

European Commission

Review of the Common Transport Policy

Task 1.7 - Level of service quality and user aspects such as passenger rights
Final Report

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Prepared for:

European Commission
Directorate-General Energy and Transport
DM 28 - 0/110
Avenue du Bourget, 1
B-1049 Brussels (Evere)
Belgium

Prepared by:

Steer Davies Gleave
28-32 Upper Ground
London
SE1 9PD
+44 (0)207 910 5000
www.steerdaviesgleave.com

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1 Passenger rights

Executive summary

- 1.1 The 2001 White Paper stated that the Commission would aim to develop and define the rights of users, and set a number of specific measures in this regard. Further measures were set in the Mid-Term Review and in a 2005 Communication from the Commission to the European Parliament and Council. Most, although not all, of these measures have been taken. However, there have been a number of difficulties, particularly with the operation of Regulation 261/2004, on the rights of air passengers in the event of denied boarding, cancellations and long delays.
- 1.2 The initiatives set out in the White Paper and the subsequent documents were strongly weighted towards the air transport sector. In part, this reflects that the air transport sector has been more affected by liberalisation measures introduced through European legislation. However, although a goal was also set of extending passenger rights to other transport sectors, progress in the rail transport sector has been slow and although measures have recently been proposed for the bus and maritime sectors, these have not yet been agreed. There are now significant differences in passenger rights between transport modes, and there is generally no clear rationale for these differences.

Introduction

- 1.3 This section sets out our review of the progress towards meeting the objectives in the White Paper and Mid-Term review relating to passengers' rights (consumer protection issues). This was emphasised as an important area of policy, because it was necessary to ensure that progress made towards opening the transport market and facilitating greater competition between operators did not result in a reduction in service quality, if operators increasingly competed on price alone.

Sources

- 1.4 This analysis has been undertaken primarily by evaluating the legislation that has been introduced relating to passenger rights, and proposed legislation relating to passenger rights, and comparing this to the objectives specified in the White Paper and the Mid-Term Review. It also takes into account the conclusions of two studies undertaken on behalf of the Commission in this area:

- Assessment of the operation and results of Regulation 261/2004, 2007; and
- Assessment of Conditions of Carriage and Preferential Tariff Schemes, 2008.

Structure of the rest of this section

- 1.5 The rest of this section is structured as follows:
 - Summary of the policy;
 - Summary of the legislative framework;

- Qualitative analysis of the implementation of the policy;
- Quantitative analysis of the implementation of the policy; and
- Conclusions regarding the impact of the policy and lessons that can be learnt.

Summary of the policy

- 1.6 The 2001 White Paper stated that the Commission would aim to develop and define the rights of users, to mitigate any negative impact on service quality from increased price competition between operators. It set out a number of goals in this area relating to the air transport sector, and stated that the next step would be to introduce equivalent consumer protection measures in other sectors. The goals identified were:
- to publish information on the performance of different airlines so that consumers could make an informed choice;
 - to improve protection in the case that passengers are subject to denied boarding, delays or cancellations;
 - to ensure conditions of contracts are fair; and
 - to improve enforcement of passenger rights.
- 1.7 In addition, in 2005, the Commission provided a Communication to the Council and Parliament entitled 'Strengthening passenger rights within the European Union', which raised further issues including passenger protection in the event of bankruptcy of an air carrier, and protection for passengers with reduced mobility (PRM). It noted that the Commission had proposed a Regulation to improve passenger rights in international rail transport.
- 1.8 The 2006 Mid-Term Review does not discuss passenger rights in detail, but did state that a priority would be to improve passenger rights in sectors other than air transport.
- 1.9 The White Paper also identified that passengers have obligations, for example not to smoke on board an aircraft, although it did not identify specific actions in this area other than that the Commission would update its Air Transport Charter to cover the obligations of users.

Legislative framework

- 1.10 At the time of the 2001 White Paper, there was little Community legislation relating to passenger rights, and the legislation that there was almost entirely related to the air transport sector. The main legislation that applied was:
- Regulation 295/91 imposed minimum criteria for compensation of passengers in the event of denied boarding (overbooking); and
 - Regulation 2027/97 implemented the Warsaw Convention on liability of air carriers in the event of death, injury, or loss/damage to baggage.
- 1.11 In addition, some other Community legislation was in force which had an impact on passenger rights in the transport sector, even though this was not the primary

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purpose of the legislation. For example, the Unfair Contract Terms Directive regulates all consumer contracts including the purchase of transport tickets. The UK Office of Fair Trading has used this Directive to force a number of air carriers to change their Conditions of Carriage, and IATA (the main representative body for international air carriers) to change the guidance to its members on Conditions of Carriage.

- 1.12 Since the White Paper, a number of new legislative measures have been taken. Again, most of these are in the air transport sector. The Regulations that have been introduced are:
- Regulation 889/2002, which implemented the Montreal Convention on liability of air carriers in the event of death, injury, or loss/damage to baggage;
 - Regulation 261/2004, which repealed Regulation 295/91 and imposed significantly more onerous requirements on air carriers in the event of denied boarding, delays and cancellations;
 - Regulation 2111/2005, which introduced the ‘black-list’ of airlines subject to an operating ban in the Community, and required that passengers be informed about the identity of air carriers;
 - Regulation 1107/2006, which provides minimum rights for air passengers with reduced mobility; and
 - Regulation 1371/2007, on the rights and obligations of rail passengers, and which includes provisions on operators’ liability in the event of death or injury, and obligations in the event of delays or cancellations.
- 1.13 To date, there is no European legislation relating to the rights of passengers travelling by bus or maritime transport. However, a number of proposals have been made:
- in 2005, the Commission proposed a Regulation on the liability of maritime operators in the event of death/injury [COM(2005) 592]; and
 - in December 2008, the Commission made proposals for Regulations to protect passenger rights in both the maritime and bus/coach sectors [COM(2008) 816 and 817].

Qualitative analysis

- 1.14 Progress has been made towards adopting most of the measures specified in the 2001 White Paper, the 2006 Mid-Term review, and the 2005 Communication from the Commission (Table 1.1 below).
- 1.15 The exception to this is that there has been little progress in improving the information available about the performance of different air carriers. The Commission published information on the relative performance of some air carriers on an experimental basis, but this was not pursued further. Some information is now published by the Association of European Airlines but this covers only a proportion of European airlines and the scope of this information is limited. The standard of information available on these issues is much more limited in the EU than in the USA, where air carriers are obliged to submit the information required and a

detailed Airline Consumer Report is published regularly by the Department of Transportation.

TABLE 1.1 ASSESSMENT OF MEASURES FOR LEVEL OF SERVICE QUALITY AND USER ASPECTS

Measure	Introduction of legislation or other initiatives
Publish information on the performance of different airlines so that consumers could make an informed choice	Not done. This was undertaken temporarily by the Commission but abandoned due to non co-operation by air carriers. It has been identified that quantitative assessment of passenger rights issues is hampered by a lack of data. The Association of European Airlines (AEA) now publishes some data on a voluntary basis, but the scope of this data is limited and it only covers AEA member airlines (low cost and charter airlines are not members of AEA).
Introduce legislation to improve protection for where passengers are subject to denied boarding, delays or cancellations	Done. Regulation 261/2004 introduced significant improvements to protection in these areas. Depending on the circumstances, passengers subject to delays, cancellation or denied boarding are now entitled to assistance, such as accommodation and meals, re-routing via other flights or a refund, and compensation of up to €600. This represents a large step forward in terms of passenger rights. However, a number of weaknesses have been identified in how the Regulation works (see under the SWOT analysis below).
Take actions to ensure conditions of contract are fair	Some progress made, largely due to authorities in Member States taking measures to ensure compliance with the Unfair Contract Terms Directive. However the recent study undertaken for the Commission showed that air and maritime operator Conditions of Carriage often still contain terms that have previously been identified as unfair.
Take actions to improve enforcement of passenger rights	Some progress made. Recent Regulations place obligations on Member States to enforce them, and the Commission has taken steps to encourage Member States to comply with their obligations, and to improve the work of enforcement bodies in each State. However, it is acknowledged that enforcement needs to be improved further.
Introduce Regulation to improve protection of passengers with reduced mobility	Done. A Regulation has been introduced to ensure that passengers with reduced mobility must be accommodated and cannot be charged extra for the services they need at airports or on board. However, it only took effect in mid 2008 and therefore it is too early to evaluate what impact it has had.
Extend passenger rights to other sectors	Some progress made. Legislation has been passed in the rail sector, although it has not taken effect yet. No legislation has been passed yet in the bus and maritime sectors, but the Commission has proposed Regulations to extend passenger rights in these sectors. These proposed Regulations include protection in the event of delay/cancellation, protection of passenger with reduced mobility, and liability in the case of death or injury.

1.16 In addition, although this was not specifically stated as an objective in the White Paper, measures have been taken to improve the safety of European air passengers

by publishing an integrated ‘black-list’ of carriers which are banned from operating in the European Union, and also giving passengers a right to a refund where flights are cancelled due to a carrier being placed on the black-list.

- 1.17 The Commission has also taken measures to improve the transparency of air ticket prices, requiring that unavoidable taxes and charges be included in advertised fares. However, some carriers have circumvented this by introducing fees for payment by credit or debit card. Whilst nominally avoidable, in practice these fees can only be avoided if the passenger hold a Visa Electron card, which, in the Member State in which two such airlines have their largest bases, hardly anybody does (other than children, who are usually not permitted to book flights themselves).
- 1.18 Some measures have been taken to clarify obligations of passengers: for example, Regulation 1371/2007 specifies reasonable measures that passengers with reduced mobility must take in order to inform operators in advance. Overall, however, little action has been taken with regard to passengers’ obligations. Nonetheless, arguably this is unnecessary, because operators have a strong commercial and operational incentive to take these measures themselves, and regularly do so: for example, a passenger caught smoking or behaving disruptively on board an aircraft may be prosecuted and/or banned from travelling in the future. Operators do not have an equivalent commercial incentive to promote passenger rights.

SWOT analysis

- 1.19 Table 1.2 sets out a SWOT analysis relating to passenger rights.

TABLE 1.2 SWOT ANALYSIS – PASSENGER RIGHTS

Strengths

Significant improvements have been made to passengers’ legal rights in the air transport sector. The main changes have been:

- introduction of a right to (depending on the circumstance) assistance, a refund, re-routing, and compensation of up to €600 per passenger, in the event of delays, cancellations, denied boarding and downgrading
- the protection of passengers with reduced mobility, including introduction of a right not to be refused carriage, except where this is impossible due to the physical constraints of the aircraft concerned, and the right to reasonable assistance at airports and on-board aircraft
- increases in the limits to carriers’ liability in the event of death, injury, delay, and loss/damage to luggage, by implementing the Montreal Convention into Community law and applying it to all journeys on Community air carriers

Legislation has also been adopted which makes significant improvements to passenger rights in the rail transport sector, although this has not yet taken effect.

<p>Weaknesses</p>	<p>One of the most significant legislative measures taken in the air transport sector, Regulation 261/2004 on delays, cancellations etc, has created a number of difficulties in practice, and there is significant anecdotal evidence that air carriers have only partially complied with their obligations under this Regulation.</p> <p>The key problems that have been identified are:</p> <ul style="list-style-type: none"> ■ some key elements of the Regulation are unclear ■ some Member States have been ineffective in enforcing the Regulation (in part because of the extensive resources that effective enforcement would require). <p>The measures introduced in the rail sector will mark a significant improvement but only apply to international services, which represent a very small proportion of rail passenger demand. Member States may delay the application of the Regulation to domestic services for up to 15 years and do not need to apply it at all to regional, suburban or urban services.</p> <p>There are now significant differences between modes. For example, the maximum liability of air carriers for deaths of passengers is £100,000 Special Drawing Rights (approximately €110,000) except where the carrier is negligent. For rail passengers, the equivalent amount is €220,000. For maritime passengers, for whom no European legislation applies, liability will usually be as specified in the Athens Convention, which is a much lesser amount. Similar issues apply to the carriers' liability for loss/damage to luggage.</p>
<p>Opportunities</p>	<p>The Commission has undertaken a significant effort, involving National Enforcement Bodies and air carriers, to improve the operation of Regulation 261/2004, and in particular to improve the effectiveness of the enforcement process. Improved enforcement of this Regulation should lead to improved compliance and improved treatment of passengers.</p> <p>On 22 December 2008, the European Court of Justice issued a ruling in a case concerning Alitalia which clarifies one of the most contentious unclear elements of the Regulation (the exemption from paying compensation in the event that a cancellation is caused by 'extraordinary circumstances'). This should also facilitate improved enforcement.</p> <p>Other passenger rights legislation has been less contentious and therefore might be expected to be implemented with fewer difficulties.</p> <p>There are opportunities to extend passenger rights legislation to other sectors, in particular international bus and maritime transport.</p>

Threats

A significant threat to the effectiveness of any passenger rights legislation is failure by operators to comply with it. This means that enforcement is likely to be very important, but this will inevitably be dependent on the relevant enforcement organisations in each Member State.

Passengers' ability to enforce their rights against international rail operators is likely to be a particularly challenging issue, given the differences in the nature of operators in different States, and the language issues that this will present.

The ability of Member States to grant long distance domestic services exemptions for up to 15 years from the provisions of Regulation 1371/2007 also represents a significant threat to the potential benefit from this Regulation.

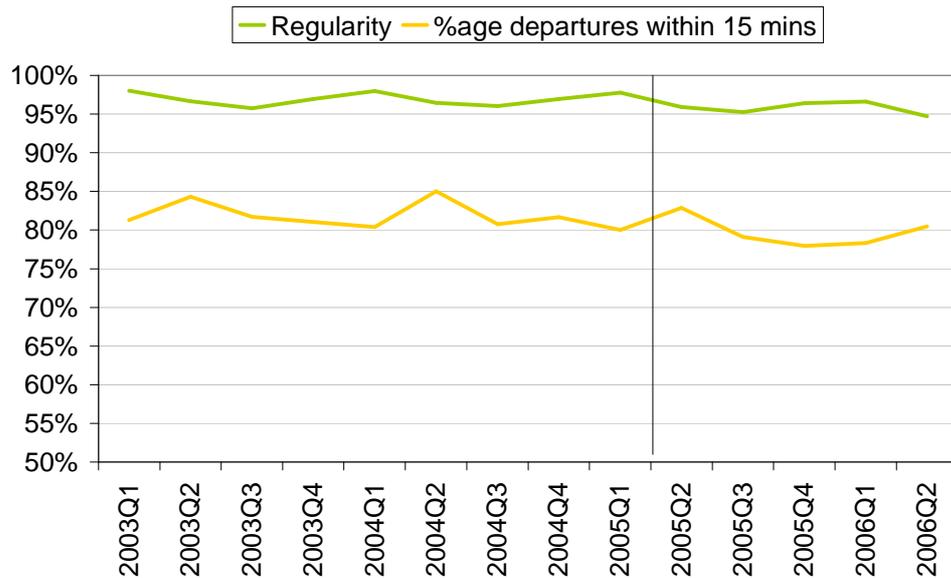
Results

- 1.20 Overall the qualitative analysis shows that actions have been taken to meet all of the goals set out in the White Paper and the Mid-term Review in this field. However, the measures taken to improve information were not successful, and although there has been sustained activity and a number of legislative measures to meet the other goals, it is difficult to determine what impact this has actually had on passengers' experiences in the event of problems with their journeys.

Quantitative analysis

- 1.21 It is difficult to measure the impact of passenger rights legislation in quantitative terms. The main purpose of the legislation is to protect passengers in the case of events which should in principle occur only in a small proportion of cases, such as cancellations or loss of luggage, or are exceptional events, such as accidents causing deaths or injuries. Statistics are not collected on the extent to which operators actually comply with the legislation, or whether passengers believe that they are treated appropriately. In addition, as discussed above, the Commission has not succeeded in meeting the objective of improving the availability of public data on the performance of air carriers.
- 1.22 In principle, by increasing the costs to air carriers of delaying or cancelling flights, it might be expected that Regulation 261/2004 could have reduced these practices. In practice, the data indicates that there has been no such impact (Figure 1.1 below).

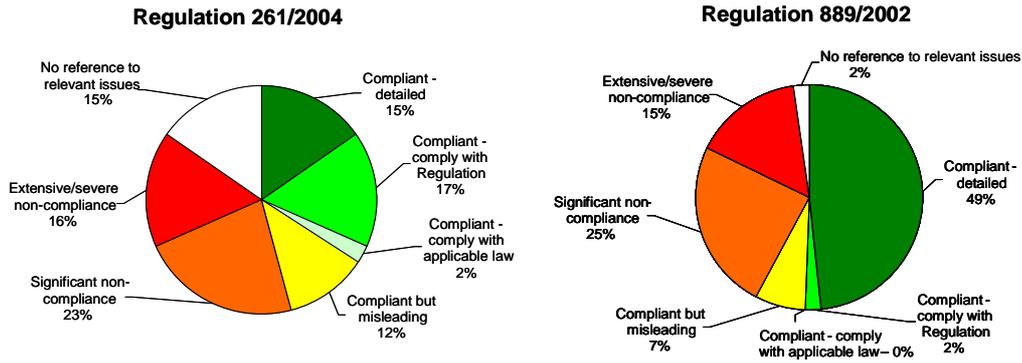
FIGURE 1.1 REGULARITY AND PUNCTUALITY (ASSOCIATION OF EUROPEAN AIRLINES MEMBERS)



Source: AEA data, SDG analysis

- 1.23 This probably reflects that many delays and cancellations arise from issues outside the control of air carriers (for example, weather or air traffic control restrictions). Therefore, the legislation could not be expected to have a significant impact on this - the purpose was to ensure the passenger is protected in these circumstances. Whilst overbooking and hence denied boarding is directly within the control of the carriers, they do not release statistics on the incidence of denied boarding and therefore it is impossible to track whether the Regulation has reduced this.
- 1.24 Similarly, there is little evidence that Regulation 889/2002 has resulted in a consistent improvement in the proportion of bags which are lost or delayed. AEA statistics show that the proportion of bags lost/delayed was 1.5% in 2008, the same as in 2003. However, as this data was not published before 2003, it is impossible to be sure what impact this Regulation has had.
- 1.25 The recent report we undertook for the Commission on Conditions of Carriage provides some evidence that many air carriers have not amended their Conditions of Carriage in order to ensure that they comply with Regulations 889/2002 and 261/2004 (Figure 1.2 below). In both cases, around half of air carriers' Conditions contain terms which are either explicitly not compliant with the Regulations, or which are misleading about carriers' obligations. However, non-compliance of the Conditions of Carriage does not in itself imply that carriers do not comply with the Regulations in practice: one of the reasons we identified that many carriers' Conditions were not compliant is that they had not been updated to reflect recent legislation. As smaller carriers were more likely to have Conditions which were not compliant, this may reflect a lack of resources in legal departments rather than intention, although this is impossible to verify.

FIGURE 1.2 COMPLIANCE OF AIR CARRIER CONDITIONS OF CARRIAGE¹



Source: SDG assessment of air carrier Conditions of Carriage

- 1.26 The legislation relating to the rail sector has not taken effect yet and therefore it is not possible to evaluate whether it has had any impact.

Conclusions

The overall impact of the policy

- 1.27 Most of the goals of the policy that have been set out have either been achieved, or significant progress has been made towards achieving them. However, there have been a number of difficulties. In particular:

- Regulation 261/2004 significantly enhances passenger rights, but the impact has been limited due to mixed compliance by airlines and poor enforcement by a number of Member States. A particular problem has been that key elements of the Regulation are unclear. Recent judgements by the European Court of Justice have helped clarify the Regulation.
 - Other than some limited information published on a voluntary basis by the Association of European Airlines for its members only, no progress has been made towards achieving the objective of improving information, so that passengers can make an informed choice between carriers. Consumer associations could also help publish information but at present they would not have access to the basic statistical data needed, because airlines do not release it.

- 1.28 Most of the measures that have been taken to improve passenger rights relate to the air transport sector. This is consistent with the goals that were set out in the White Paper and the other policy documents. It also appears reasonable for this to have been a priority for European-level action, because the sector is inherently international and has been more affected than any other transport sector by the liberalisation measures introduced by the European Union. It is now common for

¹ ‘Compliant - detailed’ means that the Conditions set out in detail the obligations of the carrier under the Regulations. ‘Compliant - comply with Regulation’ means that the Conditions state that the carrier will comply with the Regulation but do not provide more details. ‘Conditions - comply with applicable law’ means that the Conditions state that the carrier will, in the event of delay, cancellation or denied boarding, comply with applicable laws, but no more detail is provided.

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passengers to take domestic flights within their States, or from their State to another State, that is operated by a carrier based in a third country: for example, easyJet, a UK airline, operates domestic flights in France, Spain and Italy, but with UK registered aircraft and subject primarily to regulation by the UK authorities. This successful market opening creates a stronger case for regulation at the European level.

- 1.29 However, the air transport sector accounts for only a small proportion of European passenger journeys. It could be argued that, in accordance with the subsidiarity principle, measures to protect users of domestic road, rail and maritime transport should be undertaken by Member States. However, this argument does not apply to intra-EU rail, maritime or bus passengers.
- 1.30 The priority that has been given to the air transport sector means that the level of consumer protection in other sectors may be significantly less. For example, in the maritime sector:
- the only international agreement on the liability of operators in the event of death, injury or damage to property (the Athens Convention) has not been ratified by all Member States and is in any case far less generous to passengers than the equivalent Conventions in the air transport sector;
 - the level of protection guaranteed by operators to passengers in their Conditions of Carriage has been identified as being much poorer than the level offered by air carriers.
- 1.31 There are now significant differences in the liability of rail operators, maritime operators and air carriers for events such as deaths or injuries of passengers, loss of luggage, and delay. There is no obvious rationale or justification for these differences. The benefit to European transport passengers would be greater if measures were taken to bring passenger rights in other sectors up to the same level as those in the air transport sector. The Commission has recently made a number of proposals in order to do this, although the proposed regimes applying for bus/coach and maritime passengers differ from those that apply to air and rail passengers.

Contemporary developments

- 1.32 The current economic situation is likely to have an impact on the financial viability of a number of transport operators, particularly in the air transport sector, as many airlines operate with low (or negative) margins due to the strong competition in the sector, the cyclical nature of demand, and recent fluctuation in costs (particularly fuel prices). A number of European airlines have already ceased operations, and it is likely that more will do so in the future. This means that some airlines are likely to continue to believe that they have a commercial incentive to minimise compliance with European passenger rights legislation. Indeed, this is part of the original rationale for the policy: market opening has led to increased competition, but this was not intended to lead to lower quality standards. Nonetheless, it means that enforcement may be even more challenging in the future.
- 1.33 Other transport operators usually face less intensive competition than airlines, but they may also face difficulties due to the economic situation, because their costs (such as wages and fuel) are largely fixed but their revenues from ticket sales may decline. This also creates a risk that the operators in these sectors will try to limit passenger rights and hence create a need for stronger enforcement.

Lessons learnt and going forward

- 1.34 Although significant progress has been made in improving passenger rights, there have been a number of difficulties. Key lessons which should be learnt are:
- It may be difficult to achieve results without legislation. For example, the Commission sought to improve the standards of information available to passengers about the performance of different air carriers, but this was dependent on the voluntary co-operation of carriers and was eventually abandoned.
 - It is essential for legislation to be clearly drafted. This has been a particular problem with Regulation 261/2004, which was agreed through a conciliation process between the Council and the Parliament. A number of key elements of this Regulation are not clear, and some clauses have different meanings in different European languages.
 - When legislation is introduced, it needs to be clear how the legislation will be enforced, and enforcement must be effective.
 - Although the specific characteristics of individual transport modes means that there is often likely to be a case for measures to be enacted on a mode-specific basis, there should be a clear justification for any differences in the approach between modes.