

EUROPEAN COMMISSION

**Impact assessment of passenger
protection in the event of airline
insolvency**

Final report

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A METHODOLOGY AND ASSUMPTIONS FOR PASSENGER IMPACTS

B LEGAL ANALYSIS OF THE OPTIONS

C ADMINISTRATIVE BURDENS

D QUESTION LISTS FOR STAKEHOLDER INTERVIEWS

This study has been carried out for the European Commission and expresses the opinions of the organisations having undertaken it. The views have not been adopted or in any way approved by the European Commission and should not be relied upon as a statement of the European Commission's views. The European Commission does not guarantee the accuracy of the information given in the study, nor does it accept responsibility for any use made thereof

EXECUTIVE SUMMARY

Background

1. The single market for air transport has brought about significant benefits to consumers, including a wider choice of air services (including new routes) and lower fares, and there has been intense price competition between European air carriers. However, increased price competition between carriers has been concurrent with a number of airline insolvencies. We have identified that there were 96 insolvencies of European airlines operating scheduled services between 2000 and 2010 (up to 1 October). Some of these insolvencies were of small airlines offering relatively few seats, or selling few seats directly to the public, but some were of larger scheduled airlines and caused significant issues for passengers: these include the insolvencies of Air Madrid, SkyEurope and Sterling.
2. Protection from events that would lead to a failure to deliver the service, including the insolvency of airlines, is available to passengers who purchase a package tour (as defined under the Package Travel Directive¹). However, there is no equivalent protection for the growing proportion of passengers who purchase tickets directly from the airline or through intermediaries. Some protection is available through other methods, such as Scheduled Airline Failure Insurance, however the scope and availability of this is limited.
3. There is also evidence that passengers' awareness of what protection they have is generally poor. In a survey conducted for the DG Justice impact assessment² of potential revisions to the Package Travel Directive, 66% of respondents did not know whether they were protected in the event the airline on which they were booked became insolvent.

Factual conclusions

Protection available to passengers

4. When an airline ceases operations, passengers who have booked to travel with it may incur a number of costs, which vary depending on whether it ceased operations before the booked flight, or after an outbound flight but before the inbound flight is completed:
 - Where operations ceased before the outbound flight, the passenger must choose between rearranging the trip via other means or forgoing the trip. If they rearrange, the passenger must pay for the additional cost of alternative travel, which is likely to be more expensive, particularly if booked at short notice. If it is not possible to arrange alternative travel, or the passenger does not choose to do so, then they forfeit any non-refundable components of the trip (such as accommodation or car hire), as well as the cost of the original air ticket.

¹ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours

² RPA, LE and Yougov, 2010. DG Justice Impact Assessment Annex 2 – Enhanced insolvency protection for consumers purchasing airline tickets – a survey

- Where the operations ceased after an outbound flight but before the completion of the inbound flight, the passenger is stranded and will have to find alternative travel in order to return home, which will usually be at very short notice and hence on average much more expensive than the original ticket. The passenger may also have to arrange additional accommodation and other costs.
5. There are several mechanisms available in the EU which passengers may be able to use to obtain some protection from the costs above. As discussed above, the **Package Travel Directive** provides protection for passengers purchasing package tours in the EU. This requires organisers/retailers to be able to refund money paid over and/or cover repatriation of consumer in the event of insolvency. However, this protection is limited to consumers purchasing a package, defined as a pre-arranged combination of transport and at least one other significant tourist service. This excludes purchases of air tickets alone, and as a result of the growing popularity of direct bookings made separately for each element of a trip, and ‘dynamic packages’ where passengers put together the different elements of a package themselves, the proportion of passengers protected by the Package Travel Directive is declining.
 6. Where passengers purchase air tickets alone, other forms of protection are available, however at present these usually only cover the costs of the original tickets purchased; the availability of these options is also limited.
 7. In recent years, **Scheduled Airline Failure Insurance (SAFI)** has allowed passengers in some States to insure themselves against some of the costs resulting from the insolvency of an airline on which they are booked. SAFI covers the costs of repatriation if the passenger is stranded, or reimbursement for the cost of the original flight tickets in the case that the passenger cannot recover it. It does not usually cover any additional costs (such as the short notice purchase of an alternative ticket), which may be greater. At present, SAFI is only available in a small number of Member States (in particular the UK and Ireland), and the cover provided excludes any carriers publicly known to be in financial difficulty.
 8. The other forms of protection limit cover to the costs of original tickets, or are only available in specific States:
 - Purchases by **credit card** in some Member States allow consumers to claim a refund from the card-issuing bank in the event of insolvency of the airline (or any other service provider); this is limited to the cost of the original tickets and in some cases is subject to a minimum value. This protection also applies to purchases with some debit cards.
 - Payments for tickets purchased **via IATA travel agents** are held by a central payment mechanism before being passed on to the airline, in settlements at regular intervals (usually monthly). If the airline becomes insolvent, passengers whose payments have not yet been passed on to the airline should be able to recover what they paid.
 - In Denmark, the **Rejsegarantifonden**, the fund which provides protection under the Package Travel Directive was extended on 1 January 2010 to offer passengers the option of this protection on all flights from Denmark on carriers established in

Denmark³. A similar extension has been legislated for in Flanders in Belgium, however this has been disputed by airlines and at present is only partially complied with.

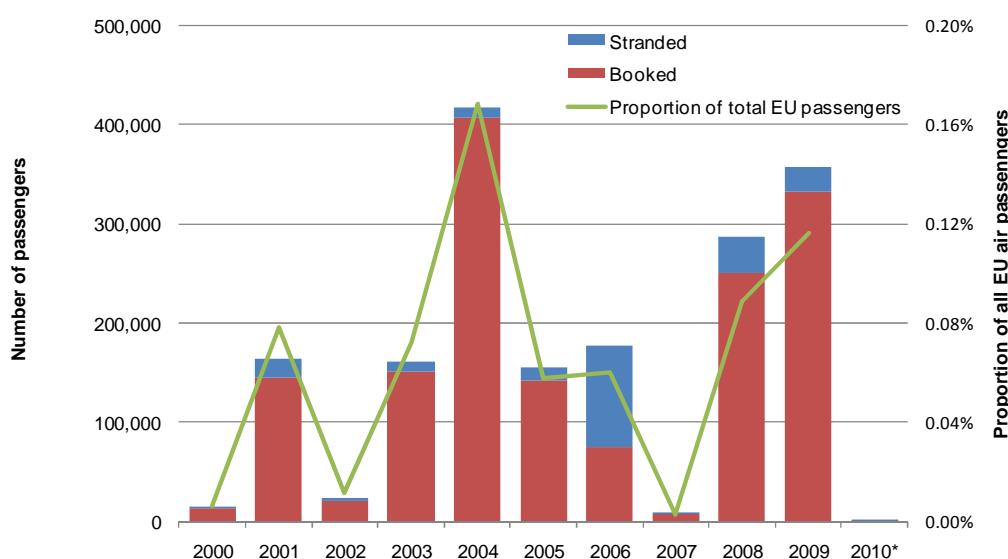
- In Flanders in Belgium, a decree came into force in 2007 which implemented an **extended definition of ‘tour operator’**, to include any company with at least one sales outlet in Flanders which sells tickets to passengers. As a result, airlines registered in Flanders are required to hold an insurance guarantee against insolvency. To date, only one of the four affected airlines has complied with the legislation.

Airline insolvencies 2000-10

9. Over 2000 to 2010 we identified 96 insolvencies of airlines providing scheduled services. The frequency of airlines ceasing operations has fluctuated considerably over this period: peaks of 14 insolvencies were observed in 2004 and 2008, while in 2000 and 2007 only 3 were identified. There is some relationship between the distribution of insolvencies and the size of States’ aviation markets, with the largest number of insolvencies being of carriers’ registered in the UK and Spain (the first and third largest markets in the EU, measured in terms of passenger numbers).
10. There is significant uncertainty about how many passengers were impacted by these insolvencies, as in most cases the only reliable source of information would have been the airlines themselves, and these no longer exist, therefore it is not possible to obtain information from them. We estimate that 1.4-2.2 million passengers were impacted between 2000 and 2010 (central case scenario 1.8 million, equivalent to 0.07% of all return standalone trips). Of these, 12% were stranded away from home. The proportion of passengers stranded was in general small in comparison to the number who were booked to travel but could not do so (see figure below), although was higher in some specific cases, particularly Air Madrid. In all years, the number of passengers impacted was lower than 500,000; the highest number was in 2004 but even in this year only 0.17% of all passengers were impacted. However, although the proportion of passengers impacted is small, the impacts on these passengers can be quite significant.

³ This has been defined as all airlines with their main office in Denmark, and international airlines with a branch office in Denmark

PASSENGERS AFFECTED BY YEAR

*Assistance provided to passengers*

11. Of the passengers purchasing standalone tickets affected by insolvency over 2000 to 2010, we estimate that 76% did not have any form of protection. Of the remainder, 14% had purchased via credit card, 8% had purchased from IATA travel agents within sufficient time to obtain a refund, and 2% had purchased SAFI. All but those who purchased SAFI were limited to recovery of costs of original tickets.
12. Assistance to passengers was only provided by national authorities in a very limited number of insolvencies; several authorities specifically stated that it was not within their remit to provide such assistance. Assistance has in some cases been provided by other airlines. In particular, ELFAA (the European association of low fares airlines) informed us that its members have entered into a voluntary agreement to provide assistance at a 'nominal fee' to affected passengers, subject to availability. However, whilst these 'rescue fares' have typically been lower than normal last-minute fares, they were in most cases sufficient to cover the airlines' costs and in some cases substantially exceeded the airline's normal average fare. The airline would also have benefited from the publicity arising from offering these fares.
13. We estimate that stranded passengers incurred the highest immediate costs resulting from airline insolvencies, of over €796 on average. The composition of this cost and costs incurred by other affected passengers is shown in the table below. Note that these costs are the average costs estimated to have actually been incurred by stranded and booked passengers; the higher average costs for stranded passengers are partly caused by the very high costs incurred by the large numbers of passengers stranded in Latin America after the insolvency of Air Madrid.
14. The costs incurred by each passenger vary depending on the distance travelled by the passenger. For example, the average stranded passenger travelling on a scheduled long-haul carrier incurred costs of €1,109, compared to costs of €335 incurred by passengers stranded who had booked with short haul low cost carriers.

AVERAGE COST PER PASSENGER BY TYPE ACROSS INSOLVENCIES OBSERVED OVER 2000-2010 (2010 PRICES)

	Stranded	Did not travel	Rebooked	Assumptions
- Information (cost of phone calls to rebook flights)	€7	-	- ⁴	Two 5 minute phone calls at EU capped roaming mobile rate
- Care (including additional accommodation)	€87	-	€92 ⁵	One additional day of trip, including accommodation, food and other necessary spending
- Cost of original flight(s) (reimbursement)	-	€260 ⁶	-	Two flights at average yield of airline sample. Note this is zero for stranded and rebooked passengers ⁷
- Cost of replacement flight(s) (for repatriation or for replacement travel)	€702	-	€298	For rebooked, two flights booked at half standard booking period For stranded, one-way flight booked at half length of stay
- Non-refundable components (such as hotel or car hire deposits)	-	€55	-	10% of cost of accommodation and other services for trip
Total	€796	€315	€390	

15. The costs above are the costs incurred immediately by passengers at the time of the insolvency. The table below shows the proportion of these costs which we estimate would have been recoverable, depending on the passenger type and the cover which they have. Those that did not travel were in principle able to recover almost all of their costs if they had at least one of the forms of cover available, however those that rebooked would only have been able to recover approximately 60-70% of their costs, as the incremental cost of new flights would not have been covered. Those stranded would have recovered most of their costs if they had SAFI, but not the other schemes. Note that the protection for passengers covered by the IATA BSP only refers to those passengers who are actually covered by the protection, i.e. those who booked within the remittance period. Passengers booking via an IATA travel agent but further in advance would not have been protected, and therefore would not have recovered any costs.

⁴ Note that calls made to rearrange flights when not stranded are assumed to result in no marginal cost to passengers, as most consumers purchase internet access on a flat rate.

⁵ The costs of care vary depending on the year and the type of carrier. As the proportion of stranded to rebooked passengers affected by each insolvency varies, the average costs of care are slightly different for stranded and rebooked passengers.

⁶ As with care costs, the costs of flights vary depending on the year and the type of carrier, and this causes differences in the average costs shown.

⁷ This is zero because these passengers still travel and so would have had to pay the original ticket anyhow. For example, if a passenger pays €260 for the original ticket and €298 for the replacement ticket when the carrier becomes insolvent, the amount this passenger has lost is €298, not €558 – as the passenger would have paid €260 for the journey even if the airline had not become insolvent.

TABLE 1.1 PROPORTION OF RECOVERABLE COSTS BY PASSENGER TYPE

	Stranded	Did not travel	Rebooked
SAFI	85%	81%	66%
Credit card	27%	79%	63%
IATA travel agent	41%	89%	78%
Nothing	0%	0%	0%
Proportion across all scheduled passengers	10%	21%	17%

The right of the European Union to act

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 a result of:

- Unlike payment for most other services, payment for air tickets is often made months in advance of the delivery of the service, and therefore the passenger is more vulnerable to insolvency of the service provider. Airlines often require passengers to purchase tickets well in advance in order to obtain lower fares. While this is also the case to an extent with other modes of transport (such as rail), air travel is the only mode which approaches a single market.
- Limited information is available to passengers regarding the risks of insolvency, and there is evidence of widespread misunderstanding of these risks: since passengers are inadequately informed about the risks they incur, they may not take action to protect themselves against them. There is therefore a market failure.
- There is limited scope for Member States to act alone to protect consumers, as Regulation 1008/2008 prohibits them from placing additional requirements (other than those specified in the Regulation) on Community air carriers.

Policy objectives

17. Potential measures to address the problems identified above were assessed in terms of their effectiveness in addressing the following general objectives:

- securing an adequate level of protection of the interests of EU passengers; and
- ensuring the best possible choice of protection mechanism for the companies within the sector.

18. Such protection is to be achieved through meeting six specific objectives:

- (1) **prevention** of airline insolvencies;
- (2) **assistance** to passengers affected by airline insolvencies;
- (3) **repatriation** of passengers stranded as a result of airline insolvencies;
- (4) **reimbursement** of the costs of original tickets paid over by affected passengers;
- (5) **information** for passengers regarding the risks of insolvency, available

measures to protect against it and the assistance available for passengers affected by airline insolvency; and

- (6) **lowest cost and maximum flexibility** for the companies operating within the sector.

Assessment of options

19. The study has evaluated the impacts of a number of options for protecting passengers. The options were defined by the Commission but in some cases have been adapted further to discussions with stakeholders about how the options could work in practice. For each of these options, we have assessed how feasible the option would be to implement, and what benefits the option would provide to passengers, particularly in terms of providing repatriation and reimbursement to passengers impacted by insolvencies. This analysis is summarised in the table below.
20. For each of the options, we have assessed economic, social and environmental impacts. However, all options have only marginal impacts on the number of passengers transported and flights operated, and therefore the social and environmental impacts are minimal. All significant impacts are economic.

SUMMARY OF IMPACT ASSESSMENT OF OPTIONS

Option	Assessment of feasibility	Assessment of passenger benefits, if the option was implemented successfully
0: No action	Feasible By definition this option is feasible	No benefits Passengers would continue to incur most costs arising from insolvency. The proportion of passengers impacted would continue to be very low but the costs incurred would be high (over €1,000 per passenger) in some cases.
0+: Self regulation Airlines would be asked to take measures to repatriate stranded passengers, and the insurance industry would be asked to improve the availability of SAFI. The Commission would review progress after 2-3 years to assess if actions necessary.	Feasible This option is feasible. However, airlines probably could not commit to transport stranded passengers for a fixed price, and there could be some contradiction between the two elements – if airlines agreed to assist stranded passengers, take-up of SAFI might fall.	Some benefits More stranded passengers could be repatriated, and passengers who opted to purchase SAFI would be protected. However, passengers that still did not purchase SAFI would generally not be protected, except if stranded, and stranded passengers probably would not have other costs (such as accommodation) refunded..
A: Improved monitoring of carriers The financial oversight of EU air carriers would be strengthened, through the adoption of raised standards of financial fitness and/or monitoring of carriers. There would be more tightly defined requirements on monitoring frequency by licensing authorities, and the power for licensing authorities to require that airlines provide additional bank guarantees, where financial issues have been identified.	Feasible This option would be workable: Articles 8 and 9 of Regulation 1008/2008 could be amended to either be more prescriptive on monitoring requirements, or to set out additional powers. It may also be possible to achieve some of the benefits of this option through sharing of best practice and better monitoring of licensing authorities by the Commission.	Limited benefits There would be limited benefit relative to the current situation, as in most cases this would not prevent insolvencies or provide protection for affected passengers.

Option	Assessment of feasibility	Assessment of passenger benefits, if the option was implemented successfully
<p>B1: Clarify roles of public authorities with respect to stranded passengers</p> <p>Obligations for Member States to provide or facilitate ad hoc assistance for stranded passengers would be defined. New legislation would require States to assist passengers, and would specify which passengers were covered, under what circumstances and what national authorities were required to provide. It could also set out how national authorities might recover the costs of providing this assistance.</p>	<p>Not feasible unless States have a means of recovering the costs</p> <p>States would need some way of recovering the costs that they incurred as a result of this requirement, most probably through a levy on air passengers. If all stranded passengers were required to be covered, it would therefore be equivalent to a restricted version of option B5 (general reserve fund). If this applied to all passengers, they might also forego other forms of protection, such as SAFI, in favour of the free protection offered by the State. The only way to avoid this would be for provision of assistance to be at the discretion of States, but this is the current situation.</p>	<p>Some benefits</p> <p>This option would provide assistance for passengers stranded away from home, who are usually the passengers who incur the greatest costs in the event of an airline insolvency. It would not provide any protection for other affected passengers. It is assumed that only repatriation would be covered, and as a result, stranded passengers would still incur other costs (such as additional accommodation).</p>
<p>B2: Carriers to be obliged to offer optional insurance</p> <p>Carriers would be obliged to offer optional insurance to their passengers, on booking, against the risk of insolvency. This could cover reimbursement, assistance and repatriation, although the cost of the insurance (and the issues raised by a requirement to offer it) would be greater if the scope was wider. For this option to be enforceable, offering insurance would have to be made a license condition, and licensing authorities would be required to monitor its provision.</p>	<p>Probably not feasible</p> <p>This option could have significant negative impacts for airlines (and passengers) on introduction, as airlines regarded as financially unstable by insurers would not be able to obtain insurance at reasonable cost or possibly at all, and therefore could have to cease operations. For this reason we think this option is probably not feasible. It might be possible to mitigate this risk if insurance is optional, as passengers could still travel on riskier airlines whilst opting not to buy the insurance if it was very expensive, and if there were transitional arrangements such as exemptions for airlines unable to obtain insurance, or State-funded insurance.⁸</p>	<p>Some benefits</p> <p>This option would provide indirect information on financial risks to passengers, and would provide protection to passengers who chose to purchase insurance. However, insolvencies caused when the policy was first introduced would cause significant negative impacts, and reduce consumer choice. Also, passengers are not always aware of what risks they face and what other coverage they do or do not have (e.g. from travel insurance), and therefore they may not all be able to make an informed decision as to whether to select the insurance.</p>
<p>B3: Carriers to be obliged to provide insurance</p> <p>Carriers would be obliged to have insurance against the risk of insolvency which would cover all of their passengers. This could cover reimbursement, assistance and repatriation, although the cost of the insurance would be greater if the scope was wider. Airlines would be required to have this insurance as a condition of their operating licenses.</p>	<p>Not feasible</p> <p>As with the optional insurance option, this option would be likely to cause the failures of a potentially large number of airlines regarded as financially unstable by insurers. This would be more severe than for option B2 as, unlike for option B2, passengers would not be able to travel on an airline whilst opting not to buy the insurance if it was very expensive. For this reason we believe this option is not feasible.</p>	<p>Significant benefits</p> <p>This option would provide a good level of protection to passengers, if it could be implemented successfully. However, the airline insolvencies which would be caused when the option was first introduced would have a significant negative impact, and would reduce competition and consumer choice.</p>
<p>B4: Carriers to be obliged to obtain bank guarantees</p> <p>Carriers in a weak financial position could be required by their licensing authorities to obtain bank guarantees to</p>	<p>Probably not feasible</p> <p>Carriers perceived as being at high risk of insolvency might be required to deposit funds equivalent to the potential liability in order to obtain a guarantee.</p>	<p>Significant benefits</p> <p>The funds from the bank guarantee could be used to reimburse and assist passengers – although the larger the scope of the protection offered, the</p>

⁸ The Package Travel Directive has in some States been implemented solely through insurance, however it is not clear to what extent pooling of risk is required to achieve this.

Option	Assessment of feasibility	Assessment of passenger benefits, if the option was implemented successfully
protect passengers in the event of insolvency.	Carriers in a weak financial position would not have sufficient funds available to do this.	larger the bank guarantee would have to be, and therefore the more difficulty carriers might have in providing this.
<p>B5: Create a general reserve fund</p> <p>A general reserve fund would be established through a new charge collected on each air ticket sold, to cover the insolvency risk of air carriers. The reserve fund could cover reimbursement, assistance and repatriation. This would be similar to the arrangements in some Member States (such as the UK and Denmark) for protection of passengers on package holidays.</p>	<p>Feasible</p> <p>This option could be implemented successfully, although the management costs of general reserve funds would be substantial.</p>	<p>Significant benefits</p> <p>This option would be effective in providing protection for passengers. However, it would distort competition: passengers booking flights with airlines with negligible risk of insolvency would have to pay into the fund and would, in effect, subsidise passengers booking with weaker airlines. Since it would provide the same level of cover to all passengers, passengers would no longer consider the financial stability of carriers as one of the factors affecting their choice between airlines.</p>
<p>B6: Adapt current bankruptcy / insolvency laws in Member States</p> <p>Current general bankruptcy and/or insolvency laws in Member States would be amended to improve the ability of passengers affected by insolvency to claim from the insolvent airline, by making passengers priority creditors. At present, passengers with tickets booked with an insolvent airline would generally be unsecured creditors and, as an insolvent airline is likely to have few assets, they would receive little or nothing.</p>	<p>Not feasible</p> <p>This option would require fundamental changes to the legal systems of many EU States. National authorities informed us that they expected their States to oppose making such a change, because they considered it disproportionate, and because it was not clear why consumers should be preferred creditors in the case of insolvency of airlines, but not in the case of other service providers. In addition, amending all Member State laws to be on a consistent basis would be difficult as national insolvency laws differ, and the prioritisation of claims from passengers over repayment of debt could make it difficult for airlines to raise finance.</p>	<p>Limited benefits</p> <p>This option would be likely only to benefit a small number of passengers. Passengers who pursued a claim in court would be more likely to receive compensation, however as this could take several years, there would be no immediate assistance for stranded passengers, and the proportion of their claim that would be paid might be low, because insolvent airlines typically have few assets.</p>
<p>C1.1A: Licensing authorities required to communicate factual financial information on carriers</p> <p>In order to inform passengers of the risks associated with specific airlines, licensing authorities could be required to publish non-commercially sensitive factual information regarding the carriers they licensed</p>	<p>Feasible</p> <p>Publication of high-level financial information (such as income statements and balance sheets) for all registered airlines is feasible. However, the publication of anything further than this is not: other information, such as traffic forecasts, is commercially sensitive.</p>	<p>Limited benefits</p> <p>If financial information were published regarding airlines, it would be difficult for passengers or other interested parties to compare or score airlines without detailed knowledge of their business models and operational environment. In addition, much of this information is already in the public domain.</p>
<p>C1.1B: Licensing authorities required to communicate information on financial fitness of carriers</p> <p>In addition to the information in C1.1A, licensing authorities could be required to publish their assessments of the financial fitness of the carriers they licensed.</p>	<p>Not feasible</p> <p>The publication of assessments of airline financial fitness would not be feasible, as this would be subjective, and would open the authority to legal challenge. In addition publication that a carrier was at risk could cause passengers to stop booking with it, and hence accelerate insolvency.</p>	<p>Some benefits</p> <p>If assessments of financial fitness were published, it would be clearer to passengers what the risks of booking with a particular airline were. However, national authorities will not always be able to identify likely insolvencies far enough in advance.</p>
<p>C1.2: Licensing authorities required to provide information when an airline has become insolvent</p>	<p>Feasible</p> <p>This option would be straightforward to</p>	<p>Limited benefits</p> <p>The publication of information to assist</p>

Option	Assessment of feasibility	Assessment of passenger benefits, if the option was implemented successfully
Member States would be required to communicate information to assist passengers in the event that an air carrier becomes insolvent.	implement.	passengers affected by insolvencies would provide some benefits to passengers, as there would in theory be a clear and consistent source of information for reference. However, the option would not provide any assistance to affected passengers.
<p>C2: Carriers to be obliged to provide more information on websites</p> <p>Marketing websites and other sales outlets for airline tickets would be required to advise purchasers of the risks they were undertaking and available options for protection. National authorities would also have to monitor sales outlets for airline tickets to ensure that appropriate information was being provided.</p>	<p>Feasible</p> <p>Some Member States believed the implementation of this option would not be difficult, however others informed us in States where many sales are through small high street travel agencies, the implementation of this option could be difficult and expensive to monitor.</p>	<p>Limited benefits</p> <p>This option could be a useful method of improving passenger awareness of risks and available protection. However, given the large amounts of information passengers are already required to navigate, the impact of the option could be minimal.</p>
<p>ABC: Combined option</p> <p>Options A, B5, C1.1A, C1.2 and C2</p>	<p>Feasible</p> <p>This option could be implemented successfully, although the management costs of general reserve funds would be substantial and there would be some costs in implementing other elements of the option.</p>	<p>Significant benefits</p> <p>This option would be effective in meeting the study objectives of providing protection and improved information for passengers.</p>

21. On the basis of this review, the only options which are both feasible and deliver the main policy objectives relating to provision of assistance, repatriation and reimbursement are B5, the general reserve fund, and the combined option ABC which includes general reserve funds. The only other option that could provide full protection for passengers is option B3, compulsory insurance against insolvency. However, we believe that this option is not feasible, because the introduction of a requirement to have this insurance could force a number of weaker airlines to stop operations, as they would not be able to obtain this insurance at a reasonable price or possibly at all. Option B4 (bank guarantees) could also, in principle, provide significant benefits but is not feasible because carriers in a weak financial position would not be able to obtain sufficient guarantees.
22. General reserve funds would be effective in terms of protecting passengers from the negative impacts of airline insolvencies, without causing significant disruption to the market. However, all passengers would have to pay into the funds, which could have significant management costs. These funds could also distort competition: passengers travelling on financially stronger airlines would in effect subsidise those travelling on weaker airlines. In our view, since this is the only feasible option which is effective in achieving the main policy objectives, there has to be a political judgement as to whether the problem of the impacts of airline insolvencies on passengers is sufficiently large to justify this market intervention.
23. If it was decided not to introduce this option, but there was nonetheless a wish to put in place some measures to improve passenger protection, the Commission could consider a combination of the other options which are feasible. The other options that would be of some limited benefit are:

- A: Improved monitoring of carriers, including that national authorities should have the option of requiring airlines to provide a bank guarantee or other means of protecting passengers;
 - C1.1A: Licensing authorities required to provide some purely factual information on airlines it has licensed;
 - C1.2: Licensing authorities required to provide information when an airline has become insolvent; and
 - C2: Carriers to be obliged to provide more information on websites.
24. However, whilst these do partially achieve some of the objectives of the study, none would be effective in terms of meeting the key objectives of ensuring that all passengers are protected against insolvency. Therefore the main alternative is self-regulation: the Commission could encourage the industry to take action to protect passengers (for example by improving the availability of SAFI, and by repatriating stranded passengers), and make clear that action would be taken in the future if this was not successful.
25. If the Commission pursues option A, on improved monitoring of carriers, it could first seek to ensure that the current Regulation 1008/2008 is implemented consistently by national licensing authorities. The Commission could encourage this through the sharing of best practice and possibly through reaching non-binding agreements with licensing authorities on the level of monitoring that they undertake.

1. INTRODUCTION

Background

- 1.1 The single market for air transport has brought about significant benefits to consumers, including a wider choice of air services (in particular through new routes) and lower fares, and there has been intense price competition between European air carriers. In order to mitigate any potential negative impacts that this might have on service quality, the Community has taken a number of measures to protect passengers, including introduction of requirements for compensation and assistance to passengers in the event of delay, cancellation or denied boarding.
- 1.2 However, increased price competition between carriers has been concurrent with a number of airline insolvencies. There have been 96 insolvencies of European airlines since 2000, resulting from a number of factors including high fuel prices and the downturn in demand prompted by the global financial crisis. Directive 90/314/EEC (the Package Travel Directive) ensures that consumers purchasing package tours as defined by the Directive are protected against insolvency of airlines or other service providers, or other events that would lead to a failure to deliver the service. However, there is no equivalent protection for the growing proportion of passengers who purchase tickets directly from the airline or through intermediaries. Some protection is available through Scheduled Airline Failure Insurance (SAFI), purchases by credit card, or purchases through travel agents that use the IATA Billing and Settlement Plan, however this protection is limited.
- 1.3 Combined with the often restricted availability of protection, passenger awareness of what protection they have is generally poor: in a survey conducted for the DG Justice impact assessment⁹ of potential revisions to the Package Travel Directive, 66% of respondents did not know whether they were protected in the event the airline on which they were booked became insolvent.

The need for this study

- 1.4 In 2009, the Commission published a study¹⁰ into airline insolvencies which identified several options for protecting consumers. The Commission's guidance requires impact assessments to be conducted of the social, economic, administrative and environmental impact of proposed policy changes, and therefore an impact assessment is required if one of these options was to be implemented.
- 1.5 The purpose of this study is to update the factual analysis in the previous study, and evaluate the impact of possible measures to:
- reduce the risk of carriers becoming insolvent, such as improved financial oversight and changes to licensing procedures;

⁹ RPA, LE and Yougov, 2010. DG Justice Impact Assessment Annex 2 – Enhanced insolvency protection for consumers purchasing airline tickets – a survey

¹⁰ Directorate – General Energy and Transport European Commission in association with von den Steinen, Joerss and Mendes de Leon, 2009. Study on Consumer Protection against Aviation Bankruptcy

- reduce the impact of insolvency on consumers, which could include optional or mandatory insurance, a general fund, or clarification of the obligations of Member States to assist passengers; and/or
- improve the information available to consumers on the risk of insolvency and the level of protection that is available to them.

This report

- 1.6 This report is the Final Report for the study and sets out the conclusions of both the factual analysis and the impact assessment. It takes into account the Commission's comments on the Intermediate Report for the study.

Structure of this report

- 1.7 The rest of this report is structured as follows:

- Section 2 summarises the research methodology for the study, including the stakeholders interviewed;
- Section 3 discusses the forms of protection available to passengers which we have identified;
- Section 4 sets out the impacts on passengers of the insolvencies identified over 2000 to 2010, in terms of both numbers of passengers affected and costs borne by them;
- Section 5 defines the problem which the measures included in the options will seek to address;
- Section 6 presents the impact assessment of each of the options defined by the Commission, and sets out conclusions and recommendations for options to be taken forward; and
- Section 7 summarises the conclusions for each option, and recommends which should be taken forward.

- 1.8 Additional supporting information is provided in appendices:

- Appendix A contains the details of the methodology and assumptions for calculating impacts on passengers
- Appendix B contains a summary of legal issues which may arise with the options.
- Appendix C provides the calculation of administrative costs and burdens.
- The question lists which were used for the stakeholder interviews are provided in Appendix D.

2. RESEARCH METHODOLOGY

Introduction

2.1 This section provides a summary of the research methodology used. It describes:

- the overall approach used;
- the scope of the desk research that has been undertaken; and
- the stakeholders that have participated in the study, and how they have provided inputs.

Overview of the approach

2.2 The objective of this study was to analyse:

- the impacts on passengers of airline insolvencies over the period 2000-10, and the types and effectiveness of protection against insolvencies available to passengers; and
- the impacts of various policy options, defined by the Commission, which could improve the situation.

2.3 The research undertaken for the study was a mixture of:

- interviews with stakeholders, in order to collect factual information and discuss the potential impacts of policy options; and
- desk research, including reviews of previous studies and other relevant documents.

2.4 This approach allowed us to raise issues with stakeholders, and subsequently check the arguments made by stakeholders against data. In particular, for the impact assessment section of the study we have noted issues which stakeholders believed were important and where possible modelled the impacts that they identified, using data gathered from the sources listed below.

Stakeholders interviewed for the study

2.5 The tables below set out the interactions with stakeholders. Each stakeholder was sent question lists and requested to take part in a telephone interview to discuss their responses. Where possible they were asked to send written responses before the interview which could be reviewed in advance. Some stakeholders requested not to have telephone interviews and preferred to respond to clarifications to their responses in written form. Others requested meetings face-to-face and where possible these were completed.

Interviews with regulatory authorities

2.6 We sought to undertake detailed interviews with a sample of 10 national aviation authorities. These were selected because of recent significant insolvencies occurring in their States, or because they represent some of the largest aviation markets in the EU. However, for two Member States (Germany and Portugal), either no or only very partial responses were received; both we and the Commission made many efforts to

persuade the relevant organisations to provide further information, but this was not successful.

TABLE 2.1 INTERVIEW STATUS: REGULATORY AUTHORITIES

Member State	Organisation	Form of response	Status
Denmark	Danish Competition and Consumer Authority	Telephone interview	Completed
France	General Directorate of Civil Aviation (DGAC France)	Telephone interview	Partial responses received
Germany	BMVBS (Federal Ministry of Transport, Building and Urban Development)	Telephone interview	No completed response received
Ireland	Commission for Aviation Regulation	Telephone interview	Completed
Italy	ENAC (CAA Italy)	Telephone interview	Completed
Poland	Commission on Passengers' Rights, Civil Aviation Office	Telephone interview	Completed
Portugal	INAC (CAA Portugal)	Telephone interview	No completed response received
Slovakia	Slovak Trade Inspection and The Ministry of Transport, Construction and Regional Development	Written submission	Completed
Spain	Ministry of Development	Telephone interview	Completed
United Kingdom	CAA	Face to face interview	Completed

Interviews with airline associations

2.7 Each of the major airline associations operating in the EU was interviewed, to represent the views of a cross-section of airline types.

TABLE 2.2 INTERVIEW STATUS: AIRLINE ASSOCIATIONS

Member State	Organisation	Form of response	Status
EU-wide	AEA (Association of European Airlines)	Telephone interview	Completed
EU-wide	ERAA (European Regions Airlines Association)	Face to face interview	Completed
EU-wide	ELFAA (European Low Fares Airline Association)	Telephone interview	Completed
EU-wide	IATA (International Air Transport Association)	Telephone interview	Completed
EU-wide	IACA (International Air Carrier Association)	Telephone interview	Completed

Interviews with consumer organisations

2.8 The following consumer organisations were chosen based on the States where the aviation authority has been selected for detailed interview, and where we are aware from previous studies that the organisations are active in aviation.

TABLE 2.3 INTERVIEW STATUS: CONSUMER ORGANISATIONS

Member State	Organisation	Form of response	Status
Belgium	Test Achats	Telephone interview	Completed
Portugal	DECO	Telephone interview	Completed
Spain	FACUA	Telephone interview	Completed
UK	Air Transport Users Council	Telephone interview	Completed
UK	Which?	Telephone interview	Completed
EU-wide	BEUC	Telephone interview	Completed

Telephone interviews with other organisations

- 2.9 Representatives from the insurance industry were also contacted, in addition to other interested parties that had been identified.

TABLE 2.4 INTERVIEW STATUS: OTHER ORGANISATIONS

Member State	Organisation	Form of response	Status
Insurance Representatives			
EU-wide	CEA (European Insurance and Reinsurance Federation)	Telephone interview	Completed, with supplementary questions
EU-wide	IPP (Scheduled Airline Failure Insurance Provider)	Telephone interview	Completed
Other interested parties			
EU-wide	ECTAA (European Travel Agents and Tour Operators Association)	Telephone interview	Completed
EU-wide	ACI (Airports Council International) Europe	Telephone interview	Completed
UK	TUfly	Telephone interview	Completed
EU-wide	Visa Europe	Telephone interview	Did not respond in time for the study
Worldwide	MasterCard	Telephone interview	Did not respond in time for the study

Stakeholders approached for data collection only

- 2.10 In addition to the stakeholders selected for detailed interviews, other stakeholders were contacted for data collection purposes, in order to obtain as complete an understanding as possible regarding airline insolvencies which had taken place, and the protection available to passengers. All were sent question lists and requested to send written responses; where necessary follow-up telephone conversations have taken place to discuss any clarification of their responses.

Data collection from regulatory authorities

- 2.11 The national aviation authorities from the remaining 17 States not selected for detailed interviews were approached for data collection only.

TABLE 2.5 DATA COLLECTION: OTHER STAKEHOLDERS

Member State	Organisation	Status
Austria	CAA	Completed
Belgium	CAA	Completed
Bulgaria	CAA	Not able to obtain a response
Cyprus	CAA	Limited response only
Czech Republic	CAA	Completed
Estonia	Consumer Protection Board of Estonia	Completed
Finland	CAA	Completed
Greece	CAA	Completed
Hungary	National Transport Authority	Completed
Latvia	CAA	Completed
Lithuania	CAA	Completed
Luxembourg	CAA	Completed
Malta	Civil Aviation Directorate	Completed
Netherlands	Consumentenbond (consumer association)	Completed
Romania	National Authority for Consumers Protection	Completed
Slovenia	Ministry of Transport	Completed
Sweden	CAA	Completed

Data collection from other stakeholders

2.12 Other stakeholders identified during the study and contacted for data collection are shown below.

TABLE 2.6 INTERVIEW STATUS: OTHER STAKEHOLDERS

Member State	Organisation	Status
Austria	Consumer Protection Association	Not able to obtain a response
Slovakia	Association of Slovak Consumers (ZSS)	Not able to obtain a response
Denmark	Rejesgarantifonden (Danish travel guarantee fund)	Completed
EU-wide	ETTSA	Completed
UK	ABTA	Completed

Desk research

2.13 The following studies have been analysed and relevant data has been included within this report:

- Study on Consumer Protection against Aviation Bankruptcy, January 2009 prepared for Directorate-General Energy and Transport European Commission by

Booz&Co (Booz&Co)¹¹

- Functioning of the Internal Market for Air Transport AIRREG – AIR transport REGulations, November 2005 prepared for the European Commission, DG Transport by Transport Studies Unit, University of Oxford (AIRREG)
- Study on Consumer Detriment in the area of Dynamic Packages, November 2009 prepared for The European Commission – Health and Consumers DG by London Economics¹²

¹¹ http://ec.europa.eu/transport/air/studies/doc/internal_market/2009_01_bankruptcy_study.pdf

¹² http://ec.europa.eu/consumers/rights/docs/study_consumer_detriment_dyna_packages_en.pdf

3. PROTECTION CURRENTLY AVAILABLE TO AIRLINE PASSENGERS

Introduction

- 3.1 When an airline ceases operations, passengers who have booked to travel with it may incur a number of costs, which vary depending on whether it ceased operations before the booked flight, or after an outbound flight but before the inbound flight is completed:
- Where the operations ceased before the booked flight, the passenger must choose between rearranging the trip via other means or forgoing the trip. If they rearrange, the passenger must pay for the additional cost of alternative travel (which is likely to be more expensive, particularly if booked at short notice). If it is not possible to arrange alternative travel, or the passenger does not choose to do so, then they forfeit any non-refundable components of the trip (such as accommodation or car hire).
 - Where the operations ceased after an outbound flight but before the completion of the inbound flight, the passenger is likely to incur costs for arranging alternative travel, and may also have to arrange additional accommodation and other costs.
- 3.2 In addition, if a passenger seeks to claim against the assets of an insolvent airline through the courts, he/she will incur legal costs.
- 3.3 There are several mechanisms available in the EU which passengers may be able to use to obtain some protection from the costs above. This section describes the mechanisms we have identified.

Cover available within EU

Package Travel Directive

- 3.4 Directive 90/314/EEC (the Package Travel Directive; hereafter, the Directive) ensures that consumers purchasing package tours are protected against insolvency of airlines or other service providers, or other events that would lead to a failure to deliver the service. It defines a package as the purchase of a pre-arranged combination of at least two elements out of the list of transport, accommodation and other tourist services (which must form a significant part of the package). This excludes purchases of air tickets alone¹³.
- 3.5 The relevant protection afforded by the Directive is provided through the following Articles:
- Article 4(7) states that if part of the package is not provided, the organiser has to make alternative arrangements and if appropriate provide compensation.
 - Article 5 requires Member States to ensure that the organiser/retailer is liable to the consumer for the delivery of all elements of the package even if it does not

¹³ A definition for seat-only tickets is given in Regulation 1008/2008, as “sale of seats, without any other service bundled, such as accommodation, directly to the public by the air carrier or its authorised agent or a charterer”.

provide the services directly.

- Article 7 requires the organiser/retailer to “provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency”.

3.6 The requirements in Article 7 are met in different ways in different Member States. Different approaches to providing evidence of security which have been implemented are as follows:

- Organisers/retailers are required to obtain insurance against failure to deliver services, including as a result of insolvency of a carrier, sufficient to cover a fixed proportion of their annual turnover over above a threshold amount.
- Organisers/retailers are required to deposit a bond with a bank which may be called on in the event of their failure to deliver a package. The bond must be of a size sufficient to cover a fixed proportion of their annual ticket sales. In some States, this bond may also be provided by an authorised institution or insurance company.
- A small fee (typically around €3) is included within the price of all packages sold within the State, paying for a central fund which can then be drawn on to cover any losses incurred by passengers as a result of the inability to deliver services (including as a result of insolvency) of a member of the fund. The fund also covers repatriation of stranded passengers.

3.7 Some States permit organizers and retailers to select between insurance or a bond as they see fit, while others supplement one type of protection with another (e.g. Ireland, which supplements bonds with a reserve fund). Table 3.1 below shows the method of implementation in each Member State; this is based on information provided by stakeholders, supplemented by data from the Consumer Law Compendium¹⁴ (CLC).

TABLE 3.1 IMPLEMENTATION OF PACKAGE TRAVEL DIRECTIVE

State	Method of implementation
Denmark	General reserve fund, managed by State, funded by payment per passenger. In addition, CLC states that organisers/retailers must place a deposit with a bank, sufficient to cover a minimum amount depending on turnover.
France	No information was provided by stakeholders. CLC states that organisers/retailers must either deposit a bond with a bank or obtain insurance.
Germany	No information was provided by stakeholders. CLC states that organisers/retailers must either deposit a bond with a bank or obtain insurance.
Ireland	Bonds equivalent to 4% of projected licensable turnover for travel agents and 10% for tour operators. Supplemented by general reserve fund administered by CAR when bonds insufficient (previously contributed to by tour operators, currently not requiring contributions). CLC also states that carriers may obtain insurance in place of a bond.
Italy	General reserve fund managed by Ministry for Tourism, based on operator contributions. CLC also states that carriers must obtain insurance.
Poland	Bank guarantee (6% of previous year’s income) or insurance against insolvencies. In practice, has not been sufficient to cover all incidents; under review.

¹⁴ See Consumer Law Compendium (2008) p334, http://www.eu-consumer-law.org/study2_en.pdf.

Portugal	No information was provided by stakeholders. CLC states that organisers/retailers must obtain insurance.
Slovakia	No information was provided by stakeholders. CLC states that organisers/retailers must either deposit a bond with a bank or obtain insurance, and that this is supplemented by a security fund.
Spain	Travel agents liable; agents must take out a bond to cover risk of their insolvency. CLC states this may be either with a bank or an insurance company. Arrangements vary depending on region travel agent based in.
United Kingdom	General reserve fund administered by CAA, funded by passenger contributions. Fund members must also obtain an insurance bond from the CAA to the value of 15% of turnover or £40,000 (€47,000), whichever is the higher amount.

3.8 We were informed by several stakeholders that in some States there had been difficulties administering the provisions of the Package Travel Directive:

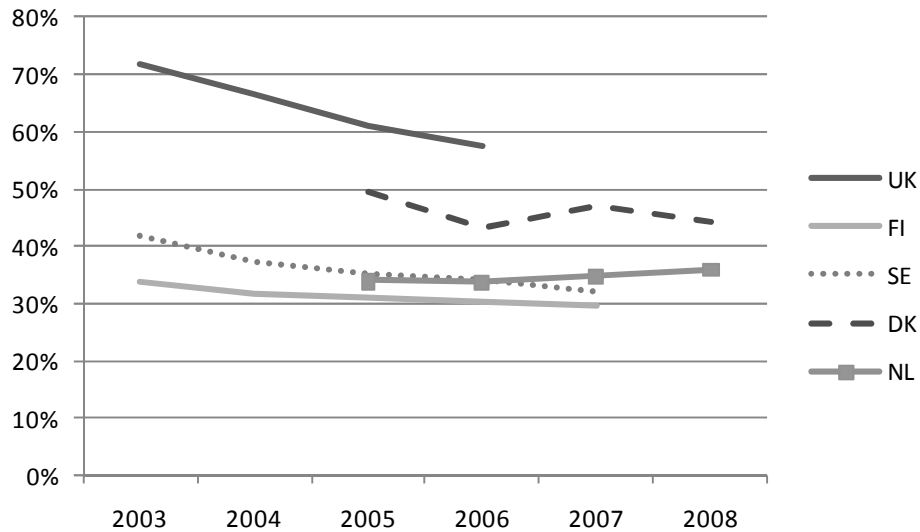
- In several States the bonds tour organisers are required to hold which are intended to cover potential claims by passengers in the case of their insolvency are insufficient to do so. In both Poland and Portugal, there have been cases where the total claims exceeded the proportion of ticket sales set aside to address them. Similarly, in Spain, it was reported in the case of the failure of Viajes Marsans¹⁵ that bonds may not be sufficient to guarantee passenger protection.
- The UK fund, ATOL, at March 2010 had a deficit of £31.8m (€37.8m) and we were informed by Which? that after the collapse of XL Airways in September 2008 the Civil Aviation Authority advised passengers to claim first on their credit cards rather than from the ATOL fund. While the fund has compensated passengers despite the deficit, contributions to the fund have increased from £1 to £2.50 per passenger (source: ATOL).

3.9 A key issue is that the proportion of passengers protected by the Package Travel Directive is declining, as a result of the growing popularity of direct bookings made separately for each element of a trip, and ‘dynamic packages’ where passengers put together the different elements of a package themselves; the Directive is currently unclear under what circumstances these are covered. The UK CAA estimated that the proportion of outbound leisure journeys from the UK protected by the ATOL scheme is now 50%, having been approximately 80% in 2000. This is consistent with data provided by TUI for the Impact Assessment of revisions to the Package Travel Directive¹⁶ (see Figure 3.1). This shows that across at least some States the proportion of holidays protected by the Directive has declined in recent years.

¹⁵ A large Spanish tour operator with multinational operations which was declared insolvent on 3 July 2010

¹⁶ Impact assessment on the revision of the Council Directive on package travel, package holidays and package tours, DG JUSTICE, not yet published.

FIGURE 3.1 PERCENTAGE OF HOLIDAYS PROTECTED BY THE PACKAGE TRAVEL DIRECTIVE AND ADDITIONAL MEMBER STATE PROVISIONS



Source: TUI

- 3.10 The Commission is currently evaluating possible revisions to the Package Travel Directive which would ensure that dynamic packages were protected, but these would not cover passengers who purchased standalone air tickets.

Credit cards

- 3.11 When flights are purchased with a credit card, the responsibility for delivery of the services (i.e. the flight) may be shared with the credit card company or with the issuing bank, and the consumer who purchases in this manner may be therefore claim (in some cases subject to a minimum value) from the appropriate company in the event of airline insolvency.

- 3.12 However, this protection is subject to several limitations:

- Protection is limited to the amount paid for the services not delivered. It does not cover any additional losses (such as accommodation) or additional costs (such as alternative travel), and passengers would be required to organise and pay for their own accommodation and repatriation.
- Protection only applies to purchases by individual consumers; businesses are assumed not to require protection, so it is not extended to purchases by corporate credit cards.
- Credit cards only protect passengers in cases where the ticket is purchased directly from the airline, not from an intermediary (such as a travel agent). The protection offered by credit cards is only available where the supplier has failed to provide the services agreed; in the case of a travel agent, when tickets are purchased it agrees to pass funds to the relevant airlines, and even if the airline is no longer solvent the travel agent has completed its services.

- This protection is not universally available. In the UK the Consumer Credit Act¹⁷ makes credit card companies responsible for the completion of all contracts where the value exceeds £100; there is similar protection in Sweden¹⁸ and MasterCard informed us that there was also this protection in Germany. In other States, the availability of protection depends on the credit card company, and the issuing bank. MasterCard informed us that it offers customers a guarantee to ‘chargeback’ where goods or services are not delivered; in contrast, Visa informed us that it offers a ‘chargeback’ mechanism to issuing banks, and it is then up to the bank whether to pass the right to use this mechanism on to consumers. We were informed by national authorities and consumer organisations that in Belgium, Malta and Spain no such cover (even without legislative protection) was available.
- 3.13 In addition, the UK CAA informed us that passengers had had difficulties in obtaining refunds where the passenger was not the purchaser. However, the AUC (a UK statutory organisation representing air passengers) informed us that obtaining refunds from credit card companies was generally straightforward.
- 3.14 In States where protection, either set out by law (as in the UK and Sweden) or by agreement with credit card providers, does not exist, there may be (depending on timing) some protection afforded by the payment process. When a consumer pays for a service by credit card, there is a delay before the payment reaches the airline (typically between 30 and 60 days). If the airline becomes insolvent occurs during this period, the passenger may be able to obtain a refund from the issuing bank.
- 3.15 A further limitation is that the availability of this form of protection depends on the level of ownership and use of credit cards. National authorities informed us that this varies significantly by State. Many stakeholders believed that credit card usage for purchase of airline tickets was increasing in their States, however some in the UK believed that UK credit card usage for this purpose was now static and that the use of debit cards was increasing, as a result of the increasing levels of credit card charges.
- 3.16 The protection offered by credit cards is also offered by some debit cards, such as Visa Debit cards available in the UK, the Republic of Ireland, and some other Member States. These offer a ‘Chargeback’ scheme, which offers the same protection for purchases as credit cards, however the protection is based on agreements between the card provider and banks, and unlike the protection available to purchases with credit cards in the UK and some other States, is not a legal requirement. However, the Visa Debit card is not available in all Member States: for example, in Italy, the only debit card offered by Visa is V Pay, which does not offer a ‘Chargeback’ scheme.

Schedule Airline Failure Insurance

- 3.17 In some Member States, passengers can obtain insurance to cover some of the costs resulting from the insolvency of an airline on which they are booked (scheduled airline failure insurance or SAFI). This is available from some insurers on a

¹⁷ Consumer Credit Act 1974, as reformed by Consumer Credit Act 2006

¹⁸ Swedish Consumer Credit Act (1992:830)

commercial basis and is sometimes included in more general travel insurance policies. SAFI usually covers the costs of repatriation if the passenger is stranded, or reimbursement for the cost of the original flight tickets in the case that the passenger cannot recover it. It does not usually cover the cost of purchasing another ticket on a different carrier at short notice (except where the passenger is stranded away from home), other elements of the trip which may be non-refundable such as accommodation or car hire, or other additional costs (such as additional accommodation) that a passenger may incur if stranded.

3.18 SAFI is most commonly included with general travel insurance policies, but we have also found examples of SAFI available as a standalone policy:

- in Germany, ERV provides SAFI for €5 per return flight; and
- www.netflights.com includes SAFI in all tickets at a cost of £2.50 (€3) per return flight.

3.19 While SAFI provides some protection to passengers who are able to purchase it and choose to do so, it also has a number of limitations:

- **Geographical availability:** SAFI is most widely available in the UK, where between 23%¹⁹ and 30%²⁰ of travel insurance policies available include SAFI. These figures are for the proportion of all policies available which contain SAFI, and not for the volume of policies sold; IPP, one of the largest providers of SAFI in Europe, informed us that it believed 50%-60% of policies sold in the UK included SAFI, but was not able to provide data to support this. IPP informed us that while the markets in the UK and Ireland were the largest, there were also significant markets in Germany, Holland, Sweden, and the Czech Republic. For example, SAFI is available in Germany for €5²¹. However, travel insurance policies offered in many other Member States at present do not include SAFI, and there are variations even within policies offered by the same provider: for example, the travel insurance offered by easyJet includes SAFI for UK residents but not for residents of Spain.
- **Exclusion of carriers perceived to be in financial difficulty:** The SAFI underwriter interviewed for this study (IPP) excludes carriers against whom risk of insolvency was known at the time the ticket or policy was purchased (whichever was the latter). For example, at present cover is not provided for Japan Airlines, and in the past it was not available for Alitalia (although it at present it is). For retail provision, where SAFI is included as part of a passenger's personal travel insurance, it excludes airlines receiving some form of State protection or funding, and airlines where it is common knowledge through media reports that there are financial difficulties. This means that if an insolvency is sudden and not publicly expected, purchasers of SAFI are covered. For corporate provision (where cover is purchased by a travel agent) IPP may exclude additional airlines; where this is the case, it is the agent's choice to either self-finance the cover, pass this information on to the passenger or to discontinue sales of the airline's tickets.

¹⁹ Defaqto (UK financial products comparison website) survey

²⁰ Of standard single trip policies. Which? census of travel insurance market, September 2010.

²¹ <http://www.reiseversicherung.de/de/versicherung/weitere-reiseversicherungen/ticketsafe.html>

- **Limited scope of cover:** The protection available under SAFI is restricted to the costs of repatriation if the passenger is stranded, or reimbursement for the price of the flight tickets if the passenger is unable to recover it from the airline. It does not cover other costs, such as additional accommodation if stranded, non-refundable elements of the trip if the passenger does not travel, or the incremental cost of booking a replacement flight. IPP informed us that it had quoted for such additions to its standard cover, but that the additional premiums are relatively high and travel agents and insurance providers have not been seen them as commercially viable. The cost of the premiums results from the poor predictability of these additional costs.
- **Insurance market variations:** The level of purchase of insurance varies considerably within the EU. In 2009, the average annual premium across the EU (among CEA members) for non-life insurance was €764 per capita, but at a State level this varies between €3,160 per capita for the Netherlands and €74 per capita in Romania.²² Within the largest five aviation markets in the EU, the average premium varies between €1,049 for Germany and €612 for Italy. While travel insurance is a small proportion of non-life insurance, it would be reasonable to expect that the some of the variation in total non-life insurance spend would be reflected in patterns of purchase of travel insurance. This is supported by anecdotal claims from some national authorities that travel insurance is not widely purchased in their States.²³

3.20 In addition to the issues detailed above, the CEA (a representative body for European insurers) believed that SAFI had only a limited market. It believed that SAFI is expensive to provide, for the following reasons:

- It insures against an entrepreneurial rather than accidental loss. Such losses are more difficult to predict, as successes of business actions such as marketing strategies are harder to assess than non-business factors (such as the rate at which mechanical parts fail) which can be assessed on the basis of previous performance.
- Unlike many other forms of insurance, the failure of an airline can result in the simultaneous filing of numerous claims. In CEA's opinion, insurers are unable to spread this risk, and this results in higher premia. This could also be considered to apply to other forms of insurance that airlines are required to take, such as war risk insurance²⁴.

3.21 As a result of these factors, the CEA believed that SAFI was most often included in 'deluxe' policies, which would not be purchased by the majority of consumers. A brief survey of policies available in the UK showed that for some providers this was the case, but that it is possible to obtain SAFI as part of a relatively cheap policy (for example via easyJet's own policy – although this only covers flights on easyJet, which

²² SDG analysis of CEA Statistics No 42, European Insurance in Figures, November 2010

²³ We also reviewed the weights used to calculate EU-wide inflation, which estimate the level of spend on different products. This shows that proportion of consumer spending on insurance connected with transport varies between 0.1% and 1.4%, but as the majority of this spending is likely to relate to motor insurance, we are not able to draw any conclusions from this source on the variation in the travel insurance market.

²⁴ War risk insurance was not available at any price after 9/11, but in January 2011 a major reinsurer announced that it would be willing to offer insurance for disruption such as seismic activity; the industries attitude to large-scale simultaneous risk is therefore unclear.

is one of the most financially robust airlines).

- 3.22 Although credit cards do provide some protection which covers these circumstances, credit providers do not face equivalent risks, as in the case of a credit card transaction, the acquiring bank has means of protecting itself which would not be available to an insurer. Where the acquirer is concerned about the financial stability of the airline it can:
- delay payments to the airline; and/or
 - require it to provide a bond covering a proportion of payments.
- 3.23 Delaying payment until the flight has been undertaken is sufficient to cover the risk that the acquiring bank has, because its maximum liability is to reimburse passengers for the price of the flight; it has no liability to reimburse the additional costs of a new flight, or other costs passengers may incur particularly if stranded.
- 3.24 However, the Package Travel Directive has in several States been implemented through requiring tour operators and travel agents to cover their risk of insolvency via cover from private insurance companies. It could therefore be argued that this should also be possible for airlines, although it is not clear to what extent there has been pooling of risk in these States (see 6.81 for further discussion). CEA was not able to provide an explanation of why insurance could be used to implement the Package Travel Directive but not equivalently to protect against airline insolvency.

Other cover available within EU

- 3.25 Within the EU, there are several other possible methods of protection available to passengers. These are less widely available than the methods listed above, and are restricted to passengers on particular airlines or within specific States.
- 3.26 Network airlines may issue tickets for journeys involving segments on different airlines, where the ticket is issued by one (issuing) airline and valid for all others (**interlining**). The issuing airline receives payment for the ticket, and retains it until the passenger completes their journey. If the carrying airline becomes insolvent the issuing airline can either reimburse the passenger, or if the passenger is stranded, the ticket will be valid on other airlines which are participating in the interlining agreement. If the issuing airline becomes insolvent, the carrying airline may still accept the passenger, although this is not guaranteed.
- 3.27 An additional element of protection is available to passengers purchasing tickets from intermediaries (such as travel agents) using the IATA **Billing and Settlement Plans** (BSPs), which facilitate transfers of funds between travel agents and airlines. Travel agents make one single payment to their State's BSP, covering sales on all airlines which participate in the BSP; the BSP makes regular consolidated payments to each airline, covering sales made by all agents in that State. Where an airline participating in a BSP becomes insolvent, IATA may withhold any payments made to the airline, and these may (subject to agreement with the airline or appointed administrator) be used to refund passengers.
- 3.28 How many passengers are able to recover the payments they made depends on how

frequently the BSPs are settled. In most EU Member States, including all those with the largest aviation markets, payments are settled on a monthly basis (on the 15th of the month after the payment was collected from the passenger), but in some other States settlements are made either fortnightly or weekly. This means that while in some States all passengers who booked within one month of the settlement date would be likely to obtain a refund, in a number of States passengers would only be able to obtain a refund for tickets booked up to a week in advance. We were informed that in the case of Air Comet, passengers who had booked their tickets within the last week were able to obtain refunds; whereas in the case of Air Madrid the timing was such that passengers booking in the previous 6 weeks should have been able to obtain refunds.

- 3.29 A number of IATA travel agents and airlines have ticketing services supplied by Hahn Air, a company which provides electronic ticketing services to travel agents in a large number of states (in addition to operating a very limited number of business flights between Dusseldorf and Luxembourg). Since 1 January 2010, **Hahn-Air e-tickets** have included SAFI, under which Hahn Air vouches for a full refund of the unused part of the ticket (including taxes). However, the impact of this protection is limited, as Hahn-Air e-tickets account for 2 million coupons per year worldwide²⁵, or 0.1% of IATA airlines' worldwide traffic²⁶.
- 3.30 Several States have sought to extend the scope of the cover offered by the Package Travel Directive to passengers who purchase standalone air tickets. In Denmark, the **Rejsegarantifonden** (the guarantee fund established to meet the requirements of the Package Travel Directive) was from 1 January 2010 extended to require all travel providers and retailers for foreign travel providers established in Denmark to become members. The definition of 'established' was disputed by airlines, and a decision was recently taken by the Company Appeals Board that international airlines headquartered outside Denmark, but with a branch office in Denmark and selling tickets for departures from Denmark to customers located in Denmark, must be registered in the Fund.
- 3.31 Airlines registered in the Danish fund must offer non-business passengers optional bankruptcy cover when buying air transport or car hire abroad, at a cost of 20DKK (approximately €3). The passenger is then entitled to a refund of the original cost of the ticket or repatriation, as appropriate. To become members of the fund, airlines must provide security based on the proportion of their ticket sales within Denmark which would have been covered by the fund. The level of security required varies depending on turnover: airlines whose qualifying annual turnover is 5m DKR (€670,000) must deposit 6% of their turnover as security, while those with an annual turnover exceeding 250m DKR (€33.5 million) must deposit approximately 1%.
- 3.32 Several airline associations opposed the extension of the fund, in part because of the securities it required. IATA and AEA also informed us that there were several practical difficulties with its extension, citing concerns regarding confidentiality of

²⁵ <http://hahnair.com/about/our-story.html>

²⁶ 1.6bn scheduled passengers in 2009, http://www.iata.org/pressroom/facts_figures/fact_sheets/Pages/iata.aspx.

information, and issues with applying the requirements of the fund to interlining tickets. For example, they did not believe it was clear how it should apply to a ticket bought in Denmark which comprises a New York to Brussels leg on a US carrier, followed by a Brussels to Copenhagen leg on an EU carrier. The response from the Rejsegarantifonden was that only leisure passengers where the point of sale is in Denmark²⁷ and the outbound ticket departs from Denmark are required to be covered. The coverage applies to the entire journey (bought from one travel provider). Connecting flights originating outside Denmark are therefore not covered, and connecting flights originating within Denmark are covered; for example, a ticket from Copenhagen to New York via Brussels, purchased from one travel provider, would have coverage for the entire journey.

- 3.33 The Rejsegarantifonden informed us that in the first three quarters of 2010, approximately 150,000 passengers who bought a standalone air ticket have chosen to buy the bankruptcy coverage; they were not able to provide the number of passengers who were offered the coverage, and we therefore cannot calculate the rate of take-up. We have not been able to identify what proportion this forms of passengers who were offered the insurance. The proportion may increase over time, as during the initial period not all carriers established in Denmark have complied with the requirement to offer the insurance.
- 3.34 The implementation of the **Package Travel Directive in Belgium** has also recently been extended. In Flanders, a decree came into force in 2007²⁸ which extended the definition of ‘tour operator’ to include any company with at least one sales outlet in Flanders which sells tickets to passengers, thereby including airlines registered in Flanders (SN Brussels, Jetairfly, Thomas Cook Airlines Belgium and Cityjet). The decree requires these airlines to hold an insurance guarantee against insolvency, however only one airline has complied with the legislation to date. Those which have not complied have argued that implementing the obligations would be discriminatory to carriers based in Flanders and distort competition, and we have been informed that SN Brussels has brought a complaint to the Commission. It is possible that this law would be inconsistent with the requirement in Article 15 of Regulation 1008/2008 that Member States must not require any permit or authorisation to allow EU carriers to operate, and therefore open to successful legal challenge.

Monitoring by regulatory authorities

- 3.35 The measures described above offer passengers protection in the event that an airline becomes insolvent. The need for such protection may be reduced if the financial positions of airlines are monitored effectively and corrective measures employed where necessary.
- 3.36 Regulatory authorities are obliged under Regulation 1008/2008 to monitor the financial position of the airlines to which they have issued licenses, as follows:

²⁷ For internet purchases, this is defined as an IP address located in Denmark.

²⁸ Decreet houdende het statuut van de reisbureaus, 2 March 2007, implemented 20 July 2007.

- **Article 8** requires airlines to present timely audited accounts to their competent licensing authorities, and requires competent licensing authorities to monitor ongoing compliance with the provisions on financial fitness set out in the Regulation. In particular, they must review the position of airlines two years after the granting of a new operating license, when a potential problem is suspected, and at the request of the Commission.
- **Article 9** requires a competent licensing authority to suspend or revoke an operating license if it is not satisfied that the airline can meet its actual and potential obligations for a 12-month period. It may grant a temporary licence valid for up to 12 months (subject to safety considerations) to allow financial reorganisation. Where there are clear signs of financial difficulty, the airline must within 3 months make an in-depth assessment of the financial situation.

3.37 The monitoring of airlines undertaken by the national authorities contacted for the study is described in Table 3.2 below.

TABLE 3.2 FINANCIAL MONITORING OF CARRIERS BY NATIONAL AUTHORITIES

State	Authority	Monitoring
Denmark	SLV (licensing authority)	Information from SLV not provided in time to be included in the study
	Travel Guarantee Fund	The Travel Guarantee Fund performs additional monitoring for its own purposes. It requires an annual financial report from airline, including contribution ratio, liquidity ratio and solvency ratio (including supplementary documentation on request).
France	DGAC France	Regular checks of timely payment of aviation taxes, charges, employee taxes. Monthly checks of operated flight hours, cash position and revenues (more frequently when in difficulty). Annual review of audited accounts.
Germany	LBA	Information from LBA not provided in time to be included in the study
Ireland	CAR	As required under Regulation 1008/2008. From October 2008 until further notice, in response to difficult market conditions, require management accounts and traffic/costs data on monthly or quarterly basis depending on airline's financial position.
Italy	ENAC	Require annual budget, and every six months information sheet showing loss/profit/operating costs for previous six months.
Poland	CAA Poland	Financial statements checked annually, more frequently (quarterly or monthly) when made aware of a problem.
Portugal	INAC	Information not provided in time to be included in the study
Slovakia	Ministry of Transport, Construction and Regional development	In accordance with Regulation 1008/2008 (further details requested, but not yet provided)
Spain	Ministry of Development	Review unaudited management accounts at end of first year of license, followed by analysis of audited accounts. If not satisfactory, require quarterly (or more frequent) reports on outlook for next 12 months and current performance. Also monitor airport suppliers and ANS for reports on payments.

United Kingdom	CAA	Frequency of monitoring varies by perceived risk (e.g. Type A carriers give monthly information). If severe difficulties, seek to minimise impact (e.g. wind down business, avoid mid-season failure).
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- 3.38 From the table, it is clear that there is some variation in the level of monitoring undertaken. The frequency of monitoring varies from the minimum required by the Regulation (i.e. when problems identified, and two years after the granting of the license), to annual and biannual review of management accounts, to monthly review of all airlines. Several national authorities will undertake more frequent review when problems are identified.
- 3.39 While the requirement to monitor the financial position of airlines is useful to national authorities as forewarning of potential issues, their ability to prevent an airline's eventual insolvency may be limited. National authorities informed us that in some cases (for example Air Comet and Flyglobespan) they were well aware that the carrier had serious financial problems, and undertook more intensive monitoring as a result, but there was nothing that they could do to prevent the carrier from failing. They believed that it would not have been appropriate to prevent the carriers from selling tickets, as this would have led to an immediate cessation of operations.
- 3.40 However, national authorities may be able to limit impacts on passengers: in the case of Flyglobespan, the UK CAA informed us that it withdrew the carriers' license at the time of year when this was expected to have the lowest possible impact on passengers. Up to a year ahead of the insolvency the UK CAA had an ongoing dialogue with Flyglobespan to monitor its financial situation and any potential investors for the firm. The UK CAA only took formal action when no further options were available to support the firm and active management was undertaken to ensure that the business was wound down at the lowest point in the demand cycle.

Differences in bankruptcy law

- 3.41 Differences in bankruptcy law may also impact the possibility that a carrier stops operating. In the United States, Chapter 11 of the Bankruptcy Code permits companies to file to a federal court for protection, which if granted allows the debtor to remain in control of the company under the supervision of the court. This allows the company to remain in operation, and in the case of airlines prevents the cessation of flights and therefore any immediate impacts on passengers.
- 3.42 Similar protection is available in several EU States, however this is generally less than under Chapter 11 in the United States:
- In Ireland, the protection is termed **examinership**. This was applied for by Aer Arann in August 2010, and the appointment of an examiner allowed the airline to continue operations while seeking alternative financing. Aer Arann has now exited examinership, and continues operations.
 - In France, companies may seek **judicial composition**, where an administrator is appointed. This scheme is more favourable to the debtor than that in several other States (the UK, for example).
- 3.43 These provisions, which vary between States depending on national insolvency law,

reduce the risk that an airline stops operating due to short term financial problems.

- 3.44 The impact assessment phase of this study has considered an option (B6: Adapt current bankruptcy / insolvency laws in Member States) which would prioritize passengers as creditors of insolvent airlines. We are not aware and were not informed of any State where this was the case at present.

4. AIRLINE INSOLVENCIES DURING THE STUDY PERIOD AND THEIR IMPACT ON PASSENGERS

Introduction

- 4.1 Airline insolvencies are relatively rare events, and as a result are hard to predict. In a given year, the number of insolvencies varies considerably, and the number of passengers affected shows further variation depending on the size of the carriers that fail. All passengers affected bear some immediate cost, but the proportion of this which can be recovered depends on what protection, if any, the passenger has. This cover varies depending on factors such as how the passenger is affected (for example if they are stranded or do not travel), the State in which they reside, and the purpose of travel.
- 4.2 This section provides a description of:
- the insolvencies we have identified during the study period;
 - the number of passengers affected over the period 2000 to 2010;
 - the assistance that was offered to these passengers; and
 - the impact on affected passengers (in terms of costs), depending on the type of protection they had.
- 4.3 This section focuses on the results, but includes a summary of the methodology and assumptions used to derive them. For a more detailed description of methodology, assumptions and intermediate results please see appendix A.

Identified insolvencies

Methodology and assumptions

- 4.4 We identified airlines which had ceased operations between September 2008 and October 2010 in a manner which would have caused disruption to passengers, and which were both registered in the EU and provided at least some scheduled seats. This list was based on a number of sources including primarily Official Airline Guide (OAG) data, and verified with stakeholders. This list was added to the insolvencies identified by previous reports, to create a complete list of insolvencies in the EU between 1 January 2000 and 1 October 2010.
- 4.5 More detail on the process followed to identify airline insolvencies, and the assumptions that we have made, is provided in appendix A.

Results

- 4.6 The results of the process of identification are shown in Table 4.1, which lists the airlines ceasing operations which affected passengers purchasing standalone tickets. We have identified 18 insolvencies of airlines carrying scheduled passengers between 16 September 2008 (the cut-off point for the previous Booz&Co study) and 1 October 2010. We have also included Aerocondor which, although it ceased operations in May 2008, was not included in the previous study; when referring to airlines within the

study period this report henceforth includes Aerocondor.

TABLE 4.1 AIRLINE CEASING OPERATIONS WITHIN STUDY PERIOD

Airline name	State	Date of ceasing operations	Type of operation	OAG weekly seats
Aerocondor	PT	01/05/2008	Network short-haul only	16,216
Lagun Air	ES	09/10/2008	Network short-haul only	3,523
Sterling	DK	29/10/2008	Low cost	129,789
LTE International Airways	ES	15/11/2008	Charter/leisure	2,168
flyLAL	LT	17/01/2009	Network short-haul only	13,120
SkySouth	UK	01/02/2009	Network short-haul only	177
centralwings	PO	26/03/2009	Mixed low cost/charter (treated as charter/leisure for purposes of modelling)	15,757
Gadair	ES	01/05/2009	Network long-haul only	1,274
MyAir.com	IT	24/07/2009	Low cost	30,613
SkyEurope	SK	31/08/2009	Low cost	72,976
New Axis Airways	FR	07/12/2009	Charter/leisure	840
Avitrans Nordic AB	SE	12/12/2009	Charter/leisure	16,509
International Business Airlines	SE	12/12/2009	Network short-haul only	35
flyglobespan	UK	16/12/2009	Low cost	11,091
Air Comet	ES	21/12/2009	Network long-haul only	15,022
Hola Airlines	ES	15/02/2010	Charter/leisure	2,288
Air Slovakia	SK	02/03/2010	Charter/leisure	5,076
Highland Airways	UK	24/03/2010	Charter/leisure	1,593

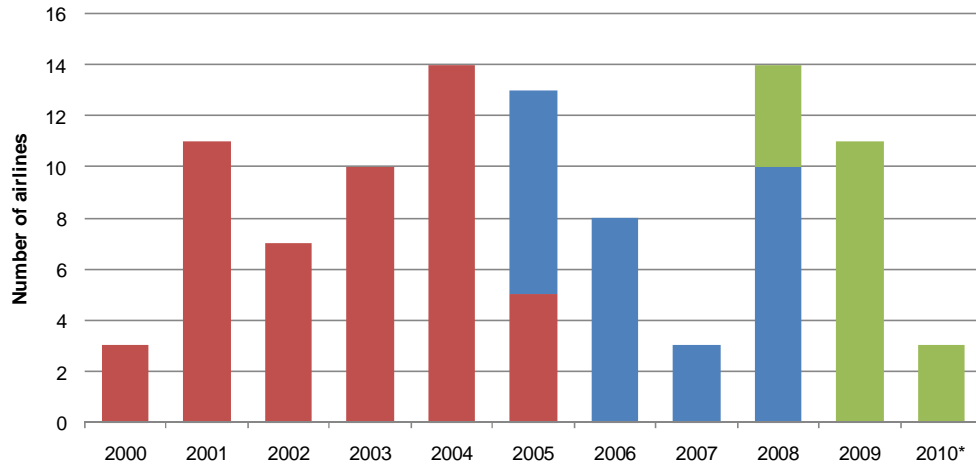
4.7 Figure 4.1 shows that the frequency of airlines ceasing operations has fluctuated considerably over the last 10 years: peaks of 14 insolvencies were observed in 2004 and 2008, while in 2000 and 2007 only 3 were identified²⁹. Although it might have been expected that the economic downturn at the end of 2008 would have increased the frequency of airline insolvencies, the number has not increased consistently.

4.8 We noted above that the previous two studies (covering 2000 to 2008) also identified airlines which never commenced services. These account for 6 of the 79 airlines (8%) identified between 2000 and 2008. Over the period defined for this study, the average number of insolvencies per year was 8.8; this compares to an average of 9.0 per year for the previous studies if airlines which never commenced services are included, and an average of 8.4 per year if they are excluded. On this basis, the exclusion of airlines which never commenced services does not affect our conclusion that there is no evidence that the number of airline insolvencies has increased consistently. In any

²⁹ This is also the case in 2010 up to the cut-off point for inclusion in the study.

case, airlines which never commenced services are likely to have had a much smaller impact on passengers.

FIGURE 4.1 EU AIRLINES OFFERING SCHEDULED SEATS CEASING OPERATIONS DURING STUDY PERIOD

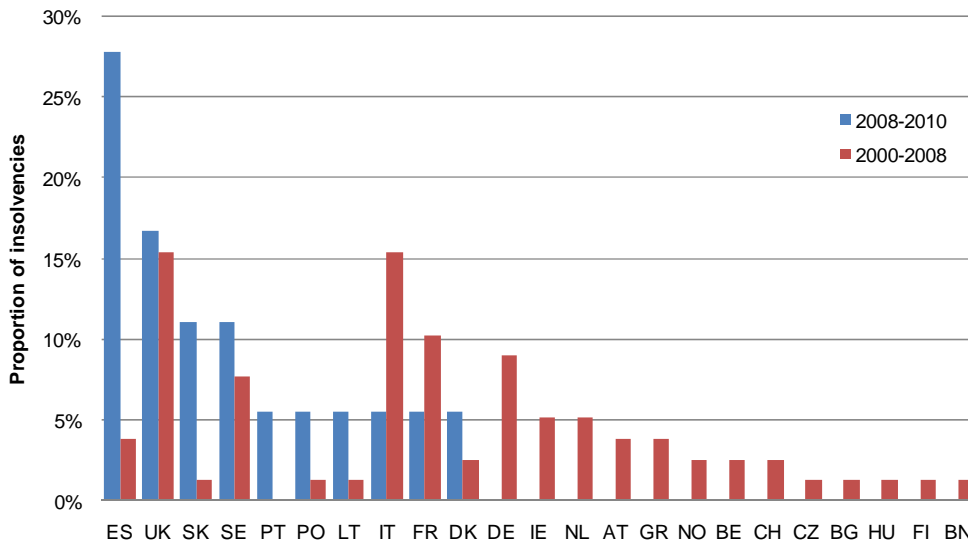


Source: AIRREG (2000-2005), Booz&Co (2005-2008), SDG (2008-2010)

* Up to 1 October 2010.

4.9 Figure 4.2 shows the proportion of insolvent airlines from different Member States. There is some relationship between the distribution of insolvencies and the size of States’ aviation markets, with the largest number of insolvencies being of carriers’ registered in the UK and Spain (the first and third largest markets in the EU, measured in terms of passenger numbers). There has been a particularly large number of airline insolvencies in Spain since 2008, which may be explained by the severe economic downturn in Spain, strong low cost carrier competition, and the downturn in the domestic aviation market following the expansion of the high speed rail network.

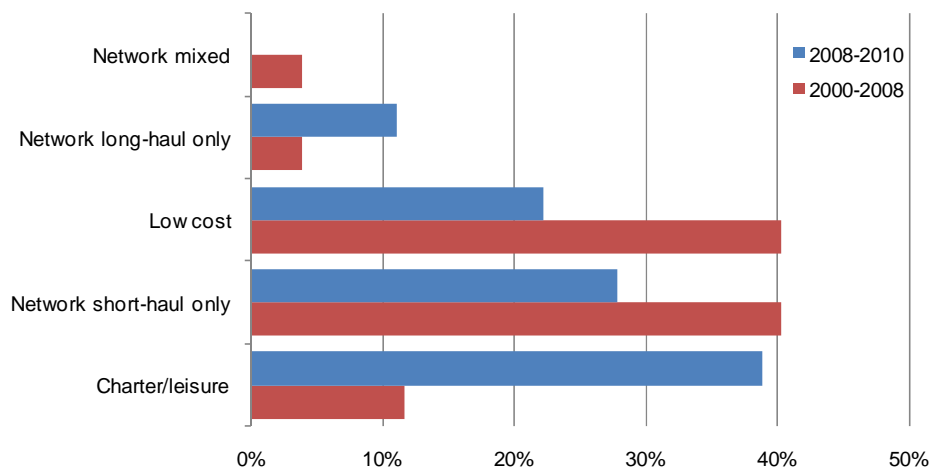
FIGURE 4.2 PROPORTION OF INSOLVENT AIRLINES BY MEMBER STATE BETWEEN 2008-2010 AND 2000-2008



4.10 Figure 4.3 shows that charter/leisure airlines made up the largest proportion of airline insolvencies for scheduled passengers over 2008 to 2010. Note that this does not necessarily mean that the largest number of passengers or the greatest impacts were the result of charter/leisure airlines; this is discussed in paragraph 4.16. 22% of the airlines which became insolvent were low cost airlines and 28% provided other scheduled short-haul services only.

4.11 In the period 2000-2008 there were a lower proportion of charter/leisure airline insolvencies with the majority (80%) split evenly between network short-haul only and low cost carriers.

FIGURE 4.3 PROPORTION OF INSOLVENT AIRLINES BY AIRLINE SERVICE TYPE BETWEEN 2008-2010 AND 2000-2008



Number of passengers affected

Methodology and assumptions

- 4.12 Where available, we used information collected from stakeholders (airline licensing authorities, airline associations and consumer organisations), or reported in the press at the time that the airline ceased operations, for the number of passengers stranded, or booked to travel, and therefore impacted by the insolvency of a carrier..
- 4.13 Where this information was not available, estimates of the number of passengers impacted were derived from data on the capacity that the airline provided. This was based on the number of seats provided (based on OAG data³⁰, or size and composition of fleet where this was not available) combined with a load factor to estimate weekly passengers transported. We then used typical passenger stay lengths to estimate the number of passengers that would have been stranded, and advance booking periods estimated on the basis of the proportion of revenue received in advance by airlines, to estimate the number passengers who would have been booked to travel but unable to do so. More detail on these assumptions is provided in appendix A.
- 4.14 These figures were then adjusted to take account of the following factors:
- validation of our estimates against airlines for which we had data from stakeholders or other sources;
 - exclusion of passengers on package travel, where these are included in the estimates.

Results

- 4.15 Table 4.2 shows the number of passengers that we estimate were affected by each of the insolvencies identified during the study period.

³⁰ Official Airline Guide

TABLE 4.2 PASSENGERS ON STANDALONE TICKETS AFFECTED BY AIRLINES CEASING OPERATIONS WITHIN STUDY PERIOD

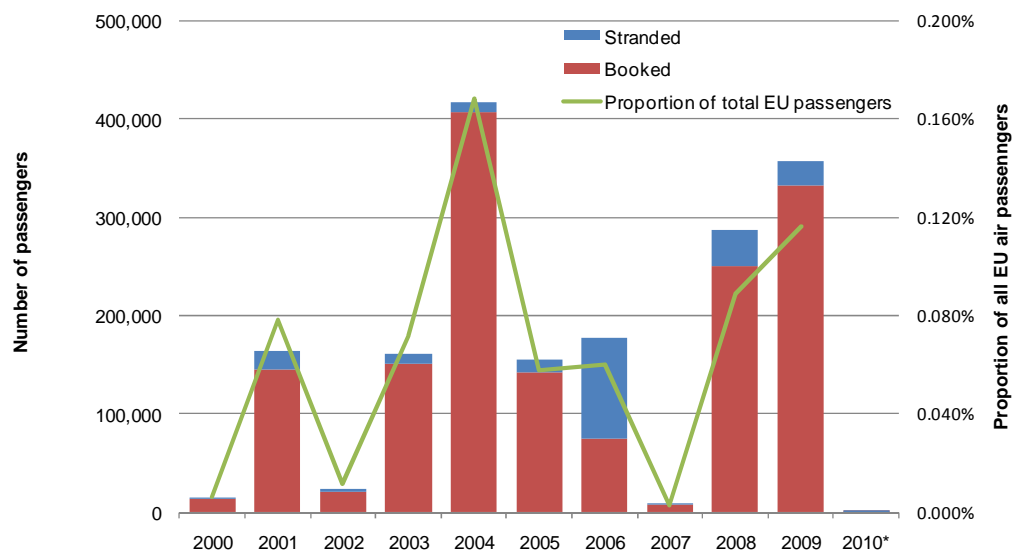
Airline	State	Date of ceasing operations	Passengers affected		Source/Notes
			Stranded	Booked	
Aerocondor	PT	01/05/2008	2,222	12,140	Estimation
Lagun Air	ES	09/10/2008	0	0	Ministry of Development, Spain – no passengers were affected as its operations were wound down and any bookings were refunded or transferred
Sterling	DK	29/10/2008	21,204	192,712	Estimation
LTE International Airways	ES	15/11/2008	30	173	Estimation
flyLAL	LT	17/01/2009	1,817	9,912	Estimation
SkySouth	UK	01/02/2009	25	134	Estimation
centralwings	PO	26/03/2009	218	1,255	Estimation
Gadair	ES	01/05/2009	449	2,232	Estimation
MyAir.com	IT	24/07/2009	546	11,831	ENAC
SkyEurope	SK	31/08/2009	12,048	254,813	Stranded passengers: Estimate Booked: Slovakian SOI/MINDOP
New Axis Airways	FR	07/12/2009	12	67	Estimation
Avitrans Nordic AB	SE	12/12/2009	229	1,315	Estimation
International Business Airlines	SE	12/12/2009	5	27	Estimation
flyglobespan	UK	16/12/2009	4,095	24,571	Which? (UK consumer body)
Air Comet	ES	21/12/2009	5,293	26,323	Estimation. Numbers for stranded passengers and affected passengers were provided by the Spanish Ministry of Development, as number of passengers assisted and making claims respectively. The actual totals are likely to be higher, and we have therefore estimated this.
Hola Airlines	ES	15/02/2010	32	182	Estimation
Air Slovakia	SK	02/03/2010	0	0	Slovakian SOI/MINDOP – no passengers were affected as the airline suspended flights operations before its operating license was suspended
Highland Airways	UK	24/03/2010	0	0	UK CAA – no passengers were affected as the airline did not take advance bookings
Total			48,224	537,686	

4.16 Figure 4.4 shows the number of passengers affected by airline insolvencies over the study period, January 2008 to October 2010. In total, over 2000 to 2010, we estimate

that 1.8 million passengers were impacted in some way; this is equivalent to 0.07% of all return standalone trips. There is inevitably significant uncertainty about this estimate given the limited information; as a high case scenario we estimate up to 2.2 million passengers could have been impacted (0.08% of all return trips) and as a low case scenario we estimate 1.4 million could have been impacted (0.06% of all return trips). Of these, 12% were stranded away from home. In all years, the number of passengers impacted was lower than 500,000. In most years the number of stranded passengers is a small proportion of these but 2006 is an exception due to the insolvency of the long haul airline Air Madrid.

4.17 The proportion of total EU passengers affected by airline insolvencies was highest in 2004, but even in this year only 0.17% (range 0.14-0.20%) of passengers were impacted. However, as discussed in more detail below, although the proportion of passengers impacted is small, the impacts on these passengers can be quite significant.

FIGURE 4.4 PASSENGERS AFFECTED BY YEAR



* Note that the data for 2010 is incomplete, and includes only insolvencies up to 1 October 2010. For this period, less than 500 passengers were affected by insolvencies, which is too small to be visible on the chart.

4.18 The proportion estimated is significantly lower than the estimate provided to the Commission by British Airways and AEA, which estimates that 0.35% of passengers were affected by insolvencies across 2008 and 2009. This variation occurs because of differences in approaches, assumptions and timescales. Two primary reasons for differences are as follows:

- Where public data is not available, the British Airways/AEA calculations assume that all the insolvent airlines it has identified have the same average capacity as the airlines where data is available. This will tend to overestimate the number of passengers affected, as the airlines where public data is not available are likely to be smaller than those where the insolvency was a significant enough problem to be covered in the media.

- The calculations for British Airways/AEA are based on 2008 and 2009, years which we identify as having had relatively high numbers of affected passengers.

4.19 A detailed comparison of our results against those of British Airways/AEA is included in appendix A.

Assistance provided

Assistance from national authorities

4.20 Table 4.3 below describes the assistance provided by national authorities in the States where we have identified an insolvency of an airline providing scheduled services since 2008.

TABLE 4.3 ASSISTANCE PROVIDED BY NATIONAL AUTHORITIES DURING AIRLINE INSOLVENCIES 2008-2010

Member State	Airline(s)	Assistance provided by national authorities
Denmark	Sterling	No assistance provided
France	New Axis Airways	No assistance provided
Italy	MyAir	No direct assistance; ENAC has chartered planes for other emergencies, but never airline insolvencies
Poland	centralwings	Where Polish passengers are stranded abroad by insolvency, they may apply to Polish embassies for monetary assistance for repatriation, which must subsequently be repaid
Lithuania	flyLAL	No information provided about assistance
Portugal	Aerocondor	No information provided about assistance
Slovakia	Air Slovakia, SkyEurope	No assistance provided; they have never organised the repatriation or assistance of passengers stranded outside the State
Spain	Air Comet, Gadair, Hola Airlines, Lagun Air, LTE International Airways	In some cases (such as Air Madrid and Air Comet) the Spanish Ministry of Development has assisted passengers. This has included chartering planes to repatriate passengers, purchasing tickets for stranded passengers from other airlines and setting up an office to provide information.
Sweden	Avitrans Nordic AB, International Business Airlines	No information provided about assistance
UK	flyglobespan, Highland Airways, SkySouth	The UK CAA has only assisted passengers in cases where the number of passengers affected was large and other alternative flights were not available.

4.21 Of the states that did not experience airline insolvencies between 2008 and 2010, four national authorities (France, Denmark, Ireland and Luxembourg) informed us that it was not within their remit to provide assistance in the case of airline insolvencies. Although the Spanish government did organise some short term assistance to stranded passengers after the failures of Air Comet and Air Madrid, these were exceptional political decisions partly prompted by the fact that both airlines failed shortly before Christmas, and it emphasised that it had no obligation to do this.

Assistance from other airlines

- 4.22 In several cases where airlines have ceased operations, other airlines which operate similar routes have offered seats at discounted ‘rescue fares’ to passengers affected. However, although stakeholders suggested that these rescue fares were not intended to maximise profit for the airline, they were in most cases at least sufficient to cover the airlines’ operating costs, and airlines generally have not provided additional capacity in these situations. As commercial operations, airlines will see such situations as marketing opportunities and may be willing to forego the revenue which could have been extracted from stranded passengers through high last-minute fares in the hope of gaining positive publicity (or at least avoiding negative publicity from appearing to exploit the situation) and attracting future customers.
- 4.23 Although two airline associations (ERA and ELFAA) informed us that some of their member airlines had offered these ‘rescue fares’, in the case of MyAir, ENAC found that while airlines stated that low prices were offered for MyAir ticket holders, there was in fact no discount. In the case of Ryanair’s rescue fares offered to Sterling passengers, these were offered at €100. This is significantly more than Ryanair’s average fare, and therefore will have been sufficient both to cover costs and generate significant profit for Ryanair, albeit less than the last-minute fare might typically have been given the high demand after the insolvency of another airline.
- 4.24 ELFAA member airlines have entered into a voluntary agreement, which requires them to offer assistance to passengers stranded away from home as a result of the failure of another airline. This assistance is available up to 2 weeks after the date of the failure of the original airline and ELFAA airlines will, subject to availability, take passengers back to the nearest ELFAA served airport for a nominal fee. The nominal fee is not defined and may vary by carrier. The assistance provided by ELFAA members is set out in Table 4.4 below; note that this is based on data provided by ELFAA, and we have not been able to verify all of this data against other sources.

TABLE 4.4 ASSISTANCE PROVIDED BY ELFAA MEMBERS

Airline	Assistance from other Airlines
Sterling	Norwegian provided extra flights where needed and transported stranded passengers – most flights were free of charge, some were for a nominal fee easyJet and Ryanair both offered seats at “repatriation fares”; in the case of Ryanair this was €100.
MyAir	Wizz Air offered repatriation fares to stranded passengers, on overlapping routes.
SkyEurope	easyJet, Norwegian, Ryanair, Vueling and Wizz Air offered repatriation fares to stranded passengers on various overlapping routes. Ryanair reported a repatriation fare of €25.
Flyglobespan	easyJet, Flybe and Ryanair reported high number of stranded passengers using repatriation fares on various overlapping routes. Ryanair reported a repatriation fare of £59 (€69).

Assistance from airports

- 4.25 We were informed by ACI that the impact of airline insolvencies on airports was often minimal, although this depends on the specifics of the airport and the airline. Typically, the passengers affected by an airline ceasing operations are dispersed between the airports formerly served by the airline, and an individual airport will

therefore only be required to manage a proportion of the affected passengers. In comparison to the other forms of disruption (such as strikes, or the recent volcanic ash cloud) where all flights at an airport are grounded, the effect of an airline ceasing operations is usually minor. At smaller airports or in the case where the main carrier at an airport has ceased operations, it is likely to be more difficult for the airport to manage the problem.

4.26 In the majority of cases the airport has limited input, and issues are primarily between the airline and its passengers. However we have been informed of examples where airports have offered limited assistance to passengers, such as AENA providing refreshments to passengers after the Air Comet and Air Madrid failures.

4.27 A consumer organisation informed us that the information provided by airports in the event of airline insolvency had been very useful to affected passengers; such passengers would be unable to obtain information from the airline which had ceased operations, and national authorities would be unlikely to have staff available at the airport.

Impact of insolvencies on passengers

Methodology and assumptions

4.28 We separated affected passengers into the following categories:

- stranded passengers;
- passengers booked on an insolvent airline who do not travel, either because they are not able to find a replacement flight, or because they decide not to (perhaps because replacement flights are too expensive); and
- passengers booked on an insolvent airline who arrange alternative travel.

4.29 The types of costs immediately incurred for each category of passenger are described in Table 4.5.

TABLE 4.5 IMMEDIATE COSTS BY PASSENGER TYPE

	Loss of original flight		Purchase of replacement flight		Loss of non-refundable accommodation and other services	Additional accommodation, food, etc	Information or communication costs
	Outbound	Return	Outbound	Return			
Stranded		✓		✓		✓	✓
Booked and does not travel	✓	✓			✓		
Booked and rebooks	✓	✓	✓	✓		✓	

4.30 We estimated the costs of each of these elements based on publicly available information, including:

- public financial data on airline yields;
- airline websites for incremental costs of rebooking flights at short notice;
- tourism statistics for average cost of accommodation and care;

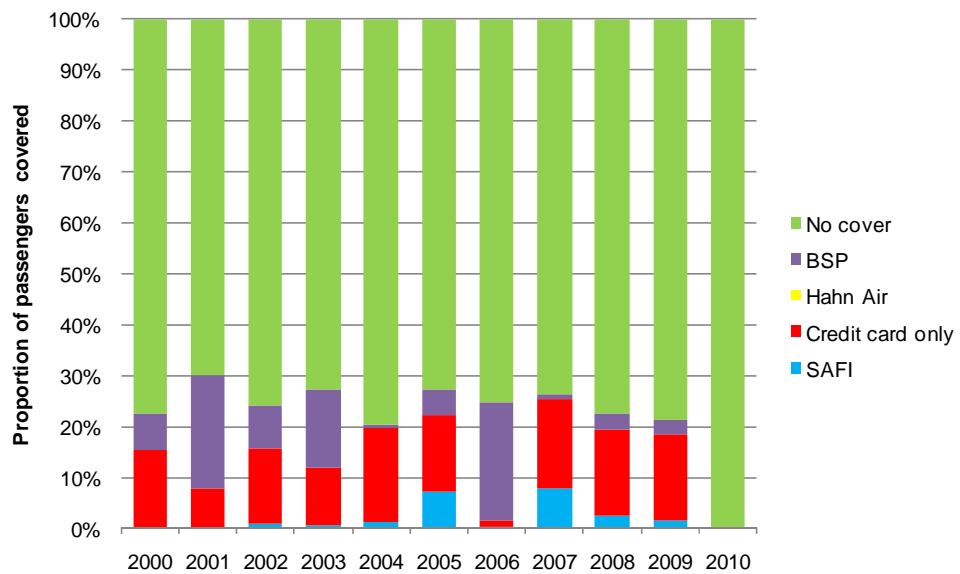
- cost of phone calls, based on the capped mobile roaming rates applying in the EU.

4.31 Depending on the type of protection a passenger has (if any), they may be able to recover a proportion of these costs; we estimated which costs could be recovered on the basis of stakeholder information. Further detail on the methodology, assumptions and data sources is provided in appendix A.

Results

4.32 Figure 4.5 shows the proportion of passengers with different types of cover for the insolvencies between 2000 and 2010; note that the level of protection provided to passengers can vary considerably between the different options. The proportion of passengers not covered remains relatively constant, varying between 70% and 80% for all years except 2010. For those passengers who do have some form of cover, the methods vary considerably year by year. The variation is a result of the types of airline which become insolvent in a given year, and which States they are registered in. The largest proportions of protection used are through the IATA BSP, and through credit cards. Although the use of credit cards and the availability of SAFI has increased, the proportion of passengers with protection has not, as a greater proportion of the insolvencies relate to low cost airlines for which there would be no protection from the IATA BSP.

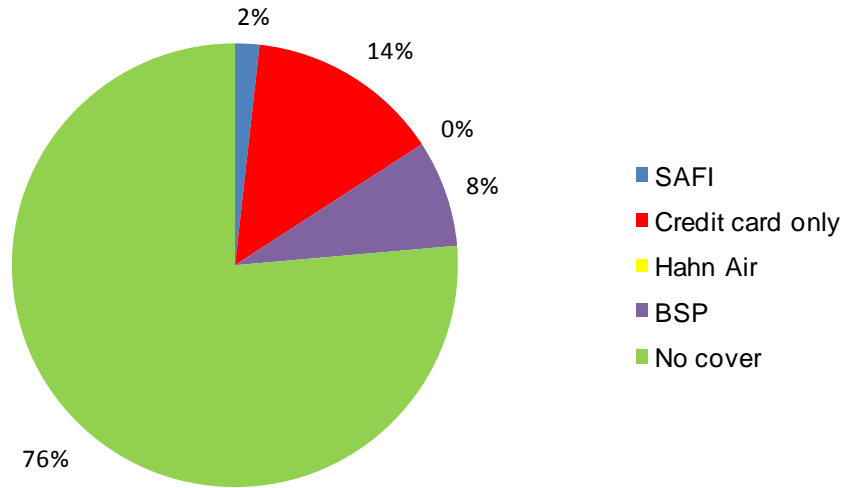
FIGURE 4.5 PROPORTION OF PASSENGER COVER FOR AIRLINE INSOLVENCIES BY YEAR



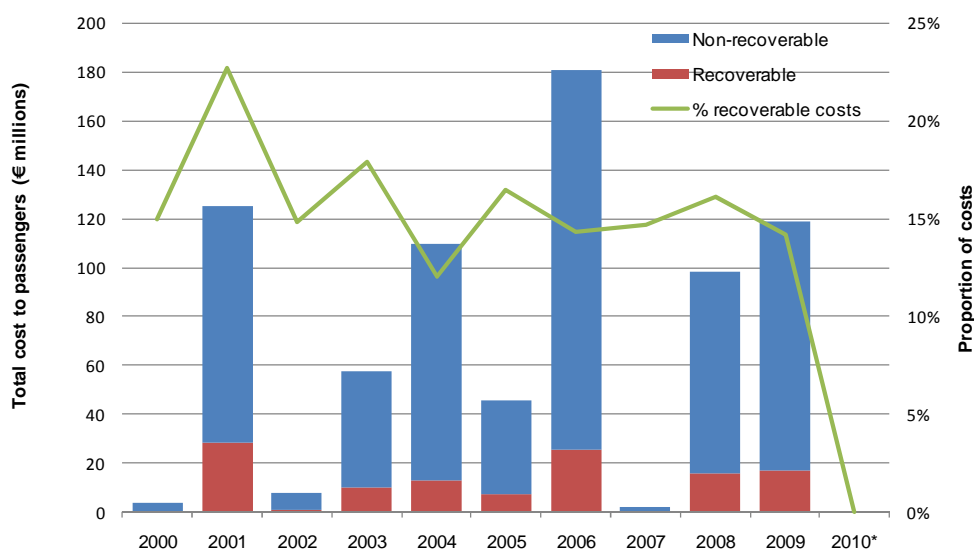
4.33 Figure 4.6 shows the proportion of passengers of insolvent airlines which had some form of protection between 2000 and 2010. Again, many of those passengers who had some form of protection would not have had all costs covered; for example, none of the forms of protection available would cover any costs of additional accommodation necessitated by an airline failure. Over the ten year period, 2% of passengers impacted by airline insolvencies had some form of protection from SAFI, 14% from credit card cover and 8% from the BSP. We estimate that approximately 76% of scheduled airline

passengers affected by insolvency over this period did not have any form of protection.

FIGURE 4.6 PROPORTION OF PASSENGERS COVERED 2000-2010



4.34 Figure 4.7 below shows the total costs that we estimate have been incurred by scheduled passengers as a result of insolvencies of airlines providing scheduled services, for each year between 2000 and 2010. This is divided into costs which are recoverable and non-recoverable. The line shows the proportion of costs which we estimate passengers have been able to recover; this has varied between 0% and 23% of total costs, varying with the types of airline becoming insolvent and the passengers travelling on these flights. Although the types of cover against insolvency available have increased, with SAFI introduced in 2000 and Hahn Air in 2010, these are only available for specific flights, or are voluntary. With the increase in direct bookings the protection offered by IATA travel agents is used by fewer passengers.

FIGURE 4.7 TOTAL COSTS TO PASSENGERS BY YEAR SPLIT INTO RECOVERABLE AND NON-RECOVERABLE COSTS (2010 REAL PRICES)

* Note that the data for 2010 is incomplete, and includes only insolvencies up to 1 October 2010.

- 4.35 For 2010, the proportion of recoverable costs is 0%. For the part year to October 2010, we have identified three insolvencies of airlines which offered scheduled seats. For two of these, stakeholders informed us that no passengers had been affected. The figures shown are therefore based on the third, which was Hola Airlines, a charter/leisure carrier based in Spain. Since it was a leisure carrier, it was not a member of a BSP, and its registration in Spain means that neither SAFI nor credit card protection was available to its passengers³¹. This demonstrates how much the level of protection available depends on the type of airline and its State of registration.
- 4.36 Table 4.6 below shows the average costs that we estimate have been incurred per passenger who is stranded, does not travel or rebooks. The costs are highest for stranded passengers, who lose the cost of one flight and must pay for an additional flight booked at very short notice, in addition to one extra night's accommodation (unless they are visiting friends and family). Passengers who rebook their trip incur the costs of their original flights and the cost of rebooking flights at relatively short notice. Those who do not travel incur the cost of the original flights and any costs of accommodation or other services which they are not able to get refunded. These estimates take into account the mix of different types of airlines that have failed and therefore reflect the different costs incurred by long haul and short haul, and business and leisure passengers.
- 4.37 The costs incurred by passengers vary depending on the distance travelled by the passenger. For example, the average stranded passenger travelling on a scheduled

³¹ We were informed by both the consumer organisation and national authority that insolvency cover was not available to air passengers paying by credit card in Spain. We have sought confirmation of this from Visa and MasterCard, but have not received in time for this study. If we receive it in time, we will include it in the Final Report.

long-haul carrier incurred costs of €1,109, compared to costs of €335 incurred by passengers with low cost carriers. Note that the high cost for stranded passengers is partly driven by high numbers of stranded passengers for Air Comet and Air Madrid; as these were long-haul carriers, the costs incurred by their passengers would be relatively high, and this has led to a higher cost than would be expected on average.

TABLE 4.6 AVERAGE COST PER PASSENGER BY TYPE ACROSS INSOLVENCIES OBSERVED OVER 2000-2010 (2010 PRICES)

	Stranded	Do not travel	Rebooked	Assumptions
- Information (cost of phone calls to rebook flights)	€7	-	-	Two 5 minute phone calls at EU capped roaming mobile rate
- Care (including additional accommodation)	€87	-	€92 ³²	One additional day of trip, including accommodation, food and other necessary spending
- Cost of original flight(s) (reimbursement)	-	€260 ³³	-	Two flights (i.e. one return) at average yield of airline sample. Zero for stranded and rebooked passengers. ³⁴
- Cost of replacement flight(s) (for repatriation or for replacement travel)	€702	-	€298	For rebooked, the incremental cost of two flights booked at half average advance booking period. For stranded, a one-way flight booked at half of average length of stay
- Non-refundable components (such as hotel or car hire deposits)	-	€55	-	10% of cost of accommodation and other services for trip
Total	€796	€315	€390	

4.38 Table 4.7 shows the proportion of these costs which we estimate would have been recoverable, depending on the passenger type and the cover which they have. Those who did not travel were in principle able to recover almost all of their costs under most schemes, however those that rebooked could recover between 63% and 78% of their costs as their new flights are not covered. Those stranded could only recover most of their costs if they had SAFI. The proportion of costs recoverable for passengers buying through the IATA BSP only refers to those passengers actually covered by the protection, i.e. those who booked within the remittance period. Passengers who booked via an IATA travel agent but further in advance would have received no protection, and therefore recovered 0% of their costs.

³² The costs of care vary depending on the year and type of carrier. The proportion of stranded to rebooked passengers affected by each insolvency varies, and as a result the average costs of care are slightly different for stranded and rebooked passengers.

³³ As with care costs, the costs of flights vary depending on the year and the type of carrier, and this causes differences in the average costs shown

³⁴ This is zero because these passengers still travel and so would have had to pay the original ticket anyhow. For example, if a passenger pays €260 for the original ticket and €298 for the replacement ticket when the carrier becomes insolvent, the amount this passenger has lost is €298, not €558 – as the passenger would have paid €260 for the journey even if the airline had not become insolvent.

TABLE 4.7 PROPORTION OF RECOVERABLE COSTS BY PASSENGER TYPE

	Stranded	Do not travel	Rebooked
SAFI	85%	81%	66%
Credit card	27%	79%	63%
BSP ³⁵	41%	89%	78%
Nothing	0%	0%	0%
Weighted average proportion of costs recovered, across all scheduled standalone passengers³⁶	10%	21%	17%

4.39 For affected passengers who are not stranded, all forms of protection are equivalent (as all refund the cost of the original flight but no other costs). However, even when the protection offered is the same, the **average proportion of costs actually recovered by passengers with each type of protection varies**. This is a result of the average being taken over different insolvent airlines, with different characteristics, amongst whom different proportions of passengers had different types of protection. For example, passengers who had protection via the BSP would always be travelling with a network airline, and due to the higher ticket prices for network airlines, the cost of the ticket forms a relatively high proportion of the total cost incurred; this means that a higher percentage of costs is recovered by the passenger. In contrast, many passengers who have protection via credit card will be travelling with low cost carriers, as low cost carriers account for a high proportion of direct bookings; for these passengers, the cost of the original flights will account for a lower proportion of total costs, and the percentage recoverable is therefore lower.

4.40 The protection offered by the different schemes depends primarily on the situation which the passenger is in:

- For those who **do not travel**, most of the protection schemes refund the costs of the original flights, and the only non-recoverable costs are therefore any non-refundable accommodation costs. The passenger loses the benefit of making his/her planned trip, but this cannot be quantified in monetary terms.
- For those who **rebook**, only the cost of the original flights is refunded, and they may have to pay for short-notice and therefore expensive replacement flights. Again, there is little difference between the coverage offered by the schemes. The slight variations in the proportion of costs which are recoverable result from factors such as the date at which the insolvencies on which these figures are based took place (this may affect, for example, the relative costs of flights against accommodation).
- Those passengers who are **stranded** who have SAFI cover are refunded the cost of their original flight in addition to the (likely very expensive) incremental cost of any additional flight. With the other types of cover identified, only the cost of

³⁵ Note that we have excluded Hahn Air, as since the introduction of its SAFI cover on 1 January 2010, we have not identified any insolvencies for which it would have been able to offer protection.

³⁶ This takes into account both the proportion of passengers that had each type of protection (or none), and the proportion of costs that were recoverable with each type

the original flight is recoverable, and passengers will incur the incremental cost of an additional flight and other additional costs.

4.41 Table 4.8 shows the total costs incurred to passengers and the proportion of these costs that were recoverable for insolvencies in the study period. The change in level of cover is largely dependent on the types of airlines that ceased operations in each year and the States within which they operate; this affects the availability of protection via SAFI or other methods.

TABLE 4.8 TOTAL COSTS TO SCHEDULED PASSENGERS AND PROPORTION OF COSTS RECOVERABLE FOR INSOLVENCIES 2008-2010

Airlines	State	Estimated total costs to passengers (€ millions, 2010 prices)	Estimated costs per passenger (€,2010 prices)	Non-recoverable costs	Recoverable costs
Aerocondor	PT	5.24	365	79%	21%
Lagun Air	ES	-	-	0%	0%
Sterling	DK	55.17	258	90%	10%
LTE International Airways	ES	0.13	634	100%	0%
flyLAL	LT	4.22	360	86%	14%
SkySouth	UK	0.06	360	72%	28%
centralwings	PO	0.92	627	93%	7%
Gadair	ES	2.78	1036	80%	20%
MyAir.com	IT	3.08	249	89%	11%
SkyEurope	SK	66.39	249	89%	11%
New Axis Airways	FR	0.05	627	92%	8%
Avitrans Nordic AB	SE	0.97	627	83%	17%
International Business Airlines	SE	0.01	360	77%	23%
flyglobespan	UK	7.44	260	80%	20%
Air Comet	ES	32.74	1036	80%	20%
Hola Airlines	ES	0.13	621	100%	0%
Air Slovakia	SK	-	-	0%	0%
Highland Airways	UK	-	-	0%	0%

5. PROBLEM DEFINITION

Introduction

5.1 In accordance with the Commission's Impact Assessment Guidance, this section summarises the problems that could be addressed through changes to the regulatory environment around airline insolvencies. This is based on examination of the evidence available, described in sections 3 and 4 of this report, and on the outcomes of interviews with stakeholders.

Who is impacted?

5.2 When airlines cease operations, this impacts primarily on passengers and debtors of the insolvent airline. Passengers are affected in two ways, depending on when the airline ceases operations. If this occurs before their outbound flight, they have a choice between arranging alternative transport and forgoing the trip. If it occurs after, they are stranded at their destination and must rearrange their travel to their final destination. Costs are generally higher in the latter case, in particular when the passenger has booked a long-haul flight.

5.3 Other bodies may also be impacted:

- **National authorities:** In some cases, stranded passengers may be assisted by CAAs or other national authorities (e.g. through chartering additional flights to return stranded passengers), although there is no legal requirement to do this and from the submissions of stakeholders it appears that such assistance is rarely provided. Licensing authorities are also required by Regulation 1008/2008 to monitor the financial fitness of airlines.
- **Other airlines:** The impact of insolvencies on other airlines is likely to be beneficial, as they are able either to gain revenue from transporting affected passengers. In some cases airlines have offered 'rescue fares' at discounted rates although we understand that these fares are sufficient to cover their costs (see paragraph 4.22).
- **Airports:** The impact of insolvencies on airports is in general minimal and within the normal operating parameters of the airport; effects on airports may be greater in cases where the airline ceasing operations is the major base carrier at the airport (see paragraph 4.25).

What are the issues that require action?

5.4 This study has identified a number of areas which could be addressed regarding the impacts on passengers of airline insolvencies:

- consistency of monitoring by licensing authorities of the financial position of airlines which they have licensed;
- no evidence of decline in the number of airline insolvencies;
- little assistance provided to passengers when affected by airline insolvencies;
- low proportion of passengers obtaining protection;
- high average costs incurred by those passengers affected by insolvencies;

- limited availability of insurance mechanisms for passengers;
- inconsistent availability of protection from credit cards across Member States of the EU; and
- poor availability of information on risks incurred by and protection available to passengers.

5.5 However, it should be noted that all of the airline associations which we spoke to believed that the magnitude of the problems experienced by passengers as a result of airline insolvency was very small relative to the number of European flights operated successfully, and argued that a regulatory response would be disproportionate to the problem.

What are the drivers of the problem?

5.6 The key drivers of the problem are as follows:

- Regulation 1008/2008 is interpreted differently by different States; for example, frequency of monitoring varies between yearly and monthly. This may lead to inconsistency of implementation across airlines licensed by different States.
- The level of control that Member States can exert over airlines to prevent airline failure is limited, as within a free market, uncompetitive carriers must be allowed to fail. As a result it is not possible for national authorities to prevent an insolvency, and this limits the possibility for reducing the frequency of airline insolvency.
- Changes in the tourism market over recent years have resulted in a decrease in the proportion of leisure passengers travelling on package tours, and therefore decreased the proportion of passengers with protection against insolvency under the Package Travel Directive (90/314/EEC).
- The options available to passengers to protect themselves against airline insolvency are limited. This is partly due to the fact that scheduled airline failure insurance (SAFI) is not available in many Member States, but also a result of the restricted coverage offered by most of the forms of protection available: this is often restricted to the cost of the original flight, and does not cover additional costs such as accommodation.
- There is poor transmission to passengers of information on risks they undergo and the protections available against them. We were also informed by consumer organisations that the understanding by passengers of these risks is often poor, and that their focus is on price above other factors which could be considered when purchasing tickets.

How will the issues evolve?

5.7 It is difficult to predict how the number or impact of airline insolvencies will change; these events occur rarely (relative to the number of airlines operating), and there is therefore only a small sample on which to base forecasts. The number of passengers travelling by air, however, is likely to continue to increase, and we would therefore expect the number and impact of insolvencies to increase with them. The number of insolvencies may be affected by the maturity of the market, and this may result in a reduction in the number of insolvencies; however, there is no evidence that this has happened to date.

- 5.8 The proportion of passengers purchasing package holidays, and therefore being protected against airline insolvency by the Package Travel Directive, is likely to continue to decrease. However, this may start to plateau; there is evidence in the UK that package bookings have in the last year started to increase, after consistently declining over recent years as passengers look for security in their travel plans with recent events including the volcanic eruption highlighting the potential problems. TUI believes that their market is actually stable rather than declining³⁷.
- 5.9 The proportion of flights protected through credit card purchases may continue to increase, as in many States we were informed that the usage of credit cards is continuing to increase. However, higher charges for using a credit card to book flights (particularly for low cost airlines) may reduce this trend; a UK consumer organisation believed this to be the case, but we were unable to find evidence with which to evaluate this. In addition, use of a credit card only provides protection against some of the costs that passengers incur when an airline becomes insolvent.
- 5.10 SAFI is currently available in a small number of States (it is still most widely available in the UK and Ireland) and we would expect its availability to expand to at least some degree. It is not clear whether there will be sufficient demand for it to expand more widely; CEA did not believe this would be possible, but did not provide what we regarded as sufficient evidence to support this argument (see paragraph 3.20).

What are the policy objectives?

- 5.11 Taking into account the exposure of passengers to the risk of airline insolvency, the general policy objectives are:
- to secure an adequate level of protection of the interests of EU passengers; and
 - to ensure the best possible choice of protection mechanism for the sector.
- 5.12 This protection is to be achieved through meeting six specific objectives, set out in Table 5.1. These are further defined in a number of operational objectives, which set out how the specific objectives would be achieved.

³⁷ <http://www.thomson.co.uk/editorial/press-centre/2008/half-of-holidaymakers-travel-on-a-package-and-premium-sales-on-the-up.html>

TABLE 5.1 SPECIFIC AND OPERATIONAL POLICY OBJECTIVES

Specific objective	Operational objective
Prevention of airline insolvencies	Although, rules on financial fitness monitoring entered into force on 1st November 2008, it could be necessary to strengthen further the financial oversight of EU air carriers.
Assistance to passengers affected by airline insolvencies	In case of air carrier's insolvency, passengers stranded should be offered free of charge: meals and refreshments in a reasonable relation to the waiting time; hotel accommodation in cases where a stay of one or more nights becomes necessary or where a stay additional to that intended by the passenger becomes necessary; transport between the airport and place of accommodation (hotel or other). In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails.
Repatriation of passengers stranded as a result of airline insolvencies	Passengers stranded should be offered, free of charge, re-routing or repatriation to the airport of origin of their flight.
Reimbursement of the costs of original tickets paid over by affected passengers	Reimbursement should cover the full cost of the ticket at the price at which it was bought, for the journey or the part of the journey not made, and for the part or parts already made if the flight no longer serves any purpose in relation to the passenger's original travel plan. Reimbursement should cover all taxes, charges, surcharges and fees paid by the passenger, but also any extra cost resulting from air carrier insolvency, especially when the passenger is stranded abroad. The reimbursement should be payable by any means, including: in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services..
Information for passengers regarding the risks of insolvency, available measures to protect against it and the assistance available for passengers affected by airline insolvency	Two types of information could be provided to passengers: information <i>a priori</i> (i.e. prior to booking and/or flight) about the financial health of the air carrier and the potential risk of bankruptcy; and information <i>a posteriori</i> , when the bankruptcy and interruption of flights have already occurred. Information <i>a posteriori</i> would include the rights of passengers and possibilities of assistance, reimbursement and repatriation available to the particular passenger. In both cases, information should be free, reliable and universally accessible in an appropriate language.
Lowest cost and maximum flexibility for the companies operating within the sector	Companies should not be subjected to additional burdens which restrict their ability to offer services which passengers wish to purchase.

5.13 In addition we have considered the extent to which the policy options would impact on competition between carriers.

Does the Union have a right to act?

5.14 The legal basis for EU action is Articles 114 and 169 TFEU, which include the following relevant provisions:

- Article 114(1) states that “The European Parliament and the Council shall [...] adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market”

- Article 114(3) states that "The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts."
 - Article 169(1) states that "In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests."
- 5.15 This gives the Union the mandate to act to ensure the functioning of the internal market, and to ensure a high level of consumer protection.
- 5.16 There are several factors which mean the protection of air passengers from the impacts of airline insolvency should be a matter for the EU:
- The Union should only intervene in the Internal Market where there is evidence of a market failure, and this includes areas where elements of service which affect passengers are not a matter of competition between airlines. This would include the current situation, where the risk of insolvency does not appear to affect passenger choice between carriers.
 - The small impact of risk of insolvency on passenger choice is partly the result of poor information regarding those risks: under the current system, there is no consistent data available on airline financial positions, and where information is available it is difficult for passengers to obtain and interpret. For this reason, it is appropriate for Union to consider action to improve this, either by improving the provision of information or by forcing the risk of insolvency to be included within ticket costs in some way.
 - Travel differs from most other consumer purchases in that the passenger is obliged to pay for service before it is delivered, often several months in advance. This weakens the position of the passenger, and to improve consumer protection the Union could consider action to ensure responsible handling of these funds by airlines. While purchases are often made in advance across all modes of transport, the air market is much closer to a single market than travel by either road or rail. For this reason, it is necessary for actions regarding air travel to be taken at EU level.
 - It would not be possible for States to act alone in requiring Community carriers operating to, from or within their States to take actions to protect consumers: Regulation 1008/2008 means that individual States cannot impose additional conditions on EU carriers.

6. ASSESSMENT OF IMPACTS

Introduction

- 6.1 This section provides both qualitative and where possible quantitative assessments of the impacts of each of the options defined in the Inception Report, and identifies any amendments necessary to the options. It then sets out recommendations for the options which appear most likely to generate benefits. The table at the end of the section summarises the assessment of each option against each of the policy objectives.
- 6.2 The options are grouped together in three ‘pillars’, each of which addresses the problems faced by passengers in different ways:
- **risk prevention (A)** – this option seeks to minimise the probability of airlines becoming insolvent;
 - **risk management (B)** – these options seek to provide assistance to passengers affected by airline insolvencies; and
 - **information on risk (C)** – these options provide information to passengers, to improve their capacity to make informed decisions or make necessary arrangements in the event that they are affected by an insolvency.

Option 0: No change (‘business as usual’)

Overview

- 6.3 Under this option, no additional measures would be introduced, and the protection described in previous sections would continue to be available to passengers. This option is used as the **baseline scenario** for comparison with the options in which changes are made.

Economic impacts

- 6.4 Over 2011 to 2020, we estimate that 0.07% of all standalone passengers will be affected by insolvency. The numbers will vary from year to year, but will tend to increase, due to traffic growth and the decline in the proportion of passengers travelling on packages. On average the number of passengers affected will increase from 325,000 in 2011 to 480,000 in 2020. Of these, 12% are likely to be stranded.
- 6.5 Assuming that the forms of protection currently available remain so, we estimate that of these affected passengers over 2011 to 2020, 76% will not have any form of protection. The 24% which have some form of protection comprises 8% with some protection from the IATA BSP, 14% from credit card purchases, and the remaining 2% from SAFI. None of these forms of protection will cover all costs passengers incur. On current trends, we estimate that the proportion with SAFI will increase from 1.9% in 2011 to about 3.0% in 2020.
- 6.6 We estimate that the average immediate costs incurred per passenger affected by

insolvency will decrease slightly, from €564³⁸ in 2011 to €547 in 2020, primarily due to the fact that air fares are declining in real terms. The proportion of this cost which passengers will be able to recover varies depending on the type of cover the passenger has, and the way in which the passenger has been affected. For example, a passengers stranded outside the EU who has SAFI protection should be able to recover 92% of his or her immediate costs, but a stranded passenger with protection via credit card or BSP will only recover an average of 31% of immediate costs. The majority of passengers will have no protection and therefore will not be able to recover any costs. On average, we estimate that 18% of all passenger costs will be recoverable.

6.7 Table 6.1 below shows the estimated risk of being impacted by insolvency and Table 6.2 shows the costs passengers incur, depending on the type of journey and whether they are stranded or had booked to travel, and in this case whether they decide not to travel or rearrange. More details on the assumptions are provided in appendix A.

TABLE 6.1 ESTIMATED FREQUENCY OF PASSENGERS AFFECTED BY INSOLVENCY

	Stranded	Booked, unable to travel	Booked, rebooked
Proportion of passengers affected	0.008%	0.015%	0.044%

TABLE 6.2 COSTS FOR PASSENGERS AFFECTED BY INSOLVENCY

Passengers affected	Distance	Information	Care	Reimbursement	Additional flights	Non-refundable components	Total cost
Stranded	Intra-EU	€ 4	€ 91	€ 102	€ 133	€ 0	€ 330
	Extra-EU	€ 4	€ 85	€ 444	€ 535	€ 0	€ 1,068
Booked, did not travel	Intra-EU	€ 0	€ 0	€ 204	€ 0	€ 50	€ 254
	Extra-EU	€ 0	€ 0	€ 889	€ 0	€ 90	€ 978
Booked, rearranged travel	Intra-EU	€ 0	€ 91	€ 204	€ 37	€ 0	€ 332
	Extra-EU	€ 0	€ 85	€ 889	€ 60	€ 0	€ 1,034

Social impacts

6.8 Airline insolvencies would continue to occur at the historical rate. When an insolvency occurred, airline and other staff whose roles were contingent on the defunct airline would lose their jobs. However, in the medium term other airlines are likely to expand into the markets served by the previous airline, and will require additional staff to do so; as a result the long term social impact is likely to be negligible.

Environmental impacts

6.9 If no policy changes are made, growth in air travel will be unaffected and will

³⁸ This figure is a weighted average of the costs incurred by different affected passengers. Some incur much more (passengers stranded outside the EU incur costs of €1,068 on average) but some incur much less (a passenger booked to travel within the EU who decides not to travel loses €254 on average).

continue to grow at historical levels, which would lead to increases in CO₂ and other emissions.

Costs

- 6.10 This option has no implementation costs. Passengers would continue to incur costs relating to insolvency, as discussed above (see 6.6).

Implementation

- 6.11 No further work would be required to implement this option.

Conclusions

- 6.12 If no action is taken, the number of air passengers impacted by insolvency would continue to be low as a proportion of all passengers, but the impacts on each passenger would be quite substantial – over €1,000 per passenger on average for those stranded outside the EU. Therefore, whether this is an attractive option depends on the relative costs and benefits of the other options.

Option 0+: Self-regulation

Overview

- 6.13 As an alternative to a solution being imposed through regulation, the Commission could request the industry to put measures into place to reduce the negative consumer impacts arising from airline insolvencies (self regulation). The Commission could publish a set of criteria by which it would assess at some point whether self regulation had been successful, and if not, whether to pursue the next best option.

- 6.14 Action could be taken in two areas:

- Airlines could be encouraged to offer more widely, and to define more clearly, what (if anything) they would offer to passengers impacted by insolvency. Under their voluntary agreement (see 4.24), ELFAA members already offer seats to passengers stranded away from home by the failure of another airline, at a “nominal” fee, subject to availability. This agreement could be expanded to include members of other airline associations, such as IATA and ERAA, and the concept of nominal fee could be defined more explicitly. Airlines might be more willing to agree to this if they perceived that there was otherwise a risk of legislation equivalent to that in the US (which obliged airlines to carry stranded passengers free of charge).
- Measures could be taken to encourage the availability and purchase of SAFI. In particular, providers of travel insurance could be encouraged to bundle SAFI in policies, as is already often the case in the UK and Ireland.

Economic impacts

- 6.15 While the impacts of this option would depend on the extent to which the industry took action, the effects would probably be relatively small, for several reasons:
- An expansion of the inter-airline agreement on assistance may only affect

stranded passengers, not the larger number who are booked to travel. In interviews for this study airline associations indicated that the industry considered that those booked to travel with an insolvent carrier were in an equivalent position to any other consumer that has contracted with a defunct provider, and therefore no special measures were required.

- Although airlines could be encouraged to offer seats at a reduced price to stranded passengers, they would be unlikely to operate additional flights to meet additional demand from stranded passengers, as this would require rescheduling or hiring additional aircraft at short notice to provide flights for passengers at a lower than usual rate.
- Where the insolvent airline was the largest carrier on a particular route, other carriers are likely to have only limited capacity to handle the additional traffic from stranded passengers.

6.16 If this was implemented successfully, passengers who were stranded due to airline insolvencies would be more likely to be able to return home for a moderate cost, although there would also be a small reduction in revenue for the airlines. In addition, there could be some additional certainty for passengers on what possibilities were available to them in the event that they were stranded. However, it would be difficult to ensure that repatriation was available at or below a fixed price (see 6.22), and therefore passengers would not have complete certainty on the level of costs they could incur.

6.17 If there was a successful expansion of the availability of SAFI, this could lead to a higher proportion of passengers purchasing this insurance, benefiting both stranded and otherwise affected passengers, as well increasing revenue for the insurance industry. However, it is possible that if it was made clearer that passengers would be transported at a nominal fee by other airlines in the event that they were stranded, the incentive to purchase SAFI would be reduced.

6.18 There would be no impact on the number of airline insolvencies.

Social impacts

6.19 Since the number of airline insolvencies would not be affected by this option, it would have no effect on the number of staff employed by airlines. The increase in take-up of SAFI could result in a marginal increase in the number of staff employed by insurers.

Environmental impacts

6.20 This option is unlikely to affect the number of air traffic movements, and will therefore have no environmental impacts relative to the baseline scenario.

Costs

6.21 Again, this option would have no direct implementation costs. Passengers would continue to bear most of the costs relating to insolvencies, although (if successful) the industry would co-operate to reduce some of these.

Implementation

- 6.22 By definition, self-regulation does not require any legal instrument. The Commission would issue non-legislative measures setting out the issues on which it wanted industry to take action; criteria by which it would assess whether the measures had been successful; and a timescale for this review. The key criteria could be:
- whether airline associations had reached agreements to assist passengers in the event of airline insolvencies;
 - whether in practice passengers stranded due to airline insolvencies had been repatriated by other airlines; and
 - that SAFI was readily available in most Member States.
- 6.23 It would be necessary for the Commission to review the situation again after 2-3 years in order to assess whether these criteria had been met.
- 6.24 The current agreement between ELFAA members shows that some form of voluntary agreement to assist passengers is possible, and this type of agreement could also be developed by other airline associations. In defining the concept of a ‘nominal fee’, it would be attractive for a fixed or maximum price to be determined, as this would provide some certainty to passengers regarding costs. However, if airlines were to agree in advance fixed or maximum prices, this would raise issues of compliance with competition law (unless the price was very low or zero). Therefore, it would be more practicable for airlines to agree to provide tickets at cost price, although it should be noted that ‘cost’ is a difficult concept to define unambiguously (for example, whether it should mean average cost per seat, or marginal cost for an additional passenger, etc).
- 6.25 Expansion of SAFI to other markets should not pose any specific difficulties, although the CEA believed that the rate of expansion would be constrained by factors such as capital ratios (see 6.95). If the market were to be expanded over the course of several years, it should be possible to avoid these problems.
- 6.26 However, it is also possible that the two elements could contradict each other: if the request to airlines to introduce measures to assist stranded passengers is successful, passengers might perceive the impacts of insolvency as less serious, and this could reduce their incentive to purchase SAFI.

Conclusions

- 6.27 The industry could be encouraged to take measures which would reduce some of the negative impacts of airline insolvencies on consumers. Airlines could be encouraged to repatriate passengers stranded after airline failures, and the insurance industry could be encouraged to improve the availability of SAFI. This would be feasible and could be implemented at relatively low cost. However, the other costs that passengers incur as a result of airline insolvencies would probably not be covered.

Option A: Improved monitoring of carriers (risk prevention)

Overview

6.28 This option would strengthen the financial oversight of EU air carriers, through the adoption of raised standards of financial fitness requirement and/or making the monitoring of carriers more pro-active.

Current requirements of Regulation 1008/2008

6.29 Regulation 1008/2008 places obligations on licensing authorities to ensure that airlines for which they issue licenses meet certain requirements. There are requirements set out both to allow a license to be granted, and for airlines to continue to hold a license. The requirements relating to financial stability are as follows:

- **Article 8** requires airlines to present timely audited accounts to their competent licensing authorities, and requires competent licensing authorities to closely monitor ongoing compliance with the provisions on financial fitness set out in the Regulation. In particular, they must review the position of airlines two years after the granting of a new operating license, when a potential problem is suspected, and at the request of the Commission.
- **Article 9** requires a competent licensing authority to suspend or revoke an operating license if it is not satisfied that the airline can meet its actual and potential obligations for a 12-month period. It may grant a temporary licence of up to 12 months to allow financial reorganisation. Where there are clear signs of financial difficulty, the authority must within 3 months make an in-depth assessment of the financial situation.

6.30 All of the national authorities we received information from met these requirements, however there was some variation particularly in the frequency of monitoring of the financial positions of airlines (see paragraph 3.37). All of the licensing authorities for which we received information reviewed the financial data of all airlines at least annually, and several undertook some form of review more frequently, particularly if a carrier was known to have financial difficulties.

Possible amendments to the Regulation

6.31 There are several possible amendments to the Regulation which could, if implemented, improve the financial monitoring of airlines:

- **Requirements on monitoring frequency to be more tightly defined:** Although the reported monitoring frequencies appeared adequate for all of the licensing authorities we contacted for this study, the wording of the Regulation could potentially allow much less frequent monitoring. To improve this, the Regulation could be amended to specify that the financial position of all airlines must be reviewed at a minimum frequency (for example, at least every six months).
- **Requirements for tighter follow-up by national authorities when financial issues are identified:** The frequency of monitoring by licensing authorities where financial difficulties have been identified could be specified, for example to require at least quarterly or monthly review.
- **Specify how potential problems should be identified:** Article 8 of the

Regulation states that authorities must monitor any airline where potential problems are identified, but does not specify how potential problems could be identified. The Regulation could be amended to list possible information sources for potential problems, including in particular timely payment of taxes or charges (either to government or to airports), and potentially to require licensing authorities to monitor these issues.

- **Allow licensing authorities to request bank guarantees:** Licensing authorities could be permitted to request bank guarantees or other similar measures from carriers considered to be at risk of insolvency, to ensure that passengers would be protected (for further discussion of this see option B4 below).

Economic impacts

6.32 These amendments would improve the control and warning available to licensing authorities, which could in some circumstances lessen the impact of insolvencies. For example, timely monitoring can allow licensing authorities to ensure (where possible) that the license of an airline in difficulty is withdrawn during a low season when impacts on passengers are minimised. However in a competitive market, airlines which are unable to compete must be allowed to fail, and the actions a licensing authority is able to take are therefore limited by this. In particular, national authorities should not be encouraged to provide funding (state aid) to airlines, even if this is the only way to avoid insolvency.

6.33 5 of the 8 national authorities which responded to this study believed that the powers and obligations already set out by the Regulation were sufficient for the purposes of the financial monitoring of airlines, and that there would be therefore be little or no benefit to this option. Of the licensing authorities which provided details of the monitoring they undertook, most already met the additional requirements on monitoring frequency above.

6.34 Some stakeholders argued that increased monitoring could increase passengers' confidence in licensed airlines. However, it was not clear how this information would be transmitted to passengers.

6.35 Increasing monitoring frequency or intensity for all airlines would have little benefit for stable airlines. The benefits might also be limited even with respect to airlines in a weaker financial position:

- There would still be a risk that the Regulation would not be implemented consistently, and several stakeholders (including both consumer bodies and airline associations) argued that conflicts of interest for national authorities monitoring large national carriers (or carriers part-owned by a Member State) restrict its effectiveness of this option.
- We were informed that the timing of interventions is difficult to judge: if a license is withdrawn too early, the airline in difficulty may argue it was not given any opportunity to recover; and earlier withdrawal of a license as a result of enhanced monitoring does not necessary mitigate impacts on passengers. Withdrawal of a license during a low season may not be possible, as many scheduled airlines aim to use all their aircraft consistently throughout the year. As a result, even with increased monitoring licensing authorities may not be able to reduce the passenger impact of insolvencies.

- Problems can be difficult for licensing authorities to detect in advance: we were informed of an airline which appeared stable at financial review, but within two years had become insolvent. In part, this results from the vulnerability of the airline industry to external shocks. Again, this would limit the ability of this option to reduce impacts on passengers.

6.36 The most significant consumer benefits would be realised if licensing authorities were able to request bank guarantees or other similar measures in order to protect passengers in the event of insolvency. However, a key limitation is that airlines in a weak financial position might not be able to obtain such guarantees, and therefore this might not help much in practice; this issue is discussed under option B4 below.

6.37 One airline association believed that since non-EU airlines would not be required to be monitored, this option could give the false impression that they were financially healthier than EU airlines. However, in our view this argument is weak: it could equally be argued that monitoring by Member States could be seen as a stamp of approval which non-EU airlines do not have.

Social impacts

6.38 The number of airline insolvencies is unlikely to be affected by this option, as national authorities do not have any powers to prevent them. This option will therefore have no effect on the number of staff employed by airlines.

Environmental impacts

6.39 This option will not affect the number of air traffic movements, and will therefore have no environmental impacts relative to the baseline scenario.

Costs

6.40 This option would have impacts on the costs incurred by both airlines and licensing authorities. For airlines, costs would result from:

- time spent by airline staff responding to licensing authority requests for information (discussed below); and
- bank guarantees, if these were required (see option B4).

6.41 The requirement to provide financial information to national authorities would be an administrative burden, and therefore needs to be measured using the Standard Cost Model (SCM).

6.42 The time required for airlines to respond to national authority requests would vary depending on the financial situation of the airline in question: for stable airlines, the additional time would be minimal, while for unstable airlines the time to prepare could be considerable. We have therefore modelled an average of the two.

6.43 Our approach was to assume that a senior manager at an airline would spend 2 working days per year on tasks relating to additional monitoring by licensing

authorities, such as preparing for and attending meetings. At a rate of €45 per hour for managers³⁹ this gives a cost of approximately €630 per airline; in August 2010 (OAG) there were 153 airlines with over 1,000 seats per month, which would give an EU-wide cost of approximately €96,000 per year (at 2010 prices). We assume that half of licensing authorities might already meet the new more stringent requirements, and therefore in only half of cases would this be additional to what is currently undertaken, and therefore administrative burden. This estimate is detailed in Appendix C.

- 6.44 Responding to additional requests from national authorities should not present any additional costs to new entrants, as the checks required to obtain a license are already very thorough. Several stakeholders argued that if any costs were likely to increase, they were those of established airlines. New entrants may find it more difficult, however, to provide the capital necessary to obtain a bank guarantee.
- 6.45 For licensing authorities, additional costs would result from the requirements for increased frequency and intensity of monitoring. We have estimated these on a similar basis to those for airlines, assuming the relevant staff to require 2 days per year additional work per airline. We estimate this would result in administrative burden costs of approximately €630 per airline (in 2010 prices), again approximately €96,000 across all EU airlines (see Appendix C).

Implementation

- 6.46 It may be possible to raise the standards of monitoring undertaken by licensing authorities without legislation: the Commission could provide guidance on the frequency of monitoring and follow-up required, and the issues that licensing authorities should seek to identify; this would be similar to the NEB-NEB agreement that the Commission facilitated to improve enforcement of Regulation 261/2004. Many stakeholders informed us that they believed the monitoring required under the current Regulation was not implemented consistently across Member States, and this is consistent with the evidence reported to us by stakeholders (see Table 3.2), where there was significant variation in the frequency and methods employed to monitor licensed airlines.
- 6.47 However, it would not be possible for licensing authorities to require bank guarantees or other similar measures, or for licensing authorities to be required to improve monitoring, without legislation. This would be through amendments to Articles 8 and 9 of Regulation 1008/2008; no other legislative measure would be appropriate as this is the current measure for regulating airline licensing.

Other issues

- 6.48 Some stakeholders also suggested that once serious financial difficulties have been identified, licensing authorities could limit the forward sales of tickets to minimise impacts on passengers. The key issue with this is that it would be likely to be difficult to do without restricting the cash-flow of the airline, and hence accelerating

³⁹ Average across all EU States, weighted by number of airlines registered in the State, of cost for legislators, senior officials and managers, from the EU's administrative burden calculator.

bankruptcy. This could therefore limit the number of passengers affected, but could also reduce the likelihood of an airline recovering.

Conclusions

- 6.49 This option would be workable, but would provide only limited benefits, as increased monitoring would not prevent airline failures, and in a competitive market, national authorities must allow financially weaker airlines to fail. Therefore, the Commission could consider encouraging improvement (for example through the sharing of best practice) and increasing monitoring of licensing authorities before deciding to enact legislation in this area.

Option B1: Clarify roles of public authorities with respect to stranded passengers

Overview

- 6.50 This option would define obligations for Member States to provide or facilitate ad hoc assistance for stranded passengers. States could be required to assist passengers, and it would be specified which passengers were covered, under what circumstances, and what national authorities were required to provide. It could also be specified how national authorities might recover the costs of providing this assistance.
- 6.51 It would be appropriate for States to assist passengers, as no other organisations have obligations towards citizens. The insolvent airline had obligations to the passengers it had contracted with, but as it no longer exists the only organisation which the passengers could legitimately ask for assistance from are Member States.

Economic impacts

Consumer impacts

- 6.52 This option would be advantageous to consumers as it would provide assistance for passengers stranded away from home, who are usually the passengers who incur the greatest costs in the event of an airline insolvency. It would not provide any protection for other affected passengers. It is assumed that only repatriation would be covered, and as a result, stranded passengers would still incur other costs (such as additional accommodation). As a result, a number of stakeholders thought that it should be considered as complementary to other options.
- 6.53 However, this option could also encourage riskier behaviour by passengers: if they believed they would be covered in the case of insolvency, they might choose to travel with airlines known to be at risk, or decide not to purchase SAFI.
- 6.54 Given pressure on government budgets, if an obligation to assist stranded passengers was introduced, Member States would need a means to recover these costs. This could be either through per passenger charges or via a levy on airlines, either of which would be likely to result in higher ticket prices, which could result in reduced demand. Therefore, this option should be considered in conjunction with option B5 (introduction of a general reserve fund). The costs which would be incurred by national authorities are discussed below (6.58).

Other economic impacts

6.55 Other airlines would only be impacted if they were obliged by the Member State to provide seats free of charge to stranded passengers (this possibility is discussed below). In most insolvency cases other airlines view the situation as beneficial to them as they are able to sell tickets to stranded passengers, possibly at discounted ‘rescue’ rates, and thereby market their company. We have not been informed of any cases in which airlines have provided any assistance additional to flights, such as accommodation, and there would be no reason for them to do so.

Social impacts

6.56 The number of airline insolvencies would not be affected by this option; this option will therefore have no effect on the number of staff employed by airlines. This option could result in a marginal increase in the number of staff employed by national authorities if they were required to expand their roles. However, this increase would be very small.

Environmental impacts

6.57 This option will not affect the number of air traffic movements, and will therefore have no environmental impacts relative to the option 0, the baseline scenario.

Costs

6.58 Table 6.3 shows the estimated costs of repatriating all non-package stranded passengers for the six most expensive insolvencies between 2000 and 2009. This illustrates that if States had an obligation to repatriate all stranded passengers this would create a large and often unpredictable liability on Member States. The costs per stranded passenger are high, reflecting the need to purchase last-minute air tickets or to charter aircraft which might often travel empty in one direction. The estimated costs per passenger are equivalent to those in Table 6.2 above.

TABLE 6.3 COSTS TO REPATRIATE STRANDED PASSENGERS FOR THE 5 MOST EXPENSIVE AIRLINE INSOLVENCIES 2000-2009

Airline	Licensing State	Year	Estimated number of stranded passengers with standalone tickets	Estimated cost of repatriation (€ millions, 2010 prices)
Air Madrid	ES	2006	99,749	93.1
Swiss Air	CH	2001	16,253	9.8
Sterling	DK	2008	21,204	5.7
XL Airways	UK	2008	9,000	5.4
Air Comet	ES	2009	5,293	4.9
SkyEurope	SK	2009	12,048	3.2

6.59 Table 6.4 shows the likely future cost to EU governments of repatriation of all stranded passengers travelling on EU airlines. The expected cost would be €28 million in 2011, rising (as a result of passenger growth and the decline in the proportion covered by the Package Travel Directive) to €38 million in 2020.

TABLE 6.4 COST PER YEAR OF REPATRIATING STRANDED PASSENGERS

Year	Number of stranded passengers	Cost to repatriate (€, millions)
2011	55,949	28.0
2012	58,061	28.9
2013	60,260	29.8
2014	62,546	30.8
2015	64,924	31.9
2016	67,398	32.9
2017	69,970	34.0
2018	72,648	35.2
2019	75,433	36.3
2020	78,332	37.6

Implementation

- 6.60 Although in principle this option could be implemented at a Member State or EU level, as no pan-EU body has the resources or capability to implement this, it would have to be implemented at Member State level.
- 6.61 It might be possible for the Commission to encourage Member States to assist stranded passengers by publishing guidance material or by seeking an informal agreement with Member States, rather than through legislation. However, a key weakness of this approach is that (as discussed above) some Member States indicated in the interviews undertaken for this study that they believed that they had no obligations towards passengers impacted by airline insolvencies, as this was a private contractual matter between the passenger and the airline. Therefore, it is possible that States would not follow the guidance material or that it would not be possible to obtain an agreement. In addition, given financial constraints, States might not accept new obligations towards passengers without a means of recovering the costs. This indicates that only legislation would be effective.
- 6.62 If new legislation was introduced, it would be necessary to determine which State would be responsible for aiding passengers stranded by an airline insolvency. The options are as follows:
- **Member States responsible for passengers of airlines they have licensed:** The advantage of this approach is that the national authority would hold information on the carrier and its operations, which would aid any repatriation operation and should (subject to sufficient monitoring activity) give the national authority some advance warning of the insolvency. This would create an added incentive for the State to undertake close financial monitoring of its licensed airlines to attempt to prevent or manage an insolvency. However, some airlines are disproportionate in size to the State by which they are licensed (for example, Ryanair), and it might be challenging for these States to provide assistance to all passengers. In addition,

passengers on non-EU airlines (including the small number of routes on which non-EU airlines carry intra-EU passengers) could not be protected on this basis.

- **Member States responsible for passengers stranded in their territory:** The advantage of this approach is that it would make the State most immediately able to provide assistance (the destination State) responsible. However, this would mean that some States would have to take on large liabilities over which they would have no control, as they may not license or monitor the airlines; and this would disproportionately affect States which are primarily destination countries, such as Malta or Cyprus. In addition, passengers travelling outside the EU could not be protected on this basis.
- **Member States responsible for their own residents:** Where States have voluntarily assisted stranded passengers to date, as in the cases of Air Madrid and Air Comet, this has been through the repatriation of their own residents. Although a State would not have control of the airlines on which its residents are travelling, in practice it usually would license many of these airlines, and the responsibility it would take on would be proportionate to its size. This could require multiple States to organise repatriation operations for one insolvency; if feasible, the coordination of this could be improved through management by one State (while financial responsibility would be shared). Passengers travelling outside the EU and on non-EU airlines could be protected.
- **Member States responsible based on origin of journey:** This would usually be the same as the previous option (most journeys originate in the passenger's country of residence), but might provide a better allocation of responsibility in the relatively unusual cases where passengers travel directly between other States. For example, if an Italian resident purchased a ticket from Germany to France, it might make more sense for the German government to be responsible for assistance, rather than the Italian government – as the journey has nothing to do with Italy.

6.63 In order to avoid placing disproportionate burdens on smaller States with large airlines, and destination States, and to enable journeys outside the EU to be covered, we suggest that the State responsible would be the State in which the journey originated. If this option was introduced in conjunction with a general reserve fund, to enable Member States to recover the costs of the assistance that they had to provide, the scope of coverage would have to be consistent.

6.64 This option may create problems for national authorities who may not have sufficient resources to plan and organise passenger repatriation after an airline insolvency, as this is not within the normal remit of their organisations. One stakeholder believed that national authorities could have a role in providing information to passengers, but did not believe this should be extended to repatriation. However, it might be possible for Member States to contract a third party to fulfil its obligation to plan and arrange assistance, in the same way as one airline has contracted a third party to provide the assistance required by Regulation 261/2004⁴⁰.

6.65 Member States could arrange the assistance that they were obliged to provide through:

- powers of injunction;

⁴⁰ See Steer Davies Gleave (2010): Evaluation of Regulation 261/2004, paragraph 3.43

- voluntary commitments from airlines; and/or
 - by procuring capacity on a commercial basis.
- 6.66 A power of injunction would allow Member States to specify that airlines would have to provide a certain level of assistance. In extremis, this could be equivalent to the powers available during states of emergency (such as war) to requisition aircraft or other facilities. However, this would be disproportionate, and as States could only exercise these powers over their own airlines, might not be practical if passengers are potentially stranded in multiple destinations across Europe or worldwide.
- 6.67 Alternatively, there could be arrangements equivalent to those formerly in place in the USA: between November 2001 and November 2006, if domestic passengers were stranded by the insolvency of an airline, other airlines were required to offer seats (subject to availability) at cost basis to passengers with a valid ticket on the defunct airline. This could be very effective in assisting some passengers. However, this would not cover all passengers requiring repatriation (for example, if the insolvent airline was the only airline serving a particular route), and would create a disproportionate burden for whichever airline happened to serve the same route(s); in addition, this might not be practical for passengers stranded outside the EU, as non-EU airlines could not be required to offer space⁴¹.
- 6.68 At present, when package holiday travellers are stranded, and in the few cases where States have assisted passengers stranded when scheduled airlines have become insolvent, they have arranged capacity with other airlines on a commercial or semi-commercial basis. However, this can be difficult to do, and national authorities have reported that some airlines have sought to take advantage of the situation by charging disproportionate fees. If legislation was to be introduced requiring States to repatriate passengers, it would be helpful to seek to agree (and possibly for the Commission to facilitate) a voluntary code of practice with airlines or airline associations regarding provision of capacity in the event that it is necessary to repatriate stranded passengers. Airlines might be more willing to agree to this if they perceived that there was a risk of legislation equivalent to that in the US if they did not do so.

Conclusions

- 6.69 In current circumstances, States would be unwilling to pay for this out of existing budgets, and would therefore need to fund it in some way. If all stranded passengers were required to be covered, this option would then be equivalent to a restricted version of a general reserve fund (option B5). If the coverage was intended to be restricted to passengers unable to obtain assistance through other means, it would be difficult to prevent passengers from foregoing other forms of protection in favour of the free protection offered by the State. The only way in which the number of passengers could be limited would be if the assistance offered by the State were to be discretionary; this is the current situation and therefore this is then equivalent to option 0.

⁴¹ This is discussed in section 3.5 of Study on Consumer Protection against Aviation Bankruptcy, Booz&Co, January 2009.

Option B2: Carriers to be obliged to offer optional insurance

Overview

- 6.70 Under this option, carriers would be obliged to offer optional insurance to their passengers, on booking, against the risk of insolvency. This could cover reimbursement, assistance and repatriation, although the cost of the insurance (and the issues raised by a requirement to offer it) would be greater if the scope was wider. For example, the cost would be significantly lower if it was restricted to repatriation or refund (as is currently offered by SAFI policies), than if it also covered accommodation and care.
- 6.71 As for the insurance already required by Regulation 785/2004, offering insurance would be a license condition and it would be the responsibility of national licensing authorities to ensure that carriers were able to offer it. The only difference with other insurances would be that, in this scenario, the purchase of insurance by individual passengers would be optional.

Economic impacts

Consumer impacts

- 6.72 Once the requirement to offer insurance was introduced, this option would be effective at ensuring that passengers at least had the option of protecting themselves against insolvency. Although, as discussed in more detail below, airlines might have to cease operations if insurance became unavailable, passengers booked on these airlines would be protected if they had selected the insurance. However, the introduction of this requirement might cause several of airlines that are in weak financial positions to cease operations, and the passengers booked to travel on these airlines generally would not be protected.
- 6.73 This option, relative to compulsory options such as B3 and B5, would treat the consumer as able to make informed choices as to whether he/she wished to protect against insolvency. This was considered a benefit by airline associations. However, consumer organisations (and some other stakeholders) believed that the proportion of passengers who would pay for optional insurance might be low, as:
- they believed that airline passengers are primarily price-driven, and will seek to reduce the cost of flights where possible;
 - since airlines are regulated by licensing authorities, consumers may believe that they are robust, and that insurance is therefore unnecessary;
 - some argued that only wealthy passengers would purchase the insurance (although this would depend on its price, and also wealthier passengers might be more willing to risk incurring costs in the event of insolvency); and
 - only passengers for whom an airline failure would result in significant consequences would purchase the insurance.
- 6.74 We have reviewed several surveys regarding passenger willingness to pay for insolvency insurance. These give a range of proportions of passengers who may use this option:

- An AUC survey in 2010⁴² found that 5% of passengers would definitely pay extra for financial protection, and 19% probably would. 14% of passengers said that it would depend on the cost, however 60% of passengers interviewed were ambivalent towards or against paying extra for insurance.
- A survey for DG Justice⁴³ found that 68% of passengers would be willing to pay €3 for protection against insolvency. 24% stated that they would be willing to spend €10 for protection, however 9% would not be willing to pay €1. Willingness to pay for insolvency protection was lower when the cost was expressed as a percentage: a typical intra-EU flight might cost €100, but only 17% of passengers were willing to pay 2% of their flight cost (€2).
- A survey by Which?⁴⁴ found that over 70% of the UK members of the organisation interviewed had some form of travel insurance. However, this does not necessarily indicate that the same proportion would be willing to pay for insolvency insurance.

6.75 Although some of these surveys show a reasonably high proportion of passengers stating that they would be willing to pay a small amount for protection against insolvency, surveys such as these can sometimes overstate willingness to pay, and therefore there is a risk of a bias towards higher values.

6.76 An additional factor affecting the likely use of this option is the variation in use of insurance between States. CEA figures show significant differences in take-up of insurance between States, although this may be distorted by use of insurance in some States to fund services such as health care that are funded by other means elsewhere. One national authority also believed that take-up of insurance was lower in its State than in other comparable markets.

6.77 The proportion of passengers choosing to purchase insurance at any one time could be affected by recent media coverage: one national authority argued that passengers only considered insolvency as a risk during the intensive media coverage immediately after a major insolvency.

6.78 In addition, passengers who had purchased travel insurance could believe that this already gave them sufficient protection, which would often not be the case; see discussion of availability of SAFI, paragraph 3.19. For this option to be effective, it would be important for information on the level of cover to be made very clear to passengers.

Business impacts

6.79 A possible impact of this option might be that airlines in financial difficulty would not be able to find an insurer willing to supply insurance at a reasonable price, or potentially at all. As offering insurance would be a license condition (see 6.103), an airline's operating license would become invalid when insurance was not available,

⁴² AUC Report on Passenger Survey – Financial protection against scheduled airline failure 2010

⁴³ *Enhanced insolvency protection for consumers purchasing airline tickets - a survey*, RPA, LE and Yougov, unpublished

⁴⁴ Stakeholder submission

and it would have to cease operations immediately. This could be viewed as a benefit, as only those airlines regarded by insurers as being at low risk of insolvency would remain in the market, and the revenues of these remaining airlines would increase, which would further improve their stability. However, this would also reduce competition and consumer choice, and could cause ticket prices to rise; and it would have a significant impact on the passengers booked to travel with the airline.

- 6.80 A further issue is that insurance providers would know that, if they withdrew insurance from an airline, it would probably have to cease operations immediately, and they would have to pay out on all existing policies. Although this could deter insurance companies from withdrawing insurance, it might also deter them from offering insurance at all, or from offering it at a reasonable price. This might also make the possibility of insolvency self-fulfilling.
- 6.81 A possible approach to making insolvency insurance available to airlines at higher risk of insolvency would be through pooling of risk, where insurance is offered at a uniform rate to a group of airlines. This would allow the prohibitive risks of the least stable airlines to be diluted across others, and reduce the cost of insurance to a level which was at a commercially viable level. However, airlines would have to be compelled to join the pool, as more financially stable airlines would be able to obtain insurance more cheaply through individual quotes from insurers. It would therefore require legislation which forced airlines in a better financial position to cross-subsidise those in a poor financial position.
- 6.82 This option would also affect the (limited) control a licensing authority has over when an airline fails. As described above, there would (in effect) be two entities which would be able to withdraw an airline's license. This could limit the possibility for a licensing authority to try to minimise the effects of a failure on passengers by influencing the timing of the failure. An insurance company could withdraw cover, precipitating the airline's failure without regard to the impact on passengers, although since the insurer would have to cover those passengers who had already bought tickets and who would be affected by the insolvency, it might also take this into consideration.
- 6.83 Although the risk of precipitating insolvency is significant, it would be mitigated by the fact that the insurance was optional. In an extreme case where an airline was in a very weak financial position, it might be able to carry on operations but with the price of the optional insurance being equivalent to or potentially exceeding the price of the ticket. Although few passengers would buy this insurance, some might continue to travel with the airline; if insurance was compulsory (see option B3 below), this would not be possible. In order to continue to offer insurance, an insurance company might also require the airline to arrange some sort of guarantee, or place funds in an escrow account, to cover the funds required in the case of its insolvency; however, the cost of doing this is likely to be high, and this could be impractical for a carrier in financial difficulty). This is discussed in paragraph 6.139.

Impacts on passenger demand

- 6.84 As a passenger's purchase of insurance would be optional, it is unlikely to have any direct effects on passenger demand: consumers that did not value the insurance would

still able to purchase the basic ticket without insurance. It is possible that the price of the insurance offered could act as a signal to consumers of risk (as assessed by insurers). This could either be at the level of individual consumers taking notice of the costs of insurance of a given airline, and being aware of the costs of insurance offered by competing airlines, or via consumer organisations or media outlets which reported these comparisons. However, there could still be an indirect impact on ticket prices, as if weaker carriers were forced from the market as a result of the unavailability of insurance, there would be less intensive price competition.

Impacts on new entrants

6.85 The impact on new entrants of this option is an important factor to consider. IPP informed us that cover would not necessarily be more expensive for new entrants, as duration of operation was only one of a large number of factors taken into account when assessing risk; it was not a rule of thumb that new entrants were more expensive to insure. This may be partly the result of the licensing conditions laid down by Regulation 1008/2008, which requires new entrants to meet strict financial criteria, including the ability to fund the first 3 months of operation without any income, and to meet actual and potential obligations for the first 24 months of operation (under reasonable assumptions). However, as by definition a new entrant can offer only limited past financial information for review, an insurer could be expected to reflect the increased uncertainty through higher premia.

Business opportunities for insurers

6.86 Insurers could gain significant revenue from this option, although this would depend on the proportion of passengers willing to pay for insurance. Table 6.5 shows the revenue for insurers for this option, based on the cost of insurance estimated below (6.89), and on the assumption that the proportion of passengers willing to pay is in line with the survey conducted for DG Justice (see 6.74). The 8% profit margin equates to €13m per year profit (in 2010).

TABLE 6.5 POTENTIAL REVENUE AVAILABLE TO INSURERS UNDER OPTIONAL INSURANCE

Distance of flight	Return scheduled passengers (2010, millions)	Proportion of passengers willing to pay ⁴⁵	Paying scheduled passengers (millions)	Cost per passenger (€)	Total revenue for insurers (€ millions)
Intra-EU	207	88%	182	0.42	77
Extra-EU	113	68%	77	1.38	106
Total	320		259		183

Social impacts

⁴⁵ *Enhanced insolvency protection for consumers purchasing airline tickets - a survey*, RPA, LE and Yougov, unpublished

6.87 In the short term, the number of airline insolvencies would be increased by the introduction of this option (although the rate of insolvencies thereafter would be likely to be lower). This option would therefore result in the loss of a number of jobs for staff employed by airlines in the short term. However, the more financially stable airlines would be likely to expand to offer the services offered by the defunct airlines, and over the medium/long term this would therefore increase the number of people employed in the airline industry back towards the level in the baseline scenario. This option could also result in a marginal increase in the number of staff employed by insurance companies.

Environmental impacts

6.88 The insolvencies of some less financially stable airlines would be likely to reduce the number of air traffic movements, and this option would therefore cause a marginal reduction in emissions shortly after its introduction. However, as other airlines expanded to replace their services, emissions would be likely to increase to at or near their levels under option 0, the baseline scenario.

Costs

Costs of insurance

6.89 We have estimated the price of insurance as follows: the risk of an event occurring is multiplied by the cost of that event occurring, with a mark-up added to reflect the insurers' operating costs, profit margin and the risks inherent in providing the insurance. We have calculated estimates on the following basis:

- frequency of insolvency in terms of proportion of passengers affected (see Table 6.1 above);
- estimated costs incurred by these passengers (see Table 6.2 above); and
- a mark-up based on the average running costs of general reserve funds, in addition to the average profit margin observed across three large insurance companies⁴⁶ (note, the running costs are based on general reserve funds rather than insurance companies, to reflect the fact that running costs may be higher as a proportion of claims for this type of product than other insurance products, such as buildings insurance).

6.90 Estimated average prices are shown in Table 6.6. These are prices per return ticket, and include coverage of all costs we expect the passengers to incur, across stranded and booked passengers⁴⁷. They include overhead costs, which add 85% to the cost of services for affected passengers, and an 8% profit margin.

⁴⁶ Aviva, Generali and Zurich, observed over all time periods available.

⁴⁷ Including rearranged flights and additional accommodation for stranded or rebooked passengers, and reimbursement for booked passengers who do not travel. It excludes non-refundable accommodation costs.

TABLE 6.6 ESTIMATED PRICE OF OPTIONAL INSURANCE PER RETURN FLIGHT

Passengers affected	Distance of flight	Cost per passenger	Probability of event occurring	Cost to compensate passengers	Overheads	Profit margin	Total
Stranded	Intra-EU	€ 330	0.008%	€ 0.03	€ 0.02	€ 0.00	€ 0.06
	Extra-EU	€ 1,068	0.008%	€ 0.09	€ 0.08	€ 0.01	€ 0.18
Booked, did not travel	Intra-EU	€ 254	0.015%	€ 0.04	€ 0.03	€ 0.01	€ 0.07
	Extra-EU	€ 978	0.015%	€ 0.14	€ 0.12	€ 0.02	€ 0.29
Booked, rearranged travel	Intra-EU	€ 332	0.044%	€ 0.15	€ 0.13	€ 0.02	€ 0.29
	Extra-EU	€ 1,034	0.044%	€ 0.46	€ 0.39	€ 0.06	€ 0.91
Total	Intra-EU		0.067%	€ 0.21	€ 0.18	€ 0.03	€ 0.42
	Extra-EU		0.067%	€ 0.69	€ 0.59	€ 0.10	€ 1.38

6.91 These estimated costs are relatively low, reflecting the fact that airline insolvencies happen rarely in comparison to the number of passengers who travel: as discussed in above, we estimate that only 0.07% of air passenger return journeys between 2000 and 2009 were impacted by a scheduled airline insolvency. However, in practice, there are a number of reasons why insurance may cost more than this:

- If insurance is optional, passengers would be more likely to purchase it where they perceive that the risk of insolvency, or the impact on them, would be higher. There would be almost no point purchasing insolvency insurance when a passenger buys a ticket on a large stable airline for travel in a few days time, as the chance of it going insolvent in this period is negligible. Therefore the average risk, and the average payout, might be higher than we have assumed.
- Insurance industry representatives have indicated that the insurance market may be unwilling or unable to offer this insurance (see 6.95).
- Insurance volumes will be lower under optional insurance, which will increase the proportion of fixed overhead costs.
- If insurance was compulsory, airlines would include this in ticket prices and (in a competitive market) would seek to find the lowest cost insurance, in order to minimise their operating costs. If insurance was an optional extra available to passengers, there would be less pressure on airlines to find the lowest cost option.

6.92 However, we were not able to obtain data which would have enabled us to quantify these effects and therefore assume that the prices calculated for compulsory insurance would be the same as the average price across all airlines under the optional insurance option.

6.93 Current prices for SAFI, which is offered at present as optional insurance, provide an indication of the potential difference in price. Costs were estimated for this option at between €3 and €15 per sector by one airline association (€6-€30 per return flight), which is 4-20 times our estimate. Where we have been able to identify it as a standalone product, SAFI has been offered at rates between £2.49⁴⁸ (€3) and £5⁴⁹ (€6)

⁴⁸ www.netflights.com

per return flight; comparing these rates with our estimates of the cost of compulsory insurance would imply that optional insurance could potentially be between 2 and 4 times more expensive than compulsory insurance.

- 6.94 The costs presented in Table 6.6 are an average across all airlines. Since the risk profiles associated with individual airlines vary considerably, so will the price of insurance offered. We have sought to illustrate this variation by assuming that the risk of insolvency is negligible across the largest ten airlines in the EU by passenger numbers (excluding Alitalia)⁵⁰, and that the full risk of insolvency is therefore shared across passengers travelling on the remaining carriers. On this basis, we estimate that the price of insurance could be increased by a multiple of four for the average cover provided to airlines smaller than the largest ten, and would be higher still for other airlines which were perceived to be at high risk of insolvency.
- 6.95 At present, the market for airline insolvency insurance is limited. If this option were introduced, demand would be likely to increase, which could strain the capacity of the insurance market. There are several financial obligations which an insurance provider must meet in order to offer an insurance product (which will include legislative capital requirements such as Solvency II⁵¹), which could limit the ability of the insurance market to expand. In the initial period following the introduction of this option, this could result in higher costs for insurance, or even a limit to the amount of airlines which are able to be insured. The European insurance association CEA argued strongly that a compulsory insurance system (which this option would be, since all airlines would be required to offer it) would not generate market development, and that the best way of providing insurance is through allowing the market to develop products which suit consumer demand. However, CEA did not provide sufficient arguments as to why the market could not develop over time to meet the requirements. Since the issues raised relate to market development, if some way of reducing initial impacts (e.g. through staggered introduction of the option) could be devised, it is likely that these capacity constraints would be resolved in the medium term.
- 6.96 The introduction of the requirement to offer insurance would represent a significant business opportunity for insurers (estimated above). As the market expanded, the cost of insurance is likely to decrease as a result of increased competition, and greater certainty about the level of claims. During the initial phase of introduction where capacity could be strained, costs could be higher, and one airline association believed there was a risk that the relatively few insurers providing insolvency insurance could exploit the undeveloped market, and charge high premiums.
- 6.97 IPP informed us that costs of insurance would be significantly increased if the insurance was required to cover non-flight expenses such as accommodation or care. These costs are harder to predict, and therefore require a higher premium to cover them. A further issue is that passengers would not have an incentive to minimise these costs if they were fully covered by insurance.

⁴⁹ www.protectmyholiday.com

⁵⁰ Based on the Eurostat Transport databook (Energy and Transport in Figures) 2010

⁵¹ Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

Implementation costs

- 6.98 As well as the costs of providing the insurance, two types of implementation cost would be generated:
- airlines and travel agents would have to adapt their systems so that passengers could be offered insurance as part of the booking process; and
 - national authorities would need to monitor that airlines and travel agents were offering the optional insurance.
- 6.99 To estimate the costs of adapting airline systems, our approach was to assume that a software engineer would spend 2 working days per year on adapting and maintaining the systems required to offer insurance and record which passengers have taken it. At a rate of €39 per hour for software engineers⁵², this gives a cost of approximately €540 per airline; in 2010 there were 153 airlines with over 1,000 seats per month, which would give an EU-wide cost of €83,000 per year (at 2010 prices).
- 6.100 ETTSA provided information on the costs which major online travel agents would incur to adapt their systems. ETTSA stated a number of provisions which would be necessary to make the insurance system feasible, including that the information on insurance should be provided in a simple and clear manner according to standard messaging rules (e.g. via the GDS system). It estimated that for an online travel agency, this would require 500 man-weeks to adapt technology and €1.2m investment. Assuming €43,000 per annum gross salary for software engineers working on the technology, we estimate that the staff costs would be approximately €490,000 per agency. ETTSA also stated that these estimates assumed cancellations and refunds could be achieved through current systems; if not, this would require additional staff costs of €880,000 (900 man-weeks) and investment of €1m per agency.
- 6.101 These estimates appear high to us, as 500 man-weeks is equivalent to one person working full time for 10 years. However, if these costs were only to be applied to ETTSA members they would be restricted to the largest online travel agencies (including Expedia, ebookers and opodo), and we would expect costs to be much lower for other intermediaries.
- 6.102 National authorities would be required to monitor airlines and travel agents to ensure that they were offering the optional insurance, and that the insurance was valid and sufficient. In order to estimate the scale of resources which might be required by national authorities, we have used as a benchmark the resources used by national authorities to monitor the implementation of Regulation 261/2004 (which sets out the rights of passengers in the event of cancellations, delays or denied boarding). We would expect the monitoring required for Regulation 261/2004 to be more onerous than for this policy option, as Regulation 261/2004 requires authorities to respond to passenger complaints, in addition to monitoring information provided on websites. We have therefore assumed that monitoring this option would require 10% of the staffing

⁵² Average across all EU States of cost for professionals, weighted by number of airlines registered in the State, from the EU's administrative burden calculator.

levels required to enforce Regulation 261/2004⁵³. On this basis, we estimate that monitoring would cost €525,000 per year across the EU; this would be an administrative burden. Please see Appendix C for further details of this calculation.

Implementation

- 6.103 Airlines would be required to obtain insurance as a condition of operating scheduled flights. For this to be enforceable, it would have to be made a condition of obtaining a license, so that compliance could be checked by licensing authorities. It would therefore be implemented via an amendment to Regulation 1008/2008 on the conditions for granting operating licenses and/or Regulation 785/2004 on airline insurance requirements. This policy could not be implemented by Member States alone as Regulation 1008/2008 prevents them from placing further restrictions on the operations of Community carriers.
- 6.104 Under the mandatory insurance option (B3), that the cost of insurance should be reflected in the final ticket price, and not charged directly to passengers as an extra fee: this has the advantage that airlines would (in a competitive market) seek to minimise the costs of insurance. However, in this case, the insurance is optional, and this means it would be necessary for it to be offered separately; this would limit competition between airlines on the price of optional insurance.
- 6.105 Two other issues would have to be resolved if this option were to be implemented:
- whether the requirement to offer insurance applied to journeys wholly within the EU, flights to/from third countries on EU carriers, or all flights to/from the EU; and
 - whether airlines could meet the requirement to offer passengers' protection against insolvency through alternative approaches, such as bank guarantees, particularly if insurance was not available.
- 6.106 The tickets which this option applied to could be restricted to those within the EU, those on EU carriers for journeys originating or landing in the EU, or could extend to non-EU carriers. However, since insolvency has the greatest impact on long haul passengers (due to the higher cost of tickets), it would not make sense to limit the scope to intra-EU journeys. This raises the issue of whether insurance should be limited to EU carriers for journeys beyond the EU:
- If the requirement to offer insurance was restricted to EU carriers, and had a cost impact on EU carriers (such as the requirement of purchase of a bond to obtain insurance) then this could distort competition between EU-registered carriers and those based outside the EU. However, if it did not have a cost impact on EU carriers then it would be unlikely to have much impact on competition, as the insurance is optional and would not affect the ticket price. It would also leave EU residents travelling on other airlines unprotected.⁵⁴

⁵³ As identified by the Review of Regulation 261/2004 undertaken for the Commission:
http://ec.europa.eu/transport/air_portal/passenger_rights/studies/doc/2007_02_review_regulation_261_2004_report_en.pdf

⁵⁴ This issue is more significant for B3 – please see discussion under this option.

- If the requirement to offer insurance was extended to non-EU carriers, there could be difficulties with enforcement, as this could be considered an extra-territorial requirement. However, this should not be a problem if it is limited to journeys to/from the EU, for tickets sold in the EU; please see Appendix B for analysis of legal issues with the options, including details of this point.
- 6.107 We would therefore recommend that this option should apply to all tickets sold for journeys originating in the EU. This approach could make monitoring and enforcement slightly more difficult, as no Member State would have the powers of a licensing authority over the non-EU carriers. However, non-EU carriers have successfully been included within other passenger rights legislation (such as Regulation 261/2004) and it should also be possible to include them here.
- 6.108 In addition to insurance, airlines should be permitted to provide another means of passenger protection, where they were not able to obtain insurance. Since they would otherwise be forced to cease operations, this would permit airlines in temporary financial difficulty to continue to operate and, potentially, recover. The implementation of the Package Travel Directive has shown that these additional methods can be effective. The alternative option would have to involve some kind of bank guarantee, or escrow account, with the ticket price plus an additional fee paid into the account when the passenger booked the ticket. The account would be independent from the airline and would therefore survive its insolvency; if the airline became insolvent, the account or bank guarantee would be used to reimburse and compensate the passenger, and if did not become insolvent, the funds could be released to the airline. This would be comparable to the arrangements for providing insurance against insolvency to credit card users: acquiring banks delay payments, and sometimes ask for bonds, to cover their potential liability. However, as discussed in option B4, the amount that would have to be paid into this account might be quite substantial relative to the ticket price, and this would have a major impact on airlines' cash flows.
- 6.109 This option would be relatively simple to implement for airlines which only sold tickets on their own flights, but would be complex to implement where tickets were to be sold through intermediaries. The difficulty would lie in presenting passengers with the correct insurance option for each airline, and ensuring that the passenger's choice of whether or not to purchase cover was passed through to the insurance company.
- 6.110 One stakeholder believed that there would be difficulties around implementing this option for codeshare and interline flights. There could be issues with these flights if insurance cover had to be provided by the operating carrier(s), and therefore potentially passengers would have to be offered a choice of whether they wished to purchase insurance for each segment of the journey, and the insurance providers could differ for different segments. In order to avoid this, codeshare and interline flights should be entirely covered by the marketing carrier's insurance. If the operating carrier failed, it would be the responsibility of the marketing carrier to arrange an alternative flight; and if the marketing carrier failed, then if the passenger had purchased cover from the marketing carrier, he or she would be protected.

Conclusions

- 6.111 This policy option would provide protection to passengers who chose to purchase insurance, as well as providing indirect information on financial risks to passengers (the cost of insurance for a particular airline would indicate the associated risk). However, it would be likely to have significant negative impacts for passengers and airlines when it was introduced, as it could cause the failures of a airlines regarded as insufficiently financially stable by insurers, who would not be able to obtain insurance at a reasonable (or possibly any) price. This would also reduce consumer choice.
- 6.112 These problems should be less severe than for option B3, as if carriers were not able to offer insurance at a reasonable price, passengers would still be able to buy tickets without purchasing insurance. It might also be possible to reduce this risk of causing airline insolvencies through phased introduction of the requirement to offer insurance, coupled with enhanced monitoring by national authorities and potentially either an exemption from the requirement to offer insurance for carriers that were not able to obtain it, or some form of State-funded insurance for these carriers as a transitional arrangement. Nonetheless, in our view the risk of causing airline failures means that this option is not an ideal one for addressing the problem.

Option B3: Carriers to be obliged to provide insurance

Overview

- 6.113 Under this option, carriers would be obliged to have insurance to against the risk of insolvency which would cover all of their passengers. As for the optional insurance option discussed above, this could cover reimbursement, assistance and repatriation, although the cost of the insurance would be greater if the scope was wider. Airlines would be required to have this insurance as a condition of their operating licenses.
- 6.114 Many of the issues for this option are the same as for Option B2 (optional insurance), and where this is the case the reader is referred to the relevant discussion in the previous section.

Economic impacts

Consumer impacts

- 6.115 This option would ensure that all tickets that were sold included insurance against insolvency, whether or not the passenger wanted to pay for it. Consumer organisations interviewed for this study considered that this would be a benefit, as it would ensure universal coverage for passengers, who might not fully understand the financial risks associated with insolvency. One consumer organisation believed that since airlines were different to most service providers in requiring payment for the service in advance, it would be appropriate to ensure that airlines did not take unnecessary risks with the monies paid in advance.
- 6.116 Airline associations regarded compulsory cover as being a disbenefit, as it would prevent consumers from making choices as to whether or not to purchase insurance, and could force them either to bear costs for services they did not want (for example, insurance against the insolvency of stable carriers), or not to travel if the additional cost of insurance was too great. As discussed above (paragraph 6.76), the variation in

use of insurance between States would be likely to affect consumer perception of this increased cost.

Business impacts

- 6.117 As discussed below, the clear benefit of this option would be that it would ensure that all consumers were protected against insolvency. However, as with optional insurance, airlines in financial difficulty might not be able to obtain insurance, and might therefore have to cease operations (see paragraph 6.79). In summary, the impacts would be to:
- increase the stability of the airlines operating in the market;
 - if some weaker carriers were forced to leave the market, reduce competition and consumer choice (and potentially increase ticket prices);
 - reduce any control that national authorities have over the timing of insolvencies;
 - potentially increase barriers to entry for new entrants, although we have been informed that this is not always the case; and
 - allow competition between airlines on insurance rates, which should reflect the risk of insolvency.
- 6.118 Insurance rates could become an element of competition between airlines, which would be able to select between insurers to negotiate the best offer. Two national authorities believed that this option would benefit airlines in a stronger competitive position, as their premiums would be lower. Competition between airlines on insurance rates would have a much greater effect if insurance was compulsory, as the consumer would be making a decision with the insurance as part of the overall price of the ticket offered by each airline, rather than two separate decisions (one on the value of the flight, the other on the value of the insurance).
- 6.119 It could be argued that a mandatory insurance scheme would be an incentive for an airline to improve its financial position, as this would reduce its insurance premium and therefore make it more competitive. However, the highly competitive nature of the air travel market already provides a strong incentive for airlines to maintain a good financial position, and so the additional benefit would be marginal.
- 6.120 As for option B2, where an airline was in financial difficulty or there was the possibility of financial difficulties in the future, this would result in higher insurance premiums. Since insurance would be compulsory, this would automatically lead to higher ticket prices and lower demand for travel with the airline concerned (see paragraph 6.125). If the insurer perceived the risk of insolvency to be very high, then in order to cover the likely costs, the price of the insurance could be equivalent to, or perhaps even exceed, the price of the flight. Such higher prices would be likely to accelerate an airline's insolvency, although they could also be viewed as a signal of the stability of the airline and would ensure that passengers took account of a risk that might otherwise not have been considered.
- 6.121 These issues would be more significant if insurance was compulsory than for the optional insurance (B2). If insurance was optional, passengers would still be able to buy tickets with a financially weak airline, even if the price of the insurance became

prohibitively high, choosing not to buy the insurance if they were willing to run the risk of insolvency. However, if insurance was compulsory, the overall ticket price would be increased, and passengers would be likely to decide not to travel with the airline at all. Therefore, the risk that the insolvency of the carrier would be accelerated would be much greater.

- 6.122 There are also a number of issues around the introduction of compulsory insurance, described in the box below.

Compulsory insurance

Compulsory insurance is usually only required in areas which represent significant risks from a societal point of view. Its purpose is to provide for protection for possible victims of events outside their control which could cause them significant harm, including motor accidents, medical mistreatments, and failures of building constructions.

Several preconditions are necessary for effective compulsory insurance schemes, including:

- a sufficient supply of insurance capacity for the specified risks;
- a variety of insurers which offer cover for the specified risks; and
- an equally adequate reinsurance market for the specified risks.

On the basis of information received from CEA, none of these preconditions is met regarding airline insolvency insurance products. In particular, the number of insurers with prior experience of providing such products is low. However, as discussed above, CEA has not explained why these could not be met in the future if a requirement to have this insurance was introduced.

If compulsory insurance was introduced, it might be necessary to require insurance companies to offer the product, or it might be necessary to require those offering the product to cover all airlines. Should this be the case, either state subsidies or risk equalisation schemes may be required to ensure that insurance companies bear a reasonable level of risk, sufficient to make the product commercially attractive; either of these could be considered State aid. If the product was not commercially attractive, insurers may respond to an obligation to offer it by withdrawing products which would oblige them to market the products in question.

- 6.123 As with option B2, a possible approach to making insolvency insurance available to airlines at higher risk of insolvency would be through pooling of risk. The same problems with cross-subsidisation would occur as under the optional insurance option (see 6.81), and again this could be regarded as state aid.

- 6.124 Airline associations have pointed out that if this option was implemented in its current form, it would increase costs for airlines without affecting the costs of other modes. This would therefore reduce the competitiveness of air against other modes, particularly high-speed rail. However, this is of limited significance as the proportion of air routes which compete directly with rail services is low.

Impact on passenger demand

- 6.125 The requirement to have insurance against insolvency would increase airlines' operating costs, and hence their fares, and this would have some impact on passenger demand. The impact will vary depending on the extent to which passengers place any value on the insurance that they are required to buy. Passengers who do not value the insurance at all will view the additional cost as a pure price increase; as a result, slightly fewer of these passengers will purchase flights. Passengers who value the insurance at its price or higher will see its provision as a benefit, and there will be no impact on the willingness of these passengers to purchase flights. In order to estimate the overall impact on demand, we have assumed that the average passenger will be half way between these extremes.
- 6.126 To estimate the impact, we calculate by how much the price of insurance (as set out in 6.133 below) would increase the ticket price; this is +0.2% for both intra-EU and extra-EU flights. We then use demand elasticities to price (-0.7 for short-haul travel, -0.9 for long-haul travel) to calculate the resulting impact on demand. Under these assumptions, using the cost of insurance modelled for the average across all airlines, we estimate that demand would be reduced by 0.1% for both intra- and extra-EU air travel; this reduction would occur when the requirement to offer insurance was introduced, but would be one-off.
- 6.127 This reduction in demand is the average across the entire EU aviation sector; where individual airlines had financial difficulties, the price of insurance for these airlines would be much higher, and if this was passed through to the passenger as higher ticket prices, would have a much greater effect on their demand. In the case that an airline with a very high premium was directly competing with airlines with more moderate premia on the same route, it would either have to absorb the insurance cost itself or pass it through to passengers (which would result in substantial reductions in demand as the passengers could transfer to other airlines); both strategies would seriously further impact its financial stability. For example, a short haul airline perceived to be at high risk of insolvency might need to pay €10-20 or more per passenger for insurance; this would make it very difficult to compete with other short haul airlines, whose costs per passenger may be as low as €50-70.

Business opportunities for insurers

- 6.128 Insurers would gain more revenue from this option than from optional insurance, as shown in Table 6.7. The 8% profit margin equates to €17m per year profit (in 2010).

TABLE 6.7 POTENTIAL REVENUE AVAILABLE TO INSURERS UNDER COMPULSORY INSURANCE

Distance of flight	Return scheduled passenger journeys (2010, millions)	Cost per passenger (€)	Total revenue for insurers (€ millions)
Intra-EU	207	0.42	88
Extra-EU	113	1.38	156
Total	320		243

Social impacts

- 6.129 As with option B2 (optional insurance), the number of airline insolvencies would be likely to be increased by the introduction of this option (although the rate of insolvencies thereafter would be likely to be lower). This option would therefore result in the loss of a number of jobs for staff employed by airlines. However, the more financially stable airlines would be likely to expand to offer the services offered by the defunct airlines, and over the medium term would have to take on additional staff. Therefore, in the medium term, this should have minimal impact on airline employment.
- 6.130 This option could also result in a marginal increase in the number of staff employed by insurance companies.

Environmental impacts

- 6.131 As for option B2, insolvencies of some less financially stable airlines followed by expansion by more stable airlines to fill this gap would result in an immediate marginal reduction in CO2 emissions as a result of the introduction of this option, followed by a return to at or near baseline scenario levels in the medium term. Since more airlines would become insolvent under this option, the effect would be more marked than under option B2

Costs

Costs of insurance

- 6.132 The same issue regarding the feasibility of this option arises as for optional insurance. At present the demand for airline insolvency insurance is limited, so, in CEA's opinion, the introduction of this option could strain the market (see paragraph 6.95). This effect would be more significant for compulsory insurance, as the amount of insurance that would have to be provided would be much greater. As with the optional insurance option, the following effects are possible:
- in the initial period following the introduction of the option, market capacity constraints could result in higher costs for insurance, or limits to the number of airlines which can be insured;
 - after market expansion, cost of insurance is likely to decrease as a result of increased competition; and
 - higher costs if the insurance is required to cover non-flight expenses such as accommodation or care.
- 6.133 We have assumed that insurance would be provided at the same price under the compulsory option as under the optional approach, as in Table 6.6. However, for reasons of increased economies of scale and opportunities to pool risk, and because there would be more pressure on airlines in a competitive market to find the lowest cost insurance option, we would expect the price of compulsory insurance to be lower (see discussion under B2 above). The range of prices of insurance would be as for

optional insurance, with some at-risk airlines only being able to obtain insurance at extremely high rates.

Implementation costs

- 6.134 As for option B2, national authorities would need to monitor that airlines had this insurance. However, the monitoring costs would be low, as it would not be necessary to ensure that it was being offered through each point of sale, and it would not be necessary to monitor that travel agents were offering it; this could be monitored at the same time that licensing authorities check the other insurance that airlines are required to have. The costs discussed under option B2 for airlines and travel agents to offer the option to purchase insurance as part of the ticket sales process would also not be incurred, as passengers would not be given the option of buying insurance or not.

Implementation

- 6.135 As for B2, this option would require airlines to obtain insurance as a condition of their operating scheduled flights, and would therefore be implemented via an amendment to Regulation 1008/2008 on the conditions for granting operating licenses and/or an amendment to Regulation 785/2004 on airline insurance requirements. This policy could not be implemented by Member States alone as Regulation 1008/2008 prevents them from placing further restrictions on the operations of Community carriers.

- 6.136 The other factors affecting implementation for this option would be the same as for Option B2, and are discussed in paragraphs 6.103 to 6.110. In summary, we recommend that, if this option was introduced:

- the option should apply to all tickets sold for journeys originating in the EU (including on non-EU carriers); and
- airlines should be permitted to use alternatives where insurance is not available (such as bank guarantees).

- 6.137 If compulsory insurance was limited to EU carriers, that would risk distorting competition with non-EU carriers. This issue would be much more significant than for B2, as a result of insurance being compulsory. If the insurance was required for all carriers, we would expect the cost to be passed through to passengers in higher fares, and it would not necessarily impact airline profitability. However, if insurance was only required for EU carriers, it would not be possible to pass the cost through to passengers, because non-EU carriers operating on the same route would not incur equivalent costs. Although the price of the insurance would probably be quite low compared to long haul ticket prices (as calculated above, less than €2 per return trip for a financially stable airline, compared to a typical long haul return ticket price of nearly €900), the very low profit margins of most network airlines (often 1-2%) would mean that this requirement would have a significant impact on profitability of EU airlines. This could be avoided by applying the requirement to all airlines for flights from the EU.

Conclusions

- 6.138 This option would provide a good level of protection to passengers, and would act to

force passengers to directly consider the risk of insolvency when purchasing air tickets. However, as for the optional insurance option, it could cause the failures of a potentially large number of airlines regarded as financially unstable by insurers, who would not be able to obtain insurance at a reasonable price, or possibly at all. This risk is more severe than for option B2 because, unlike for B2, it would not be possible for a passenger to purchase a ticket with a financially weak airline and decide not to purchase the insurance. For this reason we do not believe this option is workable.

Option B4: Require airlines in financial difficulty to obtain bank guarantees

Overview

- 6.139 Airlines could be required by their national licensing authority to obtain a bank guarantee or other similar measure, sufficient to cover liabilities to both booked and stranded passengers, which could be called on in the event that the airline becomes insolvent. If the airline was in financial difficulty and therefore there was a significant risk that the guarantee would be called on, we would expect that, in order to obtain the guarantee, the bank would require that the full value of the potential liability be deposited with it.

Economic impacts

- 6.140 Allowing licensing authorities to require airlines to provide a bank guarantee could provide more protection for passengers, as where an airline was able to obtain this guarantee its passengers would be protected from direct losses relating to its insolvency. However, the proportion of revenue which an airline would have to provide could be high, depending on the scope of the guarantee required, and this could prevent airlines in difficulty from obtaining guarantees (see paragraph 6.139). If an airline were to fail to obtain a guarantee, it would cease operations without any protection for affected passengers.

Social impacts

- 6.141 The number of airline insolvencies would not be affected by this option, and there would therefore be no impact on jobs within the airline industry.

Environmental impacts

- 6.142 The number of air traffic movements would not be affected by this option, and it would therefore have the same amount of CO2 emissions as the baseline scenario.

Costs

- 6.143 This option would require airlines identified as being in financial difficulty to pass funds to a bank which would be sufficient to provide assistance to all passengers who would be affected if the airline were to fail. This would include stranded passengers, who would require assistance to return home and for any additional costs incurred as a result of being stranded, and booked passengers, who would require a refund of monies paid in addition to the incremental cost of any new tickets.
- 6.144 To estimate the potential size of such guarantees, we reviewed the annual accounts of

a sample of airlines in 2009. The balance sheets of these airlines report revenue received in advance (second column in Table 6.8), which would have to be reimbursed if the airline failed. From this and other data provided in the annual accounts, and using the methodology to estimate costs to assist passengers described in chapter 4, we have estimated the potential liability to passengers in the event of insolvency (including reimbursing passengers, assisting stranded passengers, and paying for the extra cost of tickets on other airlines purchased at short notice); this is the total amount that the bank guarantee would have to cover (fourth column).

- 6.145 The amount of the guarantee required could be reduced if liability was excluded where passengers had protection through other means (such as credit cards). However, it might be difficult for national authorities to obtain information on the other protections held by passengers, and therefore limiting the size of the guarantee in this way could be difficult.
- 6.146 By comparing this amount with the amount of cash and equivalents held by each airline, which is also shown in their accounts (third column of the table), we can estimate whether the airlines would have sufficient funds available to obtain the guarantee. This shows that even some large and financially stable airlines such as Lufthansa and British Airways would not be able to obtain the level of guarantee required, and for other airlines including easyJet and Ryanair the guarantee would be a substantial proportion of their cash reserves. It is therefore very unlikely that a carrier in a weak financial position and at risk of insolvency would have sufficient funds to obtain a bank guarantee.

TABLE 6.8 IMPACT OF BANK GUARANTEES ON AIRLINE FINANCIAL POSITION

Airline	Data from airline annual accounts, (€ millions)		Estimated bank guarantee required (€ millions)	
	Revenue in advance	Cash or cash equivalents held	If all liabilities to passengers covered	Excluding liability covered by SAFI, credit card etc
Aer Lingus	118	650	239	192
Air Berlin	288	372	591	503
British Airways	884	785	1,480	997
easyJet	373	907	794	639
Lufthansa	1,906	1,136	3,248	2,375
Ryanair	448	1,583	969	780
Virgin Atlantic	438	312	637	358

- 6.147 We have calculated the size of the guarantee required on the basis that it would provide passengers with sufficient protection to meet all of the policy objectives (i.e. including costs such as additional accommodation/care and the incremental costs of new flights purchased at short notice, as well as a refund of the original flight). The amount of the guarantee required could be reduced if the liability to passengers was more limited: in particular, if accommodation/care and refunds of non-refundable components of trips were excluded from cover, the amount of the guarantee would be reduced by approximately 24%. However, the amount of the guarantee required would still be very large in comparison to airlines' cash reserves, and therefore it would be

difficult for financially weaker airlines to obtain the guarantee.

Implementation

- 6.148 In order to allow licensing authorities to require carriers to provide bank guarantees, it would be necessary to amend Regulation 1008/2008. This policy could not be implemented by Member States alone as Regulation 1008/2008 prevents them from placing further restrictions on the operations of Community carriers.

Conclusions

- 6.149 In theory, this option would provide national authorities with a mechanism to ensure protection for passengers booked with airlines in financial difficulty. However, the size of the guarantee required to ensure protection (at the same level as the other options offering passenger protection) would be too high to be practicable for all but the airlines with the largest cash reserves. The protection offered by the option would therefore be minimal.

Option B5: Create a general reserve fund

Overview of option

- 6.150 Under this option, a general reserve fund would be established through a new charge collected on each air ticket sold, to cover the insolvency risk of air carriers. The reserve fund could cover reimbursement, assistance and repatriation. This would be similar to the arrangements in some Member States (such as the UK and Denmark) for protection of passengers on package holidays. This option might be combined with option B1 (to define the obligations of States towards stranded passengers).

Economic impacts

Consumer impacts

- 6.151 This option would be very effective in terms of protecting consumers. It would provide all passengers with cover against airline insolvency, and unlike the insurance options, there would be no risk that the introduction of the general reserve fund would lead to any airlines being unable to continue operations because they were not able to get coverage - and hence negative consumer impacts. However, this option would also limit consumer choice, as all passengers would have to pay into the fund, whether or not they valued the protection that it provided.

Business impacts

- 6.152 Compared to the insurance options, the introduction of a general reserve fund would not have significant negative impacts on airlines: in particular, it would not cause any airlines to cease operations, because it could cover all airlines, regardless of risk.
- 6.153 The main negative economic impact of this option would be that it would distort competition. Passengers booking flights with airlines with negligible risk of insolvency would have to pay into the fund and would, in effect, subsidise passengers booking with weaker airlines. Since it would provide the same level of cover to all

passengers, passengers would no longer consider the financial stability of carriers as one of the factors affecting their choice between airlines. Consumers might have an increased incentive to purchase tickets with financially weak airlines, as they would know that they would be covered in the event of insolvency; in addition, a carrier facing insolvency might have an incentive to sell as many cheap advance-purchase tickets as possible, to maintain its cash flow, perhaps whilst reassuring passengers that they would be protected. This risk could be addressed by allowing the general reserve fund to vary contribution levels, or require bonds, based on the financial position of the carrier concerned.

- 6.154 However, we have been informed by consumer associations that these considerations have only a small effect on consumer decisions, and that most passengers are driven primarily by price. A consumer organisation argued that since consumers do not select airlines on the basis of financial fitness, they would not see it as unreasonable to pay a uniform fee.
- 6.155 If the contribution to the fund was a flat rate, then it would distort competition between low cost and network airlines, and between short and long haul. However, this could be addressed by making the contribution partly related to the price of the ticket and/or the distance travelled.
- 6.156 Although it might be expected that the requirement to pay into the fund would have the greatest impact on the demand of low cost carriers, given their fare levels, it is likely that the additional charge would be less than some of the additional charges the carriers themselves levy (such as for paying by credit card). Since these charges do not appear to have deterred passengers from using low cost carriers, the demand impact of a reserve fund (depending on how it was implemented) could also be small.
- 6.157 One national authority argued that this option would increase the level of monitoring of airlines that would be required, as the organisation managing the fund would need to undertake some monitoring of the airlines contributing to it. If it occurred, this could help increase the stability of the airlines monitored (although as discussed under option A, increased monitoring does not in itself improve financial stability).

Impact on passenger demand

- 6.158 The contribution per passenger necessary to the general reserve fund would be similar to the cost, per passenger, of compulsory insurance against insolvency (option B3). Therefore, the impact on demand would also be similar: we estimate that the introduction of the general reserve fund would result in a one-off 0.1% reduction in passenger demand.

Social impacts

- 6.159 The introduction of this option would not have a significant impact on the number of passengers transported, and it would not cause any carriers to cease operations; therefore, it would not have any significant impact on employment with airlines. It would result in an increase in roles for administering the funds; however, the number of roles created is likely to be small.

Environmental impacts

6.160 This option would result in fewer airline insolvencies relative to the baseline scenario, at the same time as a minor reduction in demand for air travel. The net impact on CO2 emissions would depend on the balance between these two factors, and would be likely to be marginal.

Costs

6.161 The cost of this option should be similar to those for compulsory insurance, as the general reserve fund would cover the same risks. However they could differ for several reasons, set out in Table 6.9.

TABLE 6.9 COST FACTORS FOR GENERAL RESERVE FUND AND COMPULSORY INSURANCE

Cost factor	General reserve fund	Compulsory insurance	Impact on cost of general reserve fund relative to compulsory insurance
Organisation basis	Non-profit	Profit	Decrease
Management	State	Commercial	Increase
Geographical coverage	National / supra-national	Multi-State	Likely to be similar
Form of fee	Uniform charge	Variable cost	Decrease
Service level	May provide assistance to affected passengers	Refund of costs incurred only	Increase

6.162 In Denmark, a similar level of cover is provided at a cost of 20DKR (€3), and the UK fund for package travel (ATOL) currently charges £2.50 (€3). However, it is not clear whether these charges reflect the full costs of the funds: the Danish fund has only very recently been introduced, and the UK fund has a significant deficit (although for several years previously it had not required contributions).

6.163 We have estimated the price of contribution to the general reserve fund on the same basis as for the insurance options (see paragraph 6.89), but without the inclusion of a profit margin for insurers. The calculation estimates the average cost per passenger of providing funds to assist passengers affected by insolvency, combined with the costs required to administer the funds. The cost required to administer the funds is based on the average proportion of administrative costs incurred by existing funds for the Package Travel Directive; this would include costs such as staff for responding to passenger queries, offices, equipment and others.

6.164 We have assumed a flat fee, however there are several possible approaches to setting charges for the fund:

- varying bands of contribution to the fund, so that airlines at greater risk of insolvency would contribute more, and those with established stability would contribute less (as an equivalent to a ‘no claims bonus’);
- varying bond requirements for participation the fund; and
- basing the charge partly on either the price of the ticket or the distance travelled.

6.165 The resulting prices are shown in Table 6.10. These are prices per return ticket, and include all costs we expect the passengers to incur, across stranded and booked passengers⁵⁵. The table also shows the price where calculated according to distance.

TABLE 6.10 ESTIMATED PRICE OF GENERAL RESERVE FUND

Passengers affected	Distance of flight	Cost per passenger	Probability of event occurring	Cost to compensate passengers	Over-heads	Total
Stranded	Intra-EU	€ 330	0.008%	€ 0.03	€ 0.02	€ 0.05
	Extra-EU	€ 1,068	0.008%	€ 0.09	€ 0.08	€ 0.17
Booked, did not travel	Intra-EU	€ 254	0.015%	€ 0.04	€ 0.03	€ 0.07
	Extra-EU	€ 978	0.015%	€ 0.14	€ 0.12	€ 0.26
Booked, rearranged travel	Intra-EU	€ 332	0.044%	€ 0.15	€ 0.13	€ 0.28
	Extra-EU	€ 1,034	0.044%	€ 0.46	€ 0.39	€ 0.85
Total	Intra-EU		0.067%	€ 0.21	€ 0.18	€ 0.39
	Extra-EU		0.067%	€ 0.69	€ 0.59	€ 1.28

Implementation

6.166 States could decide to set up general reserve funds without a legal requirement to do so, but if this applied to non-national Community carriers, there is a risk that this might be considered to infringe Regulation 1008/2008. For this reason, the fund established in Denmark applies to scheduled air tickets with carriers established in Denmark only⁵⁶. Therefore, in our view the only effective way to implement this option would be through new EU-level legislation, if necessary including amendments to this Regulation. Since the structure of the fund could vary between States, and some States might decide to set up funds on a multi-State basis, a Directive would be the appropriate instrument for Community action.

6.167 To ensure that this is implemented effectively, we suggest that Member States should be required to satisfy the Commission that the arrangements for the fund met a number of requirements, including:

- appropriate management processes (e.g. suspension of charge if the fund becomes too large, measures available to fund any shortfalls);
- the fund being sufficient to cover passengers affected;
- non-discriminatory arrangements for payment into the fund;
- definition of adequate monitoring procedures (including for example, monitoring of the validity of any bonds airlines were required to obtain).

6.168 We were informed by one stakeholder that the involvement of the banking sector in

⁵⁵ Including rearranged flights and additional accommodation for stranded or rebooked passengers, and reimbursal for booked passengers who do not travel. It excludes non-refundable accommodation costs.

⁵⁶ This has been defined as carriers with their main office in Denmark, and also international airlines with a branch office in Denmark.

setting up funds was helpful when setting up funds under the Package Travel Directive; this could be considered for this option.

Other issues

- 6.169 A number of issues would have to be addressed:
- whether the general reserve fund should be implemented at Member State or EU level, or cover groups of States;
 - whether the reserve fund should cover passengers based on the State of registration of the carrier, the State of origin of the journey, or the State of residence of the passenger; and
 - whether the reserve fund would cover travel outside the EU and/or on non-EU airlines.
- 6.170 In designing the funds, a key objective must be to minimise the risk that an individual fund either has insufficient resources to cover obligations in the event of an airline insolvency, or has to levy a fee which is so high that it deters passengers from travelling on the airlines it covers. Measures can be introduced to mitigate these risks (such as the fund obtaining an insurance bond to cover any shortfalls, or requiring airlines to obtain bonds as a condition of participating in the fund), but these measures would not be sufficient where an individual fund covers mostly one or few airlines.
- 6.171 This situation is most likely to arise if contributions were based on State of registration of the carrier: for example, Ryanair accounts for the vast majority of journeys on Irish-registered airlines, and prior to its failure, Sky Europe accounted for most journeys on Slovak-registered airlines. If there had been a general reserve fund organised on the basis of State of registration, the contribution for carriers registered in the Slovak Republic would have had to have been very high to build up sufficient funds to cover obligations when Sky Europe failed, and might have been so high that they would have contributed to the failure of Sky Europe (and potentially other Slovak airlines) by deterring passengers from booking with them.
- 6.172 Although this risk would be eliminated if the fund was organised at EU level, no pan-EU body has the resources or remit to implement an EU-wide fund, and therefore funds would have to be managed at the level of States, or groups of States.
- 6.173 This risk would be reduced by organising the funds on the basis of origin of journeys, or State of residence of the passenger. Organisation on the basis of State of residence of the passenger is likely to be impractical (a single booking could include passengers who are resident in multiple States), and therefore we would suggest that the funds should cover passengers on the basis of the origin of their journeys. This has the strong advantage of minimising any distortion of competition: all flights from a State would be covered by the same fund, regardless of which airline the passenger travelled with. This would be equivalent to the basis for implementation of the Package Travel Directive.
- 6.174 However, this would still create issues where States have very concentrated aviation markets (particularly some smaller States): for example, Sky Europe accounted for most flights from the Slovak Republic prior to its failure and therefore there would

still have needed to be a high level of contribution to build up sufficient funds. Whilst this would not have distorted competition for flights from airports in the Slovak Republic, as it would have been applicable to all airlines operating from these airports, it would have reduced the overall level of demand and might have prompted some passengers to travel to airports in neighbouring States. This risk could be addressed by permitting groups of States to set up joint funds, to pool risk. For example, it might be appropriate for Ireland to set up a joint fund with the UK, and for a single fund to cover several central European States. An alternative way of pooling risk could be for States which implement the Package Travel Directive through general reserve funds to extend these funds to cover scheduled flights.

- 6.175 As the impacts of insolvency are greatest for long haul journeys, the fund should cover travel outside the EU, and ideally should also cover travel on non-EU carriers, to ensure protection of passengers travelling on these airlines, and to avoid distorting competition. This should not present any problems if the fund was established on the basis of the State of origin of the journey: this would cover return trips from the EU on EU and non-EU airlines, provided the ticket was sold in the EU, but not trips to the EU from third countries.
- 6.176 Most of the discussion above relates to simple return journeys, where it is clear which State is the origin of the journey. It would be necessary to define which general reserve fund covered connecting flights. To avoid excessive complexity (in particular, to avoid multiple general reserve funds covering – and hence requiring contributions for – the same ticket), we suggest that the general reserve funds should cover passengers based on the State of origin of the first segment of the journey for which the ticket is valid.
- 6.177 Therefore, we recommend that:
- the general reserve funds should cover all passengers on the basis of the State of origin of the first segment of the journey;
 - funds should be set up by Member States, who would decide the exact approach to implementation; and
 - States should have the option of creating joint or pooled funds.

Conclusions

- 6.178 This option would be both workable (as has been demonstrated by the implementation of the Package Travel Directive) and effective in providing protection for passengers. Therefore, a political judgement has to be made over whether the problem this option would solve (consumer detriment due to airline insolvencies) is sufficiently large to justify the market intervention and distortion of competition.

Option B6: Adapt current bankruptcy / insolvency laws in Member States

Overview

- 6.179 At present, passengers with tickets booked with an insolvent airline would generally be unsecured creditors and, as an insolvent airline is likely to have few assets, they would receive little or nothing. Under this option, current general bankruptcy and/or

insolvency laws in Member States would be amended to improve the ability of passengers affected by insolvency to claim from the insolvent airline, by making passengers priority creditors.

Economic impacts

- 6.180 This option would offer some benefits to passengers as they would be more likely to receive compensation if they were prioritised within bankruptcy laws. However, these benefits might be quite limited. Passengers would have to wait for compensation until the insolvency procedure was complete, which might take several years: for example, at the time of writing, the case of Air Madrid still had not been resolved by the Spanish courts, four years after it had ceased operations. There would be no immediate assistance for stranded passengers. In addition, insolvent airlines are likely to have few assets (airlines main assets are aircraft, but these are often leased). Therefore, although the likelihood of passengers' eventually receiving something might increase, the proportion of their claim that would be paid might still be low.
- 6.181 If passengers were made preferred creditors in the event of insolvency, this could make it difficult for airlines to raise finance, as claims from passengers would take priority over repayment of debt. In particular, if passengers' claims took priority over repayment of secured creditors, it would not be possible for airlines to offer assets (such as aircraft) as securities for loans, as these assets would have to be sold to repay passengers first. If passengers' claims were prioritised over other unsecured creditors, but did not take priority over secured creditors, this option would be ineffective in providing passengers with redress, as insolvent airlines would often have little or no remaining assets.
- 6.182 It is not clear that the prioritisation of passenger claims would be equitable. When an airline fails, its passengers may incur significant losses – but so do its suppliers and (particularly) its staff, who would lose their jobs and may be owed their salaries⁵⁷. It would in any case not be possible to prioritise passengers' claims over staff claims, because this would be inconsistent with Directive 2008/94/EC on the protection of employees in cases of insolvency of their employer.
- 6.183 This option also only could protect passengers travelling on EU airlines, unless there was a multi-national agreement to extend the same arrangements to companies based outside the EU; such agreement could be difficult to obtain.

Social impacts

- 6.184 This option would have no impact on the number of airline insolvencies, and therefore no impact on the number of people employed within the airline industry.

Environmental impacts

- 6.185 This option would have no impact on number of air traffic movements, and therefore no impact on the level of CO2 emissions.

⁵⁷ For example, before Air Comet failed, its pilots went on strike because they had not received their salaries.

Costs

- 6.186 This option would not result in any direct costs for airlines, national authorities or passengers.

Implementation issues

- 6.187 This option would represent a fundamental change to national insolvency laws. As these vary significantly, and therefore the changes required would differ, it would be best implemented through a Directive requiring States to change their national insolvency laws to ensure this outcome.
- 6.188 National authorities interviewed for this study indicated that they expected their States to oppose making such a change, because they considered it disproportionate, and because it was not clear why consumers should be preferred creditors in the case of insolvency of airlines, but not in the case of other service providers.
- 6.189 All Member State laws would need to be amended on a consistent basis, but this would be difficult as national insolvency laws differ. For example, in some States there are set time limits for proceedings, whilst in others they are open-ended and dependent on the payment of creditors; some States allow temporary protection from creditors (similar to Chapter 11 in the US) whereas others do not. These differences mean that a Regulation might not be a sufficiently flexible way of introducing this option, and a Directive would be a more appropriate instrument.

Conclusions

- 6.190 This policy option would not be effective in protecting passengers against the impact of scheduled airline insolvencies. It would also require fundamental changes to the systems of company law in all Member States. In our opinion this option is neither practical nor beneficial.

Option C1.1: Licensing authorities required to communicate information on financial fitness of carriers

Overview

- 6.191 Licensing authorities could be required to communicate to the general public on the financial fitness of the air carriers that they are monitoring. In order to ensure that passengers are adequately informed regarding the risks associated with specific airlines, licensing authorities could be required to either:
- **Option C1.1A:** Publish some or all of the information specified in Annex I Section 3 of Regulation 1008/2008 (such as profit and loss statements, cash flow forecasts, etc); or
 - **Option C1.1B:** In addition to the above, also publish their assessments of the financial fitness of the carriers they licensed.

Economic impacts

Consumer impacts

- 6.192 The main consumer benefit of this option is that passengers could make a more informed decision about whether to book to travel with a particular airline, or whether to take out insurance against the insolvency of an airline that they had booked to travel with. However, the information would only be useful to passengers if it was presented, and could be interpreted, in such a way that the average consumer could understand it and the risks that they faced. If detailed financial information was given about airlines, it would be difficult for passengers or other interested parties to compare or score airlines without detailed knowledge of their business models and operational environment.
- 6.193 The main negative consumer impact is that, depending on what information was published, this could accelerate the insolvency of a carrier, or even cause insolvencies that would not otherwise have occurred. This risk would be greatest if national authorities had to publish an explicit statement that a carrier was at risk. This issue is discussed in more detail below.
- 6.194 As a standalone option this would not provide extra protection to affected passengers, but it could increase the number of passengers who ensured they had some form of protection against insolvency, or at least understood the risks that they exposed themselves to by booking to travel with a particular airline.

Business impacts

- 6.195 It would be feasible to publish some information:
- the UK CAA already publishes balance sheets, profit and loss accounts, and operational information for all UK registered airlines, which could be used by consumers or others to make an assessment of their financial fitness;
 - DECO stated that it publishes information about the status of travel agents every 6 months and that this could be extended to airlines; and
 - ENAC suggested that the balance sheet information airlines are already required to publish could be centralised in one place.
- 6.196 Some of the information listed in Annex I Section 3, such as audited profit and loss statements and balance sheets, would already be in the public domain for listed companies. Therefore, the only impact of a requirement to publish this would be to extend this obligation to non-listed companies, as is already the case for UK airlines. Publication of this information does not appear to have had any negative impacts.
- 6.197 However, some other information listed in Annex I Section 3, such as traffic and revenue forecasts, and liquidity plans for the forthcoming year, is highly commercially sensitive. Its publication would be likely to affect the market values of airlines. In some cases publication of this information could create significant problems for airline management: for example, if it was apparent from this that an airline intended to withdraw from certain routes or types of services in the next year, this could generate industrial relations issues; whereas if it was published that an airline intended to

expand in certain markets, this information could benefit competitors (including non-EU airlines that would have no equivalent obligations).

6.198 Much more significant issues would be created if licensing authorities also had to publish their assessment of the financial stability of an airline (option C1.1B). If a licensing authority was to publish that a carrier was in a financially weak position or at risk of insolvency, the impact of this might be:

- passengers might be more reluctant to book to travel with the airline, which could hasten its insolvency and potentially lead to insolvencies of airlines that might otherwise have been able to continue operations (for example because they are taken over by another airline);
- licensing authorities might need to undertake more detailed analysis than they currently do of the financial stability of airlines, because the risk that their assessment would be challenged by an airline would be significantly greater if it was to be published (IPP informed us that where they exclude airlines from the cover they offer, this is often challenged by the airline); and
- there would be a risk of legal challenge, or claims for damages, against licensing authorities if airlines believed that their business had been damaged by a statement from a licensing authority that it was in a weak position; there might also be claims from passengers if the licensing authority had incorrectly judged that a carrier was not at risk.

6.199 A key issue is that there is no objective standard for assessing risk of insolvency, and therefore a statement by a licensing authority that an airline was at risk would be inherently subjective. Although a scoring system was developed in the 1960s to assess the risk that a company become insolvent within two years (the Altman Z score), we have found that it is not appropriate for airlines in its standard form, as it was developed for manufacturing firms and is based primarily on factors relative to the assets of a company. While this is appropriate for manufacturing firms, the business models of airlines are different and tend to have a much lower holding of assets; some airlines have very few assets, as aircraft may be leased. In its standard form, this is not appropriate as a test of financial fitness which could be published by national authorities. However, an equivalent of this method could be developed specifically for airlines; for example, this might compare holdings of cash and other liquid assets with annual operating costs, to provide a simple measure of an airline's financial health.

Social impacts

6.200 The social impacts of this option would depend on the option implemented:

- If option C1.1A were implemented, there would be no impact on the number of jobs in the airline industry, relative to the baseline scenario.
- If option C1.1B were implemented, this could result in a higher number of airline insolvencies, and therefore reduce employment in the short term. However, over time the more financially stable airlines would expand to offer the services offered by the defunct airlines, and therefore there should be little or no medium term social impact.

Environmental impacts

6.201 The environmental impacts of this option would be marginal, and would vary in the same way as the social impacts:

- If option C1.1A were implemented, there would be no impact on CO2 emissions relative to the baseline scenario.
- If option C1.1B were implemented, this could result in a higher number of airline insolvencies, and therefore temporarily decrease the quantity of CO2 emissions.

Costs

6.202 The financial costs of this option would depend primarily on what information was to be disseminated. Costs would also depend partly on the medium used to disseminate the information, but if licensing authorities only published this on their websites, the actual costs of publication would be minimal. The UK CAA noted that there could also be a cost burden associated with responding to any passenger queries.

6.203 Much more significant costs would be incurred if national authorities had to perform additional analysis of carriers' financial position, over and above that already undertaken. This would not be necessary for option C1.1A, if purely factual information was to be published (such as profit and loss statements, or balance sheets), but would be necessary for option C1.1B, if there was a requirement to publish an opinion on the financial fitness of carriers. As discussed below, publication by a licensing authority that a carrier was in a weak financial position could accelerate its insolvency, and therefore licensing authorities could need to undertake further investigation and analysis before publishing this conclusion.

6.204 If as in option C1.1A, national authorities only had to publish information which should be available to them anyhow, the costs of this would be minimal: we estimate that this would involve 2 days' work per year to update pages on an authority's website, and there would be administrative burden of approximately €15,000 per year (see appendix C).

6.205 If as in option C1.1B, licensing authorities had to publish an opinion on the financial fitness of carriers, this would therefore require in-depth review. The time required would vary depend on the financial situation of the airline in question: for stable airlines, the additional time would be minimal, while for unstable airlines the time required to review the financial situation could be considerable. We have therefore modelled an average of the two, at 10 days per airline per year. This is longer than we would expect the reviews of the airline accounts required under Regulation 1008/2008 to take, but under this option the results would be made public and would therefore require more scrutiny. This would generate a more significant administrative cost of €653,000 per year. All of this cost is additional to what is currently undertaken, and is therefore administrative burden. Details are provided in appendix C. The rationale for these costs is as follows:

- National authorities: We have assumed that accountants assessing the airlines accounts would require 10 working days per year to review an airline's accounts and provide an assessment suitable for publication. At a rate of €39 per hour for

professionals⁵⁸ this gives a cost of approximately €2,700 per airline; in August 2010 (OAG) there were 153 airlines with over 1,000 seats per month, which would give an EU-wide cost of approximately €413,000 per year (at 2010 prices) for financial review

- Airlines: Airlines are already required to provide information to national authorities under Regulation 1008/2008, so there would be little added cost burden to supply this information on a more regular basis or in a slightly amended format. We assume that on average this would require 5 days preparation (noting that this would vary for individual airlines depending on their financial stability, as in 6.204), again assuming this would require the time of senior managers. Following the same methodology as above, we estimate that this would cost approximately €1,600 per airline, or €240,000 across the EU.

Implementation

- 6.206 As this option would place additional obligations on licensing authorities, it could be implemented through amendments to Regulation 1008/2008. Alternatively, it might be possible for the Commission to seek agreement from licensing authorities to do this, on a voluntary basis – however, it is not clear whether licensing authorities would agree to this without there being a legal obligation on them.
- 6.207 Individual Member States would only be able to provide this information for airlines that they licensed. Therefore, this option would be more effective if there was a single source (for example a shared website) covering airlines registered in all Member States, using information to be provided by national licensing authorities. This could be established by the Commission.

Conclusions

- 6.208 As demonstrated by the UK CAA, publication of high-level financial information (such as income statements and balance sheets) for all registered airlines is feasible. However, the publication of anything further than this is not: if more sensitive financial information (such as forecasts) were to be published, this could affect airline market value and create problems for airline management; if an assessment of airline financial fitness were to be published by the authority, this would be subjective and would open the authority to legal challenge. If only high-level financial information could be published, the benefits of the option would be limited.

Option C1.2: Licensing authorities required to provide information when an airline has become insolvent

Overview

- 6.209 Licensing authorities could be required to communicate information to assist passengers in the event that an air carrier becomes insolvent, for example on alternative transport options.

⁵⁸ Average across all EU States of cost for professionals, weighted by number of airlines registered in the State, from the EU's administrative burden calculator.

Economic impacts

- 6.210 If Member States were required to communicate information to assist passengers in the event that an air carrier becomes insolvent, this might be beneficial to passengers, as it could provide a central reference point for information about possible methods of obtaining assistance, repatriation and reimbursement.
- 6.211 The US Department of Transportation (DOT) already publishes some consumer information relating to airline failures. For example, further to the recent failure of Mexicana, the DOT published an information leaflet on its website which explains:
- when tickets may still be valid – for example if they were for a codeshare flight, or for interline journeys – and consumers’ rights in these circumstances; and
 - how to claim for a refund from a credit card company.
- 6.212 However, this option would again not provide extra protection to affected passengers, and it would not have any impact on the number of passengers who ensured they had some form of protection (such as SAFI), because it would only be provided after the event.
- 6.213 In addition, the information national authorities can usefully provide may be limited. Some of the consumer information which can readily be provided by the US DOT (such as how to reclaim from a credit card company) cannot be provided equivalently easily in the EU, because of the different legal and commercial frameworks in different Member States. If a carrier became insolvent, the national authority for the Member State in which it was registered would probably be able to provide information useful to consumers based in that State, but it would not necessarily be able to provide equivalently useful information to passengers based in other States that the airline flies from. In addition, with a few exceptions, most EU national licensing authorities have fewer resources than the US DOT, and many have little expertise in consumer protection issues.

Social impacts

- 6.214 The number of airline insolvencies would not be affected by this option, and it would therefore have no effect on the number of staff employed by airlines.

Environmental impacts

- 6.215 This option would not affect the number of air traffic movements, and would therefore have no environmental impacts relative to the baseline scenario.

Costs

- 6.216 If Member States provided this information, they could do this through a number of methods including via their website, news media and leaflets. The costs involved within this option would be similar to C1.1 if the information were to be provided via a website; we estimate that set-up and maintenance of additional pages on the website of each national authority would cost approximately €15,000 across the EU. This would be an administrative burden; details of the calculation are provided in appendix C.

- 6.217 If the information were to be distributed through other means, for example through a poster at all EU travel agents, there would be additional costs. In the example of a poster for all EU travel agents, we estimate that it would cost about €2,000 to design and approximately €15,000 to produce A4 colour posters for the approximately 60,000 travel agents in the EU (assuming a cost of €0.25 per poster in a large run).

Implementation

- 6.218 This option would be relatively straightforward to implement, as Member States already provide other similar information (for example, relating to the provisions of Regulation 261/2004). As for option C1.1, this option would place additional obligations on licensing authorities, and would therefore be implemented through amendments to Regulation 1008/2008.
- 6.219 It is also possible that the Commission might be able to persuade licensing authorities to provide this information of their own accord, without any regulatory measure, as the cost of doing this is quite low.

Other issues

- 6.220 Two consumer organisations, BEUC and Test Achats, suggested a centralised and published database of all airlines in the EU, which would allow passengers to make a fully informed transport choice. They argued that this should be organised, regulated and monitored by the Commission and paid for through the information budget for DG MOVE. This database could include performance statistics, safety information as well as financial status.

Conclusions

- 6.221 The publication of information to assist passengers affected by insolvencies would provide some benefits to passengers, as there would in theory be a clear and consistent source of information for reference. The cost of providing this service would be minimal, and this option could therefore be cost-effective. However, the option would not provide any assistance to affected passengers.

Option C2: Carriers to be obliged to provide more information on websites

Overview

- 6.222 This option would require marketing websites and other sales outlets for airline tickets to advise purchasers of the risks they were undertaking and available options for protection. National authorities would also have to monitor sales outlets for airline tickets to ensure that appropriate information was being provided.

Economic impacts

- 6.223 This option would increase transparency for passengers about the risks they were subject to and inform them of their options for protection. It would be relatively straightforward to implement, and would have a wide reach.
- 6.224 However, airlines and intermediaries typically provide extensive information to

passengers at booking, which passengers are often required to certify that they have read. It is not clear how many passengers actually do so, or even if it is possible to do so before a website terminates the booking due to the apparent period of non-activity. For example, to book on the Ryanair website, a passenger must certify that they have read:

- the website terms of use (806 words);
- the Terms and Conditions of Travel (6,036 words); and
- the General Conditions of Carriage (5,910 words).

6.225 In addition, airlines often provide extensive information on optional extra products or services which the passenger must select or reject. On Ryanair, the passenger must certify whether they wish to:

- purchase priority boarding;
- purchase a luggage allowances;
- purchase an approved suitcase;
- purchase travel insurance (this is asked a second time if the passenger says they don't want it);
- purchase car hire;
- purchase an SMS confirmation of the booking;
- carry sports equipment or a musical instrument; and
- request airport assistance.

6.226 In this context, although information could be provided to state that passengers are not protected against insolvency and could be if they purchased SAFI or booked a package holiday, the difficulty of ensuring passengers take in this information means that it may have limited impact. Timing may be an issue here: if information about passengers' options is promoted at the same time as media reports on an airline insolvency then passengers may associate it with the risk.

6.227 As with C1, this option of itself would provide no additional passenger protection. It was seen by stakeholders as being most beneficial when implemented alongside another option that provided support for passengers if they had already purchased a ticket and an airline became insolvent.

Social impacts

6.228 The number of airline insolvencies would not be affected by this option, and it would therefore have no effect on the number of staff employed by airlines.

Environmental impacts

6.229 This option would not affect the number of air traffic movements, and would therefore have no environmental impacts relative to the baseline scenario.

Costs

- 6.230 If airlines and sales outlets had to provide information to passengers when booking flights this would create additional costs. To add this information as part of their online booking processes, we estimate that this would cost approximately €540 per airline per year (in 2010 prices), equivalent to €8,000 across the EU (following the methodology set out in 6.99).
- 6.231 ETTSA provided some views on the types of costs that could be incurred with this option would impose on major online travel agents. It believed this option would be technologically feasible provided is an obligation on airlines/governments to provide online travel agents with all information that needs to be communicated to customers, at no additional cost.
- 6.232 In addition to costs to airlines, national authorities would bear the costs of increased monitoring. The UK CAA argued the burden would not be large for Member States as they already undertake a lot of monitoring, but conversely CAA Poland informed us that in Poland (and presumably other States) many sales are through small high street travel agencies, which could make the implementation of this option difficult and expensive to monitor.
- 6.233 As with optional insurance (see paragraph 6.102), we have used the number of staff responsible for monitoring Regulation 261/2004 as a starting point, and assumed that the monitoring required for this option would be significantly lower. The number of national authority staff employed to monitor Regulation 261/2004 is 85 FTE, and we assume that 10% of this amount (8.5 FTE across the EU) would be sufficient to monitor the implementation of this option, as the scope of work required would be much more limited. We estimate that this would cost €525,000 per year (2010 prices).
- 6.234 Finally, the development and updating of the information to be disseminated has a cost that must be borne by either the sale outlet or the Member State. This would be more cost effective if done at the Member State level and passed on to all sales outlets to display the same information.

Implementation

- 6.235 Although in principle air carriers could be requested to implement this on a voluntary basis, individual carriers might be unlikely to do so if not required to, as they could consider that it would deter passengers from booking with them (if passengers wrongly interpreted that they were at higher risk of insolvency as a result of displaying the information). This policy could not be implemented by Member States alone as Regulation 1008/2008 prevents them from placing further restrictions on the operations of Community carriers. Therefore, this requirement would probably need to be introduced through a Regulation, probably through an amendment to Regulation 1008/2008.

Conclusions

- 6.236 This option could be a useful method of improving passenger awareness of risks and available protection. However, given the large amounts of information passengers are already required to navigate, the impact of the option could be minimal. The administration and monitoring costs of this option could be high, which given the

limited benefits of the option could reduce its cost-effectiveness.

Option ABC: Combined option

Overview

6.237 This option would combine the most effective feasible options from each of the pillars, namely:

- A: Improved monitoring of carriers;
- B5: General reserve fund;
- C1.1A: Licensing authorities required to communicate factual financial information on carriers;
- C1.2: Licensing authorities required to provide information when an airline has become insolvent; and
- C2: Carriers to be obliged to provide more information on websites.

6.238 The impacts, costs and implementation of each of these options have been addressed in the relevant sections above. In this section, we therefore only discuss these points where they would be different as a result of the options being implemented in combination with others.

Economic impacts

6.239 The economic impacts from the combination of these options would be approximately equivalent to the sum of the individual options, as there are no significant synergies or conflicts between these options. However, we have identified two areas where the combination of options might be slightly more effective:

- Combining the general reserve fund (B5) with the passenger information options (C) could improve the effectiveness and reduce the costs of disseminating information to passengers, as there would be better media coverage and a natural direct route for information.
- Improved monitoring of carriers (A) and requiring licensing authorities to communicate factual financial information carriers (C1.1A) could improve the operation of C1.1A, as national authorities would have information more readily available.

Social impacts

6.240 The social impacts of the combination of these options would be the same as the sum of the effects of the individual options; we have not identified any interactions. Social impacts of the options would be negligible.

Environmental impacts

6.241 The environmental impacts of the combination of these options would be the same as the sum of the effects of the individual options; we have not identified any interactions. Environmental impacts of all options are negligible as they do not have any significant impact on the volume of air passenger traffic.

Costs

- 6.242 As stated above, the combination of the general reserve fund (B5) with the passenger information options (C) could reduce the costs of disseminating information to passengers, however this reduction would be marginal.

Implementation

- 6.243 The combination of the options above would be implemented via the relevant instruments for each option:
- A, C1.1A, C1.2 and C2 would be implemented through amendments to Regulation 1008/2008; and
 - B5 would be implemented through a new Directive setting out requirements for States.

7. CONCLUSIONS AND RECOMMENDATIONS

Introduction

7.1 This section summarises the impact assessment for each of the options, on the basis of the criteria defined in the Inception Report and agreed with the Commission, and sets out recommendations.

Conclusions

7.2 The main criterion for evaluation of policy options is the extent to which the options achieve the agreed policy objectives, defined in Table 7.1 (**effectiveness**). We have also assessed the options on the basis of:

- **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.

TABLE 7.1 POLICY OBJECTIVES

Objective	Category
Prevention of airline bankruptcies	Economic
Minimises cost and maximises flexibility for the sector	Economic
Assistance to passengers stranded following airline insolvency	Social / economic
Repatriation of passengers stranded following airline insolvency	Social / economic
Reimbursement of passengers	Social / economic
Passenger information	Social

7.3 We have also considered the impacts on employment (social impacts) and environmental impacts, but these are not significant for any of the options.

7.4 For each criteria, and for each option, impacts are categorised as follows:

TABLE 7.2 QUALITATIVE CATEGORISATION OF IMPACTS

Category	Explanation
✓✓✓	Strong positive impact
✓✓	Positive impact
✓	Weak positive impact
✓?	Any impact positive - but possibly no impact
-	No impact
✓*	Positive and negative impacts
*?	Any impact negative - but possibly no impact
*	Weak negative impact
**	Negative impact

Category	Explanation
***	Strong negative impact

7.5 The performance of each option against each of the objectives set out above is assessed in Table 7.4. The table also shows the cost implications of each of the options.

TABLE 7.3 QUALITATIVE IMPACT ASSESSMENT SUMMARY

Option	Effectiveness							Efficiency: the extent to which objectives can be achieved for a given level of resources / at least cost (cost-effectiveness)	Coherence: the extent to which options are coherent with the overarching objectives of EU policy
	Economic			Social / economic			Social		
	Prevention of airline bankruptcies	Minimum cost and maximum flexibility for sector	Estimated implementation costs	Assistance to passengers stranded following airline insolvency	Repatriation of passengers stranded following airline insolvency	Reimbursement of passengers	Passenger information		
0: No action	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	- No impact	- N/A
0+: Self-regulation	- No impact	✓✓✓ No impact	✓✓✓ No implementation costs	- No impact	✓ Limited positive impact: reduces costs of repatriation incurred by stranded passengers, subject to availability of flights on other carriers; and may result in higher take-up of SAFI.	✓ Limited positive impact: higher take-up of SAFI would provide protection to those passengers purchasing it.	✓ Limited positive impact: industry-wide agreements would be likely to result in at least some information passed to passengers.	✓ Cost-effective: would provide some benefits for little cost (to airlines), and would marginally reduce costs to passengers.	- N/A
A: Improved monitoring of carriers	✓ Limited impact: could have benefits through providing advice or early warning, but marginal at best, as national authorities are unable to directly prevent insolvencies. Could reduce number of passengers affected through timing of license	*? Potentially negative, if some carriers leave market early as a result, or prevented from selling tickets.	* €96,000 p.a. for airlines €96,000 p.a. for national authorities Approximately half of this cost would be administrative burden. Some of these costs could be avoided if monitoring was improved through sharing of best practice between licensing	- No impact	- No impact	- No impact	- No impact	*? Potentially cost ineffective: estimated monitoring cost of €360,000 per year could not be worthwhile as the option might not actually prevent any insolvencies.	✓ Ensures better and more consistent implementation of current Regulation 1008/2008

Option	Effectiveness							Efficiency: the extent to which objectives can be achieved for a given level of resources / at least cost (cost-effectiveness)	Coherence: the extent to which options are coherent with the overarching objectives of EU policy
	Economic			Social / economic			Social		
	Prevention of airline bankruptcies	Minimum cost and maximum flexibility for sector	Estimated implementation costs	Assistance to passengers stranded following airline insolvency	Repatriation of passengers stranded following airline insolvency	Reimbursement of passengers	Passenger information		
	withdrawal.		authorities.						
B1: Clarify roles of public authorities with respect to stranded passengers	- No impact	- No impact	* € 14 million p.a. average for national authorities	✓✓ Positive impact: provides assistance to stranded passengers unable to obtain it through other methods.	✓✓ Positive impact: repatriation for stranded passengers unable to arrange it through other methods.	- No impact	- No impact	✓ Cost-effective: would provide passenger protection at whatever cost national authorities were able to obtain.	*? Possibly not consistent with objectives of reduced deficits given creates an obligation without any means to fund it
B2: Carriers to be obliged to offer optional insurance	** Negative impact: airlines unable to obtain insurance will cease operations (although remaining airlines will be more stable).	** Negative impact: Some airlines will be unable to obtain insurance, and will leave the market reducing competition.	** €0.42 - €1.38 per return flight €83,000 p.a. management cost for airlines €1.6 million per large travel agency €525,000 p.a. for national authorities	✓✓ Positive impact: stranded passengers purchasing insurance would be able to reclaim costs, but depends on numbers that buy cover.	✓✓ Positive impact: stranded passengers purchasing insurance would be able to reclaim costs, but depends on numbers that buy cover.	✓✓ Positive impact: booked passengers purchasing insurance would be able to reclaim costs, but depends on numbers that buy cover.	✓✓ Positive impact: inclusion of insurance option in booking process may act as signal to passenger of airline financial viability.	** Cost ineffective: Optional nature of insurance would increase implementation costs, with likely limited benefits.	** Negative coherence: causes disruption to market and would limit consumer choice. May be possible to limit through phased introduction and transitional measures for carriers unable to obtain insurance at a reasonable price.
B3: Carriers to be obliged to provide insurance	*** Strong negative impact: airlines which are unable to obtain insurance or which have very high insurance prices may become bankrupt (although remaining airlines will be more	*** Strong negative impact: Some airlines will be unable to obtain insurance, and will leave the market reducing competition.	** €0.42 - €1.38 per return flight; total insurance costs €243 million per year Lower than €525,000 p.a. for national authorities to monitor	✓✓✓ Strong positive impact: all stranded passengers would be able to reclaim costs.	✓✓✓ Strong positive impact: all stranded passengers would be able to reclaim costs.	✓✓✓ Strong positive impact: all booked passengers would be able to reclaim costs.	✓✓ Positive impact: inclusion of insurance in ticket price is strong signal to passenger of airline financial viability.	✓* Mixed efficiency: effective passenger protection would be provided at low implementation costs, but insolvency of multiple airlines would reduce benefits.	*** Strong negative coherence: causes major disruption to market and would limit consumer choice.

Option	Effectiveness							Efficiency: the extent to which objectives can be achieved for a given level of resources / at least cost (cost-effectiveness)	Coherence: the extent to which options are coherent with the overarching objectives of EU policy
	Economic			Social / economic			Social		
	Prevention of airline bankruptcies	Minimum cost and maximum flexibility for sector	Estimated implementation costs	Assistance to passengers stranded following airline insolvency	Repatriation of passengers stranded following airline insolvency	Reimbursement of passengers	Passenger information		
	stable).								
B4: Require carriers in financial difficulty to obtain bank guarantees	- No impact	*** Bank guarantees would not be affordable even for many airlines not in financial difficulty.	*** On average guarantee required equivalent to 100% of cash balances, even for airlines not in financial difficulty	✓✓✓ Strong positive impact: if carriers had a bank guarantee, all stranded passengers would be able to reclaim costs.	✓✓✓ Strong positive impact: if carriers had a bank guarantee, all stranded passengers would be able to reclaim costs.	✓✓✓ Strong positive impact: if carriers had a bank guarantee, all booked passengers would be able to reclaim costs.	- No impact	* Cost ineffective: very high costs for airlines, provides protection but only for a small number of passengers.	*? Possibly negative coherence: any early exit from market of weaker carriers would reduce competition.
B5: Create a general reserve fund	✓ Positive impacts: passengers may be more willing to travel with airlines in difficulty, which may be able to continue to operate for longer.	* Slight negative impact: passengers on efficient airlines will subsidise passengers on inefficient airlines, giving benefits to airlines taking more financial risks. May be possible to limit this through variable contribution rates and/or requiring airlines to provide bonds.	* €0.39 - €1.28 per return flight; total annual contributions required would be €226 million, of which 85% would be overheads	✓✓✓ Strong positive impact: all stranded passengers would be able to reclaim costs.	✓✓✓ Strong positive impact: all stranded passengers would be able to reclaim costs.	✓✓✓ Strong positive impact: all booked passengers would be able to reclaim costs.	✓ Limited impact: Contribution to general reserve fund would not provide an indication of risk unless this varied between airlines. Passengers would benefit from increased information on the protection available to them in event of insolvency.	✓✓ Only way of achieving objective of protecting passengers without causing major market disruptions. However, running costs of fund could be high.	* Possibly negative coherence: may be inconsistent with aim not to distort competition, although this could be addressed by having variable contribution rates.
B6: Adapt current bankruptcy / insolvency laws in Member	*** Negative impact: if passengers were preferred creditors it could be difficult for airlines to raise	*** Raises serious financing issues for carriers	- N/A	- No impact: the time to make a claim would be too long to provide any	- No impact: the time to make a claim would be too long to provide any	✓ Limited positive impact: could improve chances of passengers pursuing claims	- No impact	*** Strongly cost ineffective: does not achieve significant benefits.	** Negative coherence: special treatment for air passengers above passengers on other modes, or for

Option	Effectiveness							Efficiency: the extent to which objectives can be achieved for a given level of resources / at least cost (cost-effectiveness)	Coherence: the extent to which options are coherent with the overarching objectives of EU policy
	Economic			Social / economic			Social		
	Prevention of airline bankruptcies	Minimum cost and maximum flexibility for sector	Estimated implementation costs	Assistance to passengers stranded following airline insolvency	Repatriation of passengers stranded following airline insolvency	Reimbursement of passengers	Passenger information		
States	finance, which could contribute to insolvencies.			direct assistance to stranded passengers.	direct assistance to stranded passengers.	in court, but as airlines often have few assets, the payouts could be low regardless of passengers' priority as creditors.			passengers above airline staff, is inconsistent with fair and equal treatment of all citizens.
C1.1A: Licensing authorities required to publish non-commercially sensitive factual information regarding carriers	- No impact.	- No impact	- Minimal cost: €15,000 p.a. for national authorities	- No impact	- No impact	- No impact	✓ Some positive impact. However, much of this information is in the public domain already, and would be of limited use to passengers.	- Very limited benefits for marginal cost.	- N/A
C1.1B: Licensing authorities required to publish assessment of carriers' financial fitness, in addition to information in C1.1A	** Negative impact: if authorities published (potentially negative) assessments of carriers' financial fitness, this could cause market instability and increase the number of insolvencies.	** Significant implementation costs and potential impact on market stability.	** Costs: €415,000 p.a. for national authorities €240,000 p.a. for airlines	- No impact	- No impact	- No impact	✓✓ Positive impact: It would be clearer to passengers what the risks of booking with a particular airline were. However, national authorities will not always be able to identify likely insolvencies far	* Limited benefit, but at some cost to authorities and airlines, and with significant negative impacts on the market.	- N/A

Option	Effectiveness							Efficiency: the extent to which objectives can be achieved for a given level of resources / at least cost (cost-effectiveness)	Coherence: the extent to which options are coherent with the overarching objectives of EU policy
	Economic			Social / economic			Social		
	Prevention of airline bankruptcies	Minimum cost and maximum flexibility for sector	Estimated implementation costs	Assistance to passengers stranded following airline insolvency	Repatriation of passengers stranded following airline insolvency	Reimbursement of passengers	Passenger information		
							enough in advance.		
C1.2: Licensing authorities required to provide information when an airline has become insolvent	- No impact	- No impact	- Minimal costs: €17,000 p.a. for national authorities	✓ Limited positive impact: could be clearer what is available to passengers, and could result in higher number of passengers arranging protection before travel.	✓ Limited positive impact: could be clearer what is available to passengers, and could result in higher number of passengers arranging protection before travel.	✓ Limited positive impact: could be clearer what is available to passengers, and could result in higher number of passengers arranging protection before travel.	✓✓ Positive impact: better information would be available to passengers during insolvencies	✓ Would be cheap to implement, although would provide only limited benefits.	- N/A
C2: Carriers to be obliged to provide more information on websites	- No impact	- No impact	** €525,000 p.a. for national authorities €85,000 p.a. for airlines	✓ Limited positive impact: could result in higher number of passengers arranging protection before travel.	✓ Limited positive impact: could result in higher number of passengers arranging protection before travel.	✓ Limited positive impact: could result in higher number of passengers arranging protection before travel.	✓✓ Positive impact: clear information would be available to passengers during booking process.	✓ Cost-effective: would be relatively cheap to implement, although would provide only limited benefits.	- N/A
ABC: Combined option	✓ Limited impact: could have benefits through providing advice or early warning, but marginal at best, as national authorities are unable to directly prevent insolvencies. Could reduce number of	* Negative impact, mostly caused by general reserve funds: passengers on efficient airlines will subsidise passengers on inefficient airlines, giving benefits to airlines taking more financial risks. May	** €1.1 million per year for national authorities €0.4 million per year for airlines In addition contributions to general reserve fund of €0.39 - €1.28 per return flight; total	✓✓✓ Strong positive impact: all stranded passengers would be able to reclaim costs.	✓✓✓ Strong positive impact: all stranded passengers would be able to reclaim costs.	✓✓✓ Strong positive impact: all booked passengers would be able to reclaim costs.	✓✓ Positive impact: clear information would be available to passengers during booking process, and more information would be	✓✓ Achieves most of the policy objectives, but at a significant cost, given the management cost of the general reserve fund.	✓* Ensures better and more consistent implementation of current Regulation 1008/2008. However potentially distorts competition between airlines.

Option	Effectiveness						Efficiency: the extent to which objectives can be achieved for a given level of resources / at least cost (cost-effectiveness)	Coherence: the extent to which options are coherent with the overarching objectives of EU policy	
	Economic			Social / economic					Social
	Prevention of airline bankruptcies	Minimum cost and maximum flexibility for sector	Estimated implementation costs	Assistance to passengers stranded following airline insolvency	Repatriation of passengers stranded following airline insolvency	Reimbursement of passengers			Passenger information
	passengers affected through timing of license withdrawal.	be possible to limit this through variable contribution rates and/or requiring airlines to provide bonds.	annual contributions €226 million, of which 85% would be overheads				publicly available on airlines financial fitness.		

Recommendations

7.6 We have summarised each of the options assessed in section 6 in terms of feasibility, and in terms of the extent to which they achieve the objectives of the study. This summary is set out in Table 7.4 below.

TABLE 7.4 SUMMARY OF IMPACT ASSESSMENT OF OPTIONS

Option	Feasible	Achieves objectives
0: No action	✓	✗
0+: Self-regulation	✓	Partially
A: Improved monitoring of carriers	✓	Partially
B1: Clarify roles of public authorities with respect to stranded passengers	Only in combination with B5	Partially
B2: Carriers to be obliged to offer optional insurance	✗	Partially
B3: Carriers to be obliged to provide insurance	✗	✓
B4: Carriers in financial difficulty to be required to obtain bank guarantees	✗	✓
B5: Create a general reserve fund	✓	✓
B6: Adapt current bankruptcy / insolvency laws in Member States	✗	Very limited
C1.1A: Licensing authorities required to communicate factual financial information on carriers	✓	Very limited
C1.1B: Licensing authorities required to communicate judgement on financial fitness of carriers	✗	Partially
C1.2: Licensing authorities required to provide information when an airline has become insolvent	✓	Very limited
C2: Carriers to be obliged to provide more information on websites	✓	Very limited
ABC: Combined option	✓	✓

7.7 This comparison shows that the only option which is both feasible, and effective in delivering the main objectives of the study, is option B5 - the introduction of general reserve fund. The only other option to fully provide protection for passengers is B3, compulsory insurance, but we do not recommend this option because of the significant risk that its introduction would cause the insolvencies of multiple airlines. Similarly, option B4 (bank guarantees) could in principle provide full protection for passengers but is probably not feasible because carriers that were in a weak financial position would not be able to obtain these guarantees.

7.8 The option providing the most benefits to passengers would therefore be the combination of B5, with the other feasible options which provide additional benefits:

- A: Improved monitoring of carriers, including that national authorities should have the option of requiring airlines to provide a bank guarantee or other means of protecting passengers;
- C1.1A: Licensing authorities required to provide some purely factual information on airlines it has licensed;
- C1.2: Licensing authorities required to provide information when an airline has become insolvent; and
- C2: Carriers to be obliged to provide more information on websites.

7.9 This combined option would be effective in terms of protecting passengers from the negative impacts of airline insolvencies, without causing significant disruption to the market. However, all passengers would have to pay into general reserve funds, which would also have significant management costs. These funds could also distort competition: passengers travelling on financially stronger airlines would in effect subsidise those travelling on weaker airlines.

7.10 The creation of general reserve funds is the only feasible option which is effective in achieving the main objective of the study; the other recommended options add some benefits but these are marginal in comparison. In our view, there is therefore a political judgement to make between option ABC, which includes general reserve funds, and option 0+, self-regulation: a political decision must be made as to whether the problem of the impacts of airline insolvencies on passengers is sufficiently large to justify the market intervention of option ABC. If self-regulation was pursued, the Commission should review the situation again after 2-3 years to assess whether the industry had been successful in addressing the issue.

7.11 If it was decided not to introduce a general reserve fund, but there was nonetheless a wish to put in place some measures to improve passenger protection, the Commission could consider a combination of the other feasible options. However, whilst these do partially achieve some of the objectives of the study, none would be effective in terms of meeting the key objectives of ensuring that all passengers are protected against insolvency.

7.12 If the Commission pursues option A, on improved monitoring of carriers, it could first seek to ensure that the current Regulation 1008/2008 is implemented consistently by national licensing authorities. The Commission could encourage this through the sharing of best practice and possibly through reaching non-binding agreements with licensing authorities on the level of monitoring that they undertake.

APPENDIX A

METHODOLOGY AND ASSUMPTIONS FOR PASSENGER IMPACTS

A1. APPENDIX A: METHODOLOGY AND ASSUMPTIONS FOR PASSENGER IMPACTS

Introduction

A1.1 This section sets out the methodology for modelling the impacts on passengers of insolvencies taking place over 2000 to 2010. It describes:

- the process for identifying insolvencies;
- estimations of the number of passengers affected; and
- the impacts on those passengers, in terms of immediate and non-recoverable costs.

Identified insolvencies

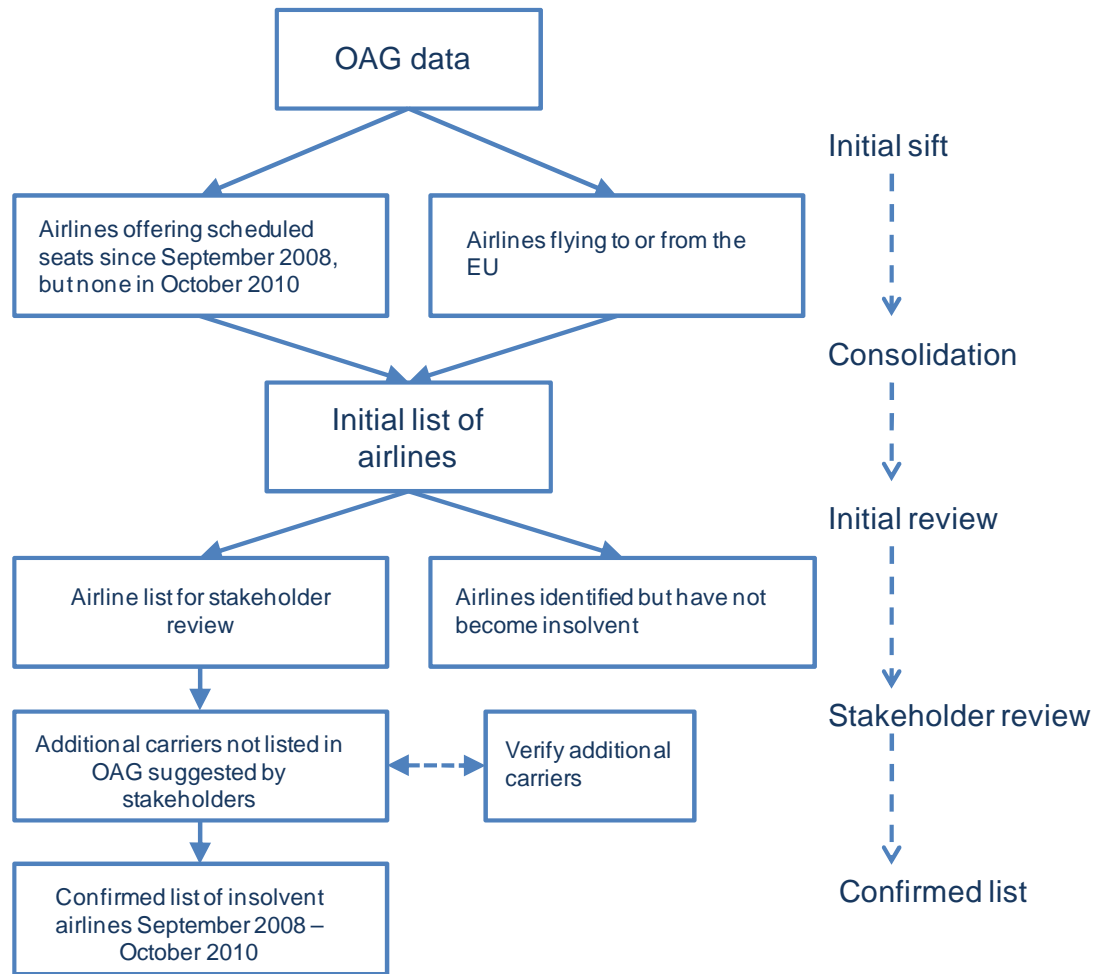
A1.2 We identified where airlines ceased operations between September 2008 and October 2010. The criteria used to select them were the following:

A1.3 The airline must have ceased operations between 16 September 2008 and 1 October 2010. We have excluded airlines which may have been technically insolvent but did not cease operations (for example because they sought protection from creditors), and airlines that were taken over by other airlines without significant effects on operations.

- The airline must have provided at least some scheduled seats; this therefore excludes airlines which only provided charter or wet lease services, business aviation and air-taxis.
- The airline must have been registered in the EU.

A1.4 A list of airlines meeting these criteria was identified, through a combination of analysis of Official Airline Guide (OAG) data and interviews with stakeholders. The analysis of OAG data identified airlines flying to or from EU Member States which offered scheduled seats at some point between September 2008 and September 2010, but did not report any in October 2010. These airlines were then reviewed to remove any from the list which had not become insolvent, but had been identified as having ceased to offer scheduled seats for other reasons, such as changes to the airline name or mergers with other airlines. The result of this analysis is a list of EU airlines that had ceased activities between September 2008 and October 2010. Stakeholders were then asked to confirm the details of the airlines relevant to them (e.g. for national authorities, airlines registered in their State). This process is shown in Figure.

FIGURE A.1 PROCESS FOR IDENTIFICATION OF AIRLINES CEASING OPERATIONS



- A1.5 This list has been added to the previous insolvencies identified in the reports from Booz&Co (2009) and the Transport Studies Unit of Oxford University (2005) to create a complete record of all airline insolvencies affecting passengers purchasing standalone tickets in the EU between 1 January 2000 and 1 October 2010. The criteria for selection of airlines for inclusion in the study are broadly consistent between the three studies: for inclusion, carriers must have offered at least some scheduled seats (charter-only carriers are therefore excluded). The geographical range is slightly wider in the study by Oxford University; this study also includes insolvencies of carriers registered in Norway, Switzerland, Iceland, Liechtenstein and the ex-Yugoslavia states. In addition, the approaches taken by the previous two studies identified some airlines which never commenced services, which our study does not identify.

Number of passengers affected

- A1.6 When an airline becomes insolvent the number of passengers it affects will vary depending on the nature of the services the airline had provided, the timing of the insolvency and the manner in which the airline became insolvent. Several possible scenarios for insolvency are set out below:

- If an airline becomes insolvent, but its operations do not stop and are taken over

by another operator, then passengers will not experience any impact from the insolvency. These cases are excluded from our survey.

- If an airline ceases operations due to insolvency, but its operations are later taken over by another airline, there will be a gap in services which may cause some passengers to be stranded or to lose previously booked tickets. If the new airline purchases only some of the assets of the defunct airline, rather than its entire operations, as in the case of Sterling, then the affected passengers may have no claim against it. The new carrier might nonetheless agree to transport some or all of the passengers – as happened in the case of Sabena (passengers were transported by DAT, formerly the regional subsidiary).
- The time that the carrier ceases operations may impact the number of passengers: if it takes place in a low season this will minimise the effect on passengers (although many low cost airlines provide year-round services and therefore the difference between a low and high season may be minimal). This timing may occur by chance or because the airlines' income is lower during the off-peak season, but in some cases has resulted from a deliberate decision by the licensing authority to withdraw the license at a time when impacts would be minimised (a prerequisite of this is active monitoring by the licensing authority).
- If an airline ceases operations during its high season or when, immediately before ceasing operations, it has been selling as many tickets as possible to remain solvent, this will have the greatest impact on passengers.

A1.7 The impact of an insolvency on passengers is therefore affected by when and how the insolvency occurs. Other characteristics of the airline will also change its impact on passengers, such as its network of operations and load factor (which affect the number of passengers affected) and whether it is a long or short haul carrier (which affect the magnitude of costs incurred by passengers affected).

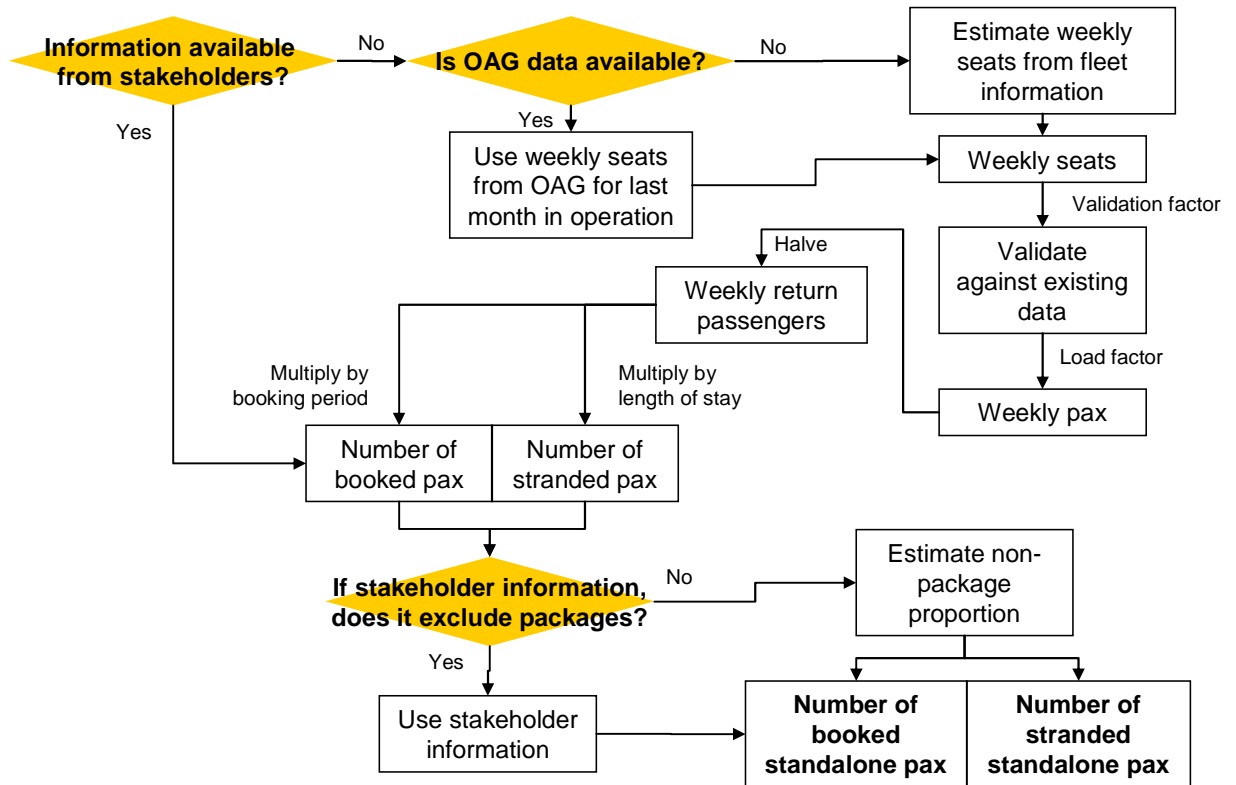
A1.8 In principle, the best source for information on the number of passengers affected by insolvencies would have been the airlines that became insolvent, or the organisations administering any bankruptcy proceedings. However, these records may no longer exist, and there would be no obligation for the organisations involved to provide them to us. Therefore, the information we have used is based on the following sources:

- where available, information collected from stakeholders; and
- where this is not available, estimations based on capacity data.

A1.9 Information was collected from stakeholders (airline licensing authorities, airline associations and consumer organisations), or from press reports at the time that the airline ceased operations. However, many national authorities were not involved in the repatriation or assistance of passengers and therefore did not have detailed information on the number of passengers affected; the figures they reported to us may come from media reports. We identify in Table 4.2 the sources of data for the number of passengers affected.

A1.10 Our approach to estimating passenger impacts is set out in Figure A.1, and each individual element of the process is described in detail in the following text.

FIGURE A.1 PROCESS FOR IDENTIFICATION OF AIRLINES CEASING OPERATIONS



Estimation of number of passengers affected

A1.11 Where we were not able to obtain information from stakeholders or from press reports, we estimated the number of passengers impacted on the basis of the capacity that the airline provided. To do this, we first estimated the number of passengers the airlines carried, based on the following calculation:

$\text{Number of passengers carried per week} = \frac{\text{Seats transported by airline per week}}{\text{Load factor}}$
--

A1.12 We identified the number of seats transported by the airline based on the reports in OAG in the month before it became insolvent. In some cases, the OAG did not include information on the number of seats provided. In these cases, we had to estimate the number of seats offered weekly from the airlines’ fleet, taking into account the nature of its operations (for example that a short haul aircraft will typically operate 5-6 flights per day whereas a long haul aircraft will typically operate 1-2).

A1.13 We estimated load factor based on a sample of airlines for each classification of airline; these are shown in Appendix Table A.1.

APPENDIX TABLE A.1 ASSUMED LOAD FACTORS BY AIRLINE CLASSIFICATION

Airline classification	Load factor	Sample
Charter/leisure	65%	Average of UK charter/leisure airlines ⁵⁹
Low cost	84%	Average of Ryanair, easyJet
Scheduled short-haul only	70%	Average of British Airways and Air France-KLM ⁶⁰
Scheduled mixed short and long haul	74%	Average of short and long haul for British Airways and Air France-KLM
Scheduled long-haul only	77%	Average of British Airways and Air France-KLM

A1.14 For passengers to be stranded by an airline ceasing operations, the airline must cease operations in the period between when they departed and when they returned, i.e. during the period of their stay; similarly for booked affected passengers and booking period. We therefore estimated number of stranded and other affected passengers on the basis of the following calculations:

<i>Number of stranded passengers</i>	=	<i>Passengers carried per week * Average length of stay (weeks)</i>
<i>Number of booked affected passengers</i>	=	<i>Passengers carried per week * Average booking period (weeks)</i>

A1.15 Using Aerocondor as an example, we estimate that at the time of its insolvency, it transported 3,200 return leisure passengers per week. We estimate the booking period for these passengers to be 6 weeks, so at the time of its insolvency, an average of 19,300 passengers would have booked tickets with Aerocondor and been affected. Similarly, we estimate the average length of stay for these passengers at 1.1 weeks, and there would therefore be 3,500 passengers stranded by the insolvency.

A1.16 To estimate typical passenger stay lengths, we used the following sources:

- the Eurostat tourism databook⁶¹;
- Travel Trends 2009 (UK)⁶²; and
- Survey of Spanish Inbound Tourism 2009⁶³.

⁵⁹ UK CAA data

⁶⁰ These airlines report separate load factors for short haul and long haul operations. Other major network airlines do not.

⁶¹ <http://epp.eurostat.ec.europa.eu/portal/page/portal/tourism/data/database>

⁶² Published by UK Statistics, <http://www.statistics.gov.uk/statbase/Product.asp?vlnk=1391>

⁶³ Published by Instituto de Estudios Turísticos, Encuesta de Movimientos Turísticos de los Españoles, <http://www.iet.tourspain.es/informes/documentacion/familitur/Familitur2009.pdf>

A1.17 The Eurostat tourism databook, while providing data across the EU, does not provide data on length of stay for business passengers, and excludes trips of length shorter than 4 nights. We therefore based our estimations on the latter two sources, and used the Eurostat data for validation. The values used are set out in Appendix Table A.2.

APPENDIX TABLE A.2 ASSUMPTIONS ON LENGTH OF STAY (WEEKS)

Airline classification	Business	Leisure	VFR
Charter/leisure	1.0	1.5	2.2
Low cost	0.5	1.1	1.2
Scheduled short-haul only	0.5	1.1	1.2
Scheduled mixed	1.0	1.5	2.2
Scheduled long-haul only	1.5	1.9	3.2

A1.18 To estimate typical advance booking periods, we reviewed airline financial results. These often include a provision for ‘revenue received in advance’ (although alternative names are used); dividing this number by the total passenger revenue received for the year gives an estimate of the average length of time that passengers book in advance. However, this is an average based on revenue and not volume. The highest ticket prices will result from the shortest booking periods, and the average booking period based on revenue will therefore be shorter than that based on volume. To correct for this, we have applied a factor (20%) to increase the revenue-based booking period. Our assumptions on advance booking periods are set out in Appendix Table A.3. Although business passengers are likely to book at much shorter notice than other passengers, we were unable to find information to determine how much shorter their booking periods were, and have therefore treated business and other passengers equally.

APPENDIX TABLE A.3 ASSUMPTIONS ON BOOKING PERIOD

Airline classification	Booking period (weeks)	Airline sample
Charter/leisure	10.1	Equivalent to low cost
Low cost	10.1	Aer Lingus, easyJet, Ryanair
Scheduled short-haul only	6.1	Air Berlin
Scheduled mixed	6.5	BA group, LH group, Air France
Scheduled long-haul only	12.7	Virgin Atlantic

A1.19 This data allows us to calculate the proportion of booked (rather than stranded) passengers who are affected by the insolvencies. Of these, we assume that 75% rebook their trip via other means, and 25% forego the trip.

Validation against existing data

- A1.20 Where stakeholder responses for the total number of passengers affected were available, these were compared with the calculations based on OAG and other sources⁶⁴. This calibration showed that the estimations from OAG were in general higher than those reported by stakeholders, and to take this into account we have factored down the outputs from the OAG calculations. For insolvencies where stakeholders did not report any data, this reduces the number of stranded passengers by 41%, and the number of booked passengers affected by 56%.
- A1.21 Part of the reason the factors reduce the OAG data significantly is that the sample of airlines where stakeholder responses were available included cases where the stakeholders informed us that no passengers had been affected. Such cases included insolvencies where existing bookings were transferred to other airlines, or where the airline suspended operations before its license was suspended. We would expect the sample of airlines where stakeholder information was not available to include a similar proportion of airlines where no passengers were affected, and these cases should therefore be included in the calculation of the factors. If this adjustment was not applied, the number of passengers estimated as having been impacted by insolvency would have been higher: 2.9 million passengers would have been affected, or 0.11% of return standalone trips. We believe that this would not be realistic although it does illustrate the uncertainty inherent in estimates of this nature; for this reason we have defined high and low scenarios for the overall number of passengers impacted, which are 20% higher and lower than the central case.
- A1.22 The two largest carriers identified, by weekly seats in OAG, were Swissair and SABENA. Previous studies provided information on the number of passengers stranded for these carriers, but not the number of booked passengers affected. In both of these cases, subsidiary carriers continued to operate and this reduced the numbers of passengers affected. Basing estimations on OAG data therefore gave figures for passengers affected which were too high, given the known circumstances, and for these carriers only we used a different approach. This was based on the reported stranded passengers, and the average ratio between stranded and booked affected passengers across other airlines, for which we have this data.

Exclusion of passengers on packages

- A1.23 Where the figures reported by national authorities and other stakeholders exclude package travel, we used these figures directly (such as in the case of SkyEurope). However, most of the figures include passengers who had booked package travel. To exclude these, we estimated what proportion of passengers would have purchased a package, based on the following statistics:

⁶⁴ This excludes Air Comet, where we were informed by AESA that the numbers they were able to provide were significantly lower than the total number of passengers affected.

- Eurostat package travel across all modes⁶⁵;
- Travel Trends 2009 (UK)⁶⁶; and
- Survey of Spanish Inbound Tourism (Spain)⁶⁷.

A1.24 We used this estimate to factor down the figures given, with the factor applied varying depending on the date of the insolvency (to reflect the downward trend in package holiday bookings), the type of airline and the purpose of travel.

A1.25 Eurostat provides data on package trips as a proportion of all trips of duration 4 nights or longer, and for 2009 across all States providing data, the value given is 13% of leisure trips are packages, and 2% of visiting friends and relatives trips. However, the Eurostat data is for all modes; UK survey data gives the proportion of leisure trips on packages for all modes and for air, and we used the difference between these to adjust the Eurostat leisure data to be restricted to air. This resulted in a value of 15% for packages by air across Europe.

A1.26 Where the carrier is charter/leisure, one would expect the proportion of package travellers to be much higher, however Eurostat does not provide this data broken down by type of carrier. To estimate the proportion of package travellers on charter/leisure carriers, we used data provided by the UK CAA on the proportion of passengers not covered by ATOL (the UK package travel fund) for an insolvency of a major charter/leisure carrier; this gives a value of 94%.

A1.27 We assume no business passengers purchase packages.

A1.28 The resulting proportions of package travellers assumed are shown in Appendix Table A.4; this shows assumptions for the year 2010.

APPENDIX TABLE A.4 ASSUMPTIONS ON PROPORTION OF PASSENGERS USING PACKAGE TRAVEL

Airline classification	Business	Leisure	VFR
Charter/leisure	0%	94%	2%
Low cost	0%	15%	2%
Scheduled short-haul only	0%	15%	2%
Scheduled mixed	0%	15%	2%
Scheduled long-haul only	0%	15%	2%

⁶⁵ Table tour_dem_torg; this data is available for air travel only, however the data for all modes combined is significantly more complete and we therefore used this.

⁶⁶ Published by UK Statistics, <http://www.statistics.gov.uk/statbase/Product.asp?vlnk=1391>

⁶⁷ <http://www.iet.tourspain.es/informes/documentacion/familitur/Familitur2009.pdf>

Estimates as proportion of all air passengers

A1.29 The number of passengers affected by insolvencies is also shown as a proportion of *all* EU scheduled air passengers. The number of EU air passengers is based on data from Eurostat for the 27 EU Member States. Data is only available from Eurostat for 2007 to 2009, and we therefore extrapolate this total figure backwards using the combined rate of market growth for those Member States where data is available. To restrict these figures to scheduled passengers only, we used the data above on proportions of package travel.

Protection arranged by passengers

A1.30 Section 3 above described the various mechanisms which may provide partial protection to passengers in the event of insolvencies. The level of cover provided by these is affected by a number of factors:

- Scheduled Airline Failure Insurance (SAFI) – Currently, this is only available as part of some insurance policies (which CEA believed are ‘deluxe’ policies) and in a limited number of States (including primarily the UK and Ireland, and selectively in Germany, the Netherlands, Sweden and the Czech Republic). This cover has only been available since 2000.
- Credit card cover – The availability of this cover varies by State: in most Member States there is no legislation requiring any cover, and the level of coverage therefore depends on the terms and conditions of the card issuer. It is also limited to tickets bought directly from the airline.
- Hahn Air – The cover provided by this option is relatively limited: it has been available from the beginning of 2010, and Hahn Air provides approximately 0.1% of tickets on IATA carriers⁶⁸.
- BSP – This cover is limited to tickets purchased through IATA travel agents, where the insolvency occurs in the time period between the purchase of the ticket and the transfer of funds from the BSP to the airline. This time period varies by State (between monthly and weekly) which affects the cover given to passengers; in the States with the largest aviation markets, the period is monthly.

A1.31 Our approach to estimating the protection arranged by passengers impacts is set out in Figure A.2. This is based on the following assumptions:

- 21% of passengers are assumed to purchase SAFI in the UK and Ireland (the two largest markets), based on 70% of UK residents purchasing travel insurance⁶⁹ and 30% of UK travel insurance policies including SAFI⁷⁰. We assume that in the other States where SAFI is offered, the rate of purchase is half this.
- 100% of passengers on low cost carriers are assumed to make direct bookings; of

⁶⁸ Based on 2 million e-tickets in 2009, compared to 1.6bn IATA flights in 2009.

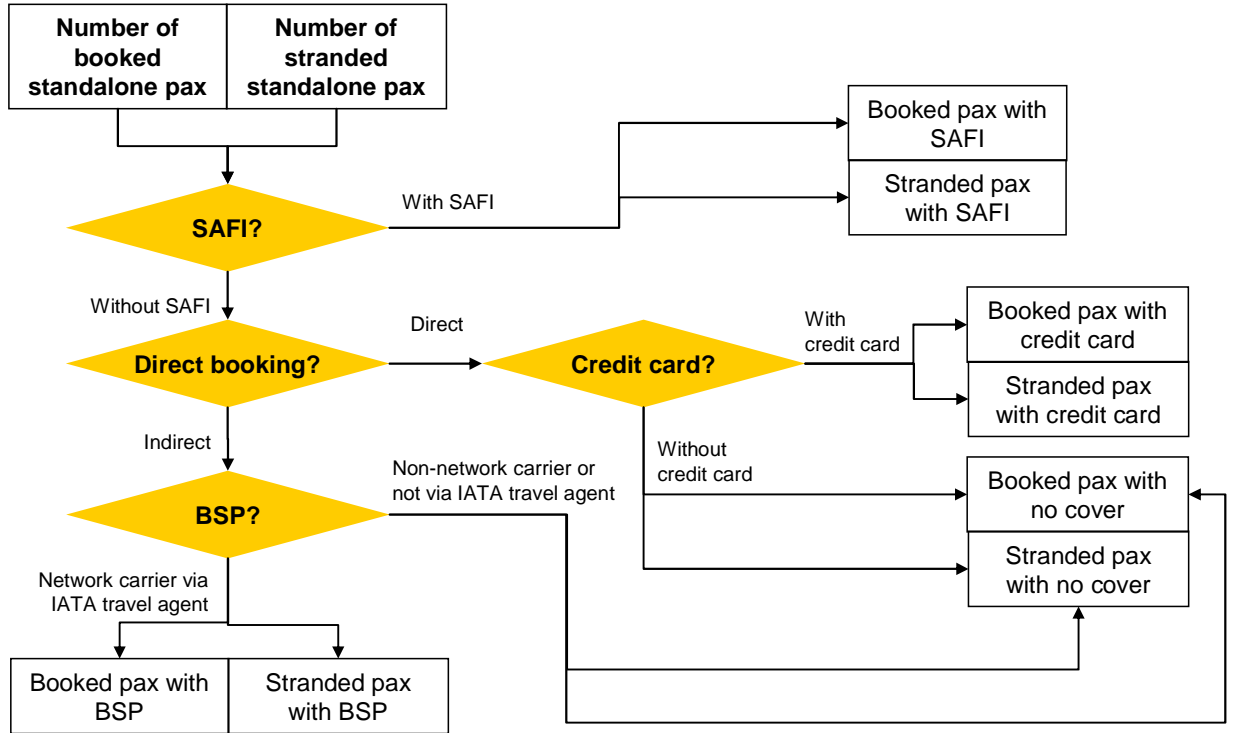
⁶⁹ Which? response to consultation.

⁷⁰ Ibid.

passengers on other airlines, we assume 50% of bookings are direct⁷¹.

- 27% of direct bookings are assumed to be by credit card⁷².
- Of passengers booking indirectly with network airlines, the proportion covered by the BSP will vary depending on how frequently the BSP is settled in their State. This coverage therefore varies between 40% of passengers covered where settlements are monthly, and 13% covered where settlements are weekly⁷³.

FIGURE A.1 PROCESS FOR IDENTIFICATION OF AIRLINES CEASING OPERATIONS



Impact of insolvencies on passengers

A1.32 The costs incurred by passengers if the airline on which they are booked to travel ceases operations depend on whether they have already undertaken their outward journey at the time it ceases operations. If they have done so, they will be stranded and must make new arrangements to travel home. If they have not done so, they have the option of arranging alternative travel (where possible), or foregoing the trip. We have therefore separated the passengers affected into the following categories:

- stranded passengers;
- passengers booked on an insolvent airline who do not travel; and
- passengers booked on an insolvent airline who arrange alternative travel.

⁷¹ Air and Rail Competition and Complementarity, SDG report for Commission, 2006

⁷² Based on £5.5bn debit card purchases, relative to £2bn credit card purchases, UK card association statistical release Q2 2009

⁷³ Based on confidential industry knowledge.

A1.33 The types of costs immediately incurred for each category of passenger are described in Appendix Table A.5. Depending on their level of protection, passengers may be able to recover a proportion of these costs; this is discussed later in this section.

APPENDIX TABLE A.5 IMMEDIATE COSTS BY PASSENGER TYPE

	Loss of original flight		Purchase of replacement flight		Loss of non-refundable accommodation and other services	Additional accommodation, food, etc	Information or communication costs
	Outbound	Return	Outbound	Return			
Stranded		✓		✓		✓	✓
Booked but do not travel	✓	✓			✓		
Booked and rebook	✓	✓	✓	✓		✓	

A1.34 The quantum of the costs incurred by passengers will also vary depending on a number other factors:

- **Distance of travel:** Costs will generally be higher for longer journeys. In addition, long haul flights are generally purchased further in advance, and the amount of time people stay away from home will tend to be longer, and this may increase the relative number of passengers stranded or who had booked but are unable to fly.
- **Destination:** Passengers stranded in, or seeking to travel to, popular destinations served by a number of other airlines are likely to have more alternative travel options available. In contrast, if the insolvent airline was the only airline to serve the destination concerned – and, in particular, if this was an island – it may be difficult and expensive to arrange alternative travel.
- **Purpose of trip:** Passengers flying on business are more likely to have purchased flexible accommodation and therefore be able to cancel bookings without charge. They are also likely to travel for shorter periods and so their chance of being stranded away from home is reduced. Passengers visiting friends and family are likely to be travelling for longer periods, and hence are at higher risk of being stranded away from home, but may not have to pay for any additional accommodation.

Costs of flights

A1.35 To establish the typical costs of flights, we calculated the average yield per passenger for a selection of large carriers, from public financial data, to obtain the typical costs of one-way tickets on the different airline types. These are shown in Appendix Table A.6. We have not estimated different costs for business passengers, as we did not have information on how their booking periods differed from other passengers.

APPENDIX TABLE A.6 ASSUMPTIONS ON COSTS OF AIR TRAVEL

Airline classification	Cost of single leg flight (€, 2010)
Charter/leisure	234
Low cost	71
Scheduled short-haul only	121
Scheduled mixed	292
Scheduled long-haul only	444

A1.36 To calculate the incremental costs of rebooking flights before travel, we compared the costs of return flights booked over the standard booking period with return flights booked at half this booking period, for a sample of journeys on airlines representing different airline types. To calculate the incremental costs of rebooking a flight when stranded, we compared the costs of return flights booked over the standard booking period with single flights booked at a period of half the length of stay, for the same sample of journeys on airlines representing different airline types. These are shown in Appendix Table A.7.

APPENDIX TABLE A.7 ASSUMPTIONS ON RATIO OF COSTS OF SHORT-NOTICE FLIGHTS TO COSTS OF FLIGHTS BOOKED AT STANDARD BOOKING PERIODS

Airline classification	Ratio of cost of short- notice replacement flight relative to cost of original return flight–	
	stranded passengers	rebooked passengers
Charter/leisure	3.58	1.03
Low cost	3.58	1.20
Scheduled short-haul only	2.30	1.18
Scheduled mixed	2.25	1.13
Scheduled long-haul only	2.20	1.07

Costs of accommodation and care

A1.37 Passengers affected by insolvencies may incur additional costs for accommodation and care; we assumed that stranded passengers would incur the costs of one additional day (with the exception of VFR passengers, who we assume do not incur any additional costs) and that passengers who choose to rebook their trips also incur the costs of one additional day. UK tourism statistics provide average spend per day for business, leisure and passengers visiting friends and relatives. We adjusted this by the GDP per capita of the EU relative to the UK. The resulting costs per day are shown in Appendix Table A.8.

APPENDIX TABLE A.8 ASSUMPTIONS ON COSTS OF ACCOMMODATION AND CARE

Purpose of travel	Cost of one day's additional accommodation and care (€, 2010)
Business	136
Leisure	87
VFR	41

A1.38 Where passengers choose not to rebook their trip, they may incur costs for the parts of the trip which cannot be refunded. We assume that this accounts for 10% of the accommodation and other costs detailed above, for both business and leisure passengers. For passengers visiting friends and relatives, we assume this is zero.

Costs of obtaining information

A1.39 We assume passengers must make two 5-minute phone calls to rearrange their flights, and calculate costs using the EU capped mobile roaming rate (currently €0.39); costs would be higher for passengers stranded outside the EU but as the cost of calls is a very small part of the costs incurred by passengers, we have not quantified this. This rate is assumed to vary depending on which year the insolvency occurred in, according to the published capped roaming rates from 2007 to 2010, and based on media reports of average costs for 2000 to 2006⁷⁴. The resulting rates are given in Appendix Table A.9.

APPENDIX TABLE A.9 ASSUMPTIONS ON COSTS OF MOBILE PHONE CALLS

Year	Cost per minute (€, nominal)
2000	1.15
2001	1.15
2002	1.15
2003	1.15
2004	1.15
2005	1.15
2006	1.15
2007	0.46
2008	0.46
2009	0.43
2010	0.39

⁷⁴ <http://news.bbc.co.uk/1/hi/world/europe/8010352.stm>

Proportions of costs recoverable as a result of protection schemes

- A1.40 The schemes providing cover generally provide reimbursement of the original cost of the flights purchased by the passenger, but do not offer any protection against the costs of rebooking a flight or any additional accommodation costs.
- A1.41 To calculate the proportion of recoverable costs, we compare the immediate costs incurred by passengers with the amount which their cover allows them to reclaim from the provider. For example, a stranded passenger with credit card cover would be able to recover the cost of their original return ticket, but would not be able to recover costs of phone calls, additional accommodation or the incremental cost of the rearranged return flight. Where the passenger has no cover, all costs are non-recoverable. The costs which are recoverable are set out in Appendix Table A.10. In this table, a ✓ indicates that a cost can be recovered and a ✗ indicates that it is not recoverable; blank cells indicate that this cost is not relevant to this type of affected passenger.

APPENDIX TABLE A.10 RECOVERABLE COSTS BY TYPE OF PROTECTION

Passenger situation	Type of protection	Original flights ⁷⁵	Type of cost					
			Non-refundable accommodation and other services	Incremental cost of short-notice replacement flight – stranded	Incremental cost of short-notice replacement flight – rebooked	Additional accommodation	Phone calls	
Stranded	SAFI	✓		✓			x	x
	Credit card only	✓		x			x	x
	Hahn Air	✓		✓			x	x
	BSP	✓		x			x	x
	No protection	x		x			x	x
Booked, unable to fly	SAFI	✓	x					
	Credit card only	✓	x					
	Hahn Air	✓	x					
	BSP	✓	x					
	No protection	x	x					
Booked, rebooked trip	SAFI	✓				x	x	
	Credit card only	✓				x	x	
	Hahn Air	✓				x	x	
	BSP	✓				x	x	
	No protection	x				x	x	

Comparison of our approach and estimations by British Airways/AEA

A1.42 BA/AEA estimated the proportion of EU passengers impacted by airline insolvencies over 2008 and 2009. For some of these airlines public information about the number of passengers and costs incurred has been used to estimate the impact; where this was not available the reported figures have been used as a proxy, combined with information on capacity.

A1.43 There are a number of areas where the BA/AEA calculations conflict with ours. The most important of these is that where public data is not available, the BA/AEA data assumes that all the insolvent airlines it has identified have the same average capacity as the airlines where data *is* available. For example, leisure airlines are all assumed to have capacity equivalent to the average of flyglobespan and Excel Airlines. This is unlikely to be the case, as the airlines where public data is not available are likely to be smaller than those where the insolvency was a significant enough problem to be

⁷⁵ Note that for stranded passengers only the cost of a single flight can be incurred or recovered; for other affected passengers it is the cost of a return flight.

covered in the media. This will tend to overestimate the number of passengers affected.

A1.44 In contrast, where we were not able to find public or stakeholder data on the number of passengers affected by an insolvency, we used capacity data either from OAG or based on fleet composition, which is likely to be much more accurate.

A1.45 Additional issues we have identified with the BA/AEA calculations include:

- Our analysis covers 2000 to 2010. The BA/AEA analysis covers 2008 and 2009, only two years, and years which we identify as having had relatively large numbers of passengers affected.
- For a number of airlines with reported figures, the data conflicts with that we have received from stakeholders. For example, for Flyglobespan BA/AEA reported that 100,000 passengers were impacted and 4,500 could not recover their costs, but Which? informed us that there were 4,500 stranded rather than unable to recover their costs. In addition, many of the figures reported are not sourced.
- The capacity information in the BA/AEA calculations is based on information from OAG which is not consistent with ours, and does not differentiate booking periods by airline or passenger type.
- We estimate the number of passengers who were not able to recover costs on the basis of detailed assumptions on type of cover available, composed of different identified costs and broken down by type of passenger and type of airline. BA/AEA bases its calculations only on media reports of stranded passengers, and does not estimate what costs passengers are likely to have incurred or how they might recover them.
- It is not clear in the BA/AEA analysis what adjustment is made for those passengers that are covered by the package travel directive.

APPENDIX B
LEGAL ANALYSIS OF THE OPTIONS

B.1 APPENDIX B: LEGAL ANALYSIS OF THE OPTIONS

B1.1 This section sets out a review of legal issues raised by the policy options that are being evaluated. Issues could arise with the consistency of the options with:

- the Montreal Convention, to which the EU and Member States are parties and which was specifically included into EU law through Regulation 889/2002;
- the Chicago Convention, to which all Member States are parties; and
- bilateral agreements, particularly the EU-US ‘Open Skies’ bilateral.

B1.2 In addition, if the policy measures were extended to cover non-EU airlines, issues of extra-territoriality could also be raised.

B1.3 Steer Davies Gleave is not authorised to provide legal advice, and therefore this section does not provide it. The Commission should take its own legal advice before proceeding with any of the options.

Montreal Convention

B1.4 The Montreal Convention regulates air carrier liability for delays to passengers, baggage and cargo, as well as liability for death and injury. The provisions relating to delay are of some relevance as it could be considered that the insolvency of an airline leads to a delay to the passenger’s journey (albeit probably an indefinite one).

B1.5 In most cases the Montreal Convention would provide no practical protection, since the liability for delay is with the contracting air carrier, and this carrier may have no assets once other higher priority creditors have been addressed. However, some protection is provided to passengers booked to travel on insolvent airlines but who had contracted with another airline, through the successive carriage and mutual liability provisions (Articles 1(3), 36 and 39-48). These mean that if a passenger purchases an interline ticket, the contracting carrier is liable for the obligations under the Convention for the whole of the contracted carriage, including for any parts for which the operating carrier fails due to insolvency.

B1.6 Article 50 entitles States that are parties to the Convention to require air carriers to take out insurance against their liabilities under the Convention, and therefore it seems that carriers could be required by States to take out insurance against their liability for delays caused by their insolvency. States are also permitted to require carriers from third countries to show evidence that they have taken out sufficient insurance, which implies that any such provision could be extended to non-EU carriers – although in the case of carriers from States which are not signatories of the Convention, this could presumably only apply to tickets which were purchased in the EU, as only these journeys would be regulated by the Convention. The issue of extra-territoriality is discussed in more detail below.

B1.7 However, there are two elements in the Convention which could, depending on interpretation, limit the potential for policy measures to protect passengers:

- The Convention states that carriers are not liable for delay “if it proves that it and its servants and agents took all measures that could reasonably be required to

avoid the damage or that it was impossible for it or them to take such measures”. Since it might be expected that air carriers would take reasonable measures to avoid becoming insolvent, this could be used by airlines to argue that they are not liable for delays caused by insolvency, and therefore could not be required to obtain insurance against this liability.

- The Convention limits liability for delay to passengers to 4,150 Special Drawing Rights (currently €4,800). This implies that carriers could not be required to provide insurance above this amount (per passenger) against the effects of their insolvency. However, in practice liability per passenger would rarely exceed this amount.

B1.8 IATA and ELFAA challenged Regulation 261/2004, which introduced common rules on assistance to passengers in the event of delays, cancellations and denied boarding, on a number of grounds including inconsistency with the Convention. The European Court of Justice, in its judgment on 10 January 2006, held that there was no incompatibility, on the grounds that the Regulation and the Convention did not have overlapping scope. This is relevant because this indicates that the Court could take a similar view on any provisions for consumer protection in cases of insolvency. However, this is not necessarily sufficient if the passenger protection measures were to be extended to non-EU airlines (see below).

The Chicago Convention

B1.9 The only possibly relevant term in the Chicago Convention is Article 15, which limits charges on airlines: airlines might claim that any consumer protection measure which incurs costs for them is a charge. However, it would not be a charge imposed “in respect solely of the right of transit over or entry into or exit from” the territory of a State, which is what is prohibited by this Article. A challenge to UK Air Passenger Duty on the grounds that it contravened Article 15 was dismissed by the English High Court in 2007, largely on this ground.

Bilateral agreements

B1.10 We have reviewed the EU-US Open Skies agreement, which contains terms which are more extensive than those in most other bilateral agreements with respect to charges and taxation. Article 12 permits user charges to be imposed on airlines but requires that these are just and reasonable and do not exceed the costs of providing services. It appears to us that charges such as mandatory insurance or mandatory contributions to general reserve funds would not be user charges, and therefore this Article is not relevant – although we understand that US airlines are contesting the Emissions Trading Scheme, which also does not appear to be a user charge, on the basis of this Article. In any case, provided any charges on airlines were cost-related and non-discriminatory, these would appear to be consistent with the agreement.

Extra-territoriality

- B1.11 If policy measures such as mandatory insurance were extended to non-EU airlines, these would be regulating non-Community carriers at least in part in respect of events occurring outside the EU. For example, if a non-EU airline stranded a passenger in the State in which it is based, this is an act which takes place within that State. Therefore, any regulation which sought to protect passengers in these circumstances might be held extra-territorial and hence unenforceable.
- B1.12 However, the introduction of any regulation to protect passengers travelling on non-EU airlines would probably not be extra-territorial if it was restricted to tickets purchased within the EU. This was held by the US courts in the case of *Civil Aeronautics Board v Lufthansa* (AG 591 F 2d 951, United States Court of Appeals, District of Columbia Circuit, 1979), with respect to US regulations on overbooking. In addition, we note that the US regulations on carriage of passengers with reduced mobility (14 CFR part 382) have extensive extra-territorial effects, covering carriage by non-US carriers on both flights to/from the US and also on connecting flights between non-US points; the only condition is that the passenger must be travelling to/from the US. As far as we are aware these Regulations have not been challenged by foreign airlines on the basis of extra-territoriality.
- B1.13 As noted above, IATA and ELFAA challenged Regulation 261/2004 on the basis it was inconsistent with the Montreal Convention. Although the ECJ dismissed this, and its judgment is final for internal EU purposes, we understand that this judgement is contentious. It is possible that a non-EU court could come to a different conclusion if a consumer protection measure which could be considered to relate to an issue which was covered by the Convention was to be extended to non-EU carriers particularly relating to flights from non-EU airports.

APPENDIX C
ADMINISTRATIVE BURDENS

C1.1 This section sets out the calculation of administrative burdens resulting from the options, following the Commission's Impact Assessment Guidelines, and using data from the EU IA database. There are differences between the values for salaries given in the database and those in the tables below, for two reasons: the values in the database are for 2006, and we have inflated this to 2010; and where the number of occurrences of a cost is determined by the airlines registered in a State, we have used an average salary weighted by the number of airlines per State in 2010.

APPENDIX TABLE C.1 ADMINISTRATIVE COSTS AND BURDEN

Option	Role	ISCO classification	Type of obligation	Required actions	Comment	Target groups	Tariff (€ per hour)	Time (hours)	Price (€)	Frequency (per year)	Number of entities	Total number of actions	Equipment and outsourcing costs (€)	Total administrative costs	% business as usual	Total administrative burden
A	Senior manager at airline	1: Legislators, senior officials and managers	Cooperation with audits & inspection by public authorities	Retrieving relevant information from existing data / Submitting the information to the relevant authority	Prepare financial data to supply to national authority in advance of meeting	Airline	45	2	89	2	153	306	0	27,382	50%	13,691
	Senior manager at airline	1: Legislators, senior officials and managers	Cooperation with audits & inspection by public authorities	Holding meetings	Meet to discuss data	Airline	45	3	134	2	153	306	0	41,073	50%	20,537
	Senior manager at airline	1: Legislators, senior officials and managers	Cooperation with audits & inspection by public authorities	Retrieving relevant information from existing data / Submitting the information to the relevant authority	Prepare financial data in response to any additional queries from national authorities	Airline	45	2	89	2	153	306	0	27,382	50%	13,691
	Senior official at national authority	1: Legislators, senior officials and managers	Cooperation with audits & inspection by public authorities	Retrieving relevant information from existing data	Prepare for meetings with airlines	National authority	45	2	89	2	153	306	0	27,382	50%	13,691
	Senior official at national authority	1: Legislators, senior officials and managers	Cooperation with audits & inspection by public authorities	Holding meetings	Meet to discuss data	National authority	45	3	134	2	153	306	0	41,073	50%	20,537
	Senior official at national authority	1: Legislators, senior officials and managers	Cooperation with audits & inspection by public authorities	Retrieving relevant information from existing data	Additional review of data after meeting	National authority	45	2	89	2	153	306	0	27,382	50%	13,691
B2	Software engineer	2: Professionals	Information labelling for third parties	Designing information material	Updating website to offer insurance	Airline	39	7	270	2	153	306	0	82,623	0%	82,623
	National authority employee	2: Professionals	Cooperation with audits & inspection by public authorities	Inspecting and checking	Monitoring by national authorities	National authority	40	35	1402	44	8.5	374	0	524,438	0%	524,438

Impact assessment of passenger protection in the event of airline insolvency

Option	Role	ISCO classification	Type of obligation	Required actions	Comment	Target groups	Tariff (€ per hour)	Time (hours)	Price (€)	Frequency (per year)	Number of entities	Total number of actions	Equipment and outsourcing costs (€)	Total administrative costs	% businesses as usual	Total administrative burden
B3	National authority employee	2: Professionals	Cooperation with audits & inspection by public authorities	Inspecting and checking	Monitoring by national authorities	National authority	40	35	1402	44	8.5	374	0	524,438	0%	524,438
C1.1A	Software engineer	2: Professionals	Other	Producing new data	Publication of assessment on website	National authority	39	14	540	1	27	27	0	14,581	0%	14,581
C1.1B	Accountant	2: Professionals	Cooperation with audits & inspection by public authorities	Inspecting and checking	Assessment of airline financial position	National authority	39	70	2700	1	153	153	0	413,115	0%	413,115
	Senior manager at airline	1: Legislators, senior officials and managers	Cooperation with audits & inspection by public authorities	Retrieving relevant information from existing data / Submitting the information to the relevant authority	Prepare financial data to supply to national authority	Airline	45	35	1,566	1	153	153	0	239,591	0%	239,591
C1.2	Designer	2: Professionals	Information labelling for third parties	Designing information material	A4 colour poster design and production	National authority	28	70	1,964	1	1	1	15,366	17,330	0%	17,330
C2	National authority employee	2: Professionals	Cooperation with audits & inspection by public authorities	Inspecting and checking	Monitoring by national authorities	National authority	40	35	1,402	44	8.5	374	0	524,438	0%	524,438
	Software engineer	2: Professionals	Information labelling for third parties	Designing information material	Updating website to offer insurance	National authority	39	7	270	2	153	306	0	82,623	0%	82,623
Totals by option																
Option	Administrative costs	Administrative burden														
A	191,674	95,837														
B2	607,061	607,061														
B3	524,438	524,438														
C1.1A	14,581	14,581														
C1.1B	652,706	652,706														
C1.2	17,330	17,330														
C2	607,061	607,061														

APPENDIX D
QUESTION LISTS FOR STAKEHOLDER INTERVIEWS

Questions for interviews with national aviation authorities

Factual information on airline insolvencies

1. Please see attached a list of failures of airlines registered in your State since 16 September 2008 which we have evaluated from OAG data and other sources. Please could you confirm if this is correct and if there are any omissions.
2. Please provide any information you have as to the number of passengers who had booked to travel on these carriers at the time that they failed and/or the number of passengers stranded away.

Existing protection schemes

3. Please provide details of any existing schemes applying in your State to protect passengers in the event of airline insolvencies (to include what proportion of passengers is covered; and which costs the schemes cover). In particular this could include:
 - schemes to ensure protection of package holiday passengers, in accordance with the Package Travel Directive
 - any credit card protection schemes
 - any Scheduled Airline Failure Insurance
4. Has there been any change in the proportion of passengers covered by these schemes, or what costs are covered, since 2000 (e.g. due to changes in the travel market)? If there have been, why?
5. Would you expect any further change in the proportion of passengers covered by these schemes, or what costs are covered?

Impact of airline insolvencies

6. In the cases of airline insolvency described above, what costs have passengers incurred? How far are these different for those covered/not covered by an existing scheme? To the extent that you are able, please identify which of these costs are accounted for by information, care, repatriation and reimbursement.
7. In the cases of airline insolvency described above, how have passengers tried to recover losses they have incurred (for example, through claims against the airline or its owners)? Have national authorities provided any assistance to passengers in doing this?
8. In these cases, to what extent have passengers succeeded in recovering costs?
9. What costs, if any, have public authorities incurred in repatriating, providing assistance to, and/or compensating passengers in cases of airline insolvencies? What proportion of these costs has been covered by existing protection schemes, such as schemes set up under the Package Travel Directive? To the extent that you are able, please identify which of these costs are accounted for by information, care, repatriation and reimbursement.
10. What practical issues have national authorities faced in organising the repatriation or assistance of passengers stranded in cases of airline bankruptcies?
11. As far as you are aware, what costs, if any, have other bodies (such as airlines) incurred in repatriating, providing assistance to, and/or compensating passengers in cases of airline insolvencies? To the extent that you are able, please identify which of these costs are accounted for by information, care, repatriation and reimbursement.
12. In order to help us assess the impact of airline insolvencies on passengers, please could you provide any information you have (for example from passenger surveys) of:

- mix of passengers on flights departing from your State (short/long haul)
- average advance booking periods for passengers
- average length of stay (in days) for passengers
- proportion of travel which is for business or leisure purposes
- extent to which any of these factors have changed since 2000

Monitoring of carriers' financial position

13. What monitoring do you or other national authorities currently undertake the financial position of carriers that you have licensed? How frequently are the financial positions of carriers monitored?

Policy options

The Commission has proposed the following options for addressing airline insolvency which will be evaluated against a 'no change' option. Your responses will help inform our assessment of the options.

A. Monitoring of carriers' financial position

The financial oversight of EU air carriers would be strengthened, through the adoption of raised standards of financial fitness requirement and/or making the monitoring of carriers more pro-active. This would be implemented at a national level, and could include measures to be implemented both by Member States and by licensing authorities.

- In what ways could the monitoring of carriers' financial position be strengthened (for example, introduction of an obligation to ensure that licensed carriers had sufficient funds to operate all flights for which they were selling tickets)?
- What would the issues/benefits be of introducing further monitoring of carriers?
- What additional costs would be incurred in the event that national authorities were required to regularly monitor the financial position of carriers? In particular, please include details of information costs, e.g. requesting data, analysis of data and production of reports.
- What would be the cost burden for new entrants to the aviation market if further monitoring was introduced?

B1. Introduction of an obligation for States to plan and coordinate the repatriation of stranded air passengers

Member States would be obliged to provide protection to passengers stranded by the insolvency of carriers for which it had issued the operating license (under Regulation 1008/2008). This would be implemented at a national level, with method of obtaining assistance depending on the State's legal framework. There are several options for which State would be responsible; the State in which the passenger is stranded could be a practical option.

- What practical issues would be faced by national authorities if such a requirement was introduced?
- What would be the benefits of such a scheme?
- What costs would be incurred if there was such an obligation on States? In particular, please include details of information costs, e.g. submission of reports. Please include any historical evidence where relevant.
- To what extent if at all would these costs differ if the coverage was limited to passengers stranded domestically, within the EU, or globally?
- What issues if any would there be if this obligation was extended to cover non-EU carriers?

B2/B3. Insurance against insolvency

Carriers would be obliged to offer optional insurance / provide compulsory insurance to their passengers, on booking, against the risk of insolvency. This would cover reimbursement, assistance and repatriation. The method of implementation would be decided at a Member State level, and non-EU carriers could be considered for inclusion.

- What issues/benefits, if any, would be created by the introduction of either:
 - B2. an obligation for all carriers to offer passengers optional insurance against their insolvency; or

B3. an obligation for all carriers to have insurance against insolvency, covering all passengers?

- What would be the additional cost burden, if any, to Member States resulting from the introduction of optional or compulsory insurance?
- If an airline was already in financial difficulty then how might the introduction of optional or compulsory insurance affect its likelihood of insolvency?
- How might compulsory insurance affect a new entrant's ability to enter the aviation market?
- To what extent if at all would these costs differ if the coverage was limited to passengers stranded domestically, within the EU, or globally?
- What issues if any would there be if this obligation was extended to cover non-EU carriers?

B4. Introduction of a general reserve fund:

A general reserve fund would be established through a new charge collected on each air ticket sold, to cover the insolvency risk of air carriers. The insurance would cover reimbursement, assistance and repatriation. This would be implemented at a national or supra-national level. One approach could be to States to be responsible for passengers stranded by carriers who they licensed, and for the fund to be based on the existing PTD funds; however the exact format for implementation is open for discussion.

- What issues, if any, would be created for national authorities by the introduction of a general reserve fund (for example funded through a levy on air tickets) to cover costs of repatriation, refunds, and assistance for passengers in the event of airline insolvency?
- What would be the likely benefits of such a scheme?
- What would be the additional costs associated with such a scheme? In particular, please include details of information costs, e.g. financial monitoring, analysis of data.
- What would be the likely costs to airlines and passengers associated with such a scheme?
- What potential effect on competition between airlines would this fund have?
- To what extent would these issues differ depending on whether the fund was operated at national, EU, or some other level?
- To what extent if at all would these costs differ if the coverage was limited to passengers stranded domestically, within the EU, or globally?

B5. Amendment to national insolvency/bankruptcy laws:

Current general bankruptcy and / or insolvency laws in Member States would be adapted and extended to cover the insolvency risk of carriers within individual States.

- What issues, if any, would be created by changing national insolvency/bankruptcy laws to give priority to assistance and repatriation of passengers who were impacted?
- What additional costs would the Member State incur to implement this option? In particular, please include details of information costs, e.g. legal costs.
- What would be the likely benefits of such a scheme?
- To what extent would these issues differ depending on whether the laws governed airlines registered in the state or airlines operating within a state?
- To what extent if at all would these costs differ if the coverage was limited to passengers stranded domestically, within the EU, or globally?

C1. Introduction of a requirement for member states to provide information:

Responsibilities for disseminating information on airline insolvency would be clearly defined, both regarding risks (e.g. financial stability of carriers), and in the event an air carrier becomes insolvent (e.g. which organisation would substitute an insolvent carrier).

- What issues/benefits would be created by requiring national authorities to monitor and communicate to the public the financial fitness of the carriers that they licensed?
- What costs would this option incur for national authorities? In particular, please include details of information costs, e.g. notification of information.

C2. Introduction of a requirement for airlines to provide information:

Marketing websites and other sales outlets would be required to advise ticket purchasers of the risks relating to insolvency, any insurance options, and other forms of protection (e.g. credit cards). This would be monitored at national level.

- What issues/benefits would be created by requiring airlines to advise ticket purchasers of risks of insolvency and existing/potential protection on websites where tickets were sold?

- What costs or issues would be created by requiring national authorities to monitor the provision of this information? In particular, please include details of information costs, e.g. notification of information, monitoring.

Questions for data collection with national aviation authorities

Factual information on airline insolvencies

1. Please see attached a list of failures of airlines registered in your State since 16 September 2008 which we have evaluated from OAG data and other sources. Please confirm if this is correct and if there are any omissions.
2. Please provide any information you have as to the number of passengers who had booked to travel on these carriers at the time that they failed and/or the number of passengers stranded away.

Existing protection schemes

3. Please provide details of any existing schemes applying in your State to protect passengers in the event of airline insolvencies (to include what proportion of passengers is covered; and which costs the schemes cover). In particular this could include:
 - schemes to ensure protection of package holiday passengers, in accordance with the Package Travel Directive
 - any credit card protection schemes
 - any Scheduled Airline Failure Insurance

Impact of airline insolvencies

4. In the cases of airline insolvency described above, what costs have passengers incurred? How far are these different for those covered/not covered by an existing scheme? To the extent that you are able, please identify which of these costs are accounted for by information, care, repatriation and reimbursement.
5. In the cases of airline insolvency described above, have you or national authorities provided any assistance to passengers in trying to recover losses they have incurred (for example, through claims against the airline or its owners)?
6. In these cases, to what extent have passengers succeeded in recovering costs?
7. What costs, if any, have public authorities incurred in repatriating, providing assistance to, and/or compensating passengers in cases of airline insolvencies? What proportion of these costs has been covered by existing protection schemes, such as schemes set up under the Package Travel Directive? To the extent that you are able, please identify which of these costs are accounted for by information, care, repatriation and reimbursement.
8. As far as you are aware, what costs, if any, have other bodies (such as airlines) incurred in repatriating, providing assistance to, and/or compensating passengers in cases of airline insolvencies? To the extent that you are able, please identify which of these costs are accounted for by information, care, repatriation and reimbursement.
9. In order to help us assess the impact of airline insolvencies on passengers, please could you provide any information you have (for example from passenger surveys) of:
 - mix of passengers on flights departing from your State (short/long haul)
 - average advance booking periods for passengers
 - average length of stay (in days) for passengers
 - proportion of travel which is for business or leisure purposes
 - extent to which any of these factors have changed since 2000

Questions for consumer organisations

Factual information on airline insolvencies

1. Please see attached a list of failures of airlines registered in your State since 16 September 2008 which we have evaluated from OAG data and other sources. Please confirm if this is correct and if there are any omissions.
2. Please provide any information you have as to the number of passengers who had booked to travel on these carriers at the time that they failed and/or the number of passengers stranded away.
3. If you have any similar information on insolvencies of airlines registered in other States (e.g. where an insolvency resulted in a large number of passengers being stranded in your State) please provide details.

Existing protection schemes

4. Please provide details of any existing schemes to protect passengers in the event of airline insolvencies (to include what proportion of passengers is covered; and which costs the schemes cover). In particular this could include:
 - schemes to ensure protection of package holiday passengers, in accordance with the Package Travel Directive
 - any credit card protection schemes
 - any Scheduled Airline Failure Insurance
5. Has there been any change in the proportion of passengers covered by these schemes, or what costs are covered, since 2000 (e.g. due to changes in the travel market)? If there have been, why?
6. Would you expect any further change in the proportion of passengers covered by these schemes, or what costs are covered?
7. Is there any evidence that the proportion of passengers covered by different schemes varies with airlines/ticket costs?

Impact of airline insolvencies

8. In the cases of airline insolvency described above, what costs have passengers incurred? How far are these different for those covered/not covered by an existing scheme? To the extent that you are able, please identify which of these costs are accounted for by information, care, repatriation and reimbursement.
9. In the cases of airline insolvency described above, how have passengers tried to recover losses they have incurred (for example, through claims against the airline or its owners)? Have national authorities provided any assistance to passengers in doing this?
10. In these cases, to what extent have passengers succeeded in recovering costs?
11. As far as you are aware, what costs, if any, have different bodies (such as airlines or national authorities) incurred in repatriating, providing assistance to, and/or compensating passengers in cases of airline insolvencies? To the extent that you are able, please identify which of these costs are accounted for by information, care, repatriation and reimbursement.
12. In order to help us assess the impact of airline insolvencies on passengers, please could you provide any information you have (for example from passenger surveys) of:
 - mix of passengers on flights departing from your State (short/long haul)
 - average advance booking periods for passengers
 - average length of stay (in days) for passengers
 - proportion of travel which is for business or leisure purposes
 - extent to which any of these factors have changed since 2000

Policy options

The Commission has proposed the following options for addressing airline insolvency which will be evaluated against a 'no change' option. Your responses will help inform our assessment of the options.

A. Monitoring of carriers' financial position

The financial oversight of EU air carriers would be strengthened, through the adoption of raised standards of financial fitness requirement and/or making the monitoring of carriers more pro-active. This would be implemented at a national level, and could include measures to be implemented both by Member States and by licensing authorities.

- What issues/ benefits would there be from providing ongoing monitoring of the air carriers operating in each Member State?

B1. Introduction of an obligation for States to plan and coordinate the repatriation of stranded air passengers

Member States would be obliged to provide protection to passengers stranded by the insolvency of carriers for which it had issued the operating license (under Regulation 1008/2008). This would be implemented at a national level, with method of obtaining assistance depending on the State's legal framework. There are several options for which State would be responsible; the State in which the passenger is stranded could be a practical option.

- What issues/benefits would there be if such a requirement was introduced?

B2/B3. Insurance against insolvency

Carriers would be obliged to offer optional insurance / provide compulsory insurance to their passengers, on booking, against the risk of insolvency. This would cover reimbursement, assistance and repatriation. The method of implementation would be decided at a Member State level, and non-EU carriers could be considered for inclusion.

- What issues/benefits, if any, would be created by the introduction of either:
 - B2. an obligation for all carriers to offer passengers optional insurance against their insolvency; or
 - B3. an obligation for all carriers to have insurance against insolvency, covering all passengers?
- To what extent would consumers be willing to pay higher ticket prices to cover the costs of this insurance?

B4. Introduction of a general reserve fund:

A general reserve fund would be established through a new charge collected on each air ticket sold, to cover the insolvency risk of air carriers. The insurance would cover reimbursement, assistance and repatriation. This would be implemented at a national or supra-national level. One approach could be to States to be responsible for passengers stranded by carriers who they licensed, and for the fund to be based on the existing PTD funds; however the exact format for implementation is open for discussion.

- What issues/benefits, would be created by the introduction of a general reserve fund (for example funded through a levy on air tickets) to cover costs of repatriation, refunds, and assistance for passengers in the event of airline insolvency?
- To what extent would consumers be willing to pay higher ticket prices to cover the costs of contributing to such a fund? Would a small contribution (€1-2 per ticket) have any impact on the demand for air travel?

B5. Amendment to national insolvency/bankruptcy laws:

Current general bankruptcy and / or insolvency laws in Member States would be adapted and extended to cover the insolvency risk of carriers within individual States.

- What issues/benefits, if any, would be created by changing national insolvency/bankruptcy laws to give priority to assistance and repatriation of passengers who were impacted?
- What other methods could be used to achieve the same outcome (e.g. bank guarantees)?

C1. Introduction of a requirement for member states to provide information:

Responsibilities for disseminating information on airline insolvency would be clearly defined, both regarding risks (e.g. financial stability of carriers), and in the event an air carrier becomes insolvent (e.g. which organisation would substitute an insolvent carrier).

- What issues/benefits would be created by requiring national authorities to communicate to the public the financial fitness of the carriers that they licensed?
- How could this be done in a way that provided consumers with clear and relevant information?

C2. Introduction of a requirement for airlines to provide information:

Marketing websites and other sales outlets would be required to advise ticket purchasers of the risks relating to insolvency, any insurance options, and other forms of protection (e.g. credit cards). This would be monitored at national level.

- What issues/benefits would be created by requiring airlines to advise ticket purchasers of risks and existing/potential protection on websites where tickets were sold?

Questions for insurance representatives

Existing protection schemes

1. We are aware of the following existing methods by which a passenger can be covered in the event of airline insolvencies:
 - schemes to ensure protection of package holiday passengers, in accordance with the Package Travel Directive
 - any credit card protection schemes
 - any Scheduled Airline Failure InsuranceAre there are others of which we should be aware (e.g. at a Member State level)? Is there any variation in existing cover between Member States? Please give details.
2. Our understanding is that the availability of Scheduled Airline Failure Insurance is relatively limited, not being available in all Member States and not covering all carriers. As far as you are aware what is the availability of SAFI? What do you believe are the reasons for this?
3. Would there be any issues created by insurance with a wider scope than SAFI (e.g. including accommodation)? Would it be possible to provide such insurance for all carriers?
4. Has there been any change in the proportion of passengers covered by these schemes, or what costs are covered, since 2000? If there have been, why?
5. Would you expect any further change in the proportion of passengers covered by these schemes, or what costs are covered?
6. Approximately what administrative costs (as a proportion of the amount insured) would insurance providers incur relating to:
 - credit card protection schemes
 - Scheduled Airline Failure Insurance

Costs and practicality of insolvency insurance

7. In broad terms, how would insurers calculate the price of insurance for airline insolvency? How would the price of insurance with a wider scope than just reimbursement of the ticket price (for example, also including accommodation costs) be calculated?
8. In particular how would insurers calculate the price of insolvency insurance for carriers that are already in financial distress?
9. Under what circumstances would insurers consider that airlines could not be insured against insolvency? How, if at all, could this be mitigated – for example, could it be mitigated by requiring that carriers' place ticket revenue in a separate holding account which would then only be released once the flight had been operated?
10. To what extent could the cost of obtaining insurance vary between established airlines and new entrants to the industry?
11. What are the advantages and disadvantages of requiring carriers to offer optional insurance against insolvency, against requiring this insurance to be included in the ticket price?
12. To what extent would you expect that passengers would be willing to pay for insurance against airline insolvency? How might this vary depending on the price level (for example at €1, €5 or €10 per ticket)?
13. What issues, if any, would be created by an obligation to offer insurance being extended to non-EU carriers?

Policy options

The Commission has proposed the following options for addressing airline insolvency which will be evaluated against a ‘no change’ option. Your responses will help inform our assessment of the options.

A. Monitoring of carriers’ financial position

The financial oversight of EU air carriers would be strengthened, through the adoption of raised standards of financial fitness requirement and/or making the monitoring of carriers more pro-active. This would be implemented at a national level, and could include measures to be implemented both by Member States and by licensing authorities.

- What issues/benefits would there be for national authorities to provide ongoing monitoring of the air carriers operating in each Member State?

B1. Introduction of an obligation for States to plan and coordinate the repatriation of stranded air passengers

Member States would be obliged to provide protection to passengers stranded by the insolvency of carriers for which it had issued the operating license (under Regulation 1008/2008). This would be implemented at a national level, with method of obtaining assistance depending on the State’s legal framework. There are several options for which State would be responsible; the State in which the passenger is stranded could be a practical option.

- What issues/benefits would there be if such a requirement was introduced?

B2. Optional insurance against insolvency

Carriers would be obliged to offer optional insurance to their passengers, on booking, against the risk of insolvency. This would cover reimbursement, assistance and repatriation. The method of implementation would be decided at a Member State level, and non-EU carriers could be considered for inclusion.

- What practical issues are there for insurance companies to provide systematic optional insurance against risk of insolvency and satisfactorily cover the risk?

B3. Compulsory insurance against insolvency

Carriers would be obliged to provide insurance to their passengers against the risk of insolvency. This would cover reimbursement, assistance and repatriation. The method of implementation would be decided at a Member State level, and non-EU carriers could be considered for inclusion.

- What practical issues are there for insurance companies to provide systematic compulsory insurance against risk of insolvency and satisfactorily cover the risk?

B4. Introduction of a general reserve fund:

A general reserve fund would be established through a new charge collected on each air ticket sold, to cover the insolvency risk of air carriers. The insurance would cover reimbursement, assistance and repatriation. This would be implemented at a national or supra-national level. One approach could be to States to be responsible for passengers stranded by carriers who they licensed, and for the fund to be based on the existing PTD funds; however the exact format for implementation is open for discussion.

- What issues/benefits would be created by the introduction of a general reserve fund (for example funded through a levy on air tickets) to cover costs of repatriation, refunds, and assistance for passengers in the event of airline insolvency? Please comment how these might vary depending on whether the fund was administered at EU or national level.

B5. Amendment to national insolvency/bankruptcy laws:

Current general bankruptcy and / or insolvency laws in Member States would be adapted and extended to cover the insolvency risk of carriers within individual States.

- What issues/benefits would be created by changing national insolvency/bankruptcy laws to give priority to assistance and repatriation of passengers who were impacted?
- To what extent would these issues differ depending on whether the laws governed airlines registered in the State or airlines operating within a State?

- What other methods could be used to achieve the same outcome (e.g. bank guarantees)?

C1. Introduction of a requirement for member states to provide information:

Responsibilities for disseminating information on airline insolvency would be clearly defined, both regarding risks (e.g. financial stability of carriers), and in the event an air carrier becomes insolvent (e.g. which organisation would substitute an insolvent carrier).

- What issues/benefits would be created by requiring national authorities to communicate to the public the financial fitness of the carriers that they licensed?

C2. Introduction of a requirement for airlines to provide information:

Marketing websites and other sales outlets would be required to advise ticket purchasers of the risks relating to insolvency, any insurance options, and other forms of protection (e.g. credit cards). This would be monitored at national level.

- What issues/benefits would be created by requiring airlines to advise ticket purchasers of risks and existing/potential protection on websites where tickets were sold?

Questions for airline associations

Factual information on airline insolvencies

1. Please see attached a list of failures of airlines registered in the EU since 16 September 2008 which we have evaluated from OAG data and other sources. Please confirm if this is correct and if there are any omissions.
2. Please provide any information you have as to the number of passengers who had booked to travel on these carriers at the time that they failed and/or the number of passengers stranded away.

Existing protection schemes

3. Please provide details of any existing schemes to protect passengers in the event of airline insolvencies (to include what proportion of passengers is covered; and which costs the schemes cover). In particular this could include:
 - schemes to ensure protection of package holiday passengers, in accordance with the Package Travel Directive
 - any credit card protection schemes
 - any Scheduled Airline Failure Insurance (SAFI)
4. We understand that passengers purchasing tickets by credit card are partially protected by the credit card issuer in the event of insolvency. What if any costs do airlines incur from credit companies relating to this? Are there any issues with the provision of this cover?
5. Are there any issues around the provision of SAFI that we should be aware of?
6. Is there any evidence that the proportion of passengers covered by different schemes varies with airlines/ticket costs?

Impact of airline insolvencies

7. What have other bodies (such as airlines) done to assist passengers stranded in the event of insolvencies? To the extent that you are able, please identify any costs, in terms of information, care, repatriation and reimbursement.

Policy options

The Commission has proposed the following options for addressing airline insolvency which will be evaluated against a 'no change' option. Your responses will help inform our assessment of the options.

A. *Monitoring of carriers' financial position*

The financial oversight of EU air carriers would be strengthened, through the adoption of raised standards of financial fitness requirement and/or making the monitoring of carriers more pro-active. This would be implemented at a national level, and could include measures to be implemented both by Member States and by licensing authorities.

- What issues/benefits would there be for national authorities to provide ongoing monitoring of the air carriers operating?
- Please estimate the additional costs to new entrants resulting from raising the financial standards to obtain a license to fly, or promoting pro-active monitoring of financial fitness by Member States under EU supervision.

B1. Introduction of an obligation for States to plan and coordinate the repatriation of stranded air passengers

Member States would be obliged to provide protection to passengers stranded by the insolvency of carriers for which it had issued the operating license (under Regulation 1008/2008). This would be implemented at a national level, with method of obtaining assistance depending on the State's legal framework. There are several options for which State would be responsible; the State in which the passenger is stranded could be a practical option.

- What issues/benefits would there be if such a requirement was introduced?
- Please estimate what costs if any have been incurred by other airlines of providing relief for stranded travellers. To the extent that you are able, please could you identify which of these costs are accounted for by information, care, repatriation and reimbursement.
- To what extent if at all would these costs differ if the coverage was limited to passengers stranded domestically, within the EU, or globally?
- What issues, if any, would there be if this obligation was extended to cover non-EU carriers?

B2/B3. Insurance against insolvency

Carriers would be obliged to offer optional insurance / provide compulsory insurance to their passengers, on booking, against the risk of insolvency. This would cover reimbursement, assistance and repatriation. The method of implementation would be decided at a Member State level, and non-EU carriers could be considered for inclusion.

- What issues/benefits, if any, would be created by the introduction of either:
 - B2. an obligation for all carriers to offer passengers optional insurance against their insolvency; or
 - B3. an obligation for all carriers to have insurance against insolvency, covering all passengers?
- Please estimate the range of costs per ticket of optional and compulsory insurance against airline insolvency.
- Please estimate what proportion of airline passengers not covered by an existing protection scheme would be unwilling/unable to pay for insurance against airline insolvency at different price levels.
- What would be the additional cost burden to airlines resulting from the introduction of compulsory insurance? In particular how would this affect airlines already in financial difficulty? How would it affect new entrants to the aviation market?
- To what extent if at all would these costs differ if the coverage was limited to passengers stranded domestically, within the EU, or globally?
- What issues if any would there be if this obligation was extended to cover non-EU carriers?

B4. Introduction of a general reserve fund:

A general reserve fund would be established through a new charge collected on each air ticket sold, to cover the insolvency risk of air carriers. The insurance would cover reimbursement, assistance and repatriation. This would be implemented at a national or supra-national level. One approach could be to States to be responsible for passengers stranded by carriers who they licensed, and for the fund to be based on the existing PTD funds; however the exact format for implementation is open for discussion.

- What issues/benefits would be created by the introduction of a general reserve fund (for example funded through a levy on air tickets) to cover costs of repatriation, refunds, and assistance for passengers in the event of airline insolvency? Please comment on how they might vary depending on whether the fund was administered at an EU or Member State level.
- Please estimate the cost per ticket of creating a general reserve fund. In particular please estimate the information costs, e.g. registration, cooperation with audits.
- Please estimate what proportion of airline passengers not covered by an existing protection scheme would be unwilling/unable to pay for the extra cost of contribution to a general reserve fund (assuming a moderate price - €1-2 per ticket)
- What impact would a general reserve fund have on competition between airlines?
- To what extent would these issues differ depending on whether the fund was operated at national, EU, or some other level?
- To what extent if at all would these costs differ if the coverage was limited to passengers stranded domestically, within the EU, or globally?

B5. Amendment to national insolvency/bankruptcy laws:

Current general bankruptcy and / or insolvency laws in Member States would be adapted and extended to cover the insolvency risk of carriers within individual States.

- What issues/benefits would be created by changing national insolvency/bankruptcy laws to give priority to assistance and repatriation of passengers who were impacted?
- To what extent would these issues differ depending on whether the laws govern airlines registered in the state or airlines operating within a state?
- What other methods could be used to achieve the same outcome (e.g. bank guarantees)?

C1. Introduction of a requirement for member states to provide information:

Responsibilities for disseminating information on airline insolvency would be clearly defined, both regarding risks (e.g. financial stability of carriers), and in the event an air carrier becomes insolvent (e.g. which organisation would substitute an insolvent carrier).

- What issues/benefits would be created by requiring national authorities to communicate to the public the financial fitness of the carriers that they licensed?

C2. Introduction of a requirement for airlines to provide information:

Marketing websites and other sales outlets would be required to advise ticket purchasers of the risks relating to insolvency, any insurance options, and other forms of protection (e.g. credit cards). This would be monitored at national level.

- What issues/benefits would be created by requiring airlines to advise ticket purchasers of risks and existing/potential protection on websites where tickets were sold?
- What would be the additional costs to airlines resulting from the introduction of this option?

Questions for ETTSA

Policy options

The Commission has proposed the following options for addressing airline insolvency, which will be evaluated against a 'no change' option. Your responses will help inform our assessment of the options.

B2/B3. Insurance against insolvency

Carriers would be obliged to offer optional insurance / provide compulsory insurance to their passengers, on booking, against the risk of insolvency. This would cover reimbursement, assistance and repatriation. The method of implementation would be decided at a Member State level, and non-EU carriers could be considered for inclusion.

- What issues would there be with the feasibility of travel agents, including online travel agents such as expedia, offering the following options?
 - B2. an obligation for all carriers to offer passengers optional insurance against their insolvency; or
 - B3. an obligation for all carriers to have insurance against insolvency, covering all passengers?
- How much do you estimate these options would cost to implement?

B4. Introduction of a general reserve fund:

A general reserve fund would be established through a new charge collected on each air ticket sold, to cover the insolvency risk of air carriers. The insurance would cover reimbursement, assistance and repatriation. This would be implemented at a national or supra-national level. One approach could be to States to be responsible for passengers stranded by carriers who they licensed, and for the fund to be based on the existing PTD funds; however the exact format for implementation is open for discussion.

- What issues would there be with the feasibility of this option, in terms of technology?
- How much do you estimate the requirement to provide information under this option would cost to implement?

C1. Introduction of a requirement for member states to provide information:

Responsibilities for disseminating information on airline insolvency would be clearly defined, both regarding risks (e.g. financial stability of carriers), and in the event an air carrier becomes insolvent (e.g. which organisation would substitute an insolvent carrier).

- What issues would there be with the feasibility of this option, in terms of technology?
- How much do you estimate the requirement to provide information under this option would cost to implement?

C2. Introduction of a requirement for airlines to provide information:

Marketing websites and other sales outlets would be required to advise ticket purchasers of the risks relating to insolvency, any insurance options, and other forms of protection (e.g. credit cards). This would be monitored at national level.

- What issues would there be with the feasibility of travel agents, including online travel agents such as expedia, providing passengers with airline-specific insolvency information?
- How much do you estimate the requirement to provide information under this option would cost for travel agents to implement?

Questions for other interested parties

Factual information on airline insolvencies

1. Please see attached a list of failures of airlines registered in the EU since 16 September 2008 which we have evaluated from OAG data and other sources. Please confirm if this is correct and if there are any omissions.
2. Please provide any information you have as to the number of passengers who had booked to travel on these carriers at the time that they failed and/or the number of passengers stranded away.

Existing protection schemes

3. Please provide details of any existing schemes to protect passengers in the event of airline insolvencies (to include what proportion of passengers is covered; and which costs the schemes cover). In particular this could include:
 - schemes to ensure protection of package holiday passengers, in accordance with the Package Travel Directive
 - any credit card protection schemes
 - any Scheduled Airline Failure Insurance
4. Has there been any change in the proportion of passengers covered by these schemes, or what costs are covered, since 2000 (e.g. due to changes in the travel market)? If there have been, why?
5. Would you expect any further change in the proportion of passengers covered by these schemes, or what costs are covered?

Impact of airline insolvencies

6. In the cases of airline insolvency described above, what costs have passengers incurred? How far are these different for those covered/not covered by an existing scheme? To the extent that you are able, please identify which of these costs are accounted for by information, care, repatriation and reimbursement.
7. In the cases of airline insolvency described above, how have passengers tried to recover losses they have incurred (for example, through claims against the airline or its owners)? Have national authorities provided any assistance to passengers in doing this?
8. In these cases, to what extent have passengers succeeded in recovering costs?
9. As far as you are aware, what costs, if any, have other bodies (such as airlines) incurred in repatriating, providing assistance to, and/or compensating passengers in cases of airline insolvencies? To the extent that you are able, please identify which of these costs are accounted for by information, care, repatriation and reimbursement.

Policy options

The Commission has proposed the following options for addressing airline insolvency which will be evaluated against a 'no change' option. Your responses will help inform our assessment of the options.

A. *Monitoring of carriers' financial position*

The financial oversight of EU air carriers would be strengthened, through the adoption of raised standards of financial fitness requirement and/or making the monitoring of carriers more pro-active.

This would be implemented at a national level, and could include measures to be implemented both by Member States and by licensing authorities.

- What issues/benefits would there be for national authorities to provide ongoing monitoring of the air carriers operating?

B1. Introduction of an obligation for States to plan and coordinate the repatriation of stranded air passengers

Member States would be obliged to provide protection to passengers stranded by the insolvency of carriers for which it had issued the operating license (under Regulation 1008/2008). This would be implemented at a national level, with method of obtaining assistance depending on the State's legal framework. There are several options for which State would be responsible; the State in which the passenger is stranded could be a practical option.

- What issues/benefits would there be if such a requirement was introduced?
- To what extent if at all would these costs differ if the coverage was limited to passengers stranded domestically, within the EU, or globally?
- What issues if any would there be if this obligation was extended to cover non-EU carriers?

B2/B3. Insurance against insolvency

Carriers would be obliged to offer optional insurance / provide compulsory insurance to their passengers, on booking, against the risk of insolvency. This would cover reimbursement, assistance and repatriation. The method of implementation would be decided at a Member State level, and non-EU carriers could be considered for inclusion.

- What issues/benefits, if any, would be created by the introduction of either:
 - B2. an obligation for all carriers to offer passengers optional insurance against their insolvency; or
 - B3. an obligation for all carriers to have insurance against insolvency, covering all passengers?
- To what extent if at all would these costs differ if the coverage was limited to passengers stranded domestically, within the EU, or globally?
- What issues if any would there be if this obligation was extended to cover non-EU carriers?

B4. Introduction of a general reserve fund:

A general reserve fund would be established through a new charge collected on each air ticket sold, to cover the insolvency risk of air carriers. The insurance would cover reimbursement, assistance and repatriation. This would be implemented at a national or supra-national level. One approach could be to States to be responsible for passengers stranded by carriers who they licensed, and for the fund to be based on the existing PTD funds; however the exact format for implementation is open for discussion.

- What issues/benefits would be created by the introduction of a general reserve fund (for example funded through a levy on air tickets) to cover costs of repatriation, refunds, and assistance for passengers in the event of airline insolvency? Please comment on how they might vary depending on whether the fund was administered at an EU or Member State level.
- To what extent would these issues differ depending on whether the fund was operated at national, EU, or some other level?
- To what extent if at all would these costs differ if the coverage was limited to passengers stranded domestically, within the EU, or globally?

B5. Amendment to national insolvency/bankruptcy laws:

Current general bankruptcy and / or insolvency laws in Member States would be adapted and extended to cover the insolvency risk of carriers within individual States.

- What issues/benefits would be created by changing national insolvency/bankruptcy laws to give priority to assistance and repatriation of passengers who were impacted?
- To what extent would these issues differ depending on whether the laws govern airlines registered in the State or airlines operating within a State?
- What other methods could be used to achieve the same outcome (e.g. bank guarantees)?

C1. Introduction of a requirement for member states to provide information:

Responsibilities for disseminating information on airline insolvency would be clearly defined, both regarding risks (e.g. financial stability of carriers), and in the event an air carrier becomes insolvent (e.g. which organisation would substitute an insolvent carrier).

- What issues/benefits would be created by requiring national authorities to communicate to the public the financial fitness of the carriers that they licensed?

C2. Introduction of a requirement for airlines to provide information:
Marketing websites and other sales outlets would be required to advise ticket purchasers of the risks relating to insolvency, any insurance options, and other forms of protection (e.g. credit cards). This would be monitored at national level.

- What issues/benefits would be created by requiring airlines to advise ticket purchasers of risks and existing/potential protection on websites where tickets were sold?

CONTROL SHEET

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