

INSURANCE REQUIREMENTS FOR AIR CARRIERS

BEUC comments
on the Commission's discussion paper
on the operation of Regulation (EC) 785/2004 on
insurance requirements for air carriers and aircraft
operators

Contact: Nuria Rodriguez – legal@beuc.eu

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BEUC, the European Consumers' Organisation
36 avenue de Tervueren, 1040 Bruxelles - +32 2 743 15 90
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Summary

Under article 7 of the package travel directive, consumers are protected in case of insolvency of the tour operator and/or travel agency with which they bought a "package travel". Yet, the same protection is inexistent for travelers who prefer to buy a seat-only flight or who self-arrange their travel.

Unlike some years ago, consumers are now more willing to purchase travel in component forms rather than buying ready-made packages. In particular, leisure travelers rely now more and more on bookings of seat-only flights and on "dynamic packaging" rather than on packages pre-arranged by a travel agency.

These market developments call for an update of the existing legislation. In particular, the discrimination between different patterns of travelers in terms of standards of protection should be removed.

We call on the Commission to come up with a legislative proposal establishing the obligation for air companies to provide for a financial guarantee to cover the liabilities of air companies towards passengers, in case of insolvency or removal of an operating license.

The guarantee should cover the refunding of the sums paid by the passenger as well as the (full) repatriation costs of the passenger if he/she is stranded abroad. The guarantee scheme should ensure that the consumer is neither obliged to pre-finance the transport nor to organise it himself.

Due to the cross-border character of air transport, and in order to foster competition in the insurance sector, an EU-wide harmonised guarantee scheme should be established.

These comments focus in particular on questions 12 and 13 of the Commission's discussion paper, which refer to insurance and passenger protection in the event of insolvency of an air company or the revocation of its operating license.

Mobility is an essential part of the EU economy. Be it for leisure or for business, travel is increasingly part of many citizens' every day lives. According to figures published by the European Commission, in 2005 more than 700 million passengers departed or arrived at EU airports.

The constant increase of the number of passengers in EU airports should go hand in hand with the development of a strong protective framework for passengers. The European Commission Vice-President, Jacques Barrot, in charge of Transport, when presenting the Eurobarometer survey on citizens' attitudes towards transport¹ stated that the European Union is *"working for a transport policy focused clearly on... citizens' needs and expectations including inter alia stronger rights for consumers"*. We trust that this endeavour will continue to drive the policy of the Commission in the field of passengers' rights.

A feature of the travel market is that, in terms of contracts, it differs from the practice in most consumer contracts as the payment is often not simultaneous with the reception of the good or the provision of the service. In the travel industry in general and in the air travel industry in particular, the provision of the services purchased only occurs after payment. The consumer pays in advance services that he/she will enjoy at a later stage. This practice makes it necessary to foresee certain special arrangements for the protection of the money pre-paid by passengers.

Overall, the holiday market in Europe is changing. The advent of low-cost airlines and the proliferation of internet direct sales have altered consumers' behaviour and attitudes towards travel. Unlike some years ago, consumers are more willing to purchase travel in component forms rather than buying ready-made packages. In particular leisure travelers rely now more and more on bookings of seat-only flights and on "dynamic packaging"² rather than on packages pre-arranged by a travel agency³.

These market changes are not always reflected in the legislation which is consequently becoming outdated and thus unable to deal with problems that occur in the market.

Insolvency or revocation of an operating license – the need for passenger protection

Under the package travel directive⁴, consumers are protected in case of insolvency of the tour operator and/or travel agency with which they bought a package. According to article 7 of that directive, *the organizer and/or retailer party to the contract shall provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency.*

¹ Eurobarometer survey: attitudes on issues related to European transport policy, analytical report, July 2007.

² See BEUC Position paper on the consultation regarding the revision of the package travel directive : X/057/2007 at www.BEUC.eu

³ For instance, according to the consumer memorandum of the Danish consumer Agency of 2004, the number of package travels sold is declining and 40% of all holiday travels are bought via the Internet.

⁴ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, *OJ L 158*, 23.6.1990, p. 59–64.

Yet, the same protection is inexistent for travelers who preferred to buy a seat-only flight or who self-arranged their travel. These travelers, if an airline ceases trading before the travel takes place, could be forced to buy alternative, often more expensive flights. They would even run the risk of being stranded abroad if their airline went bankrupt before the return journey takes place.

In the current state of affairs, situations can arise where two or more consumers who travel on the same flight with the same airline are treated differently and cannot expect the same level of protection in connection with the eventual insolvency of the airline they fly with. Depending on whether they bought a seat-only ticket or as part of a package travel contract, the airline will be liable or not.

This creates a situation where tour operators, which offer products falling under the scope of the said directive, are at a competitive disadvantage compared to scheduled airlines. This is exacerbated by the fact that consumers in general overestimate the level of protection in the travel market⁵.

In the context of the Commission proposal on air transport services in the Community (COM/2006/039), the European Parliament, in its first reading legislative resolution, introduced an amendment which required air carriers, as a condition to obtain an operating license, to take up sufficient insurance coverage *"to be able to refund sums paid and to cover the costs of repatriating passengers in the event of... insolvency or revocation of their operating license"*. This amendment was welcomed by BEUC as a step forward towards better protection of passengers, vis-à-vis air transport providers. However, regrettably, during the negotiations of the co-decision procedure, the Council and the Parliament agreed to delete this amendment.

The fact that the above mentioned Commission proposal gives stronger powers to the licensing authorities to remove the operating licenses of air carriers with unsound finances is likely to lead to situations where passengers are left in difficult situations, should specific passenger protection not be in place.

We do support the Commission proposal to strengthen the financial requirements to be provided by air companies in order to be granted an operating license. Yet, these stricter conditions would not avoid problems in all cases. Given the strong competition that exists in the travel industry in general and among airlines in particular, it is not to be excluded that bankruptcies occur in the market in the future as it was already the case in previous years.

These problems are in fact relatively frequent. Over the past years, Europe has witnessed several cases of insolvency among Community carriers (e.g. Air Madrid, Club Air, My Air, Fly Me...). According to a study mandated by the European Commission, of November 2005⁶, 50 airlines went bankrupt in the 5 year period between 2000 and 2005, leaving more than 63.000 passengers stranded abroad without a return ticket⁷.

⁵ According to a survey conducted by the UK CAA (Civil Aviation Authority), 35% of passengers incorrectly believed that a DIY (Do It Yourself) holiday they put together themselves would be protected should their airline, hotel or car hire company cease trading.

⁶ Report on the functioning of the Internal Market for Air Transport, conducted by the Transport Studies Unit of the University of Oxford (Contract No: TREN/04/MD/s07.36609).

⁷ This does not include those passengers who had not yet started their journey and whose tickets became worthless.

We thus call on the Commission to come up with a legislative proposal establishing the obligation for air companies to provide for a financial guarantee to cover their liabilities towards passengers in case of insolvency or removal of the operating license⁸.

The guarantee should cover the refunding of the sums paid by the passenger as well as the (full) repatriation costs of the passenger if he/she is stranded abroad. The guarantee scheme should ensure that the consumer is neither obliged to pre-finance the transport nor to organise it himself.

Due to the cross-border character of air transport, and in order to foster competition in the insurance sector, a harmonised guarantee scheme should be established at EU level.

END

⁸ Some may argued that in some member states repatriation of stranded passengers is dealt with by voluntary agreements between air companies. However, those eventual arrangements do not exist in all cases and do not give consumers the assurance to be repatriated in optimal conditions.