

17.88 The table below summarises the assessment of each of the options and packages against the objectives.

TABLE 17.12 QUALITATIVE IMPACT ASSESSMENT AGAINST POLICY OBJECTIVES

Option	Sub-options	Maintain and improve passenger protection			Ensure legal certainty				Ensure economic burden fair and proportionate			
		Ensure passengers receive adequate care / compensation in the event of delay, cancellation or denied boarding	Ensure passengers are adequately protected in situations not already covered by the legislation	Provide passengers with effective means of redress	Ensure the legislation is clear and that its requirements are explicit in the text	Ensure passengers rights are equivalent in equivalent circumstances (principle of equal treatment)	Ensure enforcement of the legislation is sufficient to achieve consistently high rates of compliance	Ensure consistency with international law	Ensure that the total cost of compliance to the industry are reasonable	Ensure that the costs of compliance are shared appropriately within the industry	Minimise any distortion of competition	Minimise operational costs (including administrative costs)
A: Options relating to delay, cancellation and other travel disruption												
A1: Repeal of Regulation 261/2004												
		*** Significant reduction in passenger protection	- No impact	*** Passengers would have limited means to obtain redress	✓ Problems removed but by repealing legislation	✓ Passenger rights likely to be equivalent (but minimal)	- Enforcement would not be necessary	✓ Removes any issue of inconsistency	✓✓✓ Removes cost to the industry (-€10.7 billion NPV)	- No impact	✓ Removes any distortion between EU and non-EU carriers on flights to EU	✓✓✓ Removes current administrative costs (-€281.5 million NPV)
A2: No policy action												
		- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact
A3: Options to clarify the existing Regulation	A3.1: Define or clarify key terms within the Regulation such as 'flight' and 'delay'	✓ Resolves problems where caused by lack of clarity	- No impact	✓✓ Facilitates claims by clarifying Regulation	✓✓✓ Would help clarify text	- No impact	✓✓ Facilitates enforcement by clarifying Regulation	- No impact	- No impact	- No impact	✓ May reduce distortion by facilitating more consistent compliance	- No impact
	A3.2: Define extraordinary circumstances, taking into account the Wallentin ruling and definitions used for other modes	✓ Resolves problems where caused by lack of clarity	- No impact	✓✓ Significantly facilitates redress, as many disputes are about this	✓✓ Partly resolves one of the most significant areas of dispute	- No impact	✓✓ Facilitates enforcement by clarifying Regulation	- No impact	- No clear impact (depends on definition adopted)	- No impact	✓ May reduce distortion by facilitating more consistent compliance	✓ Clarification would reduce cost of contesting / investigating cases
	A3.3: Limit circumstances in which compensation payable to those within the control of the carrier	* Reduces compensation in some cases	- No impact	* Makes it harder to prove any right to compensation	✓✓ Partly resolves one of the most significant areas of dispute	- No impact	- No impact	✓? Could be interpreted as improving consistency with Montreal Convention	-✓ Reduction in burden where exemption for extraordinary circumstances (-€1.1 billion NPV)	- No impact	- No impact	✓ Small reduction as NEBs would have to evaluate fewer claims of extraordinary circumstances (-€28.2 million NPV)
	A3.4: Incorporate Court of Justice judgements, particularly Wallentin and Sturgeon, into the main text of the Regulation	✓✓✓ Facilitates passengers obtaining the compensation to which they are entitled, and resolves problems where caused by	- No impact	✓✓ Facilitates claims by clarifying Regulation	✓✓✓ Significantly clarifies position	✓✓✓ Ensures principle of equal treatment respected	✓✓✓ Significantly facilitates enforcement	*? Airlines consider this would infringe Montreal Convention. Will be clarified by cases pending before CJEU.	*? Compensation for delays increases costs relative to current position - but carriers should be paying this compensation already	- No impact	* Potentially distorts competition with non-EU carriers on flights to EU. But reflects current position so not a change.	* Potentially increases number of claims which would have to be processed, and hence operational cost of system. But reflects



Option	Sub-options	Maintain and improve passenger protection			Ensure legal certainty				Ensure economic burden fair and proportionate			
		Ensure passengers receive adequate care / compensation in the event of delay, cancellation or denied boarding	Ensure passengers are adequately protected in situations not already covered by the legislation	Provide passengers with effective means of redress	Ensure the legislation is clear and that its requirements are explicit in the text	Ensure passengers rights are equivalent in equivalent circumstances (principle of equal treatment)	Ensure enforcement of the legislation is sufficient to achieve consistently high rates of compliance	Ensure consistency with international law	Ensure that the total cost of compliance to the industry are reasonable	Ensure that the costs of compliance are shared appropriately within the industry	Minimise any distortion of competition	Minimise operational costs (including administrative costs)
		lack of clarity										current position so not a change.
	A3.5: Clarify the Regulation to specifically reject the Sturgeon judgement	* Reduces compensation in some cases	- No impact	- No impact	✓ ? May clarify position but could be overturned by Court	*** Explicitly conflicts with principle of equal treatment	✓ ? May clarify position but could be overturned by Court	✓ ? Could be interpreted as improving consistency with Montreal Convention	✓ ? Reduces potential cost (although little actual impact relative to current position)	- No impact	✓✓ Reduces distortion of competition with non-EU carriers	✓✓ Reduces number of claims, and hence reduces operational cost of system.
	A3.6: Define rights in the case of multi-cause incidents	✓ Resolves problems where caused by lack of clarity	- No impact	- No impact	✓ Minor improvement to clarity	- No impact	✓ Minor improvement to clarity	- No impact	- No impact	- No impact	- No impact	(✓) Minor reduction in disputes due to improved clarity
	A3.7: Define rights in the case of combined carriage	✓ Improvement for those using combined tickets	✓ Clarifies position for those using combined tickets	- No impact	- No impact	✓ Ensures consistency for multi-modal trips	- No impact	- No impact	* Increases costs for multi-modal trips	? Depends on how costs allocated	✓ Ensures consistency for multi-modal trips	** May be disproportionately complex to implement given small number of passengers impacted
A4: Options relating to passenger care	A4.1: Require airports to have particular obligations towards passengers with regard to the provision of information and/or of care	✓ Could improve provision of certain services	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	✓/* Some cost impact but minimal and may allow airlines to reduce some costs (+€0.2 million NPV)	✓ Appropriate to the extent airports are responsible	- No impact	✓/* Some cost impact but minimal and may allow airlines to reduce some costs (+€0.2 million NPV)
	A4.2: Require airports to develop contingency plans for mass disruption	✓✓ Could improve provision of services during mass disruption	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	* Small increase in burden where plans not already in place (+€1.8 million NPV)	✓ May facilitate appropriate sharing of costs of mass disruption	- No impact	* Costs incurred to prepare plans (+€1.8 million NPV)
	A4.3A: Consistent time thresholds for care for delays, regardless of flight length	✓ Improves consistency	- No impact	- No impact	✓ Simplifies existing requirements	✓✓ Removes relationship to delay length	- No impact	** Risk not consistent with principle of proportionality	** Increase in economic burden (+€563.6 million NPV)	- No impact	- No impact	* Limited increase
	A4.3B: Consistent time thresholds for care for delays, cancellations and denied boarding, regardless	✓✓ Improves	- No impact	- No impact	✓ Simplifies existing	✓✓ Removes	- No impact	* ? Risk not consistent	* Small increase in	- No impact	- No impact	* Limited increase

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Option	Sub-options	Maintain and improve passenger protection			Ensure legal certainty				Ensure economic burden fair and proportionate			
		Ensure passengers receive adequate care / compensation in the event of delay, cancellation or denied boarding	Ensure passengers are adequately protected in situations not already covered by the legislation	Provide passengers with effective means of redress	Ensure the legislation is clear and that its requirements are explicit in the text	Ensure passengers rights are equivalent in equivalent circumstances (principle of equal treatment)	Ensure enforcement of the legislation is sufficient to achieve consistently high rates of compliance	Ensure consistency with international law	Ensure that the total cost of compliance to the industry are reasonable	Ensure that the costs of compliance are shared appropriately within the industry	Minimise any distortion of competition	Minimise operational costs (including administrative costs)
	of flight length	consistency across wider range of disruption			requirements	relationship to delay length		with principle of proportionality although mitigated by limited impact on burden	economic burden (although less than A4.3A; +€97.5 million NPV)			
	A4.4: Clarify that carrier is responsible for arranging care, and that if it fails to do so, the passenger can arrange it themselves and claim back costs from the carrier	✓✓ Improves assistance by clarifying that passengers can reclaim these costs	- No impact	✓ Clarifies that passengers can reclaim these costs	✓✓ Clarifies that passengers can reclaim these costs	- No impact	- No impact	- No impact	✓ Limited impact as clarifies current position. But may help exclude unreasonable claims.	- No impact	- No impact	- No impact - clarifies current position only
A5: Options relating to refunds and rerouting	A5.1: Airlines to be obliged to offer rerouting in case of long delays	✓ Improves rights, but limited benefits, as original flight still operates	- No impact	- No impact	- No impact	✓✓✓ Improves consistency between delay and cancellation	- No impact	- No impact	✖✖ Increases economic burden on carriers (+€563.7 million NPV)	- No impact	✖✖ Depends whether there is a requirement also to reroute on other carriers - if so significant risk of distortion of competition	- No impact
	A5.2A: A general requirement to reroute via other carriers where there is no reasonable alternative	✓ Limited improvement	- No impact	✓✓ Facilities redress by clarifying existing requirement	✓✓✓ Significant clarification to existing requirement	- No impact	- No impact	- No impact	✖ ? Any impact depends on interpretation of existing requirements - none if clarification only	- No impact	✖ ? Any impact depends on interpretation of existing requirements - none if clarification only	✖ ? Any impact depends on interpretation of existing requirements - none if clarification only
	A5.2B: A specific requirement to reroute via other carriers if the initial carrier cannot provide a service within 12 hours	✓✓ Would represent substantial reductions in waiting times in case of some cancellations and denied boarding	- No impact	✓✓ Facilities redress by clarifying existing requirement	✓✓✓ Significant clarification to existing requirement	- No impact	- No impact	- No impact	✖ ? Any impact depends on interpretation of existing requirements - none if clarification only. At industry level no impact	- No impact	✖✖ Could disadvantage smaller carriers and create a barrier to market entry. The extent to which this applies depends on what the current requirement is	✖✖ Rerouting via other carriers may incur higher processing costs for certain types of carrier

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										interpreted to be.		
	A5.2C: Regulation clarifies that there is no obligation to reroute on other carriers	** Would represent substantial increases in waiting times in case of some cancellations and denied boarding	- No impact	✓ Would facilitate redress by clarifying existing requirement, but at expense of reduction in level of care	✓✓✓ Significant clarification to existing requirement	- No impact	- No impact	- No impact	✓✓ Will reduce burden for carriers (-€392.1 million NPV)	- No impact	✓✓ Would be beneficial to smaller carriers	✓✓ Would minimise cost of rerouting via other carriers
	A5.3: Define obligations for carriers when passenger notified of a delay in advance (advance rescheduling of flights)	✓ Removes scope to disguise delay as schedule change	✓✓✓ Significant improvement for case of advance rescheduling	- No impact	✓ Would help clarify what is delay and what is rescheduling	✓✓ Improves consistency with cancellations notified in advance	- No impact	- No impact	* ? May increase burden on carriers, depending on what current requirement is assumed to be	- No impact	- No impact	- No impact
	A5.4: Reduce length of delay before passenger can claim refund and not travel from current 5 hours to 1-2 hours as for other modes	✓ Improvement for some passengers facing delays	- No impact	- No impact	- No impact	✓✓ Improves consistency with cancellations	- No impact	- No impact	*** Significantly increases burden on carriers (+€2.2 billion NPV)	- No impact	✓✓ Improves consistency with other modes	* May increase cost of processing refunds
A6: Options to extend Regulation to cover areas of disruption not currently included	A6.1: Require provision of care and assistance during tarmac delays	✓ Improvement for passengers facing tarmac delays (but small number)	✓ Improvement for passengers facing tarmac delays (but small number)	- No impact	✓ Clarifies current position with regard to delays on board	✓ Improves consistency between on-board and pre-departure delays	- No impact	- No impact	* Increases burden on carriers (+€10.0 million NPV). Higher if necessary to carry additional supplies on aircraft, but can probably be supplied from airport if contingency plans made.	- No impact	- No impact	- No impact
	A6.2: Require care during flight diversions	✓ Improvement for passengers facing diversions (but small number)	✓ Improvement for passengers facing diversions (but small number)	✓ Facilitates redress by clarifying current requirements	✓ Clarification, as this could be interpreted as current position	✓ Improves consistency with delays / cancellations	- No impact	- No impact	* ? Possibly some increase, but arguably current legal and practical	- No impact	- No impact	- No impact

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		Ensure passengers receive adequate care / compensation in the event of delay, cancellation or denied boarding	Ensure passengers are adequately protected in situations not already covered by the legislation	Provide passengers with effective means of redress	Ensure the legislation is clear and that its requirements are explicit in the text	Ensure passengers rights are equivalent in equivalent circumstances (principle of equal treatment)	Ensure enforcement of the legislation is sufficient to achieve consistently high rates of compliance	Ensure consistency with international law	Ensure that the total cost of compliance to the industry are reasonable	Ensure that the costs of compliance are shared appropriately within the industry	Minimise any distortion of competition	Minimise operational costs (including administrative costs)
	A6.3: Missed connections due to delays	✓ Improvement for passengers with missed connections although in most cases airlines already do this	- No impact	✓ Facilitates redress by clarifying current requirements	✓ Clarification, as this could be interpreted as current position	✓ Improves consistency with cancellations	- No impact	- No impact	* ? Some increase but most airlines provide this anyhow; could be interpreted as already being required	- No impact	- No impact	- No impact
A7: Options to extend the scope of the Regulation	A7.1A: Simple clarification by amendment of Article 3(1)(b) to refer to benefits and compensation being provided in line with local law requirements	✓ Small improvement for passengers travelling to EU on EU carriers, by clarifying current position	- No impact	- No impact	✓✓ Current position unclear in some circumstances	- No impact	- No impact	✓ Clarifies that local law takes precedence, where it exists	- No impact - clarification of current position only	- No impact	- No impact	- No impact
	A7.1B: Extension to where the contracting carrier is an EU carrier	✓✓ Improvement for passengers travelling to EU on non-EU carriers	- No impact	- No impact	✓ Current position unclear in some circumstances	✓ Equal treatment between passengers on EU and non-EU carriers	- No impact	*** May be challenged as extra-territorial	* Increases burden on non-EU carriers	- No impact	✓ Improves consistency between EU and non-EU carriers	- No impact
	A7.1C: Extension to charter flights, where tickets have been sold in the EU	✓✓ Improvement for passengers travelling to EU on non-EU charter carriers	- No impact	- No impact	✓ Current position unclear in some circumstances	✓ Equal treatment between passengers on EU and non-EU carriers	- No impact	** May be challenged as extra-territorial	* Increases burden on non-EU carriers	- No impact	✓ Improves consistency between EU and non-EU carriers	- No impact
	A7.1D: Extension to all flights to the EU	✓✓✓ Improvement for passengers travelling to EU on non-EU carriers	- No impact	- No impact	✓ Current position unclear in some circumstances	✓ Equal treatment between passengers on EU and non-EU carriers	- No impact	*** May be challenged as extra-territorial	** Increases burden on non-EU carriers (+€1.6 billion NPV) although may reduce burden on EU carriers which compete with them	- No impact	✓✓✓ Improves consistency between EU and non-EU carriers	- No impact
	A7.2: Extend the Regulation to cover scheduled helicopter services	✓ Ensures passengers using helicopters	✓ Ensures passengers using helicopters	- No impact	- No impact	✓ Equal treatment between fixed	- No impact	- No impact	** Disproportionate cost for some	- No impact	✓ Consistent treatment of fixed	* Increases costs for enforcement

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		protected (but small number)	protected (but small number)			wing and helicopters			helicopter operators due to operational characteristics		wing services where these compete with helicopters	bodies
A8: Options to ensure consistent treatment of different types of travel disruption	A8.1A: Replace current rights with rights applying for all travel disruption including delays and cancellations (except denied boarding and downgrading), with the assistance threshold set to 2 hours	✓✓ Ensures adequate and consistent treatment	✓✓✓ Ensures consistent treatment regardless of cause	✓ May facilitate redress by removing scope to dispute cause of disruption	✓ May clarify position by removing scope to dispute cause of disruption	✓✓✓ Ensures consistent treatment regardless of cause	- No impact	* ? Airlines consider this would infringe Montreal Convention	*** Significant increase in burden for air carriers (+€6.1 billion NPV)	- No impact	- No impact	* May complicate application if based on final arrival time
	A8.1B: Replace current rights with rights applying for all travel disruption including delays and cancellations (except denied boarding and downgrading), with the assistance threshold set to 3 hours	✓ Ensures adequate and consistent treatment	✓✓✓ Ensures consistent treatment regardless of cause	✓ May facilitate redress by removing scope to dispute cause of disruption	✓ May clarify position by removing scope to dispute cause of disruption	✓✓✓ Ensures consistent treatment regardless of cause	- No impact	* ? Airlines consider this would infringe Montreal Convention	*** Significant increase in carrier burden albeit less than for A8.1A (+€1.3 billion NPV)	- No impact	- No impact	* May complicate application if based on final arrival time
	A8.2: Consistent rights also covering denied boarding	* Compensation no longer paid in some cases (although arguably more consistent).	- No impact	** May increase disputes about 'extraordinary circumstances'	- No impact	✓✓ Improves consistency between cancellations and denied boarding	- No impact	- No impact	*** Significant increase in burden for air carriers (+€6.0 billion NPV)	- No impact	- No impact	* May increase disputes about 'extraordinary circumstances'
	A8.3: Consistent rights also covering downgrading	✓ More options offered to passengers facing downgrading	- No impact	* May increase disputes about 'extraordinary circumstances'	- No impact	✓✓ Improves consistency between downgrading and denied boarding	- No impact	- No impact	*** Significant increase in burden for air carriers (+€6.8 billion NPV)	- No impact	- No impact	* May increase disputes about 'extraordinary circumstances'
B1: Options to improve the information provided to passengers	B1.1: Define a minimum standard airline product including check in, issue of a boarding pass, a certain amount of cabin baggage, and potentially also a certain amount of checked baggage	- No impact	✓ Protects passengers from unexpected or unreasonable additional fees	- No impact	** Very difficult to define clearly what a standard airline product should be	- No impact	- No impact	- No impact	** May increase airline operating costs	- No impact	✓ May improve transparency and facilitate price comparisons	*** Difficult and potentially impractical to apply
	B1.2: Define a minimum standard airline product, which would be the basis for fares advertised and initially presented in the booking process, based partly on the proportion of passengers which	- No impact	✓ Protects passengers from unexpected or unreasonable additional fees	- No impact	- No impact	- No impact	* May be difficult to enforce	- No impact	* ? May increase operating costs depending on what is included	- No impact	✓ May improve transparency and facilitate price comparisons	* May be practical difficulties in applying this

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		Ensure passengers receive adequate care / compensation in the event of delay, cancellation or denied boarding	Ensure passengers are adequately protected in situations not already covered by the legislation	Provide passengers with effective means of redress	Ensure the legislation is clear and that its requirements are explicit in the text	Ensure passengers rights are equivalent in equivalent circumstances (principle of equal treatment)	Ensure enforcement of the legislation is sufficient to achieve consistently high rates of compliance	Ensure consistency with international law	Ensure that the total cost of compliance to the industry are reasonable	Ensure that the costs of compliance are shared appropriately within the industry	Minimise any distortion of competition	Minimise operational costs (including administrative costs)
	actually selected "optional" additional services											
	B1.3: Define minimum cabin baggage allowances (e.g. to include airport retail)	- No impact	✓ ? Protects passengers from unexpected or unreasonable additional fees. But may result in allowance for other cabin baggage being reduced	- No impact	- No impact	- No impact	* Difficult to enforce as rules would have to vary between aircraft / route	- No impact	*** Impractical to apply for some aircraft / routes types. Potentially increases baggage handling costs and turnaround times, and causes delay due to need to transfer baggage to the hold.	✓ Benefits airports through retail revenue (although airlines and airports ought to be able to agree between themselves to address this)	✓ May improve transparency and facilitate price comparisons	- No impact
	B1.4: Require presentation of a 'key facts' document	✓ Improves awareness of existing rights	✓ Protects passengers from unexpected or unreasonable additional fees	✓✓ Improves awareness of, and hence ability to enforce, existing rights	- No impact	- No impact	- No impact	- No impact	* Significant potential implementation costs, but no recurring burden (+€21.0 million NPV)	- No impact	✓✓ Improves transparency and facilitates price comparisons	* Significant potential implementation costs, but no recurring burden (+€21.0 million NPV)
B2: Options to require provision of immediate help	B2.1: Require provision of an emergency kit if baggage delayed or lost	- No impact	✓ Assists passengers whose baggage is delayed or lost - although depends on content	* May reduce passengers subsequent scope to claim against carriers	- No impact	- No impact	- No impact	* May conflict with Montreal Convention	** Significant increase in economic burden	- No impact	- No impact	- No impact
	B2.2: Require fixed-rate monetary compensation payments for delayed or damaged baggage	- No impact	✓ Assists passengers whose baggage is delayed or lost - although already entitled to recover costs	- No impact	- No impact	- No impact	- No impact	*** Likely to conflict with Montreal Convention	*** Substantial cost (+€900.4 million NPV) May be unreasonable burden to require airlines to compensate over and above loss incurred	- No impact	- No impact	- No impact
	B2.3: Require free transport of delayed luggage to the passenger	- No impact	✓ Assists passengers whose baggage is delayed - although	- No impact	- No impact	- No impact	- No impact	* May conflict with Montreal Convention	- No impact - airlines already liable for costs	- No impact	- No impact	- No impact

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		Ensure passengers receive adequate care / compensation in the event of delay, cancellation or denied boarding	Ensure passengers are adequately protected in situations not already covered by the legislation	Provide passengers with effective means of redress	Ensure the legislation is clear and that its requirements are explicit in the text	Ensure passengers rights are equivalent in equivalent circumstances (principle of equal treatment)	Ensure enforcement of the legislation is sufficient to achieve consistently high rates of compliance	Ensure consistency with international law	Ensure that the total cost of compliance to the industry are reasonable	Ensure that the costs of compliance are shared appropriately within the industry	Minimise any distortion of competition	Minimise operational costs (including administrative costs)
			generally this happens anyhow									
B3: Options to increase level of compensation available	B3.1: Unlimited liability for mobility equipment	- No impact	✓ Assists passengers with reduced mobility whose equipment is damaged or lost	- No impact	- No impact	- No impact	- No impact	** Conflicts with Montreal Convention. But conflict may be avoided through mandatory insurance.	* Cost impacts small and most airlines say they compensate to full value anyhow (+€6.9 million NPV)	- No impact	- No impact	- No impact
	B3.2: Refund of baggage fees in the event of lost or delayed baggage	- No impact	✓ Assists passengers whose baggage is delayed or lost - although already entitled to recover costs	- No impact	- No impact	- No impact	- No impact	** Likely to conflict with Montreal Convention	** May be unreasonable burden to require airlines to compensate over and above loss incurred	- No impact	- No impact	- No impact
B4: Options to address items missing from baggage	B4.1: Requirement that X-rays of baggage be retained, and provided as evidence	- No impact	✓ ? Limited impact as probably not feasible	✓ ? Limited impact as probably not effective in indicating content	- No impact	- No impact	- No impact	- No impact	*** Substantial implementation costs	- No impact	- No impact	*** Substantial implementation costs and not clear what could be inferred
	B4.2: Requirement that the weight of baggage be retained, and provided as evidence	- No impact	✓ ? Limited impact as probably not feasible	- No impact - not effective in indicating content	- No impact	- No impact	- No impact	- No impact	*** Substantial burden if weight had to be accepted as proof - risk of fraud	- No impact	- No impact	** Some costs as difficult / unclear what can be inferred from baggage weight
	B4.3: Allow special declaration of individual items	- No impact	✓ * Could reduce the potential for dispute about content. But carriers may then refuse to accept item in baggage.	✓ Could reduce the potential for dispute about content	- No impact	- No impact	- No impact	- No impact	* Potential disruption at airports if large number of passengers try to make declaration	- No impact	- No impact	** Some implementation costs, particularly if large number of passengers try to make declaration
C1: Clarify passengers' rights not to use	C1.1: Sequential use of coupons	- No impact	✓ * Assists passengers in a circumstance	✓ Assists passengers in enforcing a	✓ Would help clarify what is already	- No impact	- No impact	- No impact	*** Would deter airlines from	- No impact	- No impact	- No impact

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		Ensure passengers receive adequate care / compensation in the event of delay, cancellation or denied boarding	Ensure passengers are adequately protected in situations not already covered by the legislation	Provide passengers with effective means of redress	Ensure the legislation is clear and that its requirements are explicit in the text	Ensure passengers rights are equivalent in equivalent circumstances (principle of equal treatment)	Ensure enforcement of the legislation is sufficient to achieve consistently high rates of compliance	Ensure consistency with international law	Ensure that the total cost of compliance to the industry are reasonable	Ensure that the costs of compliance are shared appropriately within the industry	Minimise any distortion of competition	Minimise operational costs (including administrative costs)
some or all flight segments			not explicitly covered by existing legislation. But negative impacts as airlines stop selling cheaper indirect tickets.	right they might be considered to have already (although not clear)	required by Directive 93/13/EEC				selling lower priced indirect flights, and undermines yield management systems			
	C1.2: Define that passengers could use any segment of a ticket even if they had not used previous segments, but only if this is due to reasons outside their control	- No impact	✓✓✓ Assists passengers in a circumstance not explicitly covered by existing legislation	✓✓ Assists passengers in enforcing a right they may be considered to have already	✓✓ Would help clarify what is already required by Directive 93/13/EEC. More likely than for C1.1 or C1.3 that this is an existing requirement (and is already partly reflected in IATA RP1724).	- No impact	- No impact	- No impact	* Removes the ability to charge extra to these passengers. But no impact on airline revenue management if limited to 'force majeure', and may be current requirement anyhow.	- No impact	- No impact	- No impact
	C1.3: Define that passengers could use the return segment of a ticket even if they had not used the outward segment, but without a more general right to use other segments ticket even if they have not used the outward segment	- No impact	✓✓ Assists passengers in a circumstance not explicitly covered by existing legislation	✓ Assists passengers in enforcing a right they might be considered to have already (although not clear)	✓ Would help clarify what is already required by Directive 93/13/EEC	- No impact	- No impact	- No impact	** Removes the ability to charge these passengers. Limited impact on airline revenue management.	- No impact	- No impact	* May be some implementation costs if airlines have to require passengers to re-confirm
C2: Require airlines to correct booking errors easily and/or without charge	C2.1: Introduce a 24 hour cooling off period in which the passenger can change the reservation without charge (except for bookings made shortly before departure)	- No impact	✓✓ Assists passengers who change their mind after making a booking	- No impact	✓✓ Would help clarify what is already required by Directive 93/13/EEC	- No impact	- No impact	- No impact	** Potentially undermines airline yield management systems, but limited if short period / advance bookings only	- No impact	- No impact	* Some implementation costs, if airlines have to provide a low cost means for notification of mistakes
	C2.2: Allow clear mistakes to be corrected without fee	- No impact	✓✓ Protects passengers who make small mistakes	- No impact	✓✓ Would help clarify what is already required by Directive	- No impact	- No impact	- No impact	* Removes the ability to charge passengers who have made	- No impact	- No impact	* Some implementation costs, if airlines have to provide a



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					93/13/EEC				mistakes			low cost means for notification of mistakes
C3: Define obligation for airline to provide information on incidents at the airport and a contact person at the airport to assist in the event of disruption	C3.1: Define obligation for airline to provide information on incidents at the airport	✓ May assist passengers in obtaining the rights to which they are entitled	- No impact	- No impact	✓✓ Would clarify existing requirements on information	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact
	C3.2: Define obligation for airline to provide information on incidents at the airport and a contact person at the airport to assist in the event of disruption	✓✓✓ Assists passengers in obtaining the rights to which they are entitled	- No impact	✓✓ Assists passengers in obtaining redress at the airport	- No impact	- No impact	- No impact	- No impact	*** Depending on definition, significant implementation costs (+€340.1 million NPV)	- No impact	- No impact	*** Depending on definition, significant implementation costs (+€340.1 million NPV)
C4.1: Per-passenger taxes and charges should be automatically refunded to all passengers that do not use their tickets		- No impact	✓✓ Assists passengers in obtaining a refund they may already be entitled to anyhow	✓✓ Assists passengers in obtaining a refund they may already be entitled to anyhow	✓✓ Would help clarify what is already required by Directive 93/13/EEC	- No impact	- No impact	- No impact	* ? Reduces airlines' ability to retain taxes and charges - but may be considered they are not entitled to retain these anyhow.	- No impact	- No impact	** Some implementation costs to refund taxes and charges
C4.2: Per-passenger taxes and charges should be refunded without any deduction when requested		- No impact	✓ Assists passengers in obtaining a refund they may already be entitled to anyhow	✓ Assists passengers in obtaining a refund they may already be entitled to anyhow	✓ Would help clarify what is already required by Directive 93/13/EC	- No impact	- No impact	- No impact	* ? Reduces airlines' ability to retain taxes and charges - but may be considered they are not entitled to retain these anyhow.	- No impact	- No impact	** Some implementation costs to refund taxes and charges
C5: Clarify that passengers can transfer the ticket to another person or claim a refund if they cannot travel for reasons outside their control		- No impact	✓✓ Protects passengers who cannot travel due to force majeure	✓✓ Assists passengers in enforcing a right they may be considered to have already	✓✓ Would help clarify what is already required by Directive 93/13/EC	- No impact	- No impact	- No impact	* Reduces airlines' scope to retain revenue from these tickets (but arguably not entitled to)	- No impact	- No impact	** Some implementation costs to refund ticket
D1: Options	D1.1:A Amend length of delay	*	-	-	-	-	-	-	✓✓	-	-	-

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relating to passenger compensation	before compensation is payable for delays and cancellations to 5 hours	Reduces compensation payments	No impact	No impact	No impact	No impact	No impact	No impact	Reduces economic burden of compensation (- €923.7 million NPV)	No impact	No impact	No impact
	D1.1B: Amend length of delay before compensation is payable for delays and cancellations to 12 hours	** Reduces compensation payments	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	✓✓ Reduces economic burden of compensation (- €1.5 billion NPV)	- No impact	- No impact	- No impact
	D1.1C: Amend length of delay before compensation is payable for delays and cancellations to 5 or 12 hours depending on flight length	* Reduces compensation payments	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	✓✓ Reduces economic burden of compensation (- €1.1 billion NPV)	- No impact	- No impact	- No impact
	D1.2: Introduce time threshold for denied boarding	*** Reduces compensation payments and may increase prevalence of overbooking.	- No impact	- No impact	- No impact	✓ Improves consistency between denied boarding and cancellation	- No impact	- No impact	✓ Some reduction in economic burden arising from denied boarding	- No impact	- No impact	- No impact
	D1.3A: Compensation to be a function of ticket price	* Reduces compensation payments, although may be more proportionate	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	✓✓ Reduces economic burden of compensation (- €1.2 billion NPV) particularly for low fares carriers	- No impact	✓ May reduce distortion of competition between low fares carriers and others, but creates difficulties for charter / leisure flights	** May be difficult to calculate amount which should be refunded particularly for charter / leisure flights for which price not explicit
	D1.3B: Compensation reduced by 50%	* Reduces compensation payments	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	✓✓ Reduces economic burden of compensation (- €1.2 billion NPV)	- No impact	- No impact	- No impact
	D1.4: Specify progressive compensation per hour of delay in arrival at the final destination	✓ Impact depends on level but amount may be more	- No impact	- No impact	- No impact	- No impact	- No impact	** With respect to delays, more likely to be	? Impact depends on level at which compensation	- No impact	- No impact	*** Significant practical problems in applying

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		appropriate as linked to disruption						inconsistent with the Montreal Convention	payment set			
	D1.5: Introduce right to automatic compensation if carrier fails to provide care when required by the Regulation	✓✓ Should encourage airlines to comply with their obligations	- No impact	✓✓ Facilitates passengers in obtaining redress	- No impact	- No impact	- No impact	- No impact	** Increased economic burden on carriers	- No impact	- No impact	*** Significant practical problems and operational costs
	D1.6: Introduce right to claim interest if compensation or care/rerouting costs not paid	✓? At best marginal benefit in terms of improved compliance	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	* Increased economic burden on carriers	- No impact	- No impact	** Administrative burden in calculating interest
	D1.7: Adjust compensation by inflation	✓ Small increase in level of compensation payments	- No impact	- No impact	* Compensation amount no longer clearly codified in text	- No impact	- No impact	- No impact	** Costs of compensation are increased (+€333.5 million NPV)	- No impact	- No impact	- No impact
	D1.8: Stronger progressivity of flat rate compensation plus inflation adjustment	** Reduces compensation payments	- No impact	- No impact	* Compensation amount no longer clearly codified in text	- No impact	- No impact	- No impact	✓✓ Reduces economic burden of compensation (-€752.5 million NPV)	- No impact	✓ Improves consistency between ticket price and compensation which may reduce distortion of compt	- No impact
D2: Options to limit or transfer the economic burden on airlines	D2.1: Apply obligation to marketing carrier as well as operating carrier	- No impact	- No impact	✓✓ Would facilitate passengers in claiming redress for codeshare flights	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	** May be impractical or costly to apply, as marketing carrier does not control regulated events
	D2.2: Further specify the right to claim from responsible third parties	- No impact	- No impact	- No impact	✓✓ Would help clarify Article 13	- No impact	- No impact	- No impact	* Short term reduction in airline costs, but ultimately increased as airport and ANSP	✓✓✓ Ensures the responsible party bears the costs	- No impact	*** Potentially substantial operational costs, as airlines, airports and others contest

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		Ensure passengers receive adequate care / compensation in the event of delay, cancellation or denied boarding	Ensure passengers are adequately protected in situations not already covered by the legislation	Provide passengers with effective means of redress	Ensure the legislation is clear and that its requirements are explicit in the text	Ensure passengers rights are equivalent in equivalent circumstances (principle of equal treatment)	Ensure enforcement of the legislation is sufficient to achieve consistently high rates of compliance	Ensure consistency with international law	Ensure that the total cost of compliance to the industry are reasonable	Ensure that the costs of compliance are shared appropriately within the industry	Minimise any distortion of competition	Minimise operational costs (including administrative costs)
									charges increased to compensate, plus increase in total industry costs due to cost of contesting claims (+€408.3 million NPV)			claims (net cost effect is +€408.3 million NPV)
	D2.3A: Limit airline liability in cases of mass disruption via insurance	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	*** Risk not insurable. At best, disproportionately high premiums would be required and it might not be possible to get insurance at all.	✓ Reduces risk to individual air carriers	- No impact	- No impact
	D2.3B: Limit airline liability in cases of mass disruption via an industry fund which intervenes after 4 days	✓ May improve compliance if there was a mass disruption event and therefore ensures passengers are better protected	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	*** Would require a large fund to be built up which might never be paid out (+€408.7 million NPV)	✓ Reduces risk to individual air carriers	- No impact	* Costs associated with management of fund
	D2.4A: Limit the right of care to 3 nights in all cases, with the cost of accommodation capped at €100 per night	*** Reduces entitlement to care - €100 may not be sufficient to cover hotel rooms near all major airports	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	✓✓ Limits airline liability and economic burden (-€73.6 million NPV)	- No impact	- No impact	- No impact
	D2.4B: Limit the right of care as for D2.4A, but only in cases of exceptional mass disruption	*** Reduces entitlement to care in events which may be uninsurable (but very rare)	- No impact	- No impact	* ? Risk extends dispute over 'extraordinary circumstances', but not if limited to exceptional mass disruption	- No impact	* ? Risk extends dispute over 'extraordinary circumstances', but not if limited to exceptional mass disruption	- No impact	✓✓ Limits airline liability and economic burden during mass disruption (-€392.9 million NPV if event in 2015)	- No impact	- No impact	- No impact

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					and this is clearly defined							
	D2.4C: Limit the right of care as for D2.4A to 4 nights with the cost of accommodation capped at €100, but only in cases of exceptional mass disruption with exception for PRMs	** Reduces entitlement to care in events which may be uninsurable (but very rare)	- No impact	- No impact	* ? Risk extends dispute over 'extraordinary circumstances', but not if limited to exceptional mass disruption and this is clearly defined	- No impact	* ? Risk extends dispute over 'extraordinary circumstances', but not if limited to exceptional mass disruption and this is clearly defined	- No impact	✓✓ Limits airline liability and economic burden (-€316.0 million NPV if event in 2015)	- No impact	- No impact	- No impact
	D2.4D: Limit airline obligation for care in cases of exceptional mass disruption, with the remaining costs borne by government	** Reduces entitlement to care in events which may be uninsurable	- No impact	- No impact	* ? Risk extends dispute over 'extraordinary circumstances', but not if limited to exceptional mass disruption and this is clearly defined	- No impact	* ? Risk extends dispute over 'extraordinary circumstances', but not if limited to exceptional mass disruption and this is clearly defined	- No impact	- Limits airline liability, but would be reflected by corresponding increase in State burden.	- No impact	- No impact	- No impact
	D2.5A: Fully or partially exempt flights with small aircraft	* Reduces entitlement but on few flights	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	✓✓ Avoids disproportionate economic burden on operators of small aircraft (-€6.6 million NPV)	- No impact	- No impact provided exemption not permitted where in direct competition with other operators	* Some costs for national authorities associated with handling requests for derogations
	D2.5B: Exempt flights operated by aircraft of less than 100 seats, distance of less than 500 km and airports with less than 250,000 passengers	* Reduces entitlement but on few flights	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	✓✓ Avoids disproportionate economic burden on operators of small aircraft (-€43.2 million NPV)	- No impact	- No impact provided exemption not permitted where in direct competition with other operators	* Some costs for national authorities associated with handling requests for derogations
	D2.5C: Exempt flights operated by aircraft of less than 75 seats and distance of less than 250 km	* Reduces entitlement but on few flights	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	✓✓ Avoids disproportionate economic burden	- No impact	- No impact provided exemption not	* Some costs for national authorities

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									on operators of small aircraft (-€92.8 million NPV)		permitted where in direct competition with other operators	associated with handling requests for derogations
	D2.6: Define when travel agents should be liable to passenger	- No impact	- No impact	*** Passenger needs to be able to claim against a single party	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact: Airlines could already require this through their contracts with travel agents	- No impact	- No impact
	D2.7: Define obligation for travel agents to pass information to airlines	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	* ? Risk of inconsistency with data protection Directive but can be avoided if subject to passenger consent and limited to EU carriers	- Some implementing costs (+€27.9 million NPV) but may enable Regulation to be implemented at lower overall cost	- No impact: Airlines could already require this through their contracts with travel agents	- No impact	- No impact
	D2.8: Airlines obliged to offer insurance instead of care	*** Care no longer provided - passenger decides whether risk is sufficient to justify insurance to cover potential cost. Insurance would probably exclude exceptional events.	- No impact	- No impact	✓ Improves clarity to the extent that the level of care to be provided was previously ambiguous	- No impact	- No impact	✓ ? Some airlines consider obligation to provide care not consistent with Montreal Convention, which would be addressed (however CJEU has confirmed no conflict)	✓✓✓ Costs for care no longer incurred - burden shifts to passengers (-€7.0 billion NPV)	- No impact	✓ Would particularly benefit carriers operating shorter routes	* Insurance companies would incur (and recover from passengers) costs of management and financing of their operations.
E1: No further action by Commission		*** Would not ensure passengers receive what they are entitled to	- No impact	- No impact	- No impact	*** Passenger rights would be different in different States, due to variations in enforcement	*** Enforcement would be ineffective in some States	- No impact	✓ Costs to industry minimised, but potentially through non-compliance	- No impact	*** Distortion of competition within the single market	✓✓ Avoids increasing costs of enforcement system
E2: More systematic infringement proceedings and		✓	-	-	-	✓	-	-	-	-	✓	*

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further strengthening of NEB coordination		May result in an improvement in some States	No impact	No impact	No impact	May reduce differences between some States	May result in an improvement, but not sufficient to meet objective	No impact	No impact	No impact	May reduce distortions in some cases	May increase costs of enforcement system
E3: Options to make sanctions more effective	E3.1A: Replacement of NEBs with EU-level agency	✓✓ May deter the most persistent and severe infringements	- No impact	✓✓ May ensure more effective handling of complaints	✓ Would help ensure a consistent interpretation adopted	✓ Would help ensure a consistent interpretation adopted	✓✓ May be effective in addressing the most persistent infringements	- No impact	* Potentially small increase in enforcement costs (+€46.6 million NPV)	- No impact	✓✓✓ Minimises differences between States	*** Some implementation costs (+€46.6 million NPV). May not be realistic given constraints on EU budget and concerns about subsidiarity.
	E3.1B: Commission to have the power to impose sanctions directly	✓✓ May deter the most persistent and severe infringements	- No impact	- No impact	✓ Would help ensure a consistent interpretation adopted	✓ Would help ensure a consistent interpretation adopted	✓✓ May be effective in addressing the most persistent infringements	- No impact	* Potentially small increase in enforcement costs (+€2.8 million NPV)	- No impact	✓✓✓ Minimises differences between States	* Some implementation costs (+€2.8 million NPV). May be constrained by Commission resource availability
	E3.1C: NEBs retained as local agents or 'antennae' of the EU-level agency	✓✓ May deter the most persistent and severe infringements	- No impact	✓ May ensure more effective handling of complaints	✓ Would help ensure a consistent interpretation adopted	✓ Would help ensure a consistent interpretation adopted	✓✓ May be effective in addressing the most persistent infringements	- No impact	* Potentially small increase in enforcement costs (+€23.3 million NPV)	- No impact	✓✓✓ Minimises differences between States	** Some implementation costs (+€23.3 million NPV). May not be realistic given constraints on EU budget and concerns about subsidiarity.
	E3.2: Commission to require NEBs to investigate individual cases	✓✓ May deter the most persistent and severe infringements	- No impact	- No impact	- No impact	- No impact	✓ May help address the most persistent infringements	- No impact	- No impact	- No impact	✓ May reduce differences between States	* May increase enforcement costs in some States
	E3.3: Commission to have powers to require NEBs to impose fines	✓ ? Limited impact as probably not feasible	- No impact	- No impact	- No impact	- No impact	✓ ? Limited impact as probably not feasible	- No impact	- No impact	- No impact	✓ ? Limited impact as probably not feasible	* May increase enforcement costs in some States

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	E3.4: Give NEBs or licensing authorities the right to suspend traffic rights or ground aircraft	Option not assessed as covered by E5.3										
	E3.6: Require sanctions to exceed a particular level to ensure they can be dissuasive (clarification of need to provide financial incentive only)	✓✓ Should improve compliance where level of sanctions increased	- No impact	- No impact	- No impact	✓ Reduces variation between States	✓✓ Should improve compliance but only where sanctions actually imposed	- No impact	- No impact	- No impact	✓✓ Reduces differences between States	- No impact
	E3.7: Require airlines to designate a person or body in each State on which notifications of sanctions can be served	✓ May improve enforcement and hence compliance in some States	- No impact	- No impact	- No impact	✓ Reduces variation between States	✓✓ Facilitates effective enforcement	- No impact	* Cost to airlines of designating legal representation in each State	- No impact	✓ Reduces variation between States	*** Significant and arguably unnecessary economic burden
	E3.7A: Require airlines to provide contact details to Commission	✓ Facilitates enforcement and hence compliance	- No impact	- No impact	- No impact	- No impact	✓✓ Facilitates effective enforcement	- No impact	* Small increase in airline and NEB costs (+€0.1 million NPV)	- No impact	- No impact	* Some implementation cost but minimal (+€0.1 million NPV)
	E3.8: Require NEBs to provide information to the Commission to demonstrate that sanctions effective	✓ May improve enforcement and hence compliance in some States	- No impact	- No impact	- No impact	✓ Reduces variation between States	✓ May make enforcement more effective in some States	- No impact	* Small increase in NEB costs (+€0.3 million NPV)	- No impact	✓ Reduces variation between States	* Some cost for NEBs but minimal (+€0.3 million NPV)
E4: Other options to improve effectiveness of enforcement	E4.1: NEBs and/or licensing authorities to have power to require provision of information, such as operating manuals and ground handling agreements	✓✓✓ Ensures airlines have appropriate procedures in place to comply	- No impact	- No impact	- No impact	✓ Reduces variation between States	✓✓✓ Would ensure carriers have complaint procedures in place	- No impact	- No impact	- No impact	✓ Reduces variation between States	- Some direct costs but may reduce other enforcement costs
	E4.2: NEBs to publish statistics on complaints, sanctions and other actions taken	- No impact	- No impact	- No impact	- No impact	✓? May help reduce variation between States	✓ May encourage NEBs to enforce more effectively	- No impact	- No impact	- No impact	✓? May help reduce variation between States	* Some cost for NEBs but likely to be low
	E4.3: NEB meetings to be able to issue binding rulings	✓✓ Clarifications would help ensure passengers received their rights	- No impact	✓✓ Clarifications would help facilitate effective redress	- No impact	- No impact	✓✓✓ Clarification would facilitate effective enforcement	*** Inconsistent with general approach to EU law, and possibly with TFEU	- No impact	- No impact	✓✓ Consistent application reduces distortion to competition	- No clear impact: Increased cost of NEB process, but reduced court challenges



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	E4.3A: Detailed provisions to be defined in implementing rules	✓✓ Clearer and more specific requirements would help ensure passengers received their rights	- No impact	✓✓ Clearer and more specific requirements would help facilitate effective redress	✓✓✓ Should enable much clearer and more specific legislation	- No impact	✓✓✓ Clearer and more specific requirements would facilitate effective enforcement	- No impact	- No impact	- No impact	✓✓ Consistent application reduces distortion to competition	- No clear impact: Increased cost of legislative process, but reduced court challenges	
	E4.4: Airlines to be required to prove that they have complied with respect to all passengers	✓✓ Would increase rate of compliance	- No impact	✓✓ Would provide redress to more passengers	- No impact	- No impact	✓✓ Would provide a stronger incentive to comply	- No impact	* Increased costs but due to improved compliance. Also operational cost of applying - +€11.3 million NPV	- No impact	- No impact	** Significant administrative cost to apply	
	E4.5: Improve CPC system	✓ ? Potential benefit but not clear	- No impact	- No impact	- No impact	- No impact	✓ ? Potential benefit but not clear	- No impact	- No impact	- No impact	- No impact	- No impact	
	E4.6: Define role for licensing authority in passenger rights, and clarify relative responsibilities of NEB and licensing authority	Option not assessed, as covered by E5.3											
E5: Other options to encourage good service quality	E5.1A: Publication of delay and cancellation data	✓ May reduce number of incidents and improve passenger awareness	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	* Publication will incur some additional costs (+€0.3 million NPV)	- No impact	✓✓✓ Competition more effective if passengers better informed	* Some administrative cost depending on what is published (+€0.3 million NPV)
	E5.1B: Other service quality data to be published	✓ May reduce number of incidents and improve passenger awareness	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	* Publication will incur some additional costs (+€0.7 million NPV)	- No impact	✓✓✓ Competition more effective if passengers better informed	* Some administrative cost depending on what is published (+€0.7 million NPV)
	E5.2: Airlines to develop and apply procedures to comply consistently with the Regulation, including contingency plans	✓✓✓ Ensures airlines have appropriate procedures in	- No impact	- No impact	- No impact	- No impact	- No impact	✓✓✓ May be more effective than current approach	- No impact	- Some additional costs for airlines and NEBs (+€1.9 million NPV)	- No impact	- No impact	- Some direct costs (+€1.9 million NPV) but may

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		place to comply					to enforcement		million NPV) but potentially offsets other enforcement costs			reduce other enforcement costs
	E5.3: Compliance to become a license condition	✓ / * Ensures airlines have appropriate procedures in place to comply. But potentially negative impact if a license withdrawn and carrier grounded.	- No impact	- No impact	- No impact	- No impact	✓✓✓ May be more effective than current approach to enforcement	- No impact	*** Some direct enforcement and airline costs (+€1.4 million NPV), and severe impact for carrier if license withdrawn	- No impact	** Could only apply to EU carriers so may distort competition	- Some direct costs (+€1.4 million NPV) but may reduce other enforcement costs
E6: Options to extend the scope of enforcement activity	E6.1A: Expand scope of NEBs to cover baggage issues (including complaint handling)	- No impact	✓✓✓ Would improve compliance with baggage rules	✓✓ Depending on approach of NEBs may provide some passengers with redress	- No impact	- No impact	✓✓✓ Helps ensure baggage requirements respected	- No impact	** Expansion of scope will incur additional costs (+€199.5 million NPV)	- No impact	✓✓ Reduces distortions by improving consistency between States	*** Increased costs for NEBs (+€199.5 million NPV)
	E6.1B: Expand scope of NEBs to cover baggage issues (no complaint handling)	- No impact	✓✓✓ Would improve compliance with baggage rules	- No impact	- No impact	- No impact	✓✓✓ Helps ensure baggage requirements respected	- No impact	* Expansion of scope will incur additional costs but minimal (+€0.4 million NPV)	- No impact	✓✓ Reduces distortions by improving consistency between States	* Increased costs for NEBs (+€0.4 million NPV)
	E6.2A: Expand scope of NEBs to cover other consumer issues in air transport (including complaint handling)	- No impact	✓✓✓ Would improve compliance with other elements of legislation	✓✓ Depending on approach of NEBs may provide some passengers with redress	- No impact	- No impact	✓✓✓ Helps ensure other legislation is respected	- No impact	** Expansion of scope will incur additional costs (+€225.2 million NPV)	- No impact	✓✓ Reduces distortions by improving consistency between States	*** Increased costs for NEBs (+€225.2 million NPV)
	E6.2B: Expand scope of NEBs to cover other consumer issues in air transport (no complaint handling)	- No impact	✓✓✓ Would improve compliance with other elements of legislation	- No impact	- No impact	- No impact	✓✓✓ Helps ensure other legislation is respected	- No impact	* Expansion of scope will incur additional costs but minimal (+€0.7 million NPV)	- No impact	✓✓ Reduces distortions by improving consistency between States	* Increased costs for NEBs (+€0.7 million NPV)
F1: No action		-	-	✓	-	-	-	-	-	-	-	-

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		No impact	No impact	May be some improvement as a result of other measures	No impact	No impact	No impact	No impact	No impact	No impact	No impact	No impact
F2: Complaint handling procedure to be specified, for example in Conditions of Carriage		- No impact	- No impact	✓✓ Would facilitate passengers in making complaints	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	* Some compliance costs for air carriers	* Some compliance costs for air carriers
F3A: Carriers to provide adequate means of receiving complaints		- No impact	- No impact	✓✓ Would facilitate passengers in making complaints	- No impact	- No impact	- No impact	- No impact	* Will incur additional costs for carriers but minimal	- No impact	✓ May reduce distortions of competition	* Some compliance costs for air carriers
F3B: Carriers to handle complaints in the languages of the States they operate to		- No impact	- No impact	✓✓ Would facilitate passengers in making complaints	- No impact	- No impact	- No impact	- No impact	* Will incur additional costs for carriers but minimal	- No impact	✓ May reduce distortions of competition	* Some compliance costs for air carriers
F4: Extend deadlines for passengers to complain about delay or damage to baggage		- No impact	✓✓ Would facilitate passengers in obtaining compensation to which they are entitled in cases of delayed or damaged baggage	✓✓ Would facilitate passengers in making complaints	- No impact	- No impact	- No impact	*** Not consistent with Montreal Convention	* Potentially increased risk of fraudulent claims	- No impact	- No impact	- No impact
F4A: Require PIR to be issued at the airport and accepted as a claim for the purpose of the Montreal Convention		- No impact	✓✓ Would facilitate passengers in obtaining compensation to which they are entitled in cases of delayed or damaged baggage	✓✓ Would facilitate passengers in making complaints	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact
F5: Carriers to respond within fixed timescales		- No impact	- No impact	✓✓ Would improve complaint handling	- No impact	- No impact	- No impact	- No impact	* Will incur additional costs for carriers but minimal	- No impact	- No impact	** Increases air carrier complaint handling costs

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F7: All States to have ADR in place		- No impact	- No impact	✓✓✓ Significantly improved means of redress	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	✓ Reduces distortion of competition, as some States/NEBs provide this anyhow.	*** ADR system could have significant costs
F7A: Amendment of complaint handling system to reflect proposal on ADRs		- No impact	- No impact	✓ Would potentially improve means of redress	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	✓ Reduces distortion of competition, as some States/NEBs provide this anyhow.	* Could generate limited incremental costs
P1: Market mechanisms		*** Reduces compensation payments and care no longer provided. However, clarification resolves problems caused by lack of clarity, and could improve contingency planning. Should improve compliance if sanctions also imposed	✓ Some improvement for passengers situations not explicitly covered in the existing legislation although very limited due to the fact care no longer has to be provided	✓ Facilitates claims by clarifying some existing requirements although benefit limited due to the fact care no longer has to be provided	✓✓ Clarifies some key elements of Regulation and Directive 93/13/EEC, but compensation amounts no longer clearly specified in text due to indexation	✓✓✓ Improves consistency with cancellations notified in advance, and between delays and cancellations on-board and pre-departure delays. Also addresses inconsistencies in enforcement.	✓✓✓ Facilitates enforcement by clarifying Regulation, and Should improve compliance if sanctions also imposed, and would ensure carriers have complaint procedures in place	- No impact	✓✓✓ Substantial reduction in economic burden on the industry (-€8.3 billion NPV)	✓ May facilitate appropriate sharing of costs of mass disruption	✓* May reduce distortion by facilitating more consistent compliance, and improves consistency between ticket price and level of compensation. However any increased obligation to reroute on other carriers may create a barrier to entry.	* Clarification would reduce cost of contesting / investigating cases, although some operational/ implementation costs for industry and some NEBs (+€64.4 million NPV)
P2a: Reinforced care, reduced compensation (1)		✓✓ Reduces compensation payments and exempts small number of regional services; but clarification resolves problems caused by lack of clarity, and could improve	✓✓✓ Significant improvement for passengers facing a range of situations not explicitly covered in the existing legislation	✓✓✓ Facilitates claims by clarifying some existing requirements	✓✓ Clarifies and simplifies some key elements of Regulation and Directive 93/13/EEC, but compensation amounts no longer clearly specified in text due to indexation	✓✓✓ Improves consistency with cancellations notified in advance, and between delays and cancellations on-board and pre-departure delays. Also addresses inconsistencies in	✓✓✓ Facilitates enforcement by clarifying Regulation, and Should improve compliance if sanctions also imposed, and would ensure carriers have complaint	- No impact	✓✓ Significant reduction in the economic burden on the industry mostly due to reduced obligation to pay monetary compensation (-€1.3 billion NPV)	✓✓ May facilitate appropriate sharing of costs of mass disruption, and strengthens role of airports	✓* May reduce distortion by facilitating more consistent compliance, and improves consistency between ticket price and level of compensation. However any	* Clarification would reduce cost of contesting / investigating cases, although some operational/ implementation costs for industry and some NEBs (+€64.3 million NPV)

Option	Sub-options	Maintain and improve passenger protection			Ensure legal certainty				Ensure economic burden fair and proportionate			
		Ensure passengers receive adequate care / compensation in the event of delay, cancellation or denied boarding	Ensure passengers are adequately protected in situations not already covered by the legislation	Provide passengers with effective means of redress	Ensure the legislation is clear and that its requirements are explicit in the text	Ensure passengers rights are equivalent in equivalent circumstances (principle of equal treatment)	Ensure enforcement of the legislation is sufficient to achieve consistently high rates of compliance	Ensure consistency with international law	Ensure that the total cost of compliance to the industry are reasonable	Ensure that the costs of compliance are shared appropriately within the industry	Minimise any distortion of competition	Minimise operational costs (including administrative costs)
		contingency planning. Should improve compliance if sanctions also imposed				enforcement.	procedures in place				increased obligation to reroute on other carriers may create a barrier to entry.	
P2b: Reinforced care, reduced compensation (2)		✓✓ Reduces compensation payments and exempts small number of regional services; but clarification resolves problems caused by lack of clarity, and could improve contingency planning. Should improve compliance if sanctions also imposed	✓✓✓ Significant improvement for passengers facing a range of situations not explicitly covered in the existing legislation	✓✓✓ Facilitates claims by clarifying some existing requirements	✓✓ Clarifies and simplifies some key elements of Regulation and Directive 93/13/EEC, but compensation amounts no longer clearly specified in text due to indexation	✓✓✓ Improves consistency with cancellations notified in advance, and between delays and cancellations on-board and pre-departure delays. Also addresses inconsistencies in enforcement.	✓✓✓ Facilitates enforcement by clarifying Regulation, and Should improve compliance if sanctions also imposed, and would ensure carriers have complaint procedures in place	- No impact	✓ Significant reduction in the economic burden on the industry mostly due to reduced obligation to pay monetary compensation (-€1.5 billion NPV). Particular reduction in circumstances outside the direct control of the carrier.	✓✓ May facilitate appropriate sharing of costs of mass disruption, and strengthens role of airports	✓* May reduce distortion by facilitating more consistent compliance, and improves consistency between ticket price and level of compensation. However any increased obligation to reroute on other carriers may create a barrier to entry.	- Clarification would reduce cost of contesting / investigating cases, although some operational/ implementation costs for industry and some NEBs (although NEB costs would also reduce as would have to evaluate fewer claims of extraordinary circumstances) (+€36.1 million NPV)
P3: Passenger package		✓✓✓ Reduces compensation payments, but clarification resolves problems caused by lack of clarity, and could improve contingency planning. Should improve compliance if sanctions also imposed	✓✓✓ Significant improvement for passengers facing a range of situations not explicitly covered in the existing legislation	✓✓✓ Facilitates claims by clarifying some existing requirements	✓✓ Clarifies and simplifies some key elements of Regulation and Directive 93/13/EEC, but compensation amounts no longer clearly specified in text due to indexation	✓✓✓ Improves consistency with cancellations notified in advance, and between delays and cancellations on-board and pre-departure delays. Also addresses inconsistencies in enforcement.	✓✓✓ Facilitates enforcement by clarifying Regulation, and Should improve compliance if sanctions also imposed, and would ensure carriers have complaint procedures in place	- No impact	- Approximately cost neutral. Reduction in cost of compensation, but small increase in administrative costs and passenger redress. Also removes ability to levy additional passenger charges and increases NEB costs (+€205.4 million NPV)	✓✓ May facilitate appropriate sharing of costs of mass disruption, and strengthens role of airports	** May reduce distortion by facilitating more consistent compliance, and improves consistency between ticket price and level of compensation. However, extension to obligation to reroute on other carriers significantly	* Clarification would reduce cost of contesting / investigating cases, although some operational/ implementation costs for industry and some NEBs (+€286.7 million NPV)

## Final report

Option	Sub-options	Maintain and improve passenger protection			Ensure legal certainty				Ensure economic burden fair and proportionate			
		Ensure passengers receive adequate care / compensation in the event of delay, cancellation or denied boarding	Ensure passengers are adequately protected in situations not already covered by the legislation	Provide passengers with effective means of redress	Ensure the legislation is clear and that its requirements are explicit in the text	Ensure passengers rights are equivalent in equivalent circumstances (principle of equal treatment)	Ensure enforcement of the legislation is sufficient to achieve consistently high rates of compliance	Ensure consistency with international law	Ensure that the total cost of compliance to the industry are reasonable	Ensure that the costs of compliance are shared appropriately within the industry	Minimise any distortion of competition	Minimise operational costs (including administrative costs)
											disadvantages smaller carriers and may distort competition.	











CONTROL SHEET

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Document Title                    Final report

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