

# **Minutes from the Stakeholder Hearing on the public consultation on air passenger rights (28 June 2010)**

## **1. Introduction**

The hearing was opened by European Commission Vice-President Siim Kallas who thanked the participants for their contributions to the Public Consultation and outlined the results of the consultation, stating that the response to this consultation had been a great success. Mr Kallas emphasised that the Commission's priority was to have a broad, inter-modal approach to passenger rights, with particular focus on more information, greater protection and inter-modality, as well as a more uniform application of rules across Member States.

Mr Kallas also outlined that the outcome of the public consultation will feed into a general reflection about the future of APR policy. He indicated that two Communications will be adopted in 2010 on the APR Regulation and on the PRM Regulation.

The Vice-President's introduction was followed by a welcome by the President of the Transport, Energy, Infrastructure and the Information Society Section of the EESC, János Tóth. Mr Toth highlighted that the EESC was pleased that guaranteeing consumer rights of passengers, especially for PRMs is at the centre of EU Commission's interest and that EU legislation is checked regarding its actual implementation in the Member States. The air transport sector was severely touched by the recession and the ash crisis, revealing an increased need for EU coordination in this area. The EESC would like to ask Member States and the Commission for prompt measures to develop the Single European Sky and for developing a modern and integrated vision of the air transport sector, and is ready to assist.

## **2. Panel and discussion on Regulation (EC) 261/2004 "APR Regulation"**

**Moderators: Marjeta Jager**

### **UK Civil Aviation Authority (UK CAA)**

- In terms of compliance and enforcement it is important to take stock and to look at existing and perceived problems which were exposed by the recent ash cloud crisis. Consumers were generally well-protected by the Regulation during the ash incident.
- Sanctions should be in place and used appropriately, but other measures should be considered first, including instruments such as small claims courts and alternative dispute resolution.
- It is important to address the trend of repeated offences.
- There are limited resources in terms staff, therefore national enforcement bodies need to work together.
- EU Legislation needs to be comparable with other countries' legislation to ensure a worldwide level playing field.

### **Association of European Airlines (AEA)**

- It is in the industry's interest to serve the consumers irrespective of the legislation. Failure to do so will result in punishment through the market.
- The APR Regulation was highly controversial when first introduced, as it was understood to replace market regulation. By imposing penalty payments, airlines are discouraged to use other methods of compensation.
- Such penalty payments penalise airlines and are not necessarily in the consumers' interests.
- The ash cloud incident revealed some problems with the APR Regulation, which was never intended to cover such circumstances.
- By its ruling in the Sturgeon case, the ECJ widened the scope of the regulation. Many airlines see "Sturgeon

chaos” as unfair and burdensome on the industry.

- There is a need to define further “extraordinary circumstances”. The definition under US legislation could be taken as a model.
- Inconsistencies amongst NEBs interpretation also need to be addressed, and a level playing field between modes of transport and non European carriers when departing from a Third Country should be ensured.
- Alternative dispute resolution should be considered.

#### **European Commission** (*Marjeta Jager*)

- During the last transport Council (24/06/2010), the Commission discussed APR, US rules and Open Sky Agreement. The Commission recognises the need for a level playing field.
- Other modes of transport: the rail regulation became applicable in December 2009, negotiations were concluded the previous week on the maritime passenger rights dossier, so legislation will soon be adopted in that area of transport.

#### **European Passenger Federation (EPF)**

- Data on levels of passenger satisfaction and reports in the UK reveal frustration of passengers.
- Inter modality is very important as most journeys require several different modes. However, there is no assurance that things will be dealt with if they go wrong. For example, Rail Passenger Rights Regulation (Article 28) requires rail companies to enter into a process of annual reporting on consumer satisfaction and publish this information. This obligation should be extended across all transport modes.
- The adequacy of monitoring performance of how passengers’ rights are implemented must be addressed Greater satisfaction for the end user is key.
- The majority of passengers are not frequent flyers and therefore not necessarily acquainted with their rights. This should be taken into account and legislation should facilitate easy redress.

#### **Questions/comments for the panel:**

##### **Danish Consumer Council**

- The question of sufficient information is very important. In all airports, signs are in place, but experience shows that even when consumers know their rights the company will disagree in many cases and information is very complicated.
- The concept of ‘extraordinary circumstances’ can be interpreted in many different ways.
- Different sanctions apply – but strong measures should be taken in cases of repeated infringements.
- According to a Danish survey: 1/3 of passengers feel that, even if they know their rights, they are badly treated.

##### **European Commission** (*Marjeta Jager*)

- The Commission is doing as much as possible to inform passengers (through information campaigns, providing NEBs with guidelines etc.) and NEB have improved the information they offer to passengers. Besides, EU finances services, such as the European Consumer Centre Network (ECC network) and Europe Direct Contact Center (EDCC) which help thousands of passengers every year. Nevertheless, only the Court can interpret the Regulation.

##### **EUclaim:**

- Referring to “Sturgeon chaos”: replies from airlines to passengers are often complicated and difficult to understand. There are many possible interpretations of the APR Regulation and it is not easy for passengers to know where their NEB is located and how they can contact them, for example. NEBs refuse to represent passengers. Why is this? (addressed to UK CAA)

##### **UK Civil Aviation Authority (UK CAA)**

- UK CAA takes a robust position on the Sturgeon case. There are some problems/inconsistencies but the ruling is quite clear and they are enforcing it.

- UK NEBs complaint procedure is designed to be user friendly and without requiring a lawyer's involvement. Small claim's courts are in fact user friendly, airlines may have an advantage, but the judge will take into consideration the fact that airlines have better lawyers.
- Information is key and needs to be made available even though passengers are only interested in their rights when things go wrong.

#### **Frank Peters (individual)**

- It is very difficult to get through to airlines, e.g. passengers often receive a tel./fax number that doesn't work. Even if passengers know their rights, the problem lies in how to enforce them. What procedure does the Commission intend to implement to ensure the enforcement of rights in a smooth, fast and fair way?

#### **Association of European Airlines (AEA)**

- The Regulation is very clear – information in airports, on airline websites irrespective of the airline's business model has already been discussed.
- A harmonised complaint form has been approved at EU level (available on airline's and Commission's website – it is very accessible and clear). Airlines have a huge amount of complaints to deal with.
- Depending on national legislation, there is always legal recourse to administrative or legal procedures in Member States.

#### **European Passenger Federation (EPF)**

- Easy Jet is a model for communicating with passengers.
- Monitoring as well as measuring and publicising consumer satisfaction for each mode of transport is key. A disciplined system to deal with the matter systematically is needed.

#### **UK Civil Aviation Authority (UK CAA)**

- UK CAA spent the last 12 months going through airline systems. Except for one carrier, there was a good response from industry and an understanding that passengers are the commercial "lifeblood".
- Information is key and needs to be shared between NEBs. It helps to identify patterns.

#### **European Commission (Marjeta Jager)**

- The Commission cannot harmonise sanction schemes and complaint handling procedures since under the principle of subsidiarity each Member State is entitled to put in place its national system.

#### **Luftfahrt Bundesamt (German NEB )**

- Their experience of the complaint procedure is not entirely positive. The procedure is undergoing a review to make greater use of fines.

#### **Association of Travellers (Netherlands)**

- How can we ensure that airlines comply with the Regulation? Compensations should be automatic: when there is a delay of 4 or more hours, everybody should be entitled to compensation without having to go back to the company.

#### **French National Railway Corporation (SNCF)**

- The implementation of passenger rights is a question not only of goodwill but also of training.
- It is important to keep customers informed. Does the Commission talk with members of staff and trade unions on this subject?

### **3. Panel on Regulation (EC)1107/2006 "The PRM Regulation"**

### **European Commission** (*Salvatore D'Acunto*)

- Greater publicity and awareness for PRMs is needed, especially with respect to pre-notification.

### **Italian National Enforcement Body (ENAC)**

- The Italian NEB decided to organise a technical round-table with all stakeholders to discuss the application of Regulation 1107/2006. A circular was produced providing guidance in applying the Regulation and setting quality levels, including minimum standards in providing medical assistance and training.
- An information leaflet on APR was recently published by ENAC in Braille. This leaflet is made available for consultation in all national airports carrying civil passengers where PRMs are received and where they may have a special waiting room.

### **International Air Carrier Association (IACA)**

- Airports are responsible since 2008 for providing assistance and organising and ensuring funding for PRM-friendly infrastructure. At present, the PRM Regulation is not implemented properly by airports and NEBs. There are two main shortcomings:
  - Since 2008, service levels have dropped, and there are problems with the pre-notification process.
  - PRM charges are not always transparent, and costs have increased for PRMs.
- No revision is needed but current legislation needs to be implemented correctly, and NEBs should invest in expertise and skills.

### **European Disability Forum (EDF)**

- On the whole, the PRM regulation has changed the situation very positively.
- But there are still some problems e.g. seating issues with more seats put in the plane to generate more profit, thus reducing the space between rows, or enforcement issues such as PRMs being denied boarding with a wheelchair.
- Passengers need assurance that their needs will be met. It may be impossible for PRMs to know their needs in advance, as they may decide to book a ticket for the next day and a 48 hour pre-notification would restrict this choice. Non informed passengers, including non-EU passengers may suffer. Information is critical.
- There is a need for seamless treatment: therefore, intermodality is very important especially in airport hubs where mobility equipment is passed from one company to another.

### **European Commission** (*Salvatore D'Acunto*)

- These testimonies are very useful to identify problems. The Regulation has indeed changed practices. The Commission is a key stakeholder in coordinating Member State actions.

### **Questions/comments to the panel:**

#### **Airports Council International (ACI)**

- Pre-notification is essential for PRMs, airports and airlines in order to be able to provide appropriate assistance.
- The main problems are that PRM charges vary according to Member State and destination, airlines are not always paying and there is only a 40% pre-notification rate around Europe. Airports provide assistance even without pre-notification
- 

#### **TUI Travel**

- There are no incentives for passengers who have pre-notified such as priority given to those passengers who pre-notified.
- In the US there is a system of 'informed compliance' whereby PRMs are informed at check-in that they should pre-notify on their next journey.

- The role of NEBs should be enforced to inform the public.

#### **European Aviation Safety Agency (EASA)**

- With regard to the amount of the charge, these may differ between airports, but the network of airports allows charges to be competitive and supports a standardised approach.

#### **International Air Carrier Association (IACA)**

- IACA would favour a service level agreement between airlines and airports. This would also specify responsibilities and liabilities.

### **4. Panel on Regulation (EC) 889/2002 “The Liability Regulation”**

#### **European Consumer Centre (Germany)**

- There has been an increase in the number of complaints linked to the ash crisis, mostly relating to lost or mishandled luggage. Carriers and handlers reject responsibility and place it on one another.
- Time limits are also a problem with some companies requiring a complaint to be made within 21 days. There is a lot of room for interpretation of the rules.
- There should be clearly established rules with time limits for responding to requests, flat rate damages. Co-operation between the ECC net and NEBs should also be improved, especially with regard to baggage claims.

#### **International Air Transport Association (IATA)**

- The cost of mishandled luggage represents 4 billion US \$ per year in costs for the industry.
- There is a chain of responsible actors involved in luggage handling; therefore rules need to be implemented by all stakeholders.
- A 2009 SITA report shows a 98% success rate on luggage handling. The industry is doing very well. More than 25% of claims occur in a very small number of locations – global regulation would be heavy-handed. The Baggage Improvement Programme (BIP) could be used instead.
- Baggage liability is already regulated by the Montreal Convention which is an integral system based on a balance between the interests of passengers and those of airlines. The Convention also provides for updates of baggage liability limits on a regular basis, and such a limit can be increased if a higher value is declared.

#### **The European Consumer Organisation (BEUC)**

- For a market to be competitive there needs to be strong regulation.
- The ash crisis was exceptional and should not be used as an excuse to water down current air passenger rights. Lessons learnt from the crisis are that information, guidelines and assistance need to be provided.
- When revising different pieces of legislation, a consistent approach is needed ensuring the same rights and obligations whatever the status of the flight.
- There is no systematic data on the number of luggage lost. There is a need for reporting on implementation, including progress.

#### **Questions/Comments to the panel:**

#### **European Disability Forum (EDF)**

- Unlimited compensation is needed for mobility equipment because this equipment is very costly and essential for PRMs.
- Training luggage handlers on how to handle mobility equipment would be a very cost-efficient way to decrease related problems.
- Not all air carriers respect the Montreal Convention requirements.

#### **European Passenger Federation (EPF)**

- Many agents are involved in baggage handling and therefore there is a need for regulation, in particular with regard to monopoly agents.
- The rate of regulation should be mainly driven by consumer satisfaction levels.

#### **International Air Transport Association (IATA)**

- A harmonised, industry-wide solution is preferable, but this is limited by the work of the Commission and Member States, which hampers IATA's initiatives.
- The Baggage Improvement Programme helps to find efficient solutions without regulation.

#### **European Commission** (*Flor Diaz Pulido*)

- The period after the hearing and before the adoption of the coming communications will be a reflection time for the Commission, who is working very actively to ensure better coordination between Member States.
- All comments and observations provided by the parties during this public consultation will be taken into account in this reflection

#### **AirTransport Users Council UK (UK NEB in charge of complaint handling)**

- There is enough legislation regarding liability and consumer practices (UK has other consumer legislation such as The Unfair Contract Terms Act). The problem is with enforcement. A more detailed discussion is needed, as well as more data on performance to be able to pursue this discussion and assess the scale of the problems before enacting more legislation. .

## **5. Discussion of issues not covered by EU legislation**

**Moderators:** Salvatore D'ACUNTO and Flor DIAZ PULIDO

#### **European Economic and Social Committee (EESC), Member representing the Danish Consumer Council**

- Not all issues are addressed by the survey.
- There is a need for a comprehensive approach, more regulations and an understanding of how these rules will be managed.
- Some passengers do not understand the difference between package travel and normal travel. Research shows that the travel pattern has changed and that fewer people take package travel.
- Many other sectors are regulated; therefore the aviation sector should also be regulated.
- Complaints handling is also key. It does not work within the compensation system and is not taken seriously.
- The Commission should consider an ADR system such as the one in place in Denmark.
- Harmonizing rules on cooling off periods is necessary. The current situation is confusing as procedures differ between airlines.
- Price indication on the internet is also important. In Denmark, there have been discussions that only certain items may be added to the price. There should be limits on added charges.

#### **European Regions Airline Association (ERA)**

- There is not a 'one size fits all' solution for all airlines.
- Airlines have to be consumer friendly if they want to stay in business. Consumer friendliness takes many forms including price, product, route network, loyalty schemes and safety.
- In a deregulated market, consumers have a choice of product and price. If an airline is not offering a service, the competitor will step in and passengers benefit from this.
- Regulation needs to be accompanied by a clear justification that it would benefit the consumer.
- On regulating seat pitch: this is already regulated for safety, further regulation would restrict the airline's ability to compete, raise costs for flights and fares and make it more difficult for smaller operators to compete.
- On cabin baggage policies: this is already regulated for safety. Any further regulation would be anti-competitive and limit the choice for consumers. It would also be difficult to create a rule that takes into account different aircraft types without risking putting regional airlines out of business.

- It is important to ensure that passengers are aware of what they are buying as well as from which rights they will benefit from when things go wrong. The solution is better transparency.
- There should be equality across modes, especially as regional airlines compete with other modes of transport. It is unfair that unlimited liability for assistance during force majeure events applies to airlines under Regulation 261/2004 but not to rail.
- Safety is critical, and no regulation should ever jeopardise safety.
- All consumer rights regulations affect consumers and employees. Interference in the market would potentially result in loss of routes, mobility and jobs. This would damage the social and economic infrastructure of regions of Europe.
- The full impact of more regulation should be assessed before it is proposed.

**European Commission (*D'Acunto*):** Not that many respondents were in favour of regulating the distance between seat rows. With regard to unreasonable fees, there was no general consensus either.

#### **Confederation of Consumers and Users (CECU)**

- Consumers do not need to be experts on consumer issues, because changes occur too rapidly. Information to consumers is very important, and the service provider is responsible for this.
- In December 2009, a study on electronic contracts in transportation (not just airlines) – highlighted a lack of information on where to complain. Since December the situation has improved mainly due to pressure put on airlines.
- There are many problems that occur with regard to business practices such as rescheduling and no-show policy, and some of these problems are difficult to explain to consumers.
- There is a problem of implementation of the Regulation, and a lack of surveillance. The law should be clear enough to be understood and not be interpreted in different ways. There should be more persons available to deal with these issues (desks at airports, including after hours).
- Is there any information about how the airport users committee is functioning at local level? There is no connection between airline and airport management. There is also a problem of training.
- About minimum space between rows: this is a health and safety issue especially for long haul flights. There is also an unwelcome growing trend of introducing quality for a price.
- Regulation should not be seen negatively. It may result in more people choosing European airlines because of quality.
- Airlines are pushed too far with regard to baggage; a lot of responsibility is in fact on the airport. It may be an idea to backer-introduce the system of showing the ticket to prove ownership of baggage.

#### **European Economic and Social Committee (EESC)**

- Low cost airports have an overcapacity. Many people with low income are travelling through these airports. The relevant national authority should check whether an airport has the capacity to handle these travellers. Passengers should be informed that the airport of their arrival might be far from the main city, although its name might be misleading.
- On no-show policy: low costs do not have such rules.

## **6. Panel and discussion on Regulation 1008/2008 on Air Carrier Insolvency**

**European Commission (*Gilles Gantelet*)** presented the summaries of contributions and underlined that the European Commission does not have any preconceived ideas with regard to insolvency and the best way to deal with its consequences on passengers.

#### **European Low Fares Airline Association (ELFAA)**

- The low fares sector is born of the liberalisation of market access by EU. It allows passengers to choose and pay for the services they want without having to cross-subsidise other passengers requiring certain services which are not requested by all passengers.
- The proportion of consumers affected by airline failure is negligible.

- The difference with package holidays is justified as passengers, who miss the flight on a package, lose all their holiday.
- It is the regulator's responsibility to be vigilant of airlines that show financial weakness and be aware of signals, such as non payment of fees. ELFAA would favour closer monitoring of airlines over further regulation which many airlines do not need.
- Other forms of protection exist, namely credit card protection (as low costs sell mostly via the web, passengers should be protected by the credit card provider) and insurance cover offered by airlines, which includes Scheduled Airline Failure Insurance (SAFI). However, the EC has prohibited the sale of insurance on an opt-out basis on the grounds that customers must actively wish to buy (EC Reg1008/2008, Article 23).
- Consumers will invariably bear the cost for any levies.
- If these measures fail, all ELFAA members offer special low repatriation fares to any passengers stranded away from home. This practice should be spread, so that airlines cooperate to repatriate passengers.
- Further regulation creates a risk of distortion of competition and there is no such regulation for other transport modes. Moreover, customers of financially-strong airlines would, at significant cost, underwrite the risk presented by financially-weak competitors.
- There is no correlation between low-fares and financial weakness. Liberalization has been an unquestionable success and no further unjustified regulation should be introduced. .

#### **Tests-Achats:**

- An assessment of the current situation reveals that there is a growing number of bankruptcies. There are also increased pre-payments by consumers long before the flight, as well as growing direct selling and marketing by airlines and portal sites offering 'dynamic packages'.
- An assessment of the current legislation shows that Regulation 1008/2008 is insufficient and ineffective. There are also possible conflicts of national interests between NEBs and airlines which these NEBs are supposed to monitor.
- Information on operating airlines (e.g. Codeshare) provided for under Regulation 2111/2005 is not useful in this context. The European Parliament Resolution from November 2009 confirms the need for better regulation.
- Article 7 of the Package Travel Directive could already apply to airlines when selling a travel package (see C-400/00). There is currently discrimination between tour organisers and dynamic airlines.
- There are 8 options which can be taken from the Package Travel Directive:
  - Five options under the Booz&Co report: (1) strengthening current rules; (2) airline self-insurance; (3) consumer self-insurance; (4) general reserve fund; (5) national bankruptcy laws;
  - Option 6: Maximum (plus) review of current PTD into a 'Travel Directive';
  - Option 7: release of blocked payment when the flight takes place (such as Billing Settlement Plans by IATA). However this is not a watertight system as it would not be valid for low costs).
- Consumer proposals:
  - There should be solidarity, proportionality and subsidiarity and better protection of passengers flying with EU airlines.
  - Compulsory cover, similar to the PTD included in the upfront price and aiming at reimbursement and repatriation with limited impact on prices.
  - Harmonisation, inspired under the PTD, through umbrella fund (such as Austria or Denmark system).
  - Widening of insurance requirements under Regulation 785/2005 and 2407/93.
  - Other additional rules could be based on mutual responsibility concerning stranded passengers.

#### **European Travel Agents' and Tour Operators' Associations. (ECTAA)**

- The discussion on airline insolvency is timely, especially as the financial crisis and ash crisis have hit the industry with at least five airlines on brink of insolvency. Although airlines assert that the number of passengers affected is small, the rate of bankruptcies is increasing compared to the 1990s, with 33 suspensions of IATA airlines since 2008.
- The speaker's industry association was working on an industry scheme developed by IATA, but airlines vetoed this, and the schemes failed. In the absence of a voluntary scheme, the speaker underlined the need



for the EU regulator to step in.

- The refund of tickets and repatriation of passengers should be mandatory and included in the price of the ticket. This should also apply to third country carriers, and Member States should be free to choose the form of protection. It would not require much effort to extend package travel rules.
- Repatriation: there is currently no protection to passengers in cases of insolvency. Voluntary agreements are limited to a number of routes and available capacity, and represent an extra cost for the passenger.
- Refund of passengers: Not all credit cards offer protection, and many passengers do not pay by credit card. Customer self-insurance is only available in some countries and premiums vary greatly. Customer refunds through bankruptcy proceedings are slow and uncertain.
- Financial oversight is insufficient: Regulation 1008/2008 requires more assessments of air carriers' financial situation, but this has not led to fewer bankruptcies. Moreover, the suspension of airlines' operations accelerates the financial collapse of airlines.
- There is an unfair level playing field between package holiday travellers and others, which creates unfair competition and confusion for passengers. Unfair competition is compounded when travel only funds are used to repatriate unprotected passengers.
- Cost of passenger protection: based on an IATA industry protection scheme the industry association is working on, the cost of ticket would be US\$ 0,75. Such a system would not be difficult to administer as there is already a system to collect charges from tickets. According to a consumer survey, 88% are willing to pay one euro per ticket for protection.
- Protection is necessary and justified to facilitate efficient repatriation and restore confidence in the airline industry.

#### **Questions/comments for the panel:**

##### **Fonds de Garantie Voyage:**

- It is not normal that package travel flights need to have insurance funds when direct sale airlines do not.
- A solution needs to be found which is not too heavy for airlines, as they are already in difficulty, but there is a minimum to insure, for example through auto-insurance or guarantee funds. With creativity, it is possible to find a solution, and it should be mandatory as optional solutions do not work.

##### **EU claim:**

- Airlines are growing together, and they have different views towards passenger protection. How do these two points reconcile with each other?
  - ECTAA agrees that there is more overlapping with dynamic packaging and that a level playing field is important.
  - ELFAA asks whether ECTAA would agree with paying a levy as percentage of ticket. Reasserts that measures to increase consumer protection could reduce choice for passengers.

##### **CECU:**

The question of social responsibility needs to be considered and people should pay a bit more for good service and protection.

##### **Tests-Achats:**

There is considerable discrimination between package travellers and passengers with 'dynamic' packages. Low costs receive a commission from other service providers such as car rental providers when they offer their services next to the sale of tickets. These airlines have a direct commercial link with such service providers. The responsibility of low costs which sell dynamic packages is greater than that of intermediaries.

- ELFAA responded that there is no pressure to buy extra products such as care rentals, some consumers just like it to be made easy by being offered these services side by side.

##### **Norwegian consumer ombudsman:**

Consumers have the choice and if they do not want to pay they do not pay. The Norwegian guarantee fund for package travel is not very costly for the industry. This should be included in the price and be compulsory.

**European Commission** (*Gilles Gantelet*): All the questions will be covered by a consultation, and greater input on insolvency issues will be needed.

The meeting was closed by Marjeta Jager, who thanked all participants for the lively discussions. She emphasized again, that all contributions would be taken into account in the ongoing reflections on the current review of APR legislation.