

Public consultation on the possible revision of Regulation 261/2004 - results

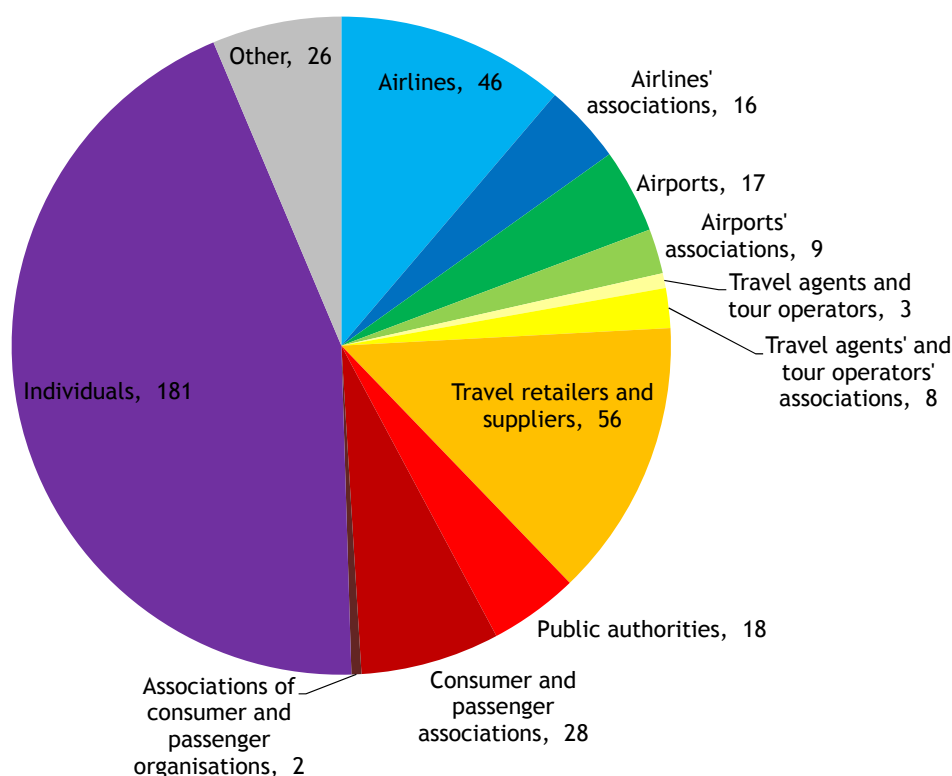
Introduction

- 1.1 The stakeholder consultation consisted of two elements:
 - **Open public consultation:** Online via ‘Your Voice in Europe’
 - **Bilateral consultation:** Interviews and direct submissions from a sample of key stakeholders
- 1.2 The open public consultation focussed on policy options for revision to the Regulation, whereas the bilateral consultation also covered:
 - collection of information necessary for analysis of the current operation of the Regulation and its impacts, and options for revision; and
 - more detailed discussion with stakeholders about issues or options particularly relevant to them - for example, with NEBs about enforcement.
- 1.3 This section summarises the results of the open public consultation.

Overview of responses to the public consultation

- 1.4 A total of 410 submissions to the consultation were received, of which 181 were from individuals and the remainder from organisations. The questionnaire allowed respondents to choose among a total of 16 organisation types, which we have summarised as 8 categories. Almost all represent a simple aggregation of the more detailed categories, but as a large number of respondents that selected the ‘other’ category actually represented travel retailers and suppliers, we separated these into a separate category. The number of responses received within each category is shown in Figure 1 below. In all but one case, the public authorities were either NEBs or statutory consumer protection bodies.

FIGURE 1 RESPONSES RECEIVED TO PUBLIC CONSULTATION



- 1.5 With the exception of the review of stakeholders identifying themselves as falling within the 'other' categories, we have not amended the respondents' choices of stakeholder grouping. However, the submission in verbatim by some 'individuals' of responses also submitted by airlines, travel agents or travel retailers suggests that a proportion of the substantial number of individual respondents may have had some connection with the industry.
- 1.6 One industry owning group submitted identical responses in the names of its different subsidiary companies. We have considered this as one response in all of the figures presented in this section.
- 1.7 In addition to the full responses to the questionnaire, we received a general statement from one national authority. We have taken into account the points made, but as it did not answer the specific questions it is not included in the figures presented in this section.

Summary of stakeholder views

- 1.8 Although most stakeholders identified issues with the Regulation, there was little agreement between different stakeholder groups as to what the problems were, or how they should be addressed.
- 1.9 In general, the representatives of the operators of air services (airlines, associations, travel agents and tour operators) were not supportive of the proposed amendments, particularly where it was clear from the wording of the question that these were likely to incur additional costs for the industry. In contrast, operators did express support for amendments to limit their liability to pay compensation and clarify extraordinary

circumstances; and were almost unanimous in expressing disapproval of the judgement of the CJEU in the case *Sturgeon v Condor* and *Bock and Lepuschitz v Air France*¹, and the right identified to compensation for delays longer than 3 hours. Although in most cases airlines, tour operators and travel agents adopted the same general viewpoints, this was not always the case - for example, most tour operator and travel agent representatives considered there should be a requirement for airlines to reroute passengers on other carriers in some circumstances, whereas almost all airlines disagreed.

- 1.10 In contrast, consumer associations and (to a lesser extent) public authorities agreed in most cases that change was desirable and expressed support for many of the options proposed in the consultation, where they provided for additional passenger redress, or entailed more stringent enforcement activities by the NEBs. Where a range of options were set out (as in the case of the length of a ‘cooling off’ period, for example), the more generous option from the passengers’ point would in general be preferred by these stakeholders, whereas the airlines would invariably opt for the least generous and potentially lower cost option. Although in the majority of cases airlines and passenger representatives expressed opposing views, there were some areas of agreement - for example, the need for clarification of extraordinary circumstances (although not about how it should be clarified), or requiring airlines to provide sufficient information to passengers regarding flight disruption.
- 1.11 The views of the individual respondents and the other stakeholders frequently lay some way between the airline/travel agent and consumer/public authority viewpoints. Airports and travel retailers expressed strong opinions with regard to specific issues of relevance to their operations, but in the remainder of cases usually did not state any opinion. This was particularly evident for the travel retailers and suppliers category, whose members focused almost entirely on question 19, and responded only in relation to the ‘one bag rule’ being enforced by certain low cost carriers. Airports expressed particularly strong opposition towards the options that they be given responsibilities under the Regulation, or that airlines be explicitly given the right to claim compliance costs from responsible third parties.

Assessment of the problems and need for action

- 1.12 The consultation document summarised the problems that the Commission had identified with the operation of the Regulation and which were set out in the April 2011 Communication. It first asked stakeholders whether they agreed it was necessary to take action to address the issues identified in this Communication.

Question 4.1: Do you agree on the need to take action to address the above-mentioned problems?

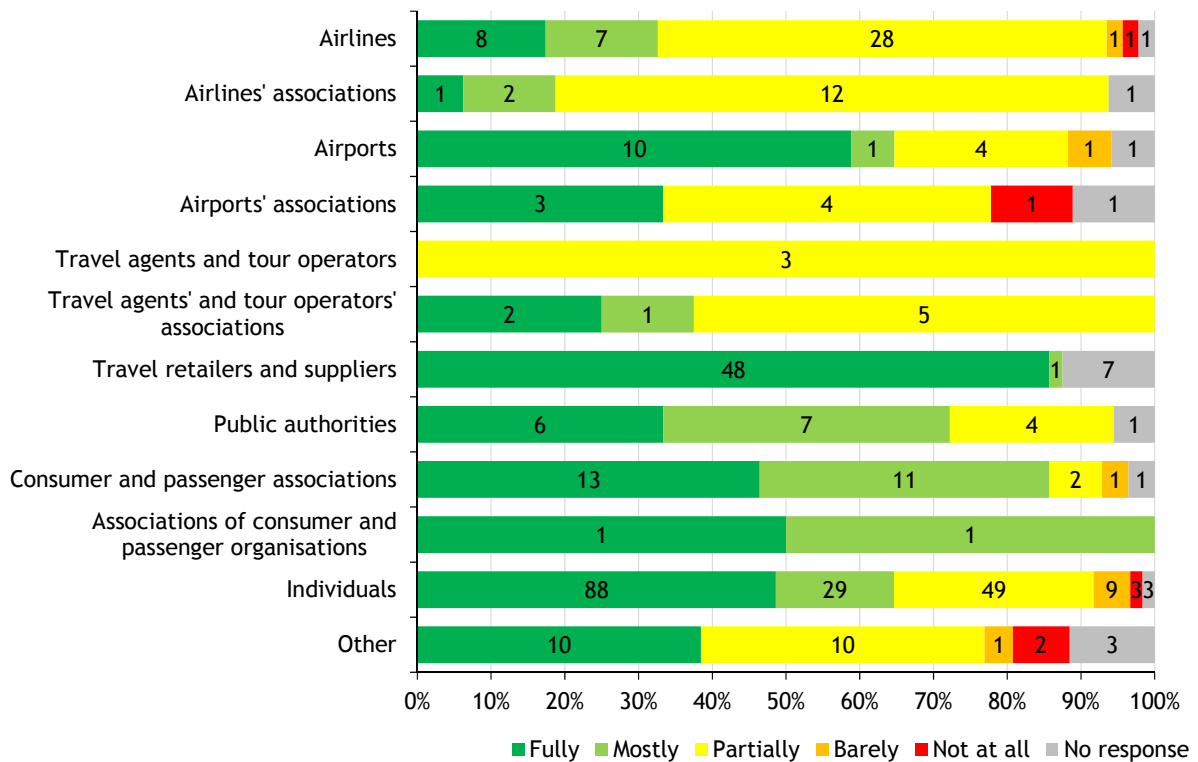
- 1.13 Figure 1 shows the views of the stakeholders for this question. Airlines and travel agents and their representative organisations were the least likely to agree that action was required to address the problem areas set out in the preamble of the consultation

¹ Joined cases C-402/07 and C-432/07

document. The majority, including four of the five main European airline associations (IATA, ERAA, AEA, and ELFAA) and most of the largest EU airlines only partially agreed. In the bilateral interviews and in direct submissions to the study they identified other issues with the Regulation, and in particular, criticised the Sturgeon judgement and raised this as a priority issue to be addressed (this issue is discussed in more detail below). They also emphasised that the Regulation imposed unreasonable economic burdens on airlines, particularly in circumstances which were not within their control. The main travel agent and tour operator associations (ECTAA and GEBTA) also only partially agreed, along with all three of the travel agents and tour operators that responded to the consultation. The other main airline association, IACA, did not respond to this question.

- 1.14 In contrast, most of the consumer representatives including BEUC and EPF agreed that action was required to address the issues that the Commission had identified in the Communication. In the bilateral interview, the priority issues that they raised were different to those raised by the industry: BEUC focussed on inadequate enforcement, lack of sufficient means for consumers to claim redress, and poor compliance by airlines as being key issues to address.
- 1.15 Most of the public authorities also agreed that action was required, and in the interviews some said that the Regulation needed to be significantly revised to improve its operation; some also said the Sturgeon judgement raised important issues to be addressed.
- 1.16 Almost all of the travel retailers and suppliers which responded to the questionnaire agreed that action was required; as discussed further below, they focussed primarily on the issue of cabin baggage restrictions imposed by some airlines, in particular the ‘one bag rule’ imposed by some low cost carriers, and the impact that this had on their business. Although most individual airports also agreed that action was required, the key airports association ACI only partially did so (see discussion under the next question).
- 1.17 Few stakeholders of any type did not think there was any need to take action on the issues identified.

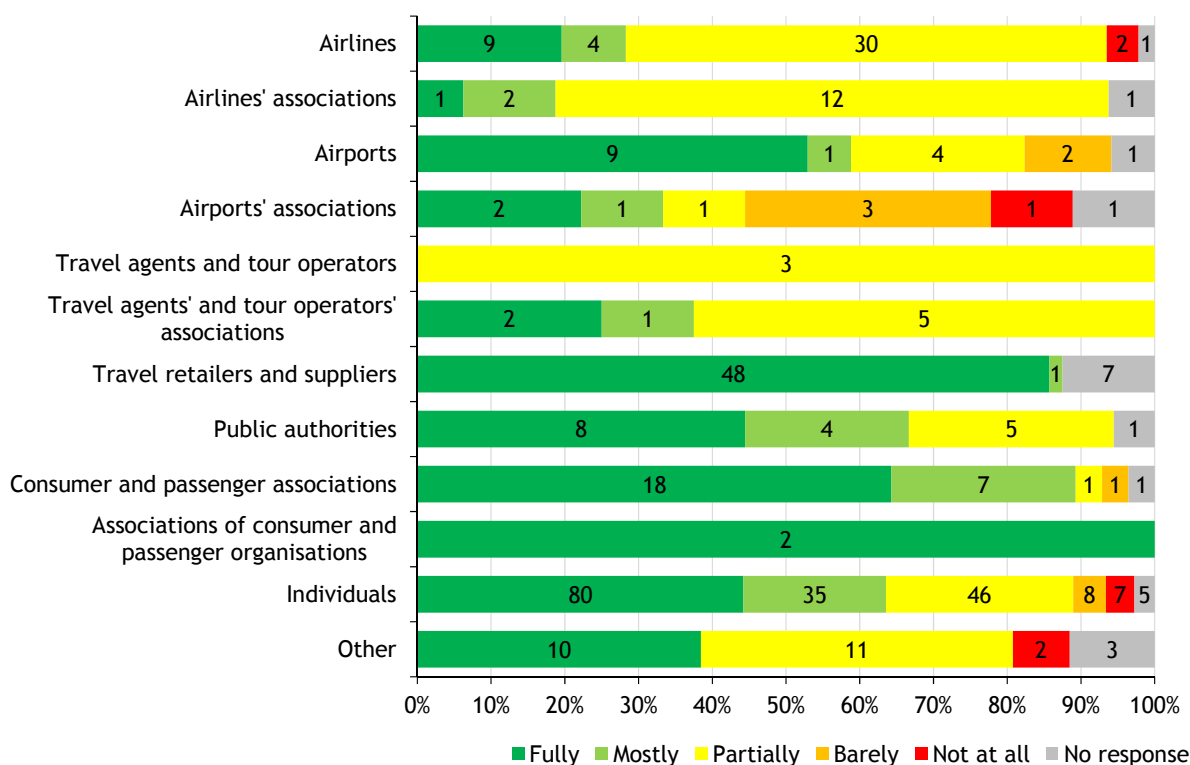
FIGURE 1 STAKEHOLDER VIEWS: QUESTION 4.1



Question 4.2: Do you agree that there is a need to revise Regulation 261/2004 to address at least part of these problems?

- 1.18 The opinions of the stakeholders regarding this question are displayed in Figure 2. Stakeholders' responses to this question were in most cases the same as their responses to question 4.1: almost all consumer associations, and almost all travel retailers, fully agreed that there was a need to revise the Regulation in order to address at least part of the problems described in the introduction of the document. Conversely, the majority of airlines, travel agents and tour operators; and all of the main representative associations, only partially agreed that the Regulation needed to be revised.
- 1.19 Although many individual airports believed the Regulation needed to be changed, the main airport association ACI did not: it argued in its direct submission to the study that Regulation did not need to be revised because its existing provisions were clear, although it suggested that enforcement should be improved.

FIGURE 2 STAKEHOLDER VIEWS: QUESTION 4.2

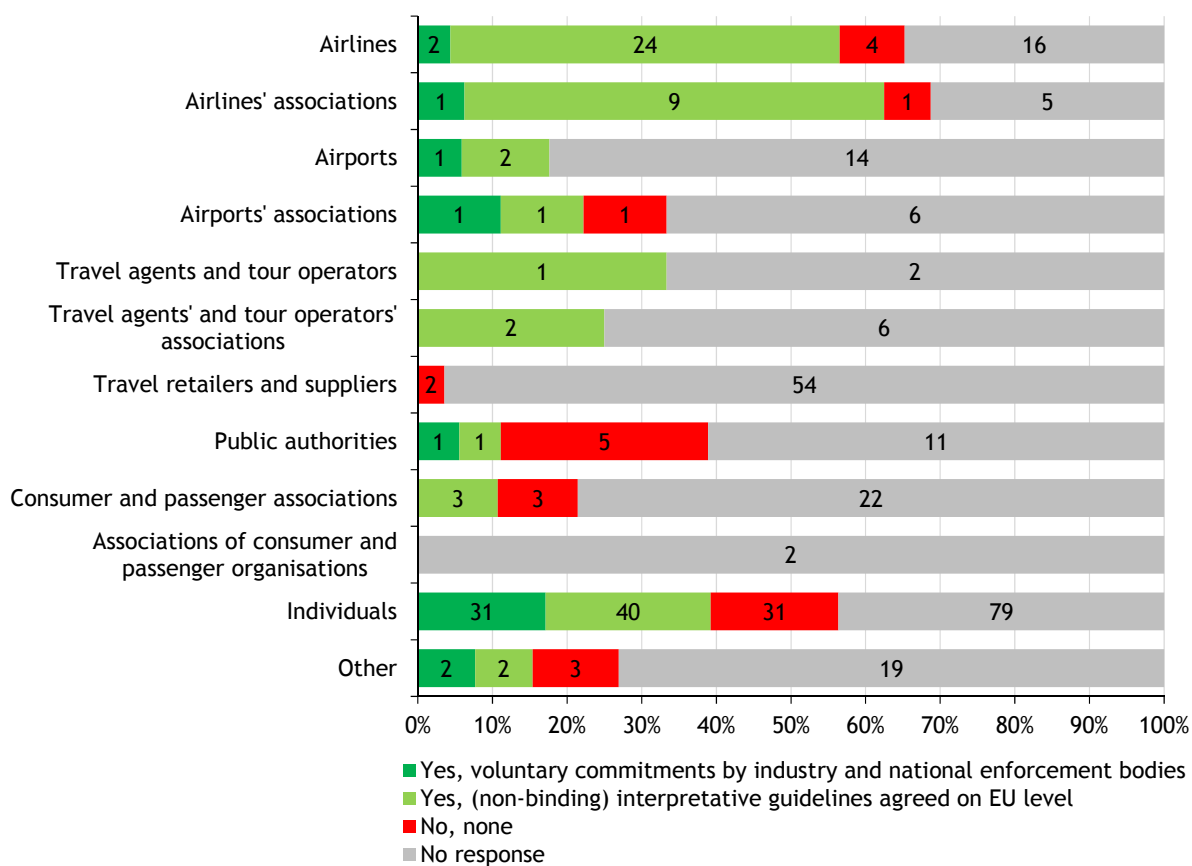


Question 4.3: If you think that there is no need to revise Regulation 261/2004, do you think that other, non-regulatory actions should be undertaken in this area?

- 1.20 Figure 3 depicts the preferred choice of action for the respondents who did not believe a revision of Regulation 261/2004 was necessary. Although many did not express any opinion, non-binding interpretative guidelines agreed on at EU level were preferred by most of those airlines and their representative associations who expressed any view, including all of the main pan-EU airline associations (IACA, ERAA, IATA, AEA, and ELFAA). They were also those least likely to think there was a need to revise the Regulation to address the problems that the Commission had identified.
- 1.21 In the bilateral interview, IACA also argued that, as the legislative process to revise the Regulation would inevitably take some time, guidelines should be agreed urgently between the Commission and the industry in particular to clarify the interpretation of the 'extraordinary circumstances' exemption from payment of compensation, which it considered had still not been sufficiently clarified despite the judgement of the CJEU in the case *Wallentin-Hermann v Alitalia*².
- 1.22 Reflecting that most thought the Regulation did need to be revised, most consumer representatives (including both EPF and BEUC), public authorities and other stakeholders did not respond.

² Case C-549/07

FIGURE 3 STAKEHOLDER VIEWS: QUESTION 4.3



Options in relation to delay, cancellation and denied boarding

Extraordinary circumstances

1.23 The consultation document explained the judgment in the Wallentin case, which sought to clarify the circumstances under which technical problems may be considered extraordinary circumstances sufficient to exempt an airline from payment of compensation. It also explained that there is a divergence of opinion with regard to when non-technical reasons may be considered as extraordinary circumstances.

Question 5.1: Is further clarification needed of extraordinary circumstances involving technical reasons?

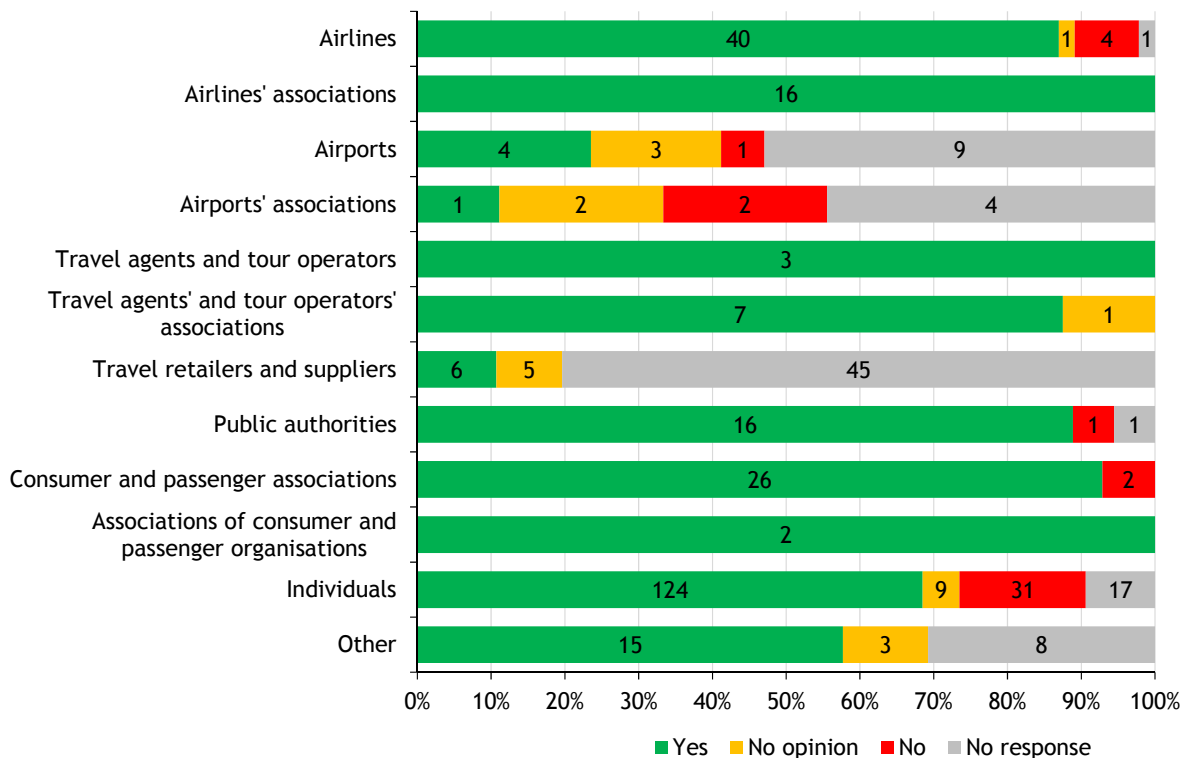
1.24 The stakeholders' responses to this question are illustrated in Figure 4. Most categories of stakeholder agreed that further clarification of extraordinary circumstances involving technical reasons was required, although as discussed further under question 5.2 below, they did not agree as to how it should be clarified.

1.25 All of the main airline and travel agent and tour operator associations (AEA, ELFAA, ERAA, IATA, IACA and ECTAA/GEBTA) and most individual airlines and tour operators agreed that clarification of this issue was needed. In the bilateral interviews undertaken for the study, some pointed to significant differences in interpretation of this issue between NEBs in different Member States; this issue was confirmed in the interviews with NEBs. One large

EU airline said that some NEBs and national courts were misinterpreting the Wallentin judgement to require airlines to pay compensation for almost all cancellations due to technical problems, which they considered was not what was intended by the judgement; it said further clarification was required of what was an ‘inherent’ and ‘non-inherent’ defect. ERAA said that the Wallentin judgement had added further confusion on this issue because it was not clear at what point a technical problem leading to a cancellation became an extraordinary circumstance. In contrast, BEUC considered the Wallentin judgement was useful but that the problem was that airlines refused to follow the judgement.

- 1.26 Few stakeholders of any type did not agree that clarification was needed; the 4 airlines that did not agree did not have any particular common characteristics which explained why their views might differ from others. However, the main airport association, ACI, also did not agree - it argued in its direct submission to the study that ‘extraordinary’ was a difficult concept to define and was addressed by the court
- 1.27 Only two groups - airports and travel retailers - had a significant proportion of respondents who declared no opinion or who did not respond, reflecting the limited relevance of this issue to these groups.

FIGURE 4 STAKEHOLDER VIEWS: QUESTION 5.1



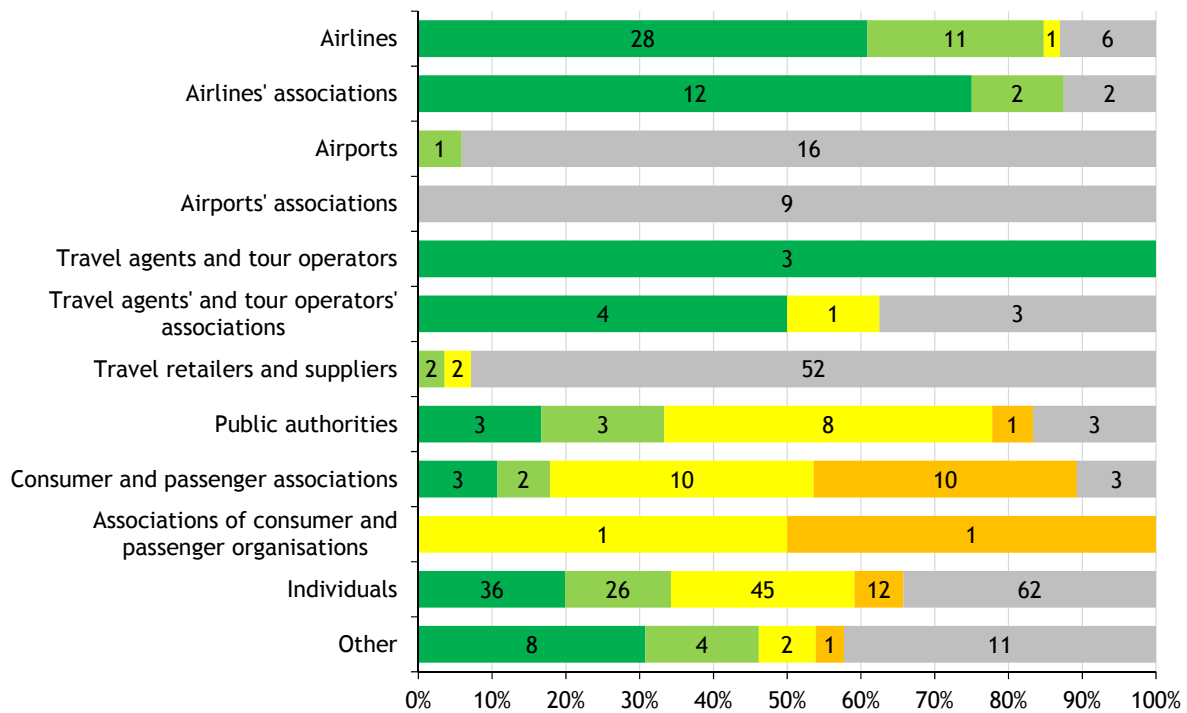
Question 5.2: If yes, how should this be clarified?

- 1.28 Although, as discussed above, there was broad consensus that this issue needed to be clarified, there was no consensus as to how; Figure 5 illustrates the stakeholders’ views. The most preferred option amongst public authorities and consumer associations was to define a list of extraordinary circumstances in the text of the Regulation linked to

technical reasons sufficient to exempt airlines from payment of compensation, in line with the Wallentin judgement, although a proportion including the EU-wide consumer organisation BEUC considered that this should be addressed by directly incorporating the Wallentin judgement into the text of the Regulation, rather than by defining a list of circumstances.

- 1.29 In contrast, most airlines, travel agents / tour operators and their representative associations, including AEA, ELFAA, ERAA, IATA, IACA and ECTAA/GEBTA, said that the definition of extraordinary circumstances should be amended to exempt a wider range of problems than permitted under the Wallentin judgement. In the interviews, they argued that the Wallentin judgement (at least as interpreted by some NEBs) led to airlines having to pay compensation in circumstances that were not within their control; some said that aircraft were complex and therefore technical problems would occasionally occur however well they were maintained. Some of the specific circumstances that they proposed should exempt them from payment of compensation are discussed below under question 5.4.
- 1.30 Reflecting the previous question very few airports and travel retailers responded.

FIGURE 5 STAKEHOLDER VIEWS: QUESTION 5.2



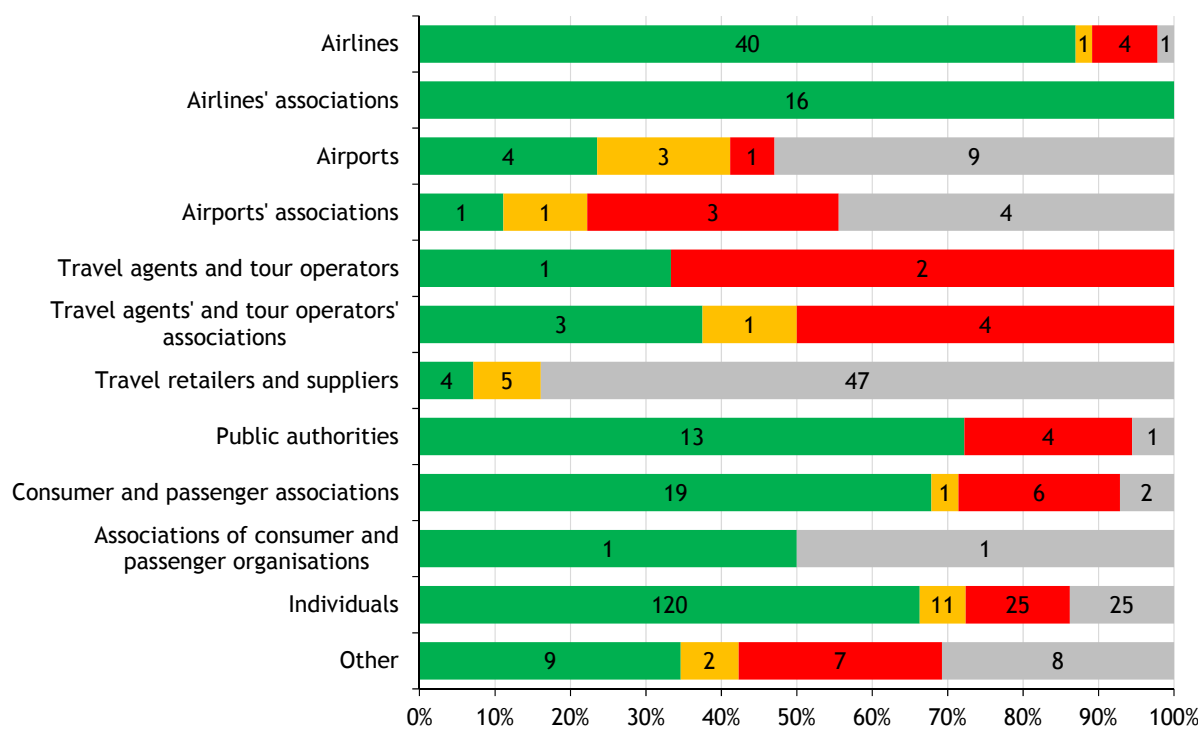
- Amend the definition of extraordinary circumstances to exempt a wider range of problems than permitted under the present Regulation (as interpreted by the Wallentin judgement).
- Define a list of extraordinary circumstances linked to technical reasons sufficient to exempt airlines from payment of compensation in the text of the Regulation, but exempting a wider range of problems than permitted under the present Regulation
- Define a list of extraordinary circumstances linked to technical reasons sufficient to exempt airlines from payment of compensation in the text of the Regulation, in line with the Wallentin judgement.
- Integrate the Wallentin judgement into the text of the Regulation, without further amendment.
- No response

Question 5.3: Is further clarification needed of extraordinary circumstances for other reasons than technical (e.g. strikes)?

1.31 It is clear from Figure 6 that the majority of airlines, public authorities, consumer associations and individuals agree that it is also necessary to clarify non-technical extraordinary circumstances. All of the airline associations and most of the airlines proposed defining a list of non-technical circumstances which were sufficient to exempt airlines from payment of compensation within the text of the Regulation. Travel retailers and airports were the only two groups who did not hold this majority view with a higher share of their respondents not agreeing (including both ACI and ECTAA/GEBA), having no opinion or not responding. The low response rates are not surprising given the limited relevance of this issue to them.

1.32 Although there was also strong support for this from consumer representatives, it was less universal than for technical reasons; in particular, BEUC did not express any view on this issue.

FIGURE 6 STAKEHOLDER VIEWS: QUESTION 5.3



- Yes, define a list of extraordinary circumstances linked to non-technical reasons sufficient to exempt airlines from payment of compensation in the text of the Regulation.
- No opinion
- No
- No response

Question 5.4: Please provide any further information or comments on this issue

1.33 The questionnaire allowed stakeholders to provide additional information and comments on this issue. Many, particularly airlines and airline associations, submitted detailed responses.

1.34 **Airline and airline associations:** Most of the airline representatives that responded said that the lack of a clear definition of extraordinary circumstances was a key weakness with the Regulation, and several suggested terms which could be added or suggested a list of scenarios to be included. Two airlines suggested a list of exemptions including conflict and political instability; civil unrest; curfews; military action; terrorism; piracy; natural disasters (volcanic eruptions; earthquakes; tsunamis, fire); meteorological conditions incompatible with the operation of the flight concerned (fog, snow, storms, ice formation); security risks; exceptional passenger, baggage and aircraft/airport security measures; infectious diseases, epidemics and pandemic; unexpected flight safety shortcomings including technical aircraft problems, airport related problems such as

runway closures and limitations, equipment malfunctions etc.; strikes in airlines or in essential services such as ATC, airports, etc.; and air traffic management decisions such as ATC delays, scheduled slots not being available, etc. Several airlines emphasised that they should be exempt from payment of compensation in the event of technical cancellations, particularly if the correct maintenance procedures had been followed.

- 1.35 The International Air Carrier Association (IACA) and some of its members said that scenarios should be agreed between the Commission and the industry in advance of any legislative change. The International Air Transport Association (IATA) and several individual airlines said that any definition/list should still leave sufficient flexibility for case-by-case assessments.
- 1.36 In contrast, ELFAA, Ryanair and other low cost carriers said that recital 14 was perfectly clear about the definition of extraordinary circumstances, and that any problem was due to misinterpretation of the Wallentin judgement. Singapore Airlines suggested that the Regulation should be amended to require the carrier to take “reasonable practical measures” and not “all reasonable measures” as stated in the judgment. All Nippon Airways said that the extraordinary circumstances exemption should be extended to cover Article 9 assistance as well as Article 5 compensation.
- 1.37 **Airports and airport associations:** Most airport representatives did not provide additional comments on this issue. The Airports Council International Europe (ACI Europe) said that it should not be necessary to integrate judgements such as Wallentin into the Regulation as they are already binding.
- 1.38 **Travel agents and tour operators:** Many of the responses from travel agents and tour operators made similar points to the airlines, reflecting the fact that they came from integrated airline and tour operator groups. The European Travel Agents and Tour Operators Association (ECTAA) and the Association of British Travel Agents (ABTA) expressed concern about any definitive list of circumstances, because it would not be possible to envisage all the circumstances that might occur - for example volcanic ash would not have been envisaged before 2010. TUI said that airlines should not have to pay compensation where they had complied with agreed maintenance procedures. ABTA said that airlines should only be required to pay compensation where they were at fault, for example if they had not rostered sufficient crew in order to operate a flight.
- 1.39 **Travel retailers and suppliers:** Travel retailers and suppliers did not respond to this question.
- 1.40 **Public authorities:** Most public authorities which responded supported the definition of a list of extraordinary circumstances, although the Agencia Estatal de Seguridad Aérea (Spanish Aviation Safety and Security Agency, AESA) said that the definition should be included as an annex to the Regulation so that it could be modified more easily. The Finnish Consumer Agency and Ombudsman said that there should be general criteria and a non-exhaustive list of examples. The Civil Aviation Administration of Lithuania (CAA Lithuania) said that any list would need to be supplemented from time to time. One other enforcement body said that any definition should not endanger safety by encouraging airlines to operate flights despite technical problems.

- 1.41 **Consumer and passenger associations:** The European Consumers' Association (BEUC) and the Dutch consumer organisation Consumentenbond said that the rulings should be incorporated into the Regulation, in particular to define that technical problems do not constitute extraordinary circumstances if they stem from events related to normal activities such as maintenance obligations; the fact that the carrier has complied with minimum maintenance obligations or that a technical problem arises during regular maintenance does not necessarily mean that it is relieved of the obligation to pay compensation; and reasonable measures must include an obligation to provide for a certain reserve time to operate the flight after the extraordinary circumstances have ended. They also emphasised that carriers should not be exempted from providing assistance in cases of extraordinary circumstances, and the volcanic ash crisis was exceptional and so should not be used as a justification to do this.
- 1.42 The European Passenger Federation (EPF) noted that airlines often argued that they should not be held responsible for events which were not within their control, but argued that airlines should be responsible for managing their suppliers (such as air traffic management and baggage service providers) and staff. Holiday Travel Watch emphasised that a key problem for consumers was that they did not have sufficient technical knowledge to know which circumstances compensation should be payable in. The Confédération Syndicale des Familles (French Union of Families, CSF) consumer association said that issues such as strikes and bad weather could not be considered extraordinary circumstances because they are predictable. Several other consumer representatives argued that strikes, particularly if announced in advance, should not be sufficient to exempt carriers from payment of compensation, and the Confederación Española de Organizaciones de Amas de Casa, Consumidores y Usuarios (Spanish Confederation of Housewives, Consumers and Users, CEACCU) pointed to national court judgements which supported this.
- 1.43 **Individuals:** Several of the individual respondents said that airlines used the exemption on payment of compensation in extraordinary circumstances to minimise their obligations, and said that it was difficult for individual consumers to dispute claims of extraordinary circumstances made by airlines. However, some also suggested that the exemption should be limited to commercial cancellations.
- 1.44 **Other:** Various rail industry representatives suggested that the definition used in the Annex to Regulation 1371/2007 could be applied in the air sector. The Nederlandse Vereniging van Luchtvaart Technici (Dutch Association of Aviation Technicians, NVLT) expressed a concern that commercial pressure could be placed on maintenance staff to allow an aircraft to be operated jeopardising safety. A law institute said that adding a list of circumstances might not help, because there would always be gaps in any list.

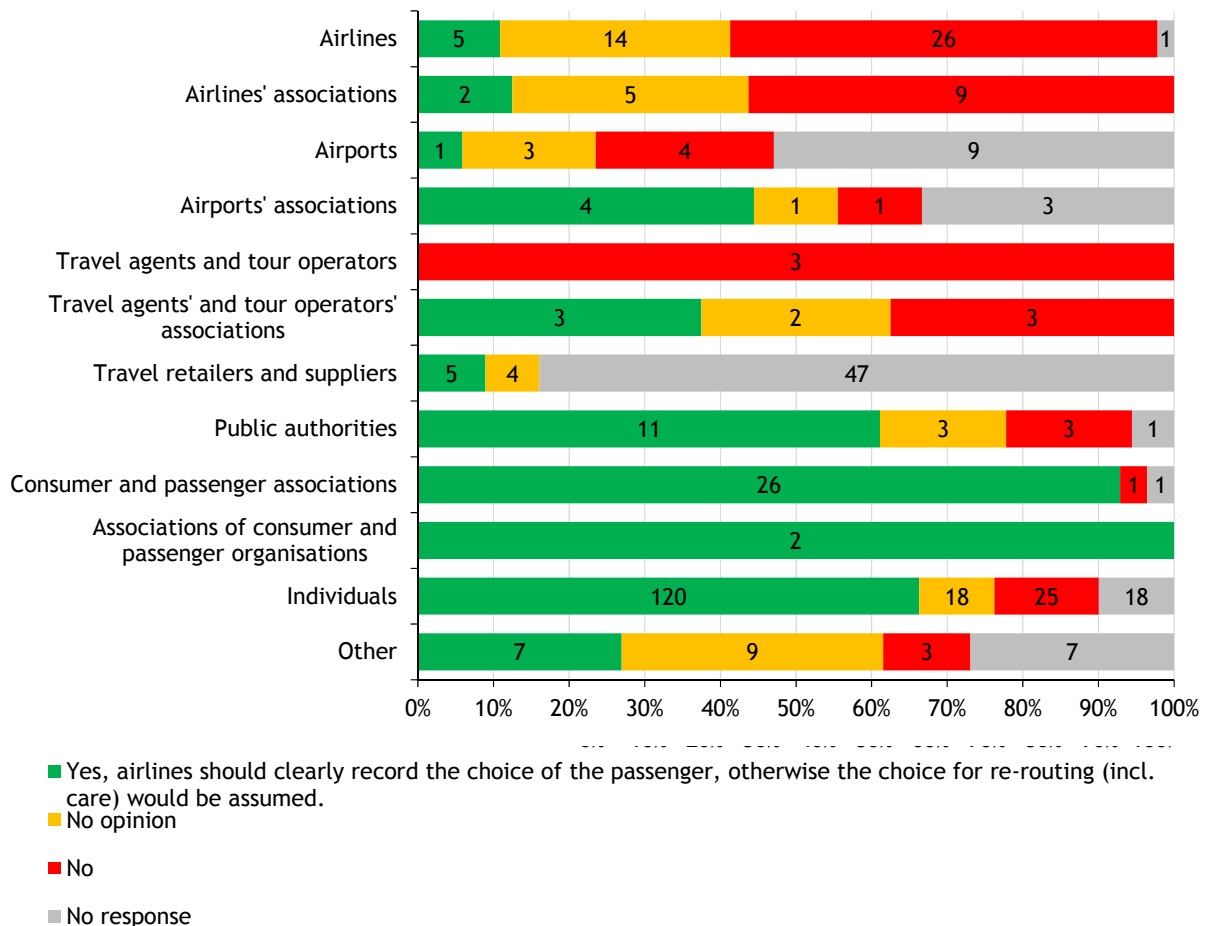
Rerouting

- 1.45 The consultation document described some of the issues that had been identified with the current provisions on rerouting, including whether it was necessary for airlines to offer rerouting on other carriers and surface transport, and how and whether airlines should record that the 'triple choice' of rerouting, rebooking or reimbursement had been offered to the passenger.

Question 6.1: Is further clarification needed of the requirements for the triple choice reimbursement/re-routing/rebooking?

- 1.46 Figure 7 displays the respondents' views on reimbursement/re-routing/rebooking. Again, most airlines and travel agents / tour operators (including the associations AEA, ELFAA and ECTAA/GEBTA) were not supportive of changes, expressing the view that no further clarification on the requirements for the triple choice was required. However, some of the other main industry associations (ERAA, IACA and IATA) and a minority of individual airlines expressed no opinion on this issue.
- 1.47 In contrast, most public authorities, almost all consumer representatives (including both BEUC and EPF), and the majority of individuals agreed that further clarification was necessary. In direct submissions to the study, some said that in cases of cancellations airlines did not always mention the possibility for passengers to be rerouted and assisted whilst they waited, instead encouraging them to accept refunds.

FIGURE 7 STAKEHOLDER VIEWS: QUESTION 6.1



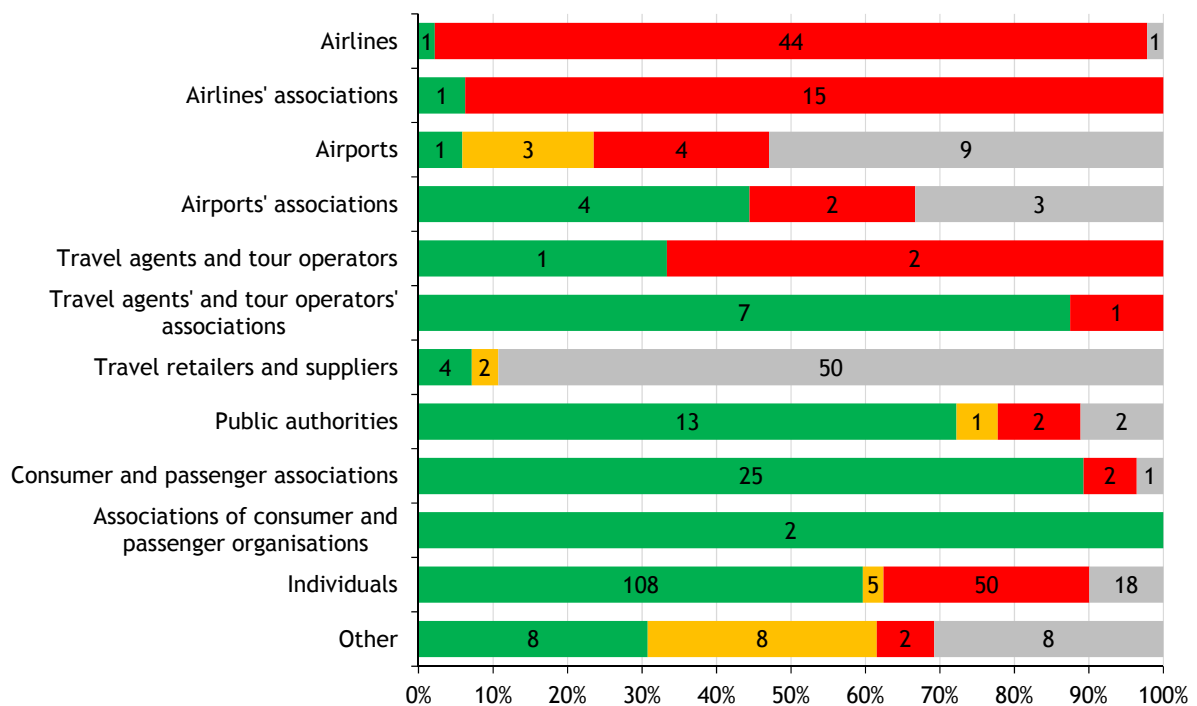
Question 6.2: Is further clarification needed on the definition of re-routing at the earliest opportunity?

- 1.48 The responses to this question are illustrated in Figure 8. All of the main airline associations, and almost all individual airlines, said that the current provisions should be

maintained. In the interviews, low cost carriers expressed particularly strong opposition to any requirement to reroute on other carriers, because they do not have access to the reciprocal rerouting agreements available to IATA carriers and therefore this would incur a much higher cost for them (although some low cost carriers said that they do have reciprocal agreements between themselves). In contrast, most tour operator and travel agent associations including ECTAA/GEBTA believed that there should be a requirement to reroute on other airlines after a certain time.

1.49 Most public authorities and consumer representatives, including both BEUC and EPF, agreed that there should be a right to rerouting on other carriers after a certain period. In the interviews, the issue of the meaning of the term ‘comparable transport conditions’ was frequently raised by NEBs as an issue needing clarification, in particular with respect to whether and when rerouting on other carriers or surface transport was required. One NEB noted that the Commission considered this term meant rerouting on surface transport was required where appropriate, but that this was contested by airlines.

FIGURE 8 STAKEHOLDER VIEWS: QUESTION 6.2

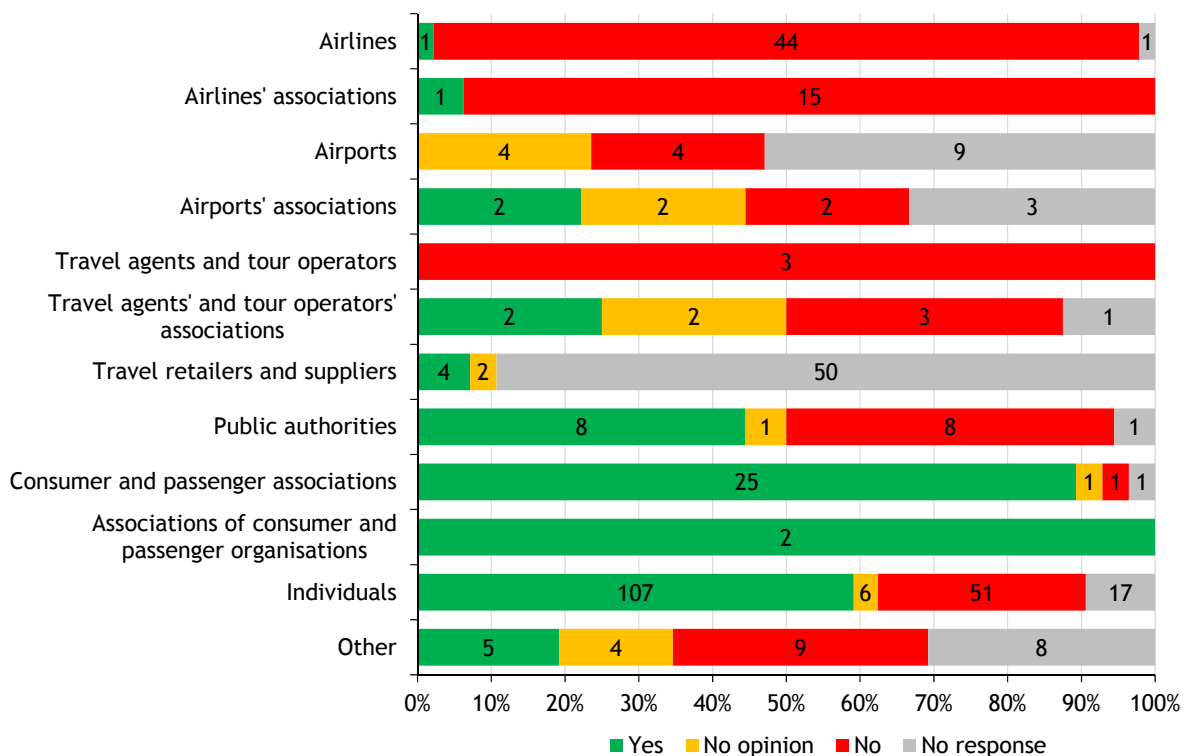


- Yes, this should include a requirement (beyond a certain time period) to offer re-routing on other airlines, or by land/maritime transport, if this is closer to the passenger’s original travel plans.
- No opinion
- No, maintain the current timeframe which allows for more flexibility for the airline.
- No response

Question 6.3: Should automatic compensation be introduced where airlines fail to offer the option of re-routing when the Regulation requires it?

- 1.50 Almost all airlines and their representative associations, and all of the individual travel agents and tour operators, opposed to the introduction of automatic compensation where passengers were not offered rerouting as required. ECTAA/GEBTA also agreed that there should be no requirement to pay automatic compensation. In the interviews, airlines argued that when flights were cancelled there could be practical difficulties in contacting all passengers to actively offer rerouting, particularly in the event of mass disruption, and that it should be sufficient for NEBs to use their existing enforcement powers to address serious or deliberate infringements.
- 1.51 In contrast, almost all consumer associations including EPF and BEUC were in favour of automatic compensation. Public authorities were divided on the issue, although when we discussed this directly with NEBs in bilateral interviews for the study, most of those that expressed any views thought this was not practical, highlighting difficulties in proving that airlines did not offer the assistance required and the potential for abuses of the Regulation, or that an airline that did not comply with the obligation to offer assistance probably also would not comply with the obligation to pay automatic compensation.
- 1.52 ACI Europe, and most individual airports, did not express any opinion on this question.

FIGURE 9 STAKEHOLDER VIEWS: QUESTION 6.3



Question 6.4: Please provide any further information or comments on the requirement for re-routing.

- 1.53 **Airline and airline associations:** Most of the comments submitted by airlines and airline associations related to the prospect of automatic compensation where airlines have failed

to automatically offer the option of rerouting, with all citing this as being unreasonable, unnecessary and/or disproportionate, particularly as in some situations the airline would not have any control over the disruption. Aside from the financial burden of providing the compensation itself, airlines and associations also cited the administrative burden of having to prove that passengers had been offered the option of rerouting in the first place, although some (for example Airlines for America (A4A) and United Airlines) took a different view, stressing that airlines should clearly record the choice of the passenger. Most added that they respect their legal obligations by offering passengers the choice between reimbursement and rerouting, although many acknowledged that this might not be possible during prolonged mass disruptions.

- 1.54 Ryanair and the European Low Fares Airlines Association (ELFAA) urged legislators to accompany any wider rerouting provisions with a requirement for all airlines to offer reasonable rerouting fares to one another, as it would be unreasonable to expect ELFAA airlines to reroute their passengers on network carriers, where rerouting agreements do not currently exist. The more general issues associated with securing rerouting via other carriers where the affected airline operated only a low frequency and no interlining agreements were in place were raised by other respondents.
- 1.55 **Airports and airport associations:** Airports and airport associations did not respond to this question.
- 1.56 **Travel agents and tour operators:** ABTA and TUI suggested that the current Regulation was sufficient in this regard, and stressed the differences between their operations and those of traditional hub carriers, whose higher frequencies mean that rerouting is much easier. This view was reflected by Thomas Cook and ECTAA. The high load factors typically associated with charter carriers were also cited as a challenge for securing rerouting. There was a divergence of opinion among the other respondents - whereas some cited poor compliance among airlines with the rerouting obligation set out in the Regulation, the Deutscher ReiseVerband (German Travel Association, DRV) and Studiosus Reisen München pointed out that automatic compensation is not provided for other modes, and so could distort competition.
- 1.57 **Travel retailers and suppliers:** Travel retailers and suppliers did not respond to this question.
- 1.58 **Public authorities:** Those that submitted additional comments were in general not supportive of the option of introducing automatic compensation where rerouting was not offered by the airline. Several highlighted the difficulty in proving whether rerouting had been offered by the airline in the first place, and one regulatory authority emphasised the likely increase in the number of disputes over the redress which should be provided, and the administrative burden which this would represent. The Finnish Consumer Agency and Ombudsman suggested that the option might generate a perverse outcome in the sense that it may be more cost effective for airlines to deliberately fail to reroute passengers if the payment of compensation was less expensive than rerouting; and another entity suggested that passengers could already claim for damages under national law if airlines were not respecting their legal obligations. However, AESA and the Principality of Asturias' Directorate of Trade and Consumption were more supportive, the latter suggesting that

the rights of passengers would only really be protected when the companies' costs of compliance were fixed, certain and automatic.

- 1.59 **Consumer and passenger associations:** The European Consumer Centre Ireland (ECC Ireland) emphasised the current Regulation's lack of clarity in terms of the rerouting options which airlines should offer to passengers. It also suggested that the Regulation might be amended to explicitly allow passengers to reclaim the costs of any rerouting they had arranged themselves. Many of the other responses stressed the need for clarity, and for consumers to be offered rerouting immediately, and by other carriers or modes where this offered the most convenient alternative for the passenger. Most added that airlines should be obliged to have representatives at the airport in place to offer this to passengers. Although consumer organisations indicated in response to the previous question near-universal support for the introduction of automatic compensation, few expressed any further comments on the issue, with only the UK ECC and Norwegian Consumer Ombudsman being clearly in favour. The French ECC stressed the importance of ensuring that compensation was not provided in place of rerouting.
- 1.60 **Individuals:** Many of the individuals which responded to this question believed that airlines were reluctant to offer rerouting via other carriers' services, and would try to resist this wherever possible. Some went further in expressing clear support for the introduction of automatic compensation, suggesting that this might incentivise airlines to comply. However, some considered an obligation to reroute on other carriers' services as potentially generating an excessive burden, particularly for low cost and charter carriers. One respondent expressed concern that the additional costs would result in them no longer being able to travel for the low fares they currently enjoy. Others noted the potential distortion of competition in comparison with other modes, or suggested that passengers should instead be allowed to make alternative arrangements at carriers' expense. Another respondent expressed general concern with the extension of the Regulation beyond its original purpose, which was to prevent commercial cancellations and denied boarding; suggesting that airlines current focus on minimising assistance costs might be compromising safety.
- 1.61 **Other:** The rail operators which responded to this question shared common concerns, noting the difficulty in proving whether passengers had been offered the choice between reimbursement and rerouting, and suggesting that automatic compensation could encourage abuse of the system by passengers or force competitors to collaborate to discuss rerouting conditions and potentially fares. The potential for passenger abuse was highlighted by other respondents, together with the potential distortion of competition predicted by other stakeholders.

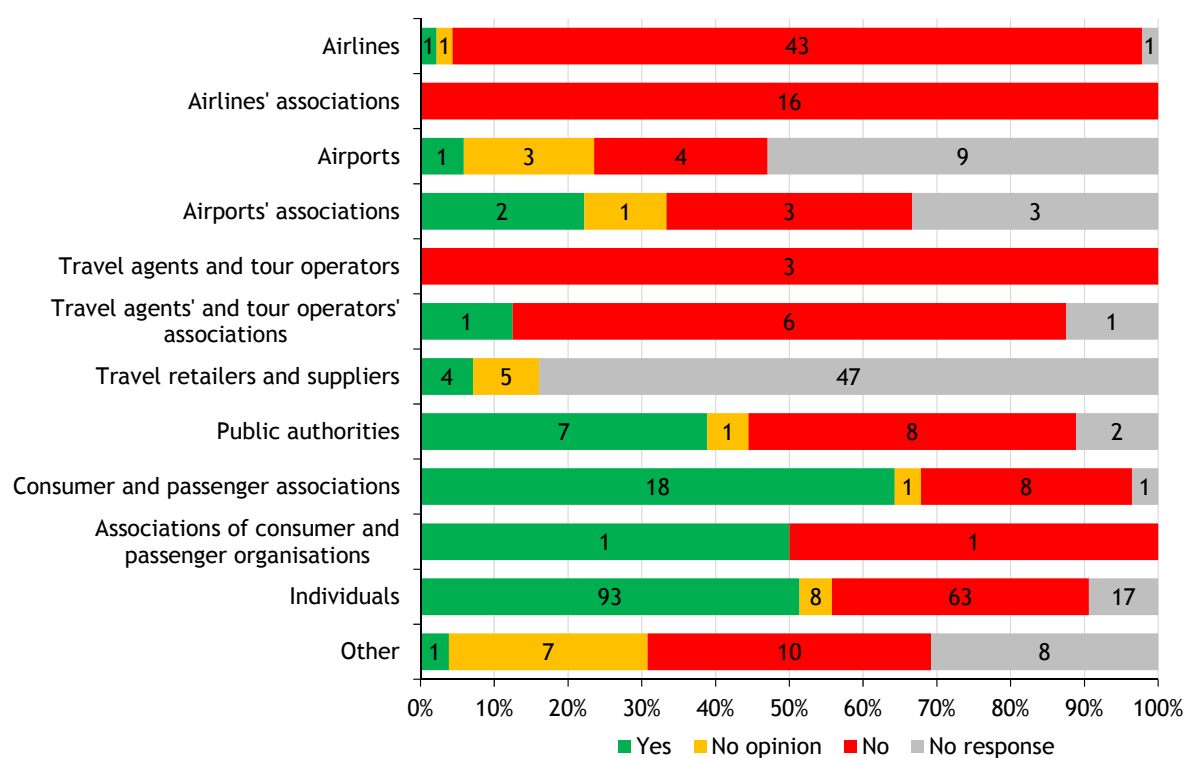
Compensation in cases of delay

- 1.62 The judgement of the Court of Justice of the European Union (CJEU) in the Sturgeon case identified a requirement to pay compensation where flights were delayed for more than 3 hours, except where the airline could prove that the delay was caused by extraordinary circumstances. The consultation asked whether respondents considered this to be appropriate.

Question 7.1: Is the current 3 hour delay after which compensation is payable in cases of delays appropriate?

- 1.63 The responses of the stakeholders to this question are shown in Figure 10. Almost all airlines and all of their representative associations disagreed that the current three hour threshold is appropriate - question 7.1b sets out their alternative preferences, although as discussed in more detail below, most thought that compensation should not be payable at all for delays, or except as specified in the Montreal Convention. ECTAA/GEBTA, as well as all travel agents and tour operators that responded, also did not think the threshold was appropriate. ACI Europe considered the threshold was appropriate but most other airports and airport associations either had no opinion or thought it was not appropriate.
- 1.64 In contrast, most consumer associations and individuals agreed that the current threshold was appropriate, but both groups still had a considerable proportion of respondents who disagreed. BEUC considered the current threshold to be reasonable whereas EPF believed it should be reduced. Public authorities were divided on this issue; some supported the current threshold but in the interviews some also expressed concerns about whether compensation should be payable for delays at all, for similar reasons to those raised by the airlines.

FIGURE 10 STAKEHOLDER VIEWS: QUESTION 7.1



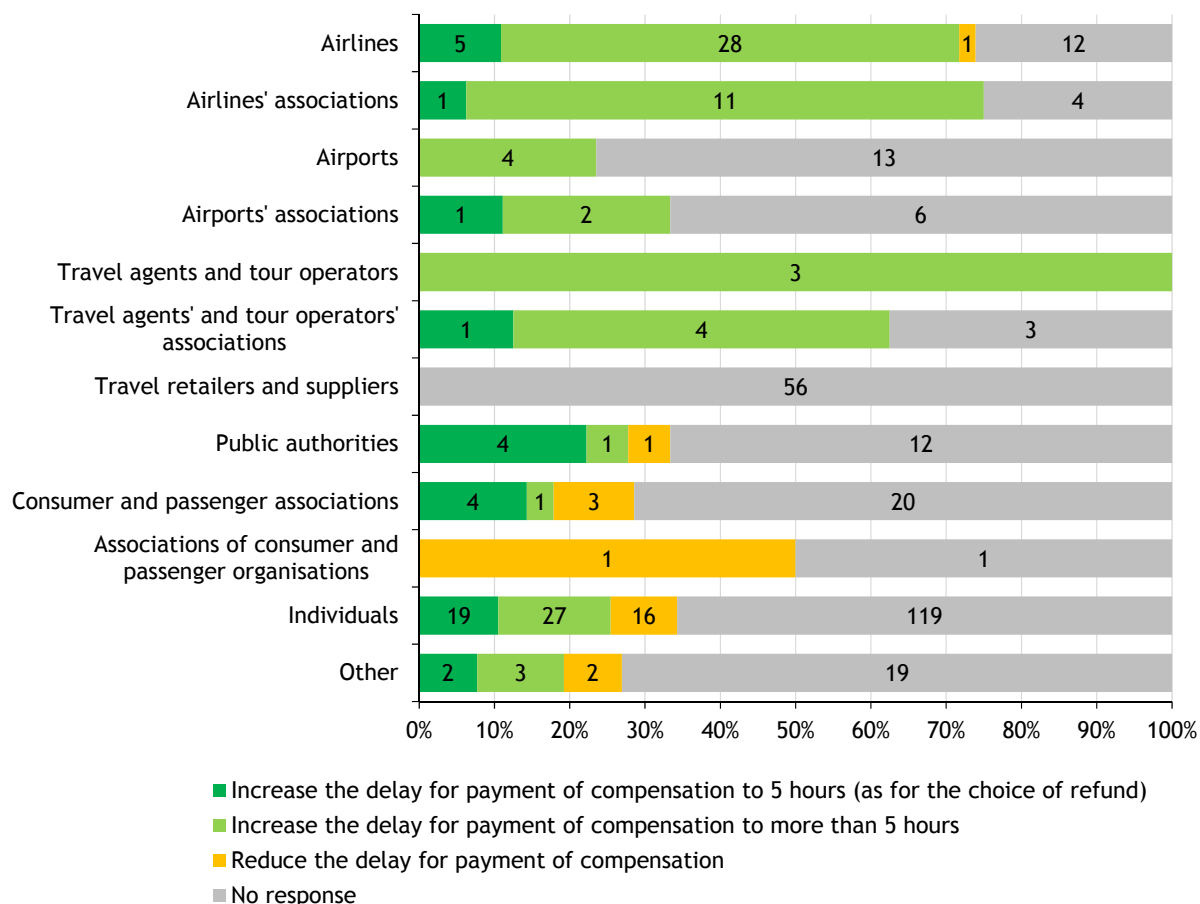
Question 7.1b: If no, should this be increased or reduced?

- 1.65 As can be observed in Figure 11, the majority of airlines and travel agents / tour operators and almost all of their main representative associations, who had answered no to question 7.1, suggested that the threshold for compensation should be increased to more than five hours. IATA was the only airline association that said the threshold should be reduced, but

this is reflected in the chart as ‘No response’, as in its answer to the subsequent question it explained it had selected this only because there was no option to say there should not be any compensation at all (two of the three airlines which selected this option also explained that this was because they thought there should be no such compensation and we have also amended these to ‘No response’). The airlines’ detailed views on this issue are discussed under question 7.2 below, and airline representatives emphasised similar points in the interviews with the study team. Several said that if this compensation was required they would be encouraged to cancel flights to avoid knock-on delays, and one leisure airline said in the interviews that if Sturgeon compensation was retained it would have to reduce services to remote airports, to improve resilience.

- 1.66 While there were few responses from consumer associations and public authorities (in part because most agreed that the current three hour threshold was appropriate), most of those which did respond also believed that the threshold should be increased to five hours. In contrast, EPF considered the threshold should be reduced - it said that the three hour contingency provided by this threshold was excessive, particularly for intra-EU travel for which a delay of this length might negate the benefits of air transport.

FIGURE 11 STAKEHOLDER VIEWS: QUESTION 7.1B



Question 7.2: Please provide any further information or comments on the issue of compensation in case of long delay.

- 1.67 **Airline and airline associations:** All of the major airline associations - IATA, IACA, AEA, ELFAA and the European Regions Airline Association (ERAA) - and almost all individual airlines that submitted comments gave similar answers. They argued that any requirement to pay compensation for delays would be an infringement of the Montreal Convention, and would contradict the original intention of both the Commission and legislature, as well as contradicting the text of the Regulation. They therefore considered that the Sturgeon judgement was flawed and invalid. Reflecting the responses to question 7.1b, they all argued that there should not be compensation for delay, either at all, or except as specified in the Montreal Convention.
- 1.68 One airline also pointed out that the time of arrival at a passenger's final destination might be completely unrelated to the delay on the original flight, as it would depend on whether or not they missed a connection. Singapore Airlines said that if the time threshold was set at 5 hours, this would be more comparable to a cancellation; ELFAA and Ryanair also said that if compensation for delays was to be retained (which they opposed) it would be more reasonable to limit it to delays over 5 hours. Another airline also said that there

should be no right to assistance in case of delay if this was specified in the airline's Conditions of Carriage.

- 1.69 **Airports and airport associations:** Most airports and airport associations did not respond to this question. However, the Union des Aéroports Français (Union of French Airports) said that there should be a distinction between short and long delays, and very long delays could be considered as cancellations, although the threshold should be greater for long haul flights.
- 1.70 **Travel agents and tour operators:** Most of the travel agent and tour operator responses made the same points as the airlines. ECTAA and ABTA argued that the level of compensation was disproportionate to the amount of inconvenience suffered: ABTA said that for a typical medium-haul package holiday, compensation for a delay of 3 hours would be 50% of the cost of the holiday. Studiosus Reisen München said that there should not be compensation for delays but, if there was, the threshold should be increased to more than 5 hours. The Svenska Resebyråföreningen (Association of Swedish Travel Agents and Tour Operators, SRF) said it should be clarified whether the delay was to an individual flight or the whole journey.
- 1.71 **Travel retailers and suppliers:** Travel retailers and suppliers did not respond to this question.
- 1.72 **Public authorities:** The UK Civil Aviation Authority (UK CAA) said that the threshold should be equivalent for delays and cancellations, and suggested that it should be 5 hours; another NEB also said that the threshold should be increased to 5 hours. AESA also said that passengers should be treated equally regardless of the cause, but suggested that the time threshold should vary depending on the length of the flight. In contrast another Member State said that any compensation for delays would violate the Montreal Convention, and another said that the Court of Justice had expanded the legal framework rather than highlighting deficiencies in the legislation. One NEB said that it was important to incorporate the Sturgeon judgement within the main text of the Regulation.
- 1.73 **Consumer and passenger associations:** Most consumer representatives supported the current 3 hour threshold and asked that the Sturgeon judgement be explicitly incorporated within the Regulation. BEUC and several other respondents said that airlines were not implementing the Sturgeon judgement at present. Holiday Travel Watch said that the threshold should vary by length of flight, but the EPF said that it should not vary, as the inconvenience to passengers could be the same regardless of the length of their flight. CEACCU said that the 3 hour threshold was already too high, as it might more than double the journey time, and said the threshold should be a proportion of the scheduled journey time. BEUC also said that prior to the Sturgeon judgement, airlines tended to claim that cancellations were actually long delays, in order to minimise their obligations. The Confederación de Consumidores y Usuarios (Users & Consumers Spanish Confederation, CECU) said that they were still doing so, despite the Sturgeon judgement, and therefore the Regulation should specify criteria by which delays and cancellations could be distinguished.
- 1.74 **Individuals:** The individual responses showed a mix of views. Several argued that the current levels of compensation were excessive, or echoed the airline views that compensation should not be payable at all. In contrast some others noted airlines were

failing to comply with the obligations identified in the Sturgeon judgement, or argued that the threshold for compensation should be reduced.

- 1.75 **Other:** Transindemnitate.com and the research centre Centre d'étude et de prospective stratégique (Centre for Long Term Strategic Studies, CEPS) said that the compensation threshold should vary depending on flight length. The Organización Nacional de Ciegos Españoles (Spanish national organisation of the blind, ONCE) said that disabled people could not wait 3 hours. In contrast, the Community of European Railway and Infrastructure Companies (CER) and other railway representatives responded that the Montreal Convention prohibited compensation for delays, and also argued that rights should be equalised between modes. The Utrecht University Molengraaff Institute for Private Law, and some other respondents, also said any right to compensation would infringe the Montreal Convention.

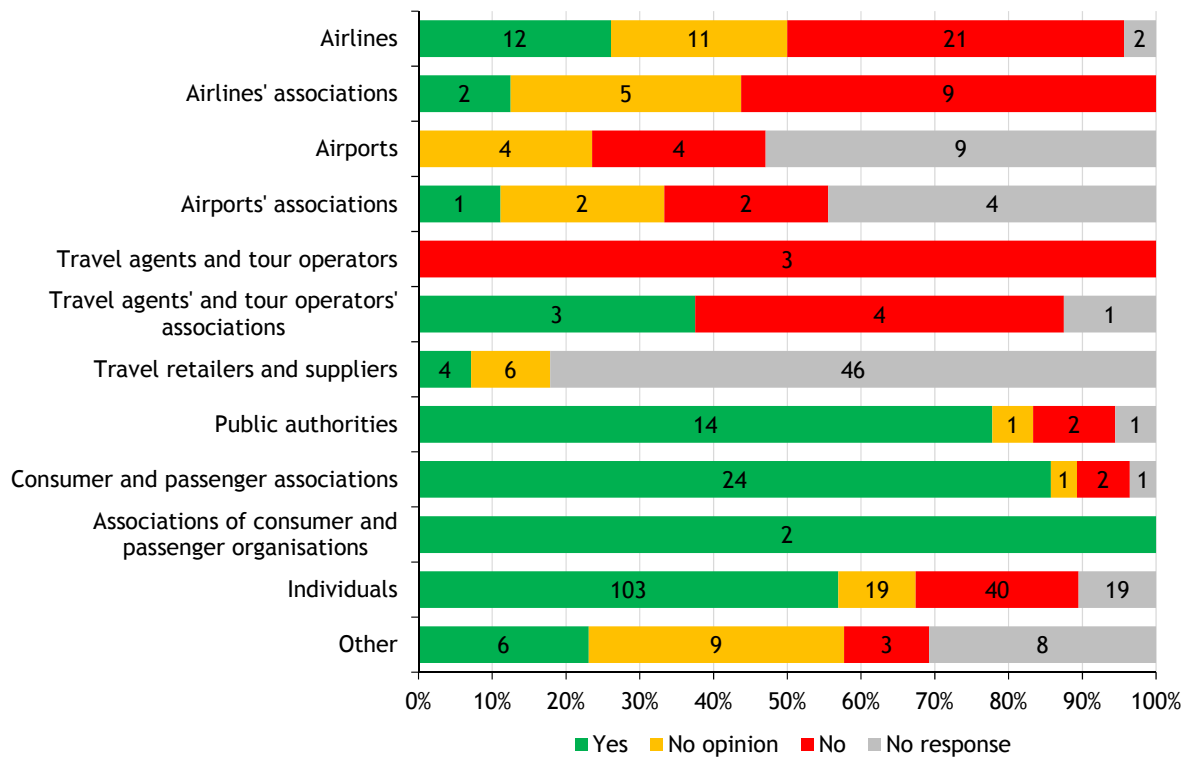
Time periods for assistance

- 1.76 At present the Regulation defines that passengers have a right to assistance such as refreshments and telephone calls but the thresholds for this differ: for cancellations and denied boarding, passengers are entitled to immediate assistance, whereas in cases of delays there is only an entitlement after 2-4 hours depending on the length of the flight. Rights to rerouting or a refund also depend on the cause of the disruption. The consultation asked whether these rights should be harmonised.

Question 8.1: Should the Regulation be amended to introduce consistent time periods, after which there would be a right to assistance (such as refreshments and telephone calls), regardless of whether the disruption was caused by delay or cancellation and regardless of the length of the flight?

- 1.77 Figure 12 displays the respondents' views for this question. Most public authorities and consumer associations, including both BEUC and EPF, agreed that the Regulation should be amended to introduce consistent time periods for assistance regardless of the cause of the disruption. In their direct submissions to the study, several argued that a common time threshold would make the Regulation more consistent and easier to understand. Some also made references to the equal treatment principle discussed in the Sturgeon judgement.
- 1.78 Travel agents, tour operators, airlines and their representative associations were least likely to agree, or had no opinion: of the main pan-EU associations, AEA, ELFAA and ECTAA/GEBTA opposed this, with the remainder not expressing any views. Several argued in their direct submissions to the study that delays and cancellations were different situations and this should be reflected by the Regulation. However, a minority of individual airlines (most of which were leisure-orientated airlines) did support a common threshold, and in direct submissions to the study there was some support for common time thresholds for assistance (although not common treatment between delays and cancellations) to make the Regulation more consistent and easier to apply.
- 1.79 ACI Europe also opposed this proposal and most other airport associations and airports also either opposed this or expressed no opinion. The significant number expressing no opinion may be a reflection of the lack of a clear alternative proposition - it is not clear from the question whether such an option would increase or reduce the economic burden of the Regulation.

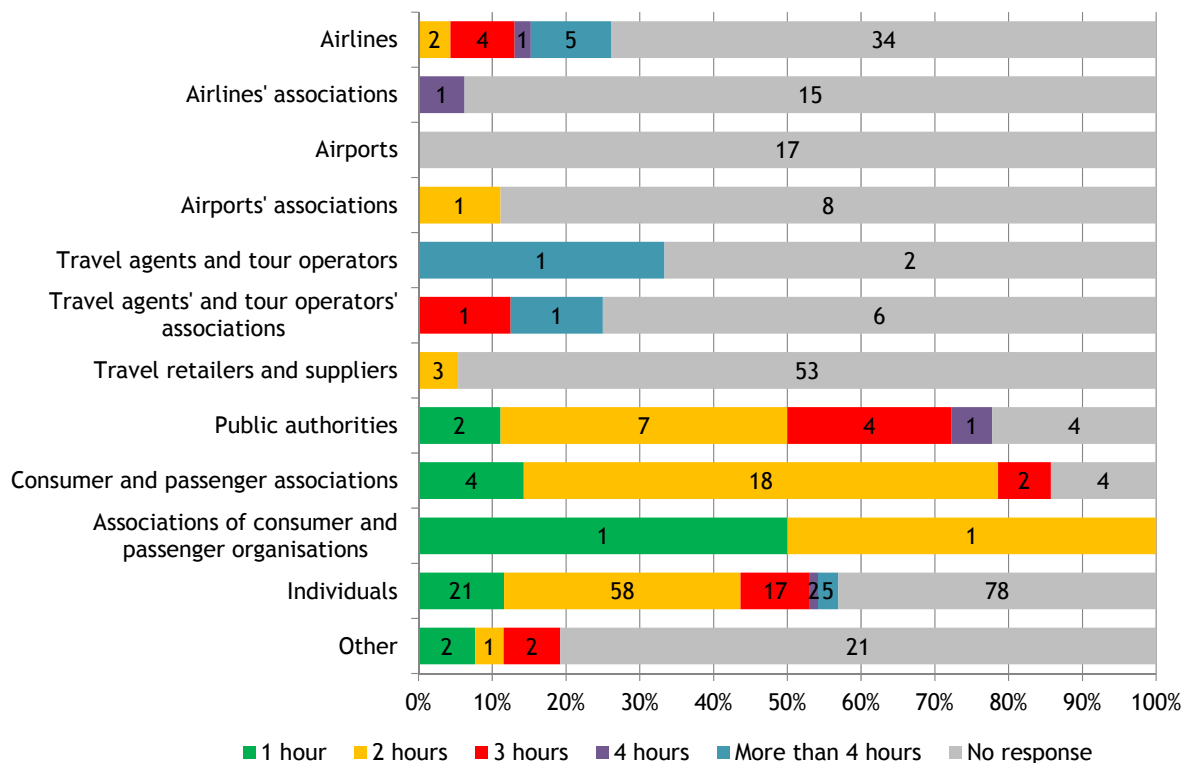
FIGURE 12 STAKEHOLDER VIEWS: QUESTION 8.1



Question 8.1b: If yes, what should the time period be, after which there would be a right to assistance such as refreshments and telephone calls?

1.80 For those who answered yes to the previous question, their preferred time period after which assistance has to be provided is illustrated in Figure 13. BEUC and most individual consumer associations supported a threshold of 2 hours, although EPF and some others proposed 1 hour. Most public authorities also proposed a threshold of either 2 or 3 hours. None of the main pan-EU industry associations responded to this question; the minority of airlines, travel agents / tour operators and their representatives that did respond generally favoured longer time thresholds. Industry respondents also generally did not express views on appropriate thresholds in their direct submissions to the study.

FIGURE 13 STAKEHOLDER VIEWS: QUESTION 8.1B



Question 8.1c: please explain/justify briefly your choice

- 1.81 **Airline and airline associations:** Few airlines or associations provided further comment. There was a divergence of opinion among those which did respond - with some (for example Enter Air) arguing that the current distinction between delays and cancellations and/or long and short haul passengers was unjustified; whereas others argued that there were good reasons why these distinctions were applied. One airline emphasised the greater time required to provide assistance to all the passengers on board a large long-haul aircraft, and XL Airways France stressed that too low a threshold might lead to an increase in costs and ultimately ticket prices; although it was in favour of the concept of standardisation. Singapore Airlines highlighted that the meal service which would have been provided on board a long haul flight would have been more extensive, and this should be taken into account when determining the care to be provided in the event of disruption. United Airlines and A4A added that limits should be applied to airlines' liabilities for the provision of care.
- 1.82 **Airports and airport associations:** Airports and airport associations did not respond to this question.
- 1.83 **Travel agents and tour operators:** Only two travel agents and tour operators provided a response to this question. The Association of Independent Tour Operators (AITO) suggested that a threshold of 5 hours be adopted 'for consistency', whereas the Thomas Cook Group stressed the difficulty in applying any kind of uniform threshold; as the availability of assistance would depend on both the circumstances of the delay and the facilities available at a given airport.

- 1.84 **Travel retailers and suppliers:** Only one company replied to this question, stating that passengers should be offered at least some refreshments after a wait of 2 hours, with further assistance to be provided after a longer delay; which could include Wi-Fi internet access as an alternative to telephone calls.
- 1.85 **Public authorities:** One Member State suggested that delays, cancellations and denied boarding were not comparable, and that therefore differentiation of treatment on this basis was appropriate. The Finnish Consumer Agency and Ombudsman was one of the authorities which took a different view, emphasising the increased simplicity for passengers of a system with consistent time periods, although it also acknowledged differences between the disruption types which might necessitate some differences in approach. Despite also arguing for a consistent threshold, another regulator suggested that it be set at 4 hours. In contrast, the Agència Catalana del Consum (Catalan Consumer Agency) argued for a consistent threshold of 2 hours. Another regulator highlighted advantages and disadvantages in standardising the threshold, contrasting the apparently unfair distinction between long and short haul passengers with the possibility that the proportionate disruption suffered by short haul passengers subjected to the same delay would be higher. One entity argued that the harmonisation of air passengers' rights in the event of a cancellation or delay is a consequence of the case law established by the Sturgeon judgment.
- 1.86 **Consumer and passenger associations:** Almost all of the respondents were in favour of consistent time thresholds, with many reflecting their responses to question 8.1b in suggesting that this be set at two hours (ADAC suggested that the two hour threshold was one which had proven itself in practice). This was justified on the basis of greater simplicity from a passengers' point of view, and the similar inconvenience suffered by passengers despite the differing lengths of their flights. The Bundesarbeitskammer (Austrian Chamber of Labour, BAK) stressed that a new standard should only be applied if it did not diminish existing passenger rights; and the Fédération Internationale de l'Automobile (FIA) suggested reducing the threshold only for passengers with special needs. Finally, the EPF suggested that airlines were holding passengers on the tarmac or in boarding areas in order to avoid being liable for assistance.
- 1.87 **Individuals:** A range of opinions were expressed by the individuals who responded to this question. Whereas some supported the introduction of consistent thresholds, others put forward arguments as to why variances in the treatment of different types of passengers in different situations were justified. Again, two hours was commonly proposed as a possible threshold, although other alternatives were suggested.
- 1.88 **Other:** The only response to this question was provided by the ONCE, which emphasised that disabled passengers might have to take medicine which would require the accompaniment of a meal or refreshments.

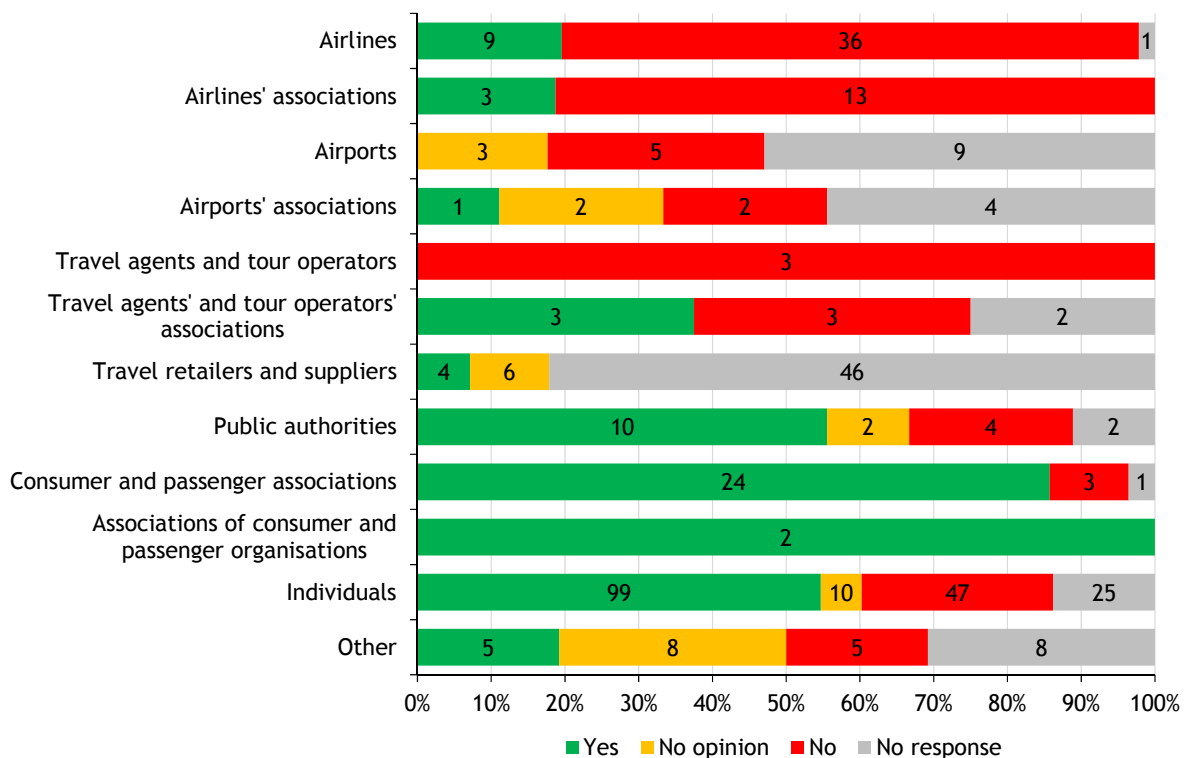
Question 8.2: Should the Regulation be amended to introduce consistent time periods, after which there would be a right to refunds or re-routing, regardless of whether the disruption was caused by delay or cancellation?

- 1.89 The responses of stakeholders to this question are depicted in Figure 14. Again, the industry stakeholders were generally opposed to change - all of the main pan-EU associations (IATA, IACA, ERAA, AEA, ELFAA, ECTAA/GEBTA and ACI) opposed common

thresholds. A minority of individual airlines did support common thresholds; there was no consistency between these (for example in terms of business model) which would explain why they had adopted a different view.

- 1.90 On the other hand, the majority of public authorities, consumer associations and individuals supported the introduction of common thresholds. Some explanations for this mentioned in direct submissions to the study were discussed under question 8.1 above.

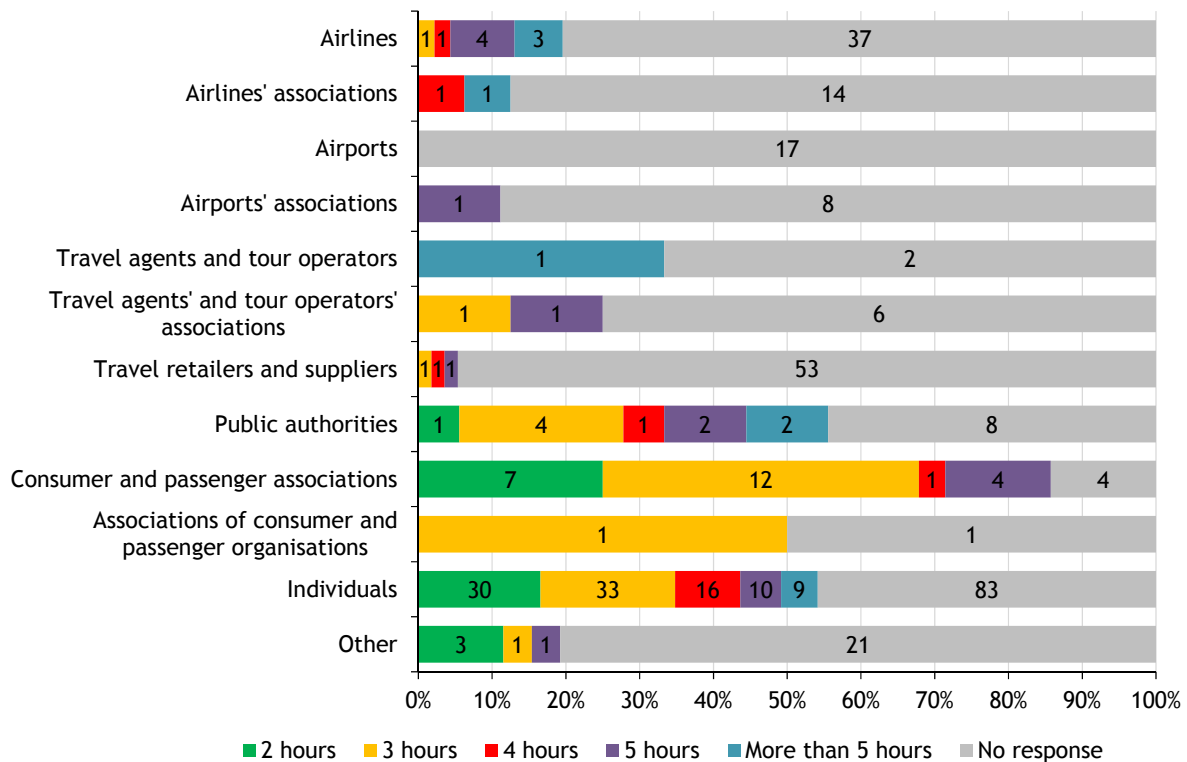
FIGURE 14 STAKEHOLDER VIEWS: QUESTION 8.2



Question 8.2b: If yes, what should the time period be, after which there would be a right to refunds and re-routing?

- 1.91 For those respondents who answered yes to question 8.2, their responses to question 8.2b are shown in Figure 15. Consumer associations and individuals were more likely to opt for a time period of 2 or 3 hours after which there would be a right to refunds and re-routing; BEUC supported a period of 3 hours whereas EPF did not express any view. Of the few airlines, airports and travel agents that replied to this question, the majority preferred the longest time periods of five hours or more than five hours. Public authorities did not express any common view but the largest proportion proposed 3 hours.
- 1.92 Respondents that answered no to the previous question were not able to submit a response to this question and so most industry representatives did not.
- 1.93 It is notable that, despite 2 hours being more consistent with the passenger rights Regulations applying in other sectors (in rail, for example, the threshold is 1 hour), this was not supported by a significant proportion of stakeholders of any type, and no industry representatives at all supported this option.

FIGURE 15 STAKEHOLDER VIEWS: QUESTION 8.2B



Question 8.2c: please briefly explain/justify your choice

- 1.94 **Airline and airline associations:** Most airlines and airline associations considered the proposal to introduce consistent time thresholds as inappropriate, as it would not allow for the fact that cancellations and delays are different and require a different response. Svenska FlygBranchen (Swedish Aviation Industry Group, SFB) stated that the proposal would incentivise carriers to cancel flights that might otherwise have operated with a delay, inconveniencing passengers further. Air Berlin highlighted that in some countries (such as Egypt), passengers' visas may expire if refunds are issued and the passenger no longer has a booked flight. Monarch noted that charter airlines would be severely affected by having to offer rerouting, as they often operate to destinations that are not well served by scheduled flights. On the other hand A4A conceded that consistent time thresholds would minimise passenger confusion.
- 1.95 **Airports and airport associations:** Airports and airport associations did not respond to this question.
- 1.96 **Travel agents and tour operators:** The Thomas Cook Group was the only respondent in this category. They highlighted the problem of having to refund a charter flight sold as part of a package holiday when the individual elements are not separately priced.
- 1.97 **Travel retailers and suppliers:** Travel retailers and suppliers did not respond to this question.
- 1.98 **Public authorities:** These organisations stressed the importance of equal treatment of affected passengers, as they suffer the same inconvenience whether the flight was

delayed or cancelled. The Danish Transport Authority noted that while refunds could be given within a time period of less than five hours, the possibility of re-routing would depend on the destination, the number of passengers and the time of year.

1.99 **Consumer and passenger associations:** Many consumer and passenger associations stated that delays and cancellations should invoke the same rights because the burden on the passenger is the same, irrespective of the reason for the disruption. However, there was no consensus regarding an appropriate threshold at which the right to a refund or rerouting would apply. Some noted that even relatively short delays can negate the purpose of a trip or cause missed connections so passengers should be offered re-routing or a refund at the earliest possible opportunity. BEUC stressed the importance of a re-routing option (rather than a refund alone) due to the higher cost of last-minute tickets. The EPF recommended aligning air passengers' rights to those of passengers on land-based transport.

1.100 **Individuals:** The responses in this category were mixed but tended to suggest that a threshold of around three hours would be a reasonable compromise between passengers' requirements to reach their destination and the airlines' interests. Some suggested shorter times, which reflect the fact that passengers will already have been at the airport around two hours before the scheduled departure time and that even a short delay may render the journey unnecessary. Other suggestions included variation by flight length and consideration of arrival time at the destination (where, for example, a delay to an evening flight might make it difficult or impossible to travel from the destination airport to the final destination such as the city centre). A minority of respondents believed that the current provisions were sufficient.

1.101 **Other:** Two responses were received in this category: one requested equal treatment with a three hour threshold for both delays and cancellations and the other suggested varying the threshold according to the length of the flight, from two hours for routes shorter than two hours to five hours for routes longer than four hours.

Information in cases of disruption

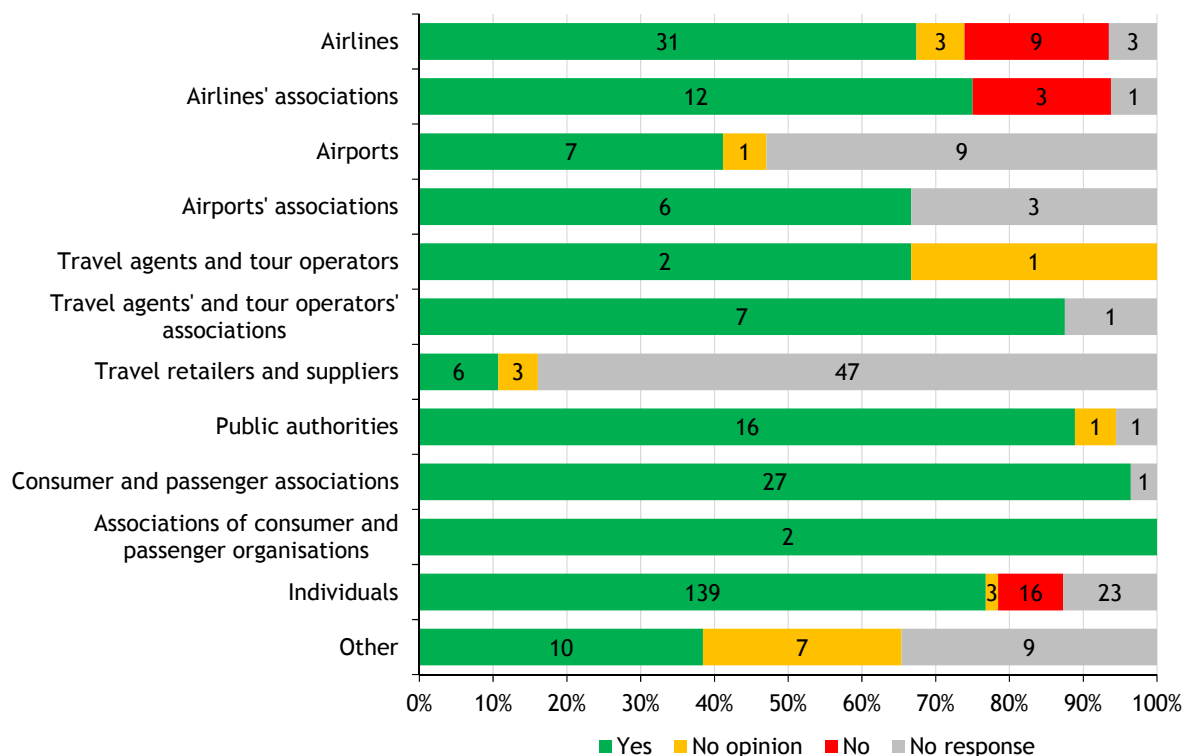
1.102 The consultation document cited the requirements on information in cases of disruption contained in passenger rights legislation for other modes, and explained that the Commission wished to consider whether an equivalent requirement should apply in the air transport sector.

Question 9: Should airlines be required to provide passengers at the airport with appropriate information on the circumstances and the expected waiting time for delays and other disruption to their journeys?

1.103 The majority of each stakeholder group agreed that airlines should be obliged to provide passengers with appropriate information regarding the circumstances of the delay and the expected waiting time as demonstrated by Figure 16. This option was supported by most of the pan-EU airline associations (IATA, ERAA, ELFAA and AEA - IACA did not respond). Although a minority of individual airlines did not support this proposal, there was no consistent pattern between these which would explain why they adopted a different position.

1.104 Consumer associations and public authorities were particularly supportive, with almost all stakeholders agreeing with the proposition. ACI also supported this, as did most other airport representatives that expressed any view.

FIGURE 16 STAKEHOLDER VIEWS: QUESTION 9



Airline representative at the airport

1.105 The consultation document noted that passengers affected by flight disruptions may face difficulties finding an interlocutor at the airport. It asked whether this could be addressed by requiring each airline to designate a representative available at each airport that they serve, in order to assist passengers in the event of disruption.

Question 10.1: Should airlines be required to designate a person at each airport that they serve, to assist passengers in the event of disruption?

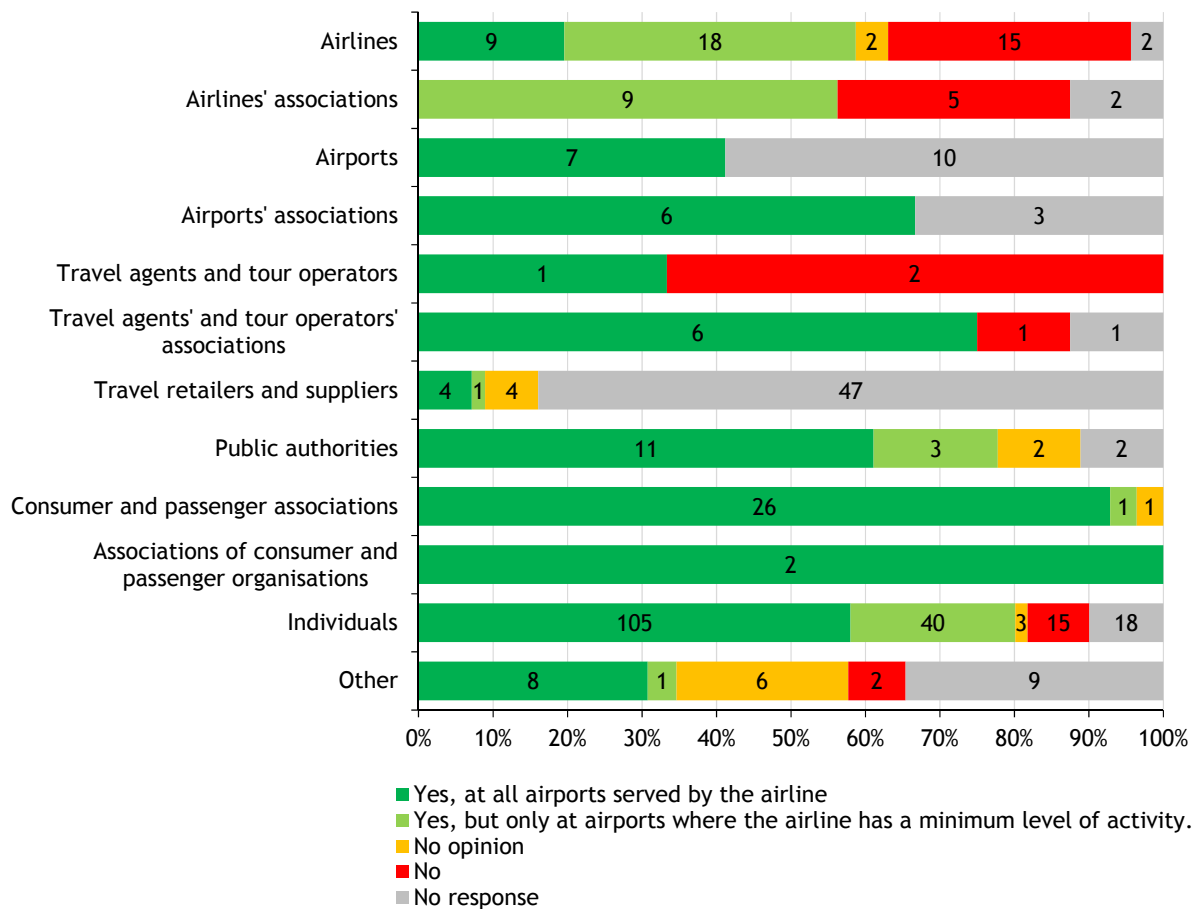
1.106 Figure 17 below shows the stakeholders' responses to this question. Again, consumer associations, public authorities and airports were most likely to agree that airlines should be required to have a designated person to aid passengers in the event of disruption at all airports served by that airline. Almost all consumer associations, including BEUC and EPF, expressed this view both in response to the open consultation and in bilateral interviews. BEUC said in its direct submission that this was is an priority and that there should be an obligation to create an information complaint desk in each airport responsible for dealing with passengers' complaints and assistance; most agreed, although a minority said that the priority was that information was given and readily accessible, rather than necessarily that it was given in person.

1.107 Airlines expressed mixed opinions; few thought there should be an obligation to designate a person at all airports served, but some agreed that a person should be designated at

airports where the airline has a minimum level of activity. Others disagreed with the requirement to designate a person at all. Amongst the main pan-EU airline associations there was no consensus: IATA, IACA and ERAA said a contact person should be designated at airports at which airlines had more than a certain level of activity, whereas AEA and ELFAA opposed the proposal altogether.

- 1.108 In the bilateral interview, AEA said that this proposal would be difficult to comply with at non-EU airports served by EU airlines; IATA said that the proposal would imply a substantial cost if it was required at all airports served by an airline. ELFAA, IACA and ERAA said that there would always be a handling agent for passengers to speak to in any case. Several airlines said that their staff would in any case be present at the airport to assist passengers, but that other channels (such as SMS) might also be used. easyJet also said it was impractical for any designated person to assist a significant proportion of passengers in a case of mass disruption when thousands might be stranded; legislation should not prescribe how airlines communicate in these cases. Ryanair said it already had a named contact person at each of its airports to assist, and that handling agents would report all incidents to its operational control centre.
- 1.109 ECTAA/GEBTA, and most other travel agent and tour operator representatives (but not the travel agents and tour operators that have airlines within the same owning group), also supported airlines having to designate a person at all of the airports they serve - although in its direct submission to the study ECTAA said that the person could be a handling agent. In addition, ACI Europe and all of the other airport representatives that expressed any opinion supported the proposal that airlines had to designate a representative at all airports served. One respondent emphasised that it was important that this person had sufficient authority to take actions themselves, and that they were trained in customer relations - although it also said that it could be a handling agent rather than an airline employee.

FIGURE 17 STAKEHOLDER VIEWS: QUESTION 10



Question 10.2: If yes, which criteria should determine the choice of airports for an airline?

- 1.110 **Airline and airline associations:** Although a few airlines suggested that the required airports could be determined by the number of flights or passengers, the vast majority stressed that the obligation should relate to periods during which an airline operates from the airport. Some organisations, such as SAS Group and SFB, specified that the representative would only be needed three hours before and one hour after a scheduled flight, and suggested that the designated representative should not be exclusively dedicated to the task of providing assistance. Several respondents argued that airlines should be free to fulfil their duty to inform affected passengers as they deem appropriate, such as by appointing a ground handling agent as the point of contact. XL Airways France noted that the airline representative at the airport would be unlikely to have the seniority to commit the airline to decisions (regarding re-routing, for instance) that could incur substantial costs for the airline.
- 1.111 **Airports and airport associations:** Airports and airport associations did not respond to this question.
- 1.112 **Travel agents and tour operators:** Travel agents and tour operators did not respond to this question.

- 1.113 **Travel retailers and suppliers:** Travel retailers and suppliers did not respond to this question.
- 1.114 **Public authorities:** The UK CAA supported the designation of a contact person to provide information but noted that airlines already have representatives at most of their airports and provide phone-based support for the remaining airports. The CAA also pointed out that ground handling agents would not have the authority required to commit airlines to expenditure. The Danish Transport Authority supported the use of passenger numbers as a criterion to determine in-scope airports.
- 1.115 **Consumer and passenger associations:** ECC Cyprus stated that either passenger numbers or the frequency of flights could determine the choice of airports. EPF said that all airports served by an airline should be in-scope.
- 1.116 **Individuals:** Where individual respondents suggested criteria, these tended to be based on the frequency of flights. Many individuals highlighted the likely impracticalities of this option, in terms of costs and the ability of one member of staff to deal with a plane-load of passengers. Alternatives suggested include the use of ground handling staff or airlines' on-board staff. One respondent stressed that passenger rights should be the same for all passengers regardless of the carrier chosen and suggested that airports should hire trained personnel to assist all passengers during disruption; and another said that no legislation was required in this respect, as the provisions of Articles 7 and 8 of the Regulation could not be satisfied without such a person already being in place.
- 1.117 **Other:** One of the other respondents (Blue Chip Jet) suggested that airlines should be able to delegate a ground handling agent to carry out the role and that it 'seems impractical' to specify standard requirements based on airport size or airline operations. Another - Europäische Reiseversicherung AG (ERV) - stated that the proposal could make the provision of assistance to passengers affected by disruption more efficient.

Role of airports

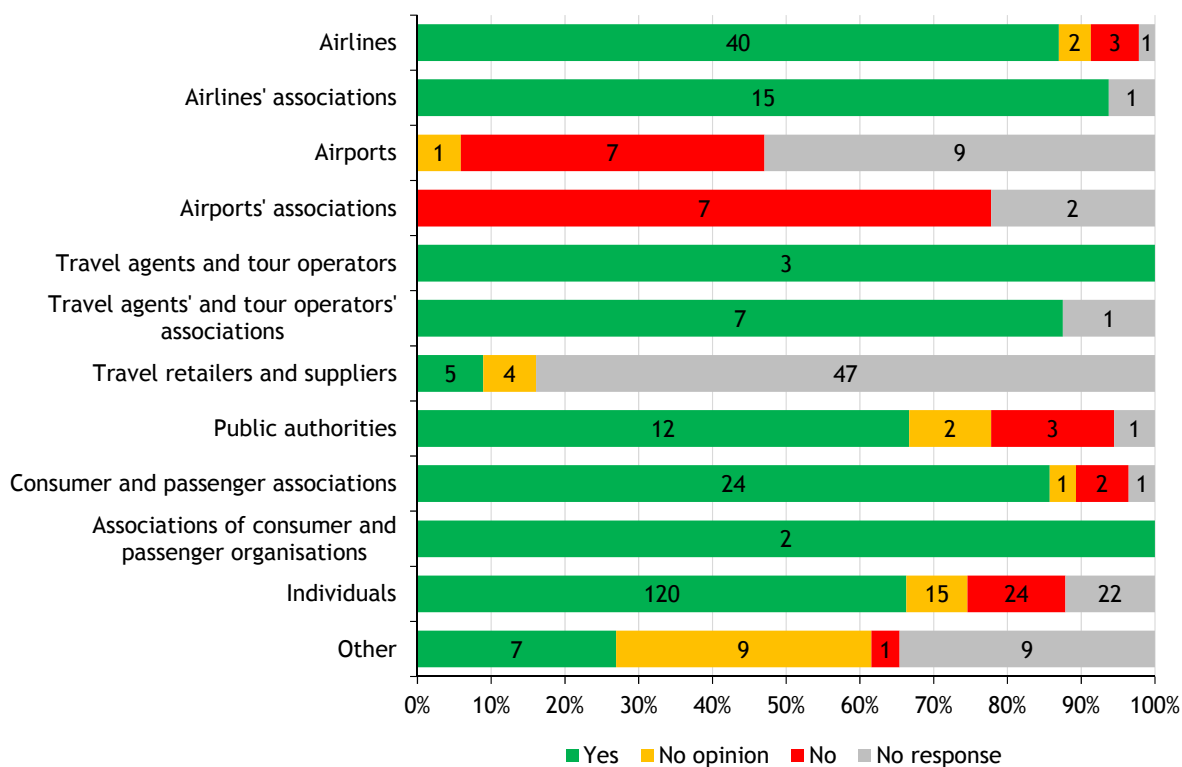
- 1.118 At present, the Regulation defines the airline as being responsible for provision of compensation and assistance. The consultation document asked whether some of these responsibilities could be given to airports instead.

Question 11.1: Should airports be given any responsibilities, either to assist passengers directly, or to develop contingency plans (with the airlines and their ground handlers, and national authorities) whenever airports are affected by special circumstances where a large number of flights are disrupted (e.g. bad weather)?

- 1.119 Almost all airlines and tour operators, and their representative associations, agreed that airports should be responsible for some passenger assistance or for development of contingency plans for when a large number of flights are disrupted. In the bilateral interviews, airline associations and individual airlines said that the airport could be in a better position to undertake certain tasks. These included displaying information on passenger rights (as this obligation applies to all airlines), and assisting passengers in particular during periods of mass disruption and on behalf of airlines for which the airport was not one of their main bases (as they would have fewer staff at the airport). However, IATA and ERAA also expressed concern that any associated cost would be passed on to airlines.

- 1.120 Almost all consumer representatives also agreed that airports should be given some responsibility; in our interview, BEUC said that there should be joint liability between the airport and the service provider for assistance. However, some other consumer representatives cautioned that any sharing of responsibility should not create confusion about which organisation was responsible or change the fact that the airline is ultimately responsible. Whilst public authorities also generally supported the proposal to give some responsibilities to airports, in the interviews several NEBs stated that this should be limited to provision of information, contingency planning and coordination during exceptional mass disruption; most thought the primary responsibility should remaining with the airlines, to avoid creating a confused split of responsibilities.
- 1.121 In contrast, ACI and almost all other airport respondents which expressed any view did not support this proposal. In its direct submission to the study, ACI said that the role of airports was to provide infrastructure for airlines to use, but that it was the responsibility of airlines to care for their passengers, and it was only the airline that had a contractual relationship with them. Several individual airports noted that they do already prepare contingency plans for mass disruption, and that they had assisted passengers in specific cases, but that the primary obligation should remain with airlines. One airport group said that the primary problem with the Regulation was that airlines did not always comply with these obligations.
- 1.122 Consistent with this, Figure 18 demonstrates that the majority of airports disagreed with this proposal but most other stakeholder categories including airlines, tour operators, consumers and public authorities supported it.

FIGURE 18 STAKEHOLDER VIEWS: QUESTION 11



Question 11.2: If yes, what responsibilities should airports be given and under which circumstances?

- 1.123 **Airline and airline associations:** Airlines were generally in favour of transferring responsibilities and risks to airports, although they suggested a variety of ways to achieve this. Many carriers suggested that airports are often in a better position to provide assistance and care than are airlines. Specific suggestions for airport involvement include:
- The provision of shelter and food for stranded passengers;
 - Directing passengers to the right personnel to make alternative travel arrangements and helping them obtain assistance from the airline;
 - Sharing the costs of compensation and accommodation;
 - Ensuring that care and assistance facilities (food outlets, phones, internet access) are open during disruption;
 - Accommodating passengers within the terminal when all hotels are booked;
 - Arranging transit visas when an overnight stay is required; and
 - Contingency planning.
- 1.124 In addition, XL Airways France suggested that airports should coordinate all hotel bookings because they can use their position to negotiate better rates and prevent larger airlines from booking all the accommodation to the detriment of passengers travelling on small- or medium-sized carriers. Norwegian and some other airlines suggested that the airport should be responsible for providing the assistance specified in Article 9 whenever the disruption is beyond the control of the carrier (e.g. weather, slot issues, volcanic ash). However, many airlines expressed concern that airports would simply pass on the costs to airlines, who ‘will lose control over how passengers are being treated and still be obliged to pay for it’ (SAS Group). SAS believed that for this reason airlines would be better off caring for their passengers themselves. A number of organisations (such as IACA, the Association of Asia Pacific Airlines (AAPA) and Transavia expressed a preference for airlines and airports to reach an agreement on an airport-by-airport basis, rather than imposing a standardised approach.
- 1.125 ELFAA and Ryanair stated that in most cases airlines would prefer to arrange assistance themselves but that there needs to be a mechanism by which the airlines can receive compensation from airports (or other third parties) for failure to provide the contracted level of service.
- 1.126 **Airports and airport associations:** Most of these respondents, having answered ‘no’ to the previous question, did not answer this question. However, ACI Europe expanded on their position that there is no need to transfer responsibilities to airports. They argued that the principle that a passenger’s primary relationship is with their airline, on which the Montreal Convention and Regulation 261/2004 are based, meant that airlines should retain full responsibility for assisting their passengers. It said that adding airports into the relationship would add unnecessary complications for the passengers and stress that airlines can already seek redress from third parties under Article 13.

- 1.127 **Travel agents and tour operators:** Responses from this group focused on the idea that airports should be responsible when the disruption affects multiple flights or airlines, including weather-related causes. Many organisations argued that airports are often in a better position to provide the care and assistance. A key concern raised several times was the ability of airports to simply pass on the cost to the airlines.
- 1.128 **Travel retailers and suppliers:** Only one response was received in this category. It argued that airports should offer compensation in some circumstances (such as bad weather, staff strikes, and airline insolvency) and should be responsible for arranging accommodation for stranded passengers.
- 1.129 **Public authorities:** Most responses by this group stated that airports should develop contingency plans and provide information to passengers. The Norwegian Civil Aviation Authority (CAA Norway) suggested a ‘service booth’ that can provide care and assistance to passengers using any of the airport’s airlines. The Finnish Consumer Agency and Ombudsman tentatively supported transferring responsibility to airports in cases of mass disruption, but argued that it would be difficult to impose extensive responsibilities since airports do not have a contract with passengers and are usually not responsible for the disruption. They suggested that in practice airports’ duties may be limited to providing information and assisting the airlines. A key concern among this group of respondents is the treatment of travellers with special circumstances, such as those with disabilities or babies.
- 1.130 **Consumer and passenger associations:** The airports’ duty to prepare contingency plans was mentioned in many responses. Most supported the involvement of airports in providing the care and assistance required in Article 9, particularly when multiple airlines are affected. Responses also suggested that passengers may benefit from airport involvement when their airline does not have a major presence at the airport or when the operating carrier has changed. However, Royal Dutch Touring Club noted that it is important for passengers to address their claims to one party (the carrier), who can then claim compensation from third parties such as the airport.
- 1.131 Consumentenbond and others noted that passengers’ contracts of transport only exist with the airline; however, the EPF stated that ‘airports should have a general duty of care and assistance for any passenger passing through the airport’. The CSF argued that since a significant proportion of the ticket price is attributable to airport charges, passengers should legitimately expect airports to take some responsibility. Some organisations mentioned that airport involvement would reduce disparities between airlines’ care and assistance levels. One respondent mentioned the use of fixed-value airline vouchers which cannot buy sufficient food and drink in countries with higher prices.
- 1.132 The CECU stated that the management of providing care and assistance could pass to airports but that the cost should remain with the airline, arguing that taxpayers (via State-operated airports) should not have to pay for the airlines’ lack of planning and that airlines should not be incentivised to allow for delays in the knowledge that the cost will be borne by third parties.
- 1.133 **Individuals:** Individual respondents tended to support airports being given responsibility for information provision and at least some of the care and assistance required by Article 9. Most individuals believed this should occur when the airline is not to blame for the

disruption (e.g. the airport's failure to clear snow or strike action) or when multiple airlines are affected. One respondent suggested that the airport could ensure that airlines are meeting their requirements by being the 'middle man' that implements the measures and claims back the cost from the airlines. This could ensure speedier and better treatment for all passengers. While some individuals argued that airports exist to serve passengers and therefore have a duty of care, others recognised that the contract is between passengers and the airline and that it is better for passengers to deal with only one party, with the airlines and airports arranging cost transfers themselves as a separate process. Some responses noted that any costs airlines incur as a result of this involvement would be passed onto airlines and, ultimately, passengers.

- 1.134 **Other:** The other responses included suggestions of legislation to define airports' obligations similar to Article 9 and, given that costs will be passed on to airlines and passengers, airport responsibilities in cases where the airport can organise assistance more efficiently than individual airlines.

Other issues

- 1.135 The consultation document noted that some issues, although implicitly covered by the existing Regulation, are not explicitly referred to, and this had led to disputes as to the extent of passengers' rights. The document asked whether rights in these circumstances should be clarified.

Cases of journey disruption not explicitly addressed by the existing legislation

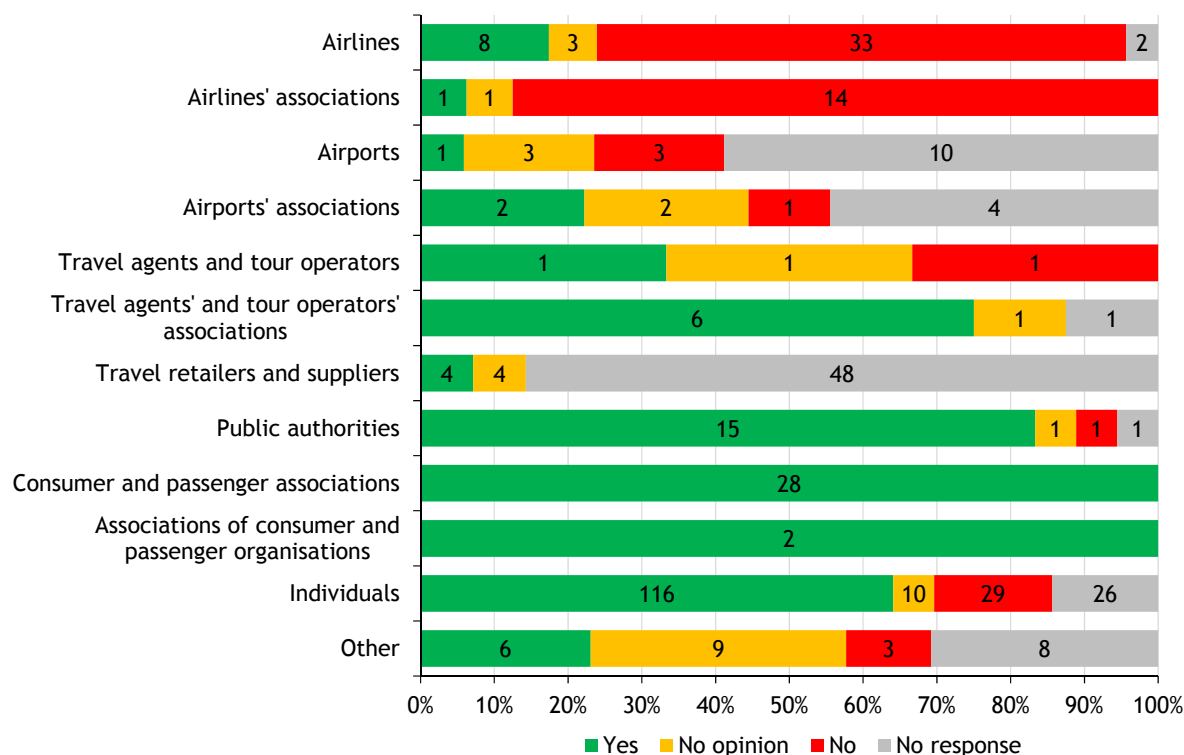
- 1.136 The following questions cover a range of situations which are covered only implicitly by the current legislation. The document asked if any revision to the Regulation could include clarification of the rights which passengers have in these circumstances.

Question 12.1: Missed connections due to the delay or cancellation with re-routing of the previous leg of a flight, where the passenger has a single transport contract covering both legs of the flight?

- 1.137 All consumer associations and almost all public authorities agreed that the Regulation should be amended to clarify explicitly that missed connections due to the delay or cancellation of a previous leg of a journey under a single transport contract are covered. In the bilateral interviews, most said that airlines generally already did provide rerouting and assistance in these cases, but that it depended on the airline and was not universally the case. Other than the issues of 'extraordinary circumstances' and 'comparable transport conditions', the issue of missed connections was one of the issues raised most often by NEBs and others in the interviews as being unclear in the current Regulation - although one NEB said that this was not a common enough problem to justify revision to the Regulation.
- 1.138 ECTAA/GEBTA agreed that missed connections should be explicitly addressed, although there was no consistent view amongst the other travel agents / tour operators and associations. ACI expressed no opinion on this issue and there was no consistent view amongst the other airport respondents.
- 1.139 Given the potential for an increase in the economic burden airlines were the least likely to be supportive of this option, as illustrated in Figure 19. All of the main airline associations

expressed opposition to this, apart from ELFAA - most of whose members do not sell connecting flights. The few airlines that did not oppose this were also disproportionately airlines that do not sell connecting flights.

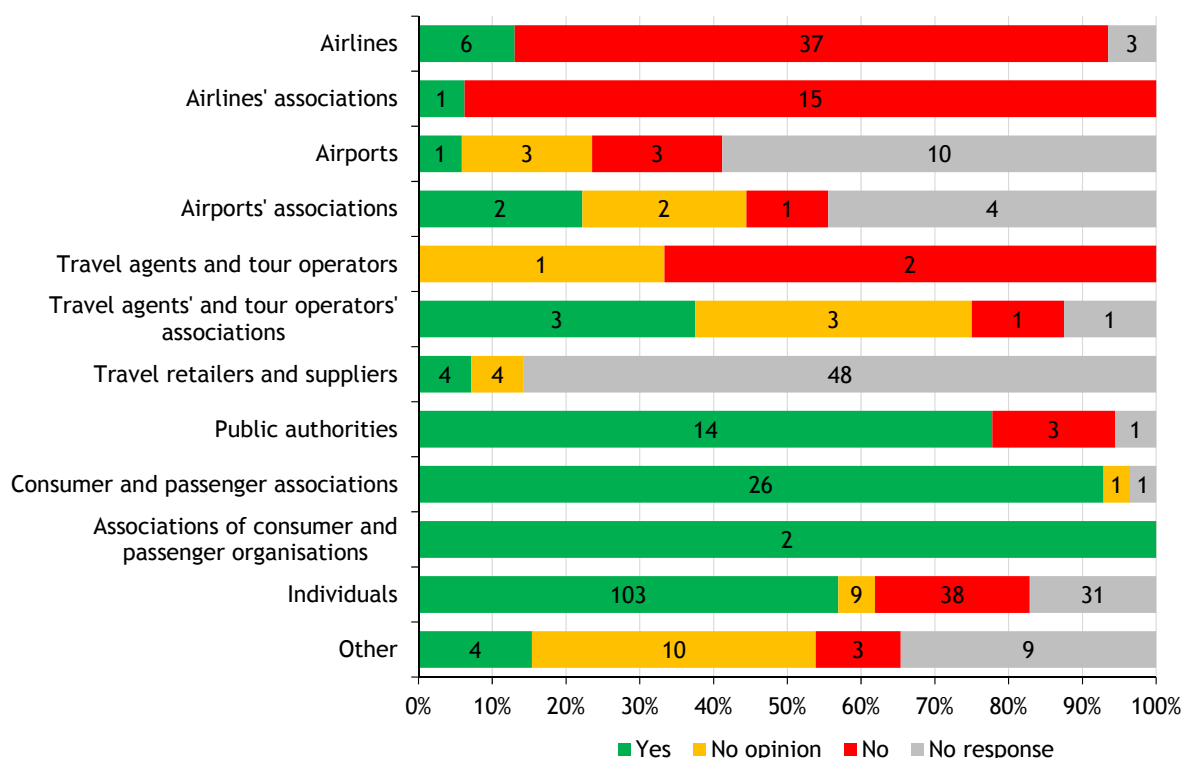
FIGURE 19 STAKEHOLDER VIEWS: QUESTION 12.1



Question 12.2: Diversion of the flight to an airport other than the intended destination airport?

- 1.140 Again, as shown in Figure 20, airlines were least likely to be in support of change, with the vast majority disagreeing that the Regulation should be amended to clarify that flight diversions are covered. All of the main pan-EU airline associations expressed opposition to this proposal, as did the large majority of individual airlines - despite the fact that, in the bilateral interviews, almost all airlines that said when this occurred they would provide onward transport (another flight or surface transport as appropriate) and care such as refreshments and if necessary hotel accommodation. One large EU airline said that, depending on interpretation, diversions already were covered by the Regulation.
- 1.141 In contrast, almost all consumer associations and the large majority of public authorities supported this clarification. In the bilateral interviews, most indicated that airlines would generally offer onward transport in these cases, but some said that airlines did not always provide other assistance; those that expressed any view did generally acknowledge that diversions were rare and would usually be outside the control of the airline. Amongst the other stakeholders, ACI and ECTAA/GEBTA expressed no view; whilst some of the travel agent and tour operator representatives supported the proposal, the two tour operator groups that also include airlines opposed the proposal.

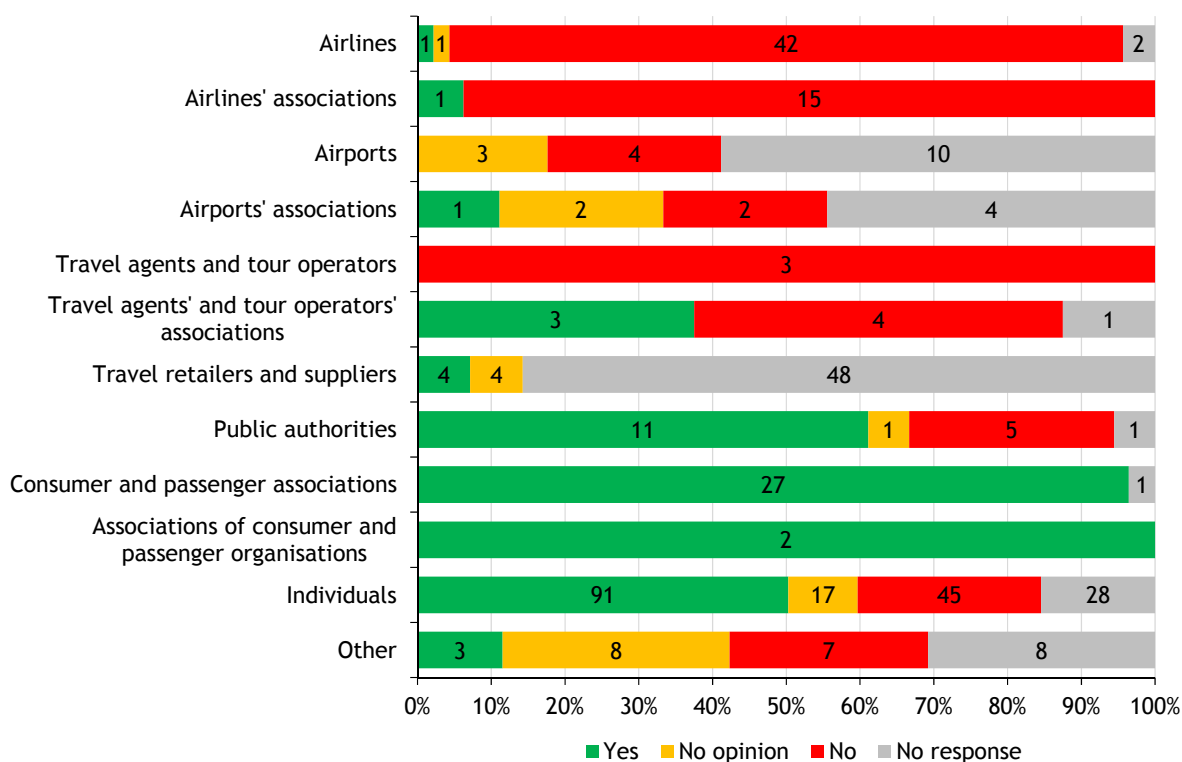
FIGURE 20 STAKEHOLDER VIEWS: QUESTION 12.2



Question 12.3: Long delays between boarding the aircraft and take-off, or between landing and disembarkation (tarmac delays)?

- 1.142 Figure 21 shows that airlines and their representative associations almost universally opposed extending the Regulation to explicitly cover tarmac delays. All of the main pan-EU airline associations opposed this. In the bilateral interviews, airlines emphasised that tarmac delays are rare at EU airports (particularly in comparison to the US), and would generally occur for reasons that were outside the control of the airline; they argued that there was no need to regulate for such rare circumstances. Most nonetheless said that they would make reasonable efforts to provide passengers with refreshments (free of charge) in these cases; some also highlighted practical or safety reasons why this might not be possible in some cases. Only one airline told us that it would charge passengers for refreshments during a long tarmac delay. ECTAA and the travel agents / tour operators also opposed the proposal, although the other travel agent and tour operator representatives were divided on the issue.
- 1.143 In contrast, almost all consumer representatives and most public authorities supported this proposal. Although most that expressed any opinion in the bilateral interviews agreed that tarmac delays were rare, some individual cases were cited in which passengers had been kept on board aircraft for prolonged periods, sometimes in high temperatures, without any assistance being offered. ACI did not express any view; several German airports and their representatives opposed the proposal but most other airport representatives did not express any opinion.

FIGURE 21 STAKEHOLDER VIEWS: QUESTION 12.3



Question 12.4: Please provide any further information or comments on how, if at all, the Regulation should be extended to cover cases of disruption not explicitly addressed at present

- 1.144 **Airline and airline associations:** reflecting the three preceding questions, airlines and airline associations argued that the Regulation should not be extended to explicitly cover any additional cases of disruption. In general they believed that airlines were already commercially incentivised to minimise delay, that it was not possible to legislate for all possible circumstances, and that additional regulation would restrict their ability to compete on service. Many presented arguments why specific types of disruption should not be made the responsibility of airlines: tarmac delays were argued to be both very rare in Europe; missed connections and diversions were argued to be adequately covered by the contract of carriage. Both of these circumstances were argued to be generally outside the control of the airline, and Transavia argued that where this was the case any financial burden should lie with the responsible party. However, several airlines believed that it was appropriate for them to provide refreshments during long tarmac delays. A4A believed that in most cases airlines do already provide rerouting for passengers who miss connections. ERAA supported the narrowing of the scope of the Regulation on flights to remote regions or for very small carriers where limited infrastructure exists to provide assistance and rerouting.
- 1.145 IACA, AAPA and several individual airlines suggested that the Commission should first provide an assessment of the number of passengers affected by the additional circumstances, to allow a cost-benefit analysis.

- 1.146 **Airports and airport associations:** Airports and airport associations did not respond to this question.
- 1.147 **Travel agents and tour operators:** Most travel agents and tour operators (in particular, the members of TUI) took similar positions to the airlines. They stated that there was no need for additional regulation, as lengthy tarmac delays are very rare in Europe, and it would not be possible to legislate for all circumstances in a way which was both proportionate to airlines and fair to passengers.
- 1.148 ECTAA, DRV and SRF believed clarification of the Regulation was needed where there is a single transport contract for a multi-segment flight: on a single multi-coupon ticket, the final destination should be the final destination on the ticket (not the first leg) and the ticketing carrier should be liable for any rights arising from an incident of denied boarding, cancellation or delay on any of those legs, irrespective of whether that leg is operated by a non-EU carrier or departing from a non-EU airport.
- 1.149 **Travel retailers and suppliers:** Travel retailers and suppliers did not respond to this question.
- 1.150 **Public authorities:** Only half of the Public authorities responded to this question. The UK CAA said it would support these initiatives if there was evidence that the events concerned resulted in consumer detriment, and would also support access to refreshments for passengers held on-board during tarmac delays. One public authority believed that diversions could be considered for inclusion in the Regulation, but noted that most carriers already transport passengers to their original destination and provide assistance where possible. AESA believed that the rights of passengers who miss connections should be clarified, particularly where the connecting flight is on a separate contract of carriage, and under what circumstances an airline is obliged to provide assistance at connecting airports. The Catalan Consumer Agency suggested that there should be compensation mechanisms where long delays or diversions are the responsibility of airport operators. The Finnish Consumer Agency and Ombudsman had similar views to many airlines, that general contract law remains applicable, and that it was not practical to legislate for all circumstances; it had not yet had any difficulty with interpreting the Regulation on the points listed.
- 1.151 **Consumer and passenger associations:** Many ECCs and other consumer bodies responded that the Regulation should be extended to cover additional circumstances, which again reflects the responses submitted to the previous three questions. These included missed connections (both where the flights form part of a single contract and where they do not); cases where the flight departs but subsequently returns to the airport of departure (to be treated as cancellations); flights departing earlier than scheduled without prior notice; flights to the EU operated by third carriers; and helicopter services. ECC Belgium believed that the extension to missed connections should also cover tickets where one leg is on a different mode of transport. Several consumer bodies argued that where passengers are delayed on the tarmac, shorter time periods for providing assistance should apply. The UK Consumer Council believed that carriers should be prevented from offering passengers travel arrangements to an airport other than the intended destination airport without providing arrangements to transfer the passengers to their intended destination airport or a nearby location, and BEUC argued that passengers should have some legal redress to

recover any additional costs resulting from diversion to an alternative airport. Consumentenbond argued that the Regulation should be amended to calculate delay on the basis of delay on arrival. CEACCU cautioned that given the interpretations of the Regulation that had been adopted to date by the Spanish courts, expansion of the Regulation in these areas could reduce the rights of Spanish passengers.

- 1.152 **Individuals:** Many individual respondents believed that the Regulation should be expanded to cover missed connections. They argued that this should cover any additional costs of rescheduling, overnight accommodation and refreshments, and that it should apply where the passenger holds separate contracts for the different segments. In addition, they also believed that there were problems related to diversion of flights, where airlines had refused to arrange transport to the destination airport. They argued this should be specified in the Regulation, and that passengers should be offered a choice between the rerouting arranged by the carrier and making their own arrangements (possibly on the basis of a fixed amount of compensation to cover the cost of a taxi).
- 1.153 Tarmac delays were noted as a relatively significant problem by individuals, and several individuals noted that the provision of information during such circumstances was very important to passengers. A smaller number of individuals believed that the Regulation was sufficient, and that no additional compensation was necessary, or that the questions should be decided by national courts. One argued that where the root cause of a problem is poor enforcement, the legislation should not be changed.
- 1.154 **Other:** Other stakeholders submitted a range of responses. The Utrecht University Molengraaff Institute for Private Law believed that any legislation concerning delay could conflict with the Montreal Convention. A legal firm believed that delays to flights resulting from delays within the airport should be addressed. Other arguments made were similar to those made by airlines and by consumer associations.

Advance rescheduling

- 1.155 The document explained that the public consultation undertaken by the Commission in 2009-10 showed broad support for specifying the rights passengers have if their flights were rescheduled in advance. It added that, if such rights were to be defined, the question also arises as to whether the right should cover all flights under the same transport contract. It also suggested that advance rescheduling could be treated in the same way as cancellations notified in advance.

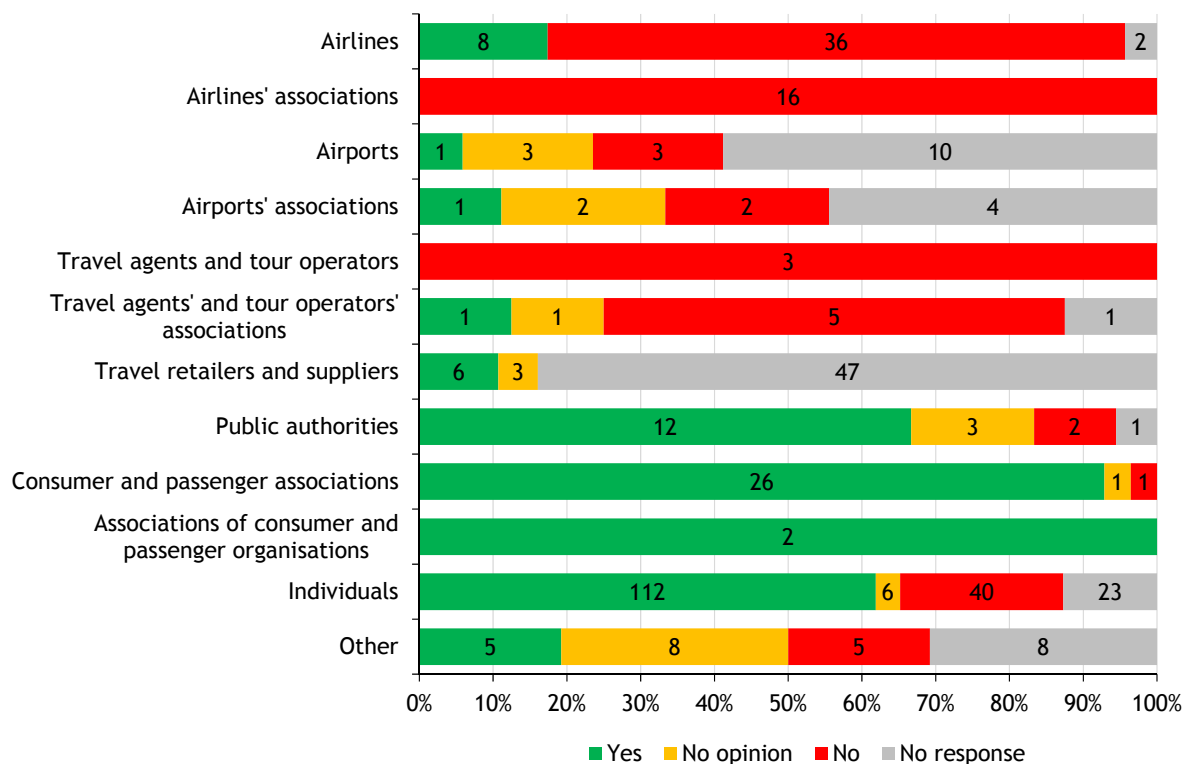
Question 13.1: Should the Regulation be amended to specify under what circumstances passengers whose flights are rescheduled in advance have a right to a refund?

- 1.156 The pattern of responses to this question was again divided between the industry and the other respondents: all airline associations and a large majority of individual airlines disagreed that the Regulation should be amended to specify the circumstances under which passengers whose flights are rescheduled in advance have a right to a refund. In the bilateral interviews, airlines emphasised that they do give passengers the right to rebook or a refund where there is a significant change to the schedule (more than 1 hour), but they believed that it was not necessary to regulate for these issues.
- 1.157 ECTAA/GEBTA and almost all travel agent and tour operator associations agreed with the airlines that the Regulation should not define this. In the bilateral interviews, a tour

operator indicated that it would give a refund if the change to the time of the flight was considered significant in the context of a package holiday (more than 12 hours); tour operators are already obliged by the Package Travel Directive to offer a refund or an alternative in the event of a significant change. ACI, and most other airports and airport representatives, did not express any view on this, reflecting its limited relevance to them.

1.158 In contrast, almost all consumer associations, including BEUC and EPF, agreed that the Regulation should be amended, as can be seen in Figure 22. Some said in the bilateral interviews that airlines do not currently offer rerouting, particularly for flights rescheduled longer in advance. One pointed out that a passenger might have paid a premium to travel at a particular time, and that it might be too late to buy an alternative flight at the appropriate time with another airline. Most public authorities agreed, although most that expressed any view in the interviews said that airlines would generally offer rerouting - although not, for example, if the route was being withdrawn and no other airline offered it.

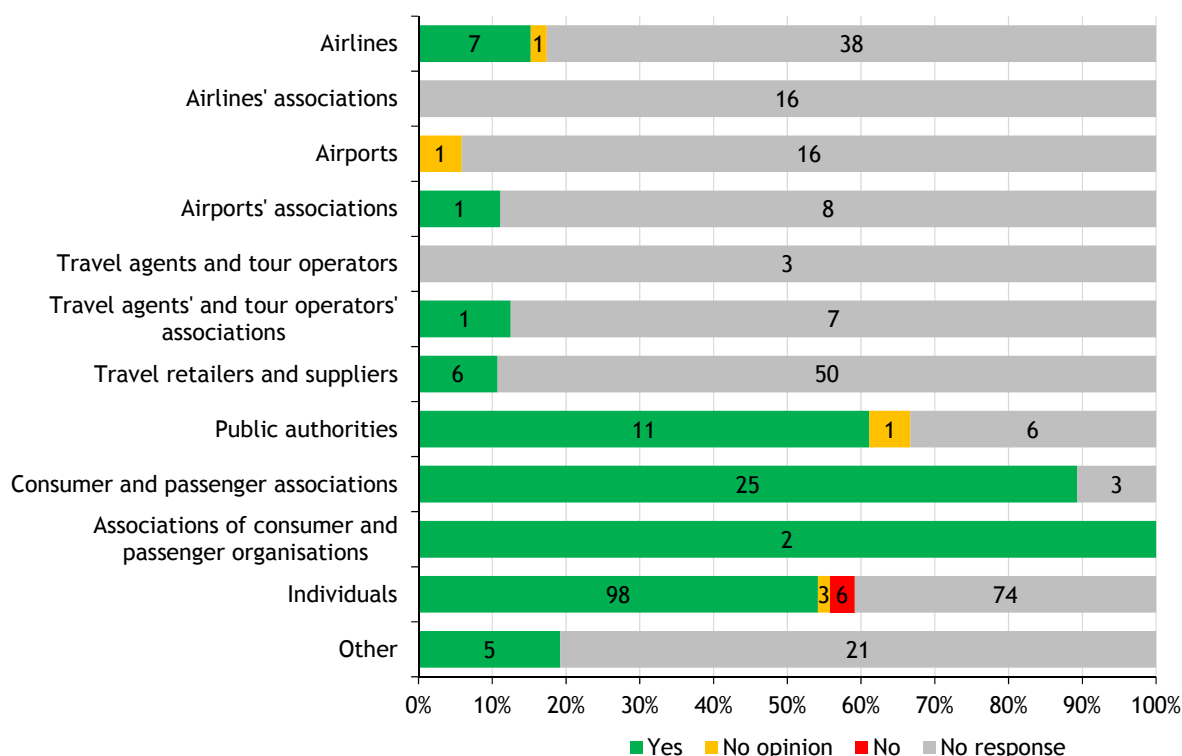
FIGURE 22 STAKEHOLDER VIEWS: QUESTION 13.1



Question 13.1b: If yes, should such right cover all flights under the same transport contract (outbound and return flights, connecting flights, etc.)?

1.159 For those who answered yes to Question 13.1, their responses to Question 13.1b are shown in Figure 23. Most industry representatives had answered no to the previous question and therefore did not respond to this. Those stakeholders that did express any view on this question almost all agreed that such a right should cover all flights under the same contract.

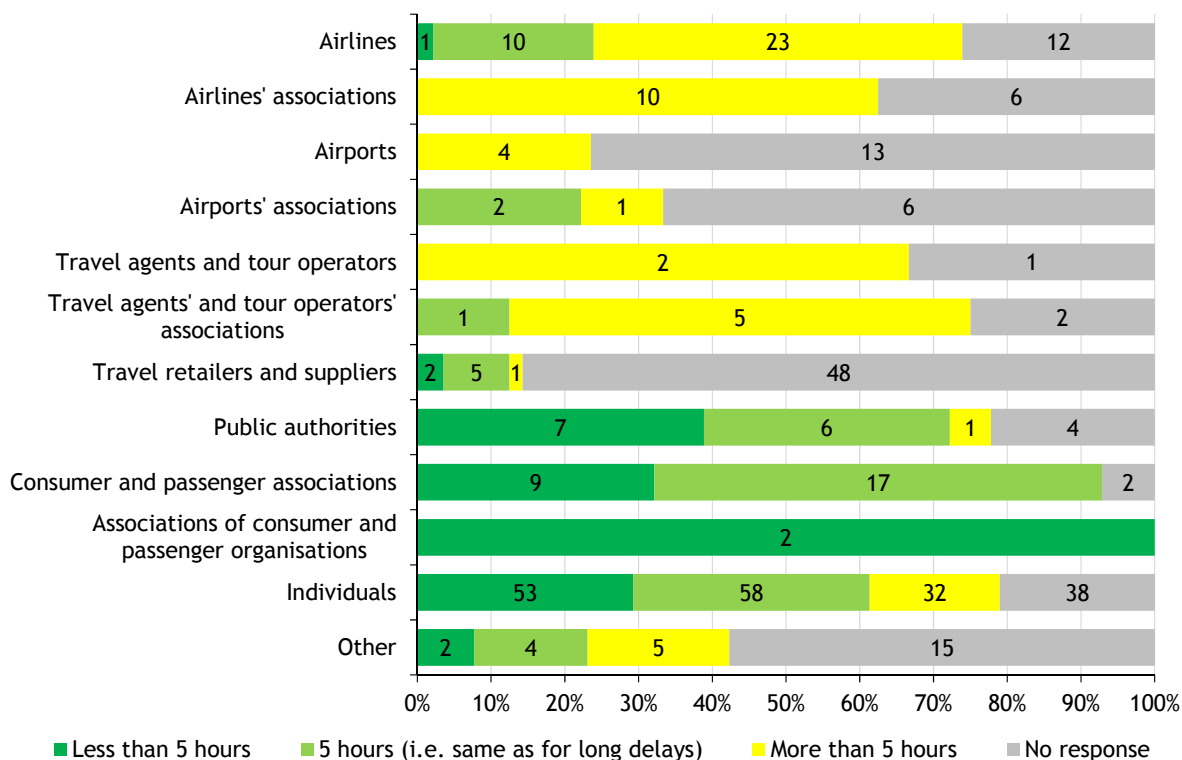
FIGURE 23 STAKEHOLDER VIEWS: QUESTION 13.1B



Question 13.2: What should the time threshold be after which passengers would be entitled to a refund?

- 1.160 The responses to this question are displayed in Figure 24. AEA, ELFAA and most individual airlines that responded selected the highest possible option (more than 5 hours), even though when this issue was discussed in the bilateral interviews, most said that a refund or an alternative would already be offered. ERAA, IATA and IACA and many other individual airlines did not express any opinion on this question. ECTAA/GEBTA and most other travel agent and tour operator representatives that expressed any opinion also considered that the threshold should be more than 5 hours.
- 1.161 In contrast, EPF and BEUC and some other consumer associations proposed a threshold of less than 5 hours, although the majority of other consumer associations proposed a threshold of 5 hours. The public authorities and individuals also generally favoured a threshold of 5 hours or less. Reflecting its limited relevance to them, ACI Europe and most other airport representatives did not express any view in response to this question.

FIGURE 24 STAKEHOLDER VIEWS: QUESTION 13.2



1.162 Several airlines believed that a ‘Not applicable’ option should have been included in this question, as they do not agree with a change of the Regulation on this issue.

Question 13.2b: please explain/justify briefly your choice

1.163 **Airline and airline associations:** Most airlines and airline associations who submitted additional comments argued that this issue was already addressed by Article 5 of the Regulation, if advanced rescheduling is considered as cancellation notified in advance (this may partly explain the large proportion of negative responses to question 13.1). SATA stated that the Regulation should specify rights for changes in advance similar to those for delays. ELFAA argued that rescheduling within 14 days of travel can be useful to maintaining the airline’s operation, and that the alternative of cancellation is likely to be more detrimental to the consumer. Emirates argued that regulation in this area would restrict airline freedom to provide a personalised service, and that a possible solution would be to require passengers to purchase travel insurance. Monarch suggested that if the flight departs more than 5 hours late, then it should be treated as a cancellation and a refund offered, but if the flight departs early then there should be no such option. Air Berlin noted that where the rescheduling results from short-notice changes to slots, the airline should not be made responsible.

1.164 **Airports and airport associations:** Airports and airport associations did not respond to this question.

1.165 **Travel agents and tour operators:** Thomas Cook and ECTAA noted that the impact of rescheduling varies considerably depending on the passenger, and argued that no single requirement could address this appropriately. ECTAA also noted that when a flight is sold

as part of a package, it is very difficult to calculate any amount to be refunded, and that the criteria for refunds in the Regulation and in the Package Travel Directive were different. Thomas Cook also noted that the Package Travel Directive entitles customers to refunds where there are significant changes to a contract, but does not define 'significant'. TourCom informed us that where the flight forms part of a package holiday, a delay of five hours can prevent passengers from using other parts of the package (e.g. departure of a cruise ship, non-reimbursable hotel bookings).

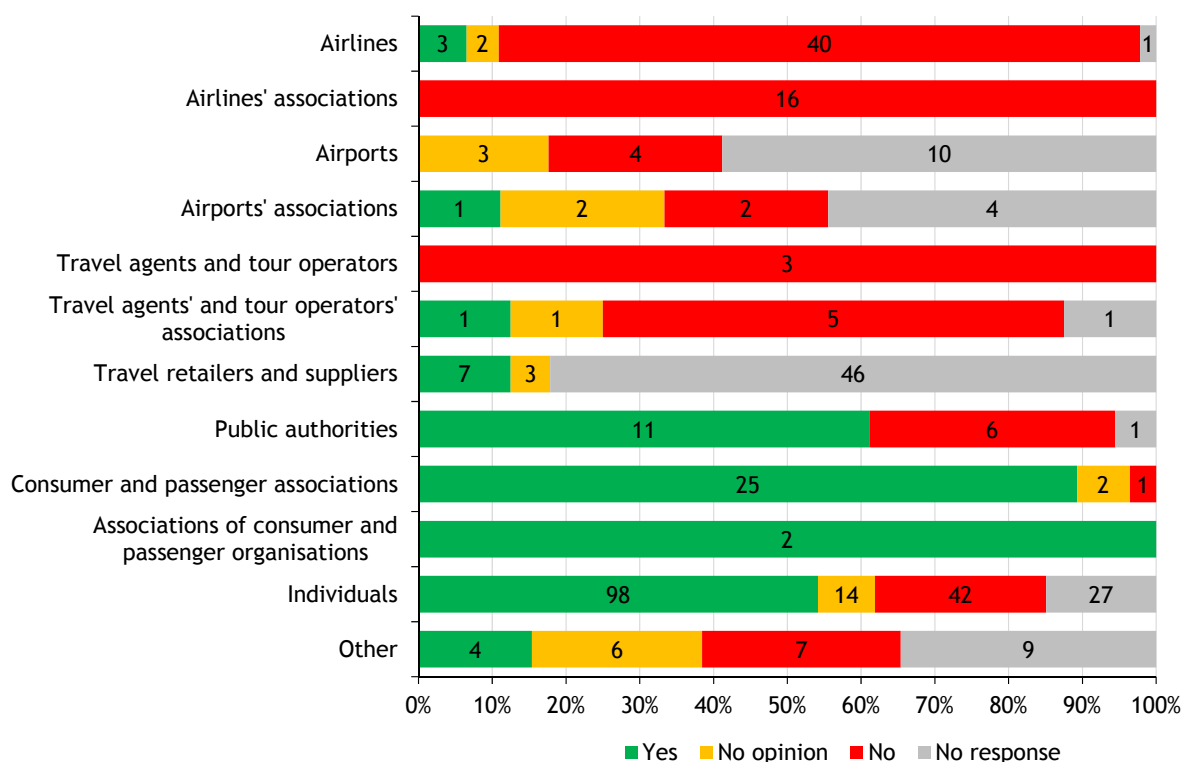
- 1.166 **Travel retailers and suppliers:** Travel retailers and suppliers did not respond to this question.
- 1.167 **Public authorities:** There was no consistent view from public authorities on this question. AESA and the Danish Transport Authority believed that a threshold of five hours would be appropriate, to match other sections of the Regulation; the Catalan Consumer Agency argued that the threshold should be 3 hours. The Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection noted similar concerns to travel agents and tour operators regarding the impact of rescheduling on package tours. It also believed that passengers should be able to obtain a refund regardless of the change in flight time. One entity noted that the impact of rescheduling varied depending on the nature of the trip (business or leisure); and the Principality of Asturias' Directorate of Trade and Consumption regarded this matter as particularly important for one day trips.
- 1.168 **Consumer and passenger associations:** Many consumer and passenger associations believed that rescheduling should be considered as equivalent to cancellations, and should therefore give rights to a refund or re-routing. BEUC argued that for consistency with the terms on cancellation, the time threshold should be 3 hours; Holiday Travel Watch and the Cyprus and Norway ECCs believed that 5 hours was appropriate; the EPF and the Irish ECC believed that the flight being rescheduled by more than 1 hour was the correct threshold. The UK Consumer Council and the Norwegian Consumer Ombudsman argued that the option for a refund was particularly important, as rescheduling could potentially make the trip worthless. Holiday Travel Watch has observed a trend among tour operators of rescheduling flights without recognising any detrimental effects this may have on passengers (e.g. reducing holiday period from 7 nights to 6). It believed that a strengthening of the Regulation would improve this.
- 1.169 **Individuals:** Several individuals argued that, in many cases, rescheduling by 5 hours could negate the purpose of the trip. One suggested that the notice period (before which no compensation should be payable) should be increased from 2 to 6 weeks. Some agreed with a threshold of 5 hours as a practical compromise, however several argued for lower thresholds such as 3 or 4 hours. The reasons given were that typical European sector lengths were 1-2 hours, and that a change of 5 hours could be equivalent almost a full working day. One individual noted that a 5 hour rescheduling could have significant impacts on connections where the connecting route is infrequently served. Some individuals argued that airlines rarely change schedules without external factors causing them to, so allowing passengers to have refunds for small changes in schedule will lead to higher prices. One also believed that further regulation would reduce the service level competition between carriers. Some made similar arguments to tour operators, that such rescheduling can result in significant additional costs to passengers, and that they should be able to claim adequate compensation if they are able to prove this loss.

- 1.170 **Other:** Most of the other stakeholders believed that the Regulation already addresses this point through Article 5. ONCE believed that 5 hours was an excessive time for someone with mobility impairments to wait, but that a refund would be more useful.

Question 13.3: Should the Regulation be amended to provide the same rights to passengers in the case of advance rescheduling of flights as in the case of cancellations which are notified in advance?

- 1.171 If the Regulation was amended in this way, passengers whose flights were rescheduled in advance would have the right to a triple choice between immediate rerouting, rebooking and a refund, as well as care and assistance whilst they waited. The stakeholders' opinions on this question can be seen in Figure 25.
- 1.172 There was almost universal opposition to this proposal from industry representatives: all of the airline associations and the vast majority of individual airlines were opposed. ECTAA/GEBTA was also opposed along with all travel agents / tour operators and most other travel agent / tour operator representatives. The rationale for their views is described in more detail under question 13.4 below. Again, reflecting its limited relevance to them, ACI Europe and most other airports and airport representatives did not express any views in response to this question.
- 1.173 In contrast, EPF and BEUC and the vast majority of other consumer associations, as well as most individuals, supported amending the Regulation to provide the same rights to passengers in the case of advance rescheduling of flights as in the case of cancellations. Government respondents were divided but the majority also supported this proposal; in the bilateral interviews, one said that airlines appeared to disguise cancellations in some cases as advance rescheduling in order to reduce their obligations. Adopting common rights in both cases would address this issue.

FIGURE 25 STAKEHOLDER VIEWS: QUESTION 13.3



Question 13.4: Please provide any further information or comments on how, if at all, the Regulation should be extended to cover cases of advance rescheduling of flights

- 1.174 **Airline and airline associations:** As noted in question 13.3, most airlines believed that rescheduling and cancellations should not be treated equally, as passengers who are notified months before a flight are not in the same position as those informed shortly prior to departure. Many also argued that Article 5 of the Regulation already provides sufficient protection. Many believed that additional legislation in this area would restrict carriers' commercial flexibility, and it would be unnecessary as airlines already accommodate passengers by offering rerouting or refunds. One airline argued that if the law treated cancellations and rescheduling of flights equally, airlines would not publish flight schedules in advance, which would reduce consumers' choice. SATA thought that treating rescheduling in a similar manner to delays was more appropriate. Ryanair informed us that flights were rescheduled for reasons outside the control of airlines, and that adequate alternatives were already offered. Emirates believed that any additional legislation could potentially result in reduced capacity or higher fares.
- 1.175 One airline suggested that care must be taken with regard to flights which form part of package tours, as these are already covered by the Package Travel Directive.
- 1.176 **Airports and airport associations:** Airports and airport associations did not respond to this question.
- 1.177 **Travel agents and tour operators:** Most respondents believed that it was important to ensure any changes to the Regulation were consistent with the Package Travel Directive, particularly that they should allow what is regarded as a significant change (and therefore

eligible for a refund) to be judged on a case by case basis. It was also noted by many that it was difficult to estimate the cost of a flight when provided as part of a package. Several argued that flights should not be treated as equivalent to cancellations, as the effect on passengers was not the same; however a number believed that passengers who are rescheduled should be entitled to rerouting. Thomas Cook believed that the purpose of the Regulation was to penalise airlines for bad behaviour, and that advance notification of schedule changes should not be regarded as such.

- 1.178 **Travel retailers and suppliers:** Travel retailers and suppliers did not respond to this question.
- 1.179 **Public authorities:** Several public authorities believed that the Regulation should regard rescheduling as equivalent to a cancellation. The Finnish Consumer Agency and Ombudsman noted that a uniform threshold takes no account of the purpose of the flight and of its significance to the passenger. AESA noted that to be consistent with Article 5, the airline must be able to prove that it has informed the passenger. However two bodies believed that rescheduling and cancellation should not be treated equally as this would restrict airlines' operational freedom.
- 1.180 **Consumer and passenger associations:** Most consumer and passenger associations believed that where flights are rescheduled, passengers should be entitled to a choice of rerouting or a refund (particularly since a refund would often not cover the cost of a flight rebooked at 14 days' notice). CSF noted that this is already offered by some tour operators, and it should therefore be possible for airlines to do the same. The Norwegian Consumer Ombudsman was concerned that the introduction of a definition of rescheduling could lead to commercial cancellations being covered as schedule changes.
- 1.181 **Individuals:** Most individuals believed that rescheduling should be regarded as cancellations, and grant affected passengers the choice between refund or rerouting. Several suggested that the time period within which notification could be given without penalty to the airline should be longer than 14 days. However, a smaller number argued that they were not equivalent, that additional legislation in this area would restrict carriers' ability to compete through product differentiation, or that national contract law provided sufficient passenger protection in this area. One argued that the allocation between the operating and marketing carrier should be made clear.
- 1.182 **Other:** CER and ÖBB noted that Regulations for different modes have different time periods after which rescheduling requires a new contract, and that these time periods should be consistent across modes. The German Insurance Association (GDV) believed that the current Regulation was sufficient, and that there should not be a right to compensation if no damage is suffered. ERV believed that rescheduling should not be regarded as equivalent to cancellations.

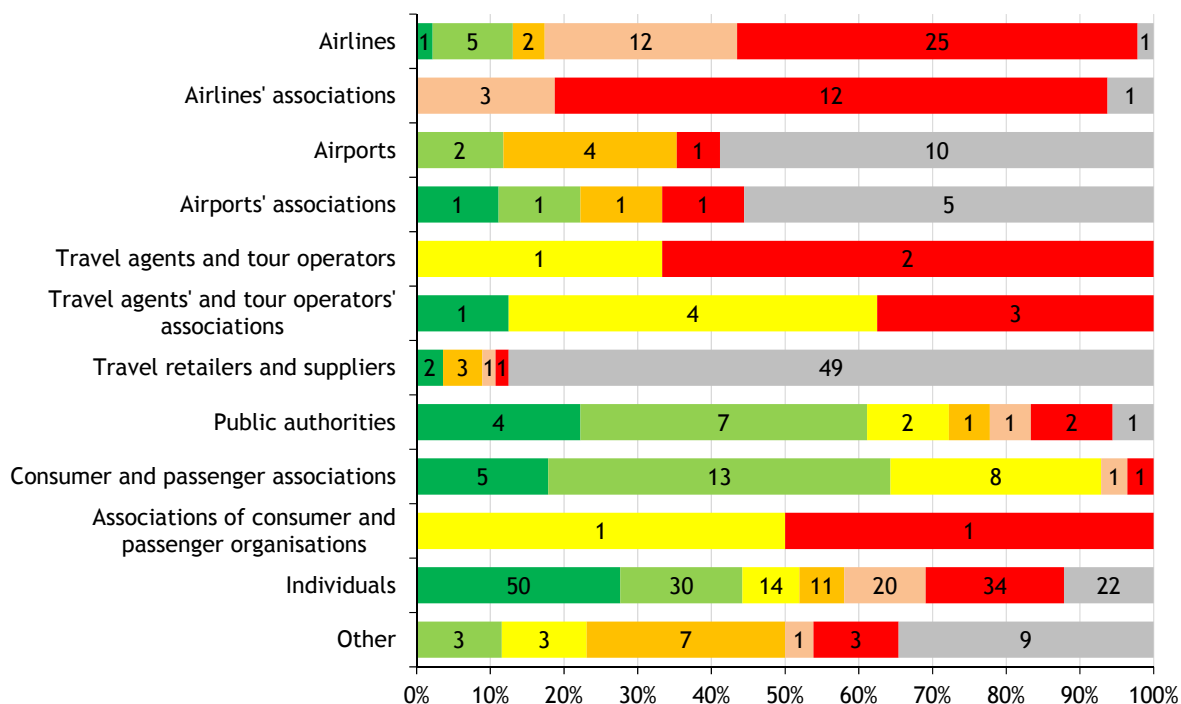
'No show' policy

- 1.183 The public consultation undertaken by the Commission in 2009-10 showed strong support amongst consumer representatives for regulating the 'no show' policy imposed by many airlines, by which if the passenger does not take one flight on their booking, all subsequent reservations on the booking may be cancelled, generally without any refund being available. This consultation asked how, if at all, the policy should be regulated.

Question 14: What if any rules should be specified regarding the 'no show' policy of some airlines?

- 1.184 The views of stakeholders regarding this question are displayed in Figure 26. All of the main pan-EU airline associations, and the majority of individual airlines, considered that this should not be regulated. A minority said that it should be regulated only to the extent that carriers should have to provide information on their policies. The minority of individual airlines who said that this should be regulated further, generally to allow passengers to take the return flight if they had not taken the outward flight, were generally airlines that sold tickets on a point-to-point basis and who would therefore already allow passengers to do this.
- 1.185 In the bilateral interviews, IATA discussed this issue in detail: it argued that the policy benefited passengers, because it enabled airlines to sell lower-priced tickets on different city pairs reflecting market demand on each; by differentiating fares, airlines were able to compete effectively in different markets, increasing consumer choice. It also noted that regulatory authorities had previously investigated this rule and found that it did not conflict with consumer protection legislation. AEA pointed out that consumers could opt to travel on point-to-point airlines that did not apply this policy.
- 1.186 Although some of the tour operators agreed with the airlines on this issue, ECTAA/GEFTA and some other travel agent and tour operator associations considered that the rule should be further limited. ECTAA also discussed this issue in detail in its direct submission to the study. It considered that consumers ought to be able to use whatever part of their tickets they wished; it also noted that point-to-point airlines had adopted other means for segmenting the market, such as requirements to book in advance to obtain lower fares. It expressed particular concern that IATA airlines may surcharge travel agents if a passenger does not use all of the segments.
- 1.187 Consumer associations were most likely to propose that passengers should be allowed to take a return flight if they do not take the outward flight, or if they were not able to take the first flight due to reasons outside their control - although EPF did not consider any change was necessary on this point. In the interview, BEUC highlighted judgements by national courts which had found that the no show policy was an unfair contract term. Most public authorities agreed that the rule should be limited. In the bilateral interviews, some NEBs said that this rule should be addressed particularly in relation to circumstances where the passenger cannot take the flight for reasons beyond their control - although one noted that airline terms and conditions often already allow this. One NEB suggested that standard EU terms and conditions should be adopted in order to protect passengers.
- 1.188 Airports did not have a consistent view and many did not respond at all on this issue, reflecting its limited relevance to them; however, ACI Europe considered that passengers should be able to take the return flight if they did not take the outward flight.

FIGURE 26 STAKEHOLDER VIEWS: QUESTION 14



- Passengers to be allowed to take subsequent legs of the flight if one leg is missed due to reasons outside their control (e.g. public transport delays on access to the airport).
- Passengers to be allowed to take return flight if they do not take the outward flight.
- 'No show' policy to be further limited or prohibited.
- No opinion
- No change to the law, except a requirement to provide clearer information on the airline's policy.
- No change - general consumer law would still apply and therefore passengers may be able to challenge the 'no show' rule through national courts.
- No response

Question 14a: If yes, please specify what further limitation there should be?

- 1.189 **Airline and airline associations:** Reflecting that airlines did not support any further limitation, only one commented on this question: Qantas asked why an airline should be exposed to loss of revenue if a customer decides not to travel.
- 1.190 **Airports and airport associations:** Airports and airport associations did not respond to this question.
- 1.191 **Travel agents and tour operators:** All travel agents and tour operators responding to this question believed that passengers should have a choice over how to use the services they have purchased from the airlines. They all also argued that it was unacceptable for airlines to seek any additional supplementary fares from travel agents, as they could not be held accountable for passenger behaviour. ECTAA and several other bodies noted that several national courts had found that conditions of carriage requiring sequential use of segments were unfair, particularly because it enables the carrier to unilaterally cancel the ticket without reimbursing the passenger, and to resell the seats.

- 1.192 **Travel retailers and suppliers:** Travel retailers and suppliers did not respond to this question.
- 1.193 **Public authorities:** Only the Finnish Consumer Agency and Ombudsman responded to this question, stating that where airlines require sequential coupon use, they should conspicuously inform passengers of this as part of marketing and accepting reservations. It argued that passengers should be able to take subsequent legs where travel on initial legs had been missed for reasons outside their control. It also noted that the benefits of legislation should be weighed against any possible reduction in routes offered or increase in fares.
- 1.194 **Consumer and passenger associations:** Almost all consumer and passenger associations which responded to this question believed that ‘no-show’ clauses in airline terms and conditions led to a significant imbalance between airlines and passengers, as the airline cannot prove any damage which results from a no-show, and they permit airlines to receive two payments for the same ticket. BEUC and other bodies listed a number of judgements of national courts against no-show clauses, and other unfair airline terms and conditions. ECC Ireland noted that IATA has updated its conditions of carriage to specify that subsequent flights will not be cancelled if the passenger warns the airline that ‘force majeure’ reasons have prevented them from taking the first flight; however it did not believe that this was sufficient, as no definition of ‘force majeure’ was given, and no similar obligation is put on airlines to inform passengers of this condition. ECC Belgium received many complaints on this specific issue. However, EPF acknowledged that this could be addressed through the market, with airlines using such policies to compete on service.
- 1.195 **Individuals:** Individual respondents believed that passengers should be permitted to choose which legs of a journey they wish to take. However one individual noted that terms such as this might be illegal under consumer protection law, and therefore it would not be necessary to amend the Regulation to address the issue.
- 1.196 **Other:** The other stakeholders which responded to this question were insurance bodies, and took the same position as travel agents and tour operators: that passengers should have the right to choose whether or not to use the ticket which they have paid for, and also that travel agents should not be made liable for passenger behaviour.

Booking errors

- 1.197 The 2009-10 public consultation had showed strong support from some stakeholders, but opposition from airlines, for a ‘cooling off’ period. It suggested that, although some airlines may already allow passengers to correct booking errors free of charge, the lack of a clear requirement to do so could mean that some refuse or charge substantial fees.

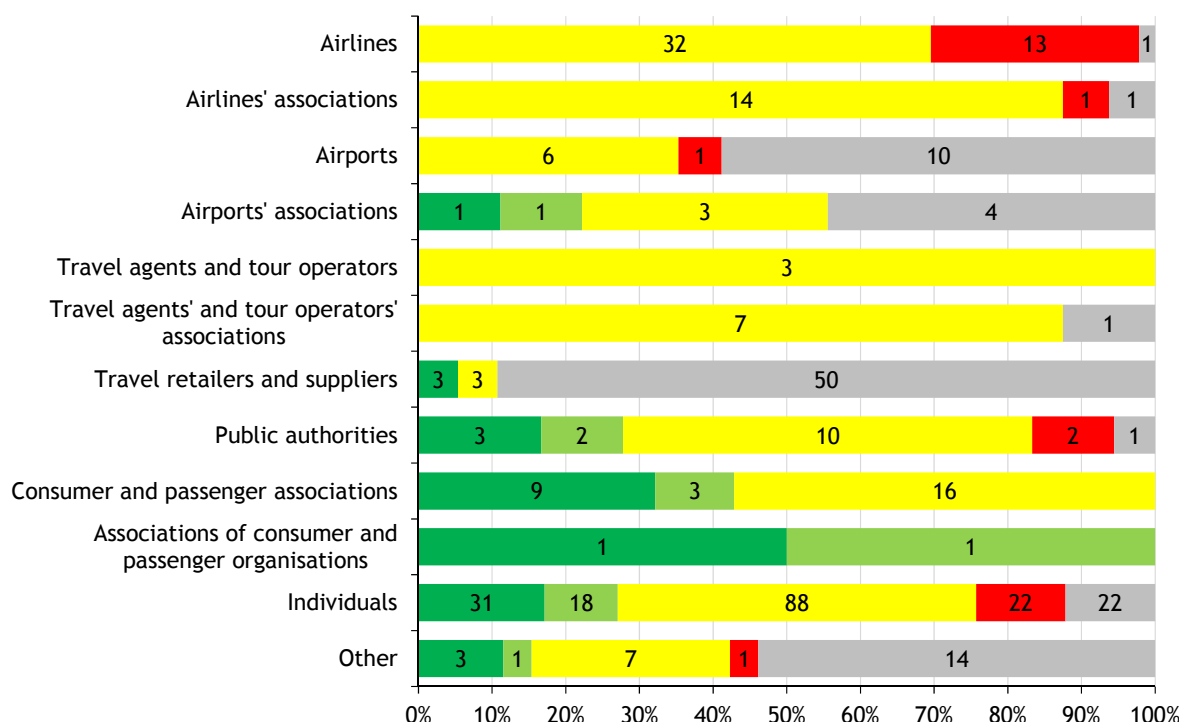
Question 15.1: Should the Regulation be amended to require that airlines allow passengers to correct booking errors without charge?

- 1.198 The stakeholders’ responses to this question are shown in Figure 27. The majority of respondents supported some form of amendment, although the extent of support for the different types of amendment proposed varied between groupings.
- 1.199 Four of the main pan-EU airline associations (IATA, ELFAA, ERAA and AEA) said that there should be a right to correct obvious mistakes, but not a more general right; most

individual airlines agreed. IACA and a minority of individual airlines opposed any regulatory change on this issue; the airlines that opposed any change were disproportionately non-EU airlines or airlines operating flights beyond the EU. This may reflect an issue raised by some airlines and airline associations in the bilateral interviews: whilst most airlines said that they would already allow passengers to correct minor booking errors such as a spelling mistake in the name free of charge, some said that for travel to certain non-EU States, it was essential that the passenger's name exactly matched the name on the reservation, due to the legal requirements imposed by the third country. ECTAA and most other travel agent and tour operator respondents also thought that the only change should be to allow correction of minor spelling mistakes. No airline or travel agent / tour operator respondents supported the introduction of a cooling off period; this is discussed further below.

- 1.200 Both BEUC and EPF supported the introduction of a cooling off period. Although some individual consumer associations also did, many only supported the introduction of a requirement to allow obvious mistakes to be corrected. Public authorities also almost always thought that there should be a right to correct spelling mistakes but fewer were supportive of a more general cooling off period. In the bilateral interviews, one NEB noted that airlines had been exempted from the requirement for a cooling-off period for distance selling in the Consumer Rights Directive and suggested that this exemption could be made subject to conditions.

FIGURE 27 STAKEHOLDER VIEWS: QUESTION 15.1



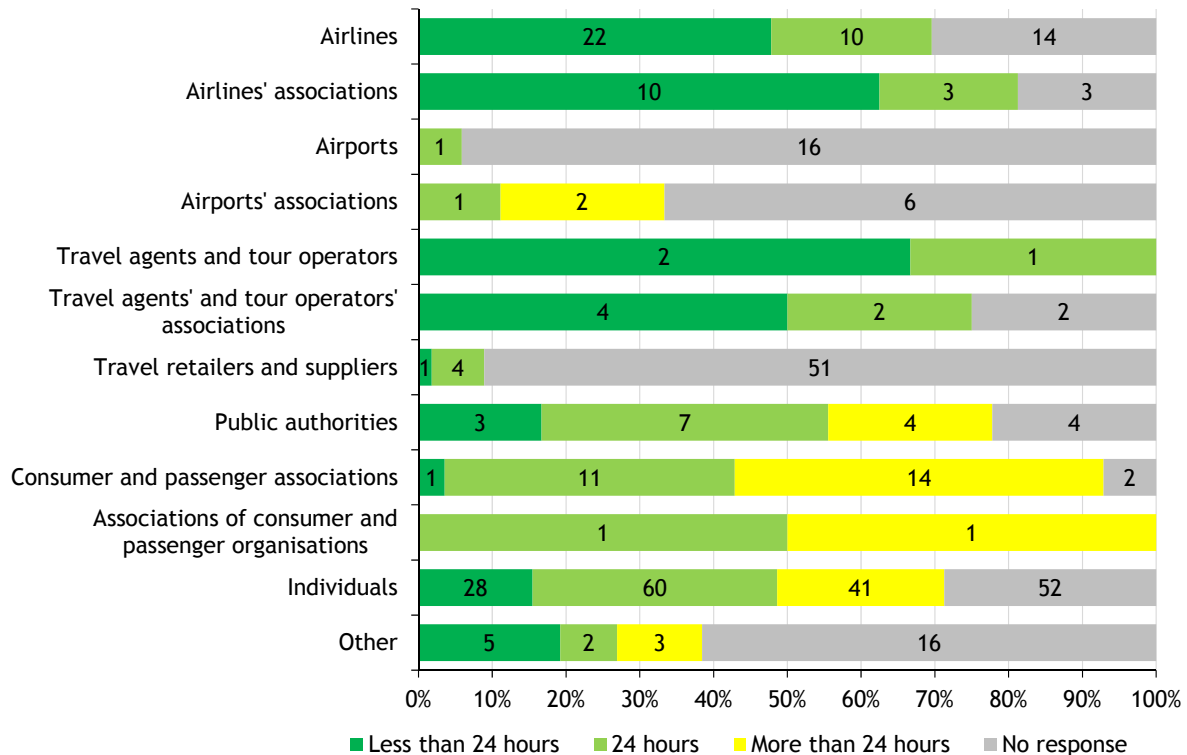
- Yes - there should be a 'cooling off' period within which the passenger can cancel and receive a full refund, or can choose to transfer the ticket to another person (and the latter at no additional cost).
- Yes - there should be a 'cooling off' period within which the passenger can cancel and receive a full refund.
- Yes - obvious mistakes, such as misspelled names or duplicate bookings, should be corrected free of charge, provided this is identified within a limited period, but there should not be a more general right to cancel/change bookings.
- No
- No response

Question 15.1b: In the consultation of 2009-2010, most respondents in favour of a "cooling off" period argued for a period of 24 hours, arguing that this would be sufficient to correct mistakes while airlines pointed towards operational problems and additional costs attached to such possibility. If there should be a right to correct mistakes or a 'cooling off' period, how long should this period be?

1.201 Figure 28 shows the stakeholders' views for this question. IATA, AEA, ELFAA and ERAA, as well as a majority of individual airlines, said that any time to correct mistakes or a cooling off period should be less than 24 hours. ECTAA/GEBTA and most travel agents / tour operators and their representatives agreed. In contrast, BEUC and most other consumer representatives believed the cooling off period should be more than 24 hours; EPF and others considered that 24 hours would be appropriate. In the bilateral interviews, one consumer representatives stressed that it was also important that there was an easy means to contact the airline during the cooling off period (particularly if it fell over a weekend); one suggested the period should start from when the passenger had received

the booking confirmation. It also noted that if there was a spelling mistake this might in any case not be identified until check-in so a cooling off period would not address this. Most public authorities agreed that the cooling off period should be 24 hours or more.

FIGURE 28 STAKEHOLDER VIEWS: QUESTION 15.1B



Question 15.1c: Please explain/ justify briefly your choice

- 1.202 **Airline and airline associations:** AEA, IATA and many individual airlines said that there should be a distinction between correction of obvious mistakes, such as obvious spelling errors, and a general cooling off period. They considered that giving consumers a general right to withdraw from the contract would damage airlines' pricing systems; Qantas expressed a concern that this would lead to speculative bookings by passengers or travel agents, limiting availability for consumers who genuinely wanted to travel. IATA, ELFAA and Ryanair also pointed out that a deliberate decision had been made to exclude transport services from the cooling off period defined in the new Consumer Rights Directive. A4A said that its member airlines already allowed passengers to cancel bookings within 24 hours and receive a full refund; therefore, it considered legislation to be unnecessary; some other airlines also said that they already allowed this either as a matter of general policy or on a case-by-case basis.
- 1.203 SAS and some other airlines also said that if a right to transfer tickets to others was created, this would lead to 'black market' in air tickets, and generate security issues, as airlines have to provide passenger information to national authorities in advance of the flight.

- 1.204 **Airports and airport associations:** Most airports and airport associations did not reply to this question; however, ACI Europe said that the possibility to correct booking errors easily and without charge would be a real improvement for passenger rights.
- 1.205 **Travel agents and tour operators:** A large majority of the responses from travel agents and tour operators expressed equivalent views to the airlines. ECTAA, ABTA and several others said that any change should be limited to a right to correct obvious mistakes such as misspellings or incorrect email addresses; they said that there should be no general right to change the booking. Thomas Cook said that if there was a more general cooling off period it should be limited to 2 hours. However, Danmarks Rejsebureau Forening (Association of Danish Travel Agents and Tour Operators) considered that there should be a grace period; it considered 24 hours would be reasonable provided there was an adjustment for weekends and public holidays.
- 1.206 **Travel retailers and suppliers:** Most travel retailers and suppliers did not respond to this question; however one pointed out that it could take up to 24 hours to receive a confirmation from the airline, and only at that point would the passenger spot a mistake.
- 1.207 **Public authorities:** Most national authorities that responded said that this was a significant issue and supported regulation. The UK CAA said that some airlines charged high fees to make even small changes to a passenger's name. The Netherlands Consumer Authority said that passengers could accidentally make duplicate bookings or enter incorrect names or birthdates; it said that there should be a limit on airline fees for correction of these mistakes. CAA Norway said there should be a cooling off period of at least 12, but not more than 24, hours. The Principality of Asturias Directorate of Trade and Consumption emphasised the particular problem people with Spanish names could have (due to the use of two surnames and sometimes also two first names). Another NEB said that it seemed reasonable to allow minor errors to be corrected, but if there was a more general cooling off period, this could have implications for last minute seat sales and if introduced it should be limited to 24 hours. AESA said that minor changes should be made free of charge but that major changes such as to the time of the flight should only be permitted within 2 hours of the booking being confirmed.
- 1.208 **Consumer and passenger associations:** Most consumer and passenger representatives argued that there should be a cooling off period of 24 or 48 hours; some also said that failure to allow the passenger to withdraw from the contract should be considered an unfair contract term, as the airline can cancel the flight without paying compensation if it does so at least 14 days in advance. Some said that if the period was relatively short it should not impose a significant financial burden on the airline. BEUC and several other respondents said that a 48 hour cooling off period had been agreed as part of the 2001 airline voluntary passenger service commitment. Consumer representatives thought that a longer period should be permitted to correct minor mistakes, such as spelling errors, and that this should not have any financial impact on airlines other than limiting their ability to impose unreasonable fees. However, one stakeholder emphasised that there had to be a readily available way for the passenger to contact the airline to make a change, and said there should be an email address (so that it could be proved when the passenger sent the request), not just a phone number or an online contact form.

- 1.209 **Individuals:** Most individual respondents that expressed any view considered that there should be a cooling off period of 24 hours; however a minority thought that this would not necessarily be sufficient to identify any mistakes, and 48 hours or longer should be permitted. Some considered there should be a distinction based on how long in advance the booking was made, with longer for bookings made well advance. Several also argued that longer would have to be permitted to correct minor spelling mistakes, possibly up until the check in time.
- 1.210 **Other:** Most other stakeholders did not make any comments. However, ONCE said that passengers might not notice that a mistake had been made until they arrived at the airport; and CEPS said people needed time to realise they had made an error. In contrast Blue Chip Jet said that it did not support regulation and that differentiated practices form part of carriers' ability to compete in a free market; ERV said that the contract had to be binding, because bookings for travel services differ from other goods and services as availability is finite.

Refund of taxes, fees and charges

- 1.211 The document explained that, although many airlines refund taxes and charges if a passenger does not travel, some do not, or do not make it clear that these can be refunded, or set administration charges at a level which means that claiming a refund is not worthwhile for passengers.

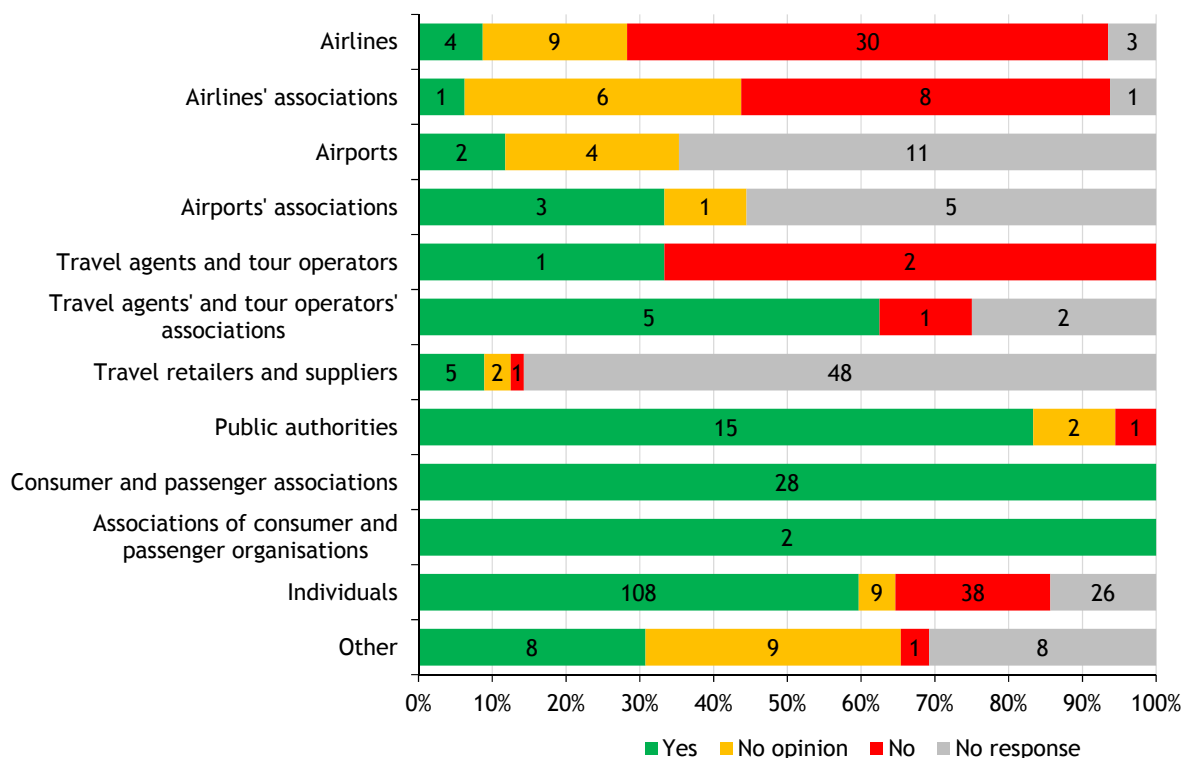
Question 16: Should it be specified that per-passenger taxes and airport charges have to be refunded if a passenger does not travel, and administration fees for making this refund be limited?

- 1.212 The responses of stakeholders for this question are displayed in Figure 29. IATA, IACA, ELFAA and a majority of individual airlines and travel agents / tour operators opposed this proposal; ERAA, AEA and some others expressed no opinion. In the bilateral interviews, most industry respondents did not object to the principle that taxes should be refunded if they were not incurred, but argued that administration fees should be levied because significant costs were incurred; one airline estimated a cost of €35 for responding to correspondence and making a manual refund. IACA suggested that passengers could pay taxes in person at the airport (as in some non-EU airports) to avoid airlines collecting these. One low cost carrier did argue that airlines should not have to refund airport charges, as these were equivalent to any other element of their cost base, and the ticket is non-refundable - it also said that the actual amount of airport charge paid might be subject to commercial agreements with the airport and therefore the amount could not be disclosed without revealing commercially sensitive information.
- 1.213 In contrast, there was universal agreement amongst the consumer associations, and also almost all of the public authorities, that a requirement to refund taxes and airport charges along with a limit for administration fees should be specified in the Regulation. In the bilateral interviews, one consumer association described the retention of taxes by airlines as tantamount to theft - the money is collected on behalf of the government and not passed on to them. BEUC and other consumer representatives said that there had to be a limit on the amount charged for refunds; one said that these were often set at a level to make claiming the refund pointless. Although some enforcement bodies consider existing consumer protection legislation already requires airlines to refund taxes for passengers

that do not travel, the UK CAA said its legal advice was that this was not clear although a case could be made on the basis of the Unfair Contract Terms Directive.

- 1.214 ECTAA expressed no opinion on this proposal but those other travel agent and tour operator associations which expressed any view mostly supported it. ACI Europe also supported the proposal but most other airport stakeholders did not express any opinion.

FIGURE 29 STAKEHOLDER VIEWS: QUESTION 16



A 'Key facts' document

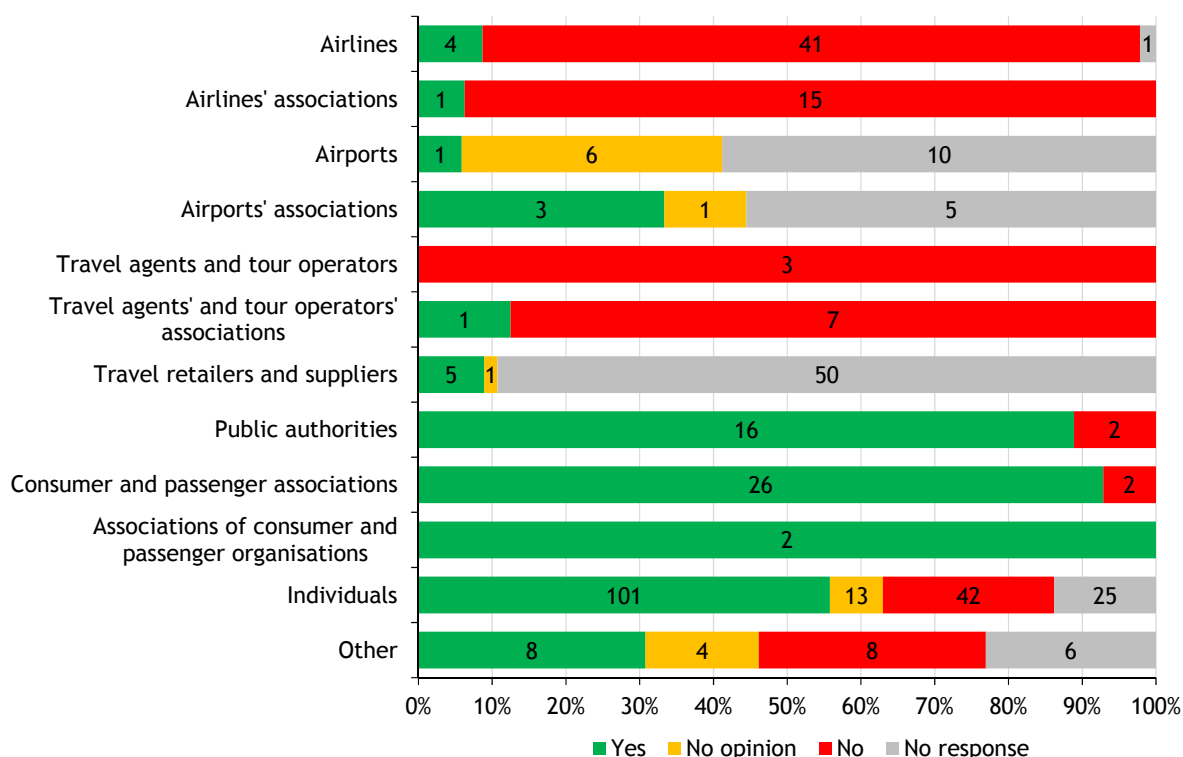
- 1.215 The document suggested that the specification of a 'key facts' document might help passengers to understand the complex and divergent terms and conditions applied to airline bookings, and consequently to avoid potentially paying additional fees as a result of non-compliance with these conditions.

Question 17: Should airlines and travel agents be required to provide a standard format 'Key facts' document to passengers (either in paper or in electronic format) before they confirm a reservation of tickets?

- 1.216 Opinion was particularly strongly divided between the airline and tour operator industry and other stakeholder groups on this issue (Figure 30 below). All of the main airline and travel agent and tour operator associations (IATA, ERAA, AEA, ELFAA, IACA and ECTAA/GEFTA) opposed the proposal, as well as the vast majority of individual airlines. Of the four airlines that agreed with the proposal, only one was a major EU airline. In contrast, BEUC, EPF and virtually all of the other consumer representatives, as well as a large majority of the public authorities, supported the proposal.

- 1.217 In the bilateral interviews, airline representatives argued that there was no need for a key facts document because all relevant information was already provided in the Conditions of Carriage. They said that airlines were required to provide the full terms and conditions under existing consumer protection legislation, and they considered the passengers ought to read them. ECTAA said that any such document would be so huge it would disrupt the booking process, and IACA expressed concern about disputes if a clause became relevant which was not included in the summary ‘Key facts’ but was included in the Conditions of Carriage. An airline said that it was not feasible to have such a document because tariff and fare conditions differed so much.
- 1.218 In contrast consumer representatives argued that such a document was necessary - one said that passengers never read the full Conditions of Carriage; another said ticket terms and conditions should be clear, accessible and easily understood but this is not the case in the airline industry and therefore there could be a need for such a document. Another said that a standard document was a good idea because if too much information was given, it would never be read.
- 1.219 ACI Europe also agreed that such a document should be provided, but most other airport respondents did not express any view on this question.

FIGURE 30 STAKEHOLDER VIEWS: QUESTION 17

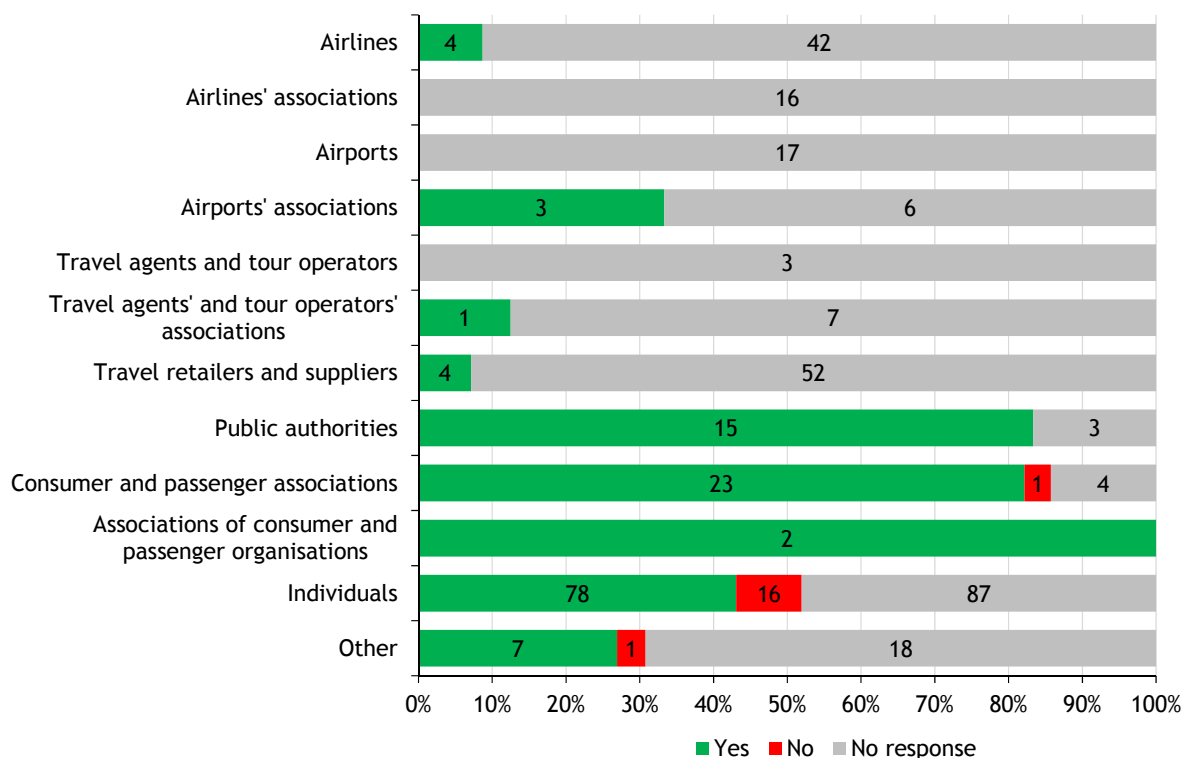


Question 17a: If yes, do you consider that such a standard key facts document should be defined on an EU level rather than on the national level?

- 1.220 For those who answered yes to question 17, their responses to question 17a are shown in Figure 31. Almost all of those who thought that such a document should be defined

supported it being defined at EU rather than national level. Few industry stakeholders replied to this question, as most believed that the document should not be defined at all.

FIGURE 31 STAKEHOLDER VIEWS: QUESTION 17A



Geographical scope

1.221 The consultation document compared the lack of applicability of the Regulation outside the EU with the extra-territorial application of similar legislation in third countries, and suggested that passenger protection could be improved if the scope of the legislation were extended. However, there were several approaches which could be adopted.

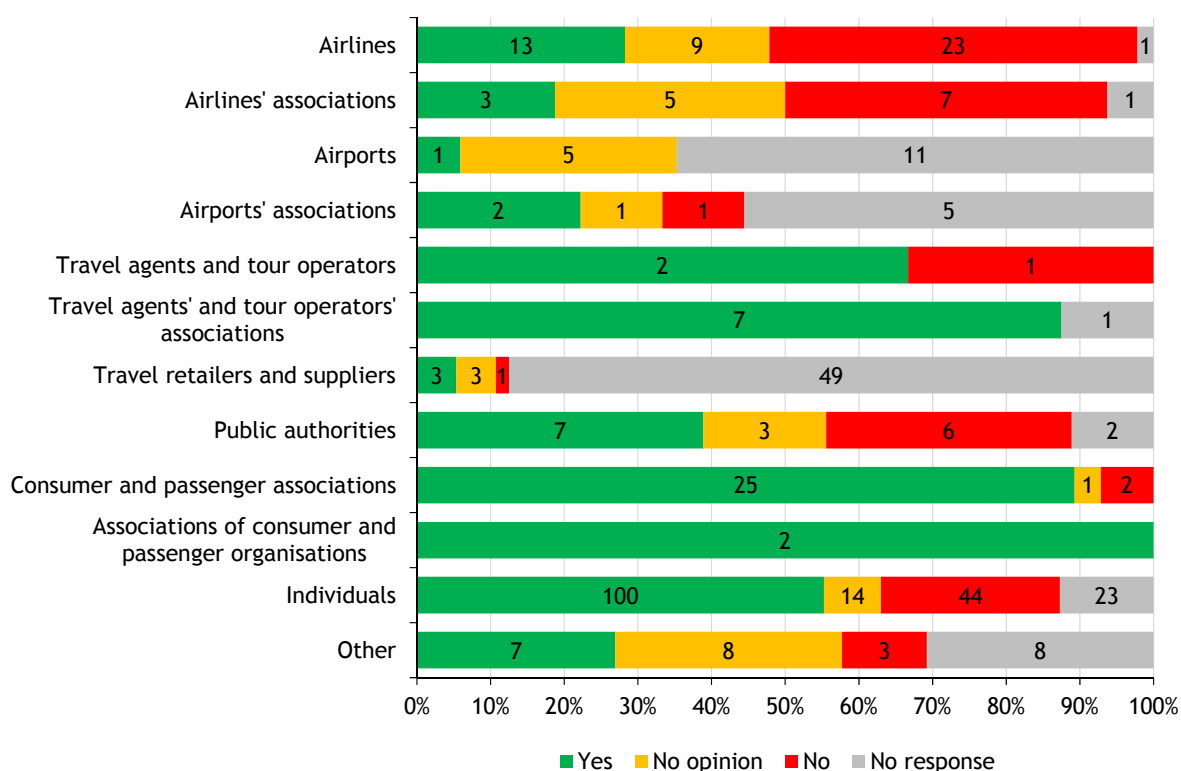
Question 18: Should the scope of the Regulation be extended to include flights to the EU from non-EU airports operated by non-EU airlines?

1.222 Figure 32 displays the stakeholders' viewpoints for this question. Whilst the consumer representatives were united in favour of this proposal, most other stakeholder groups were divided.

1.223 BEUC, EPF and almost all other consumer representatives considered that the Regulation should be extended to cover flights from non-EU airports operated by non-EU carriers. In the bilateral interviews, BEUC said that companies operating to the EU should respect EU law; another consumer association said it was confusing for consumers that they were covered by the Regulation on the outward sector of their journey but not on the return. Another consumer association highlighted that EU residents stranded abroad during the volcanic ash crisis had not received any assistance if they were travelling with non-EU airlines, and it supported extension of the Regulation to address issues such as these.

- 1.224 In contrast, whilst most of the airline industry opposed the proposal, this view was not universal. Amongst the airline associations, IATA (which also represents global airlines), IACA and ERAA opposed it, whereas ELFAA supported it and AEA expressed no opinion. Of the individual airlines, although again most opposed the proposal, a minority of EU airlines supported it. ECTAA/GEBTA and most travel agents / tour operators and their associations also supported the proposal. In the bilateral interviews and in their responses to the subsequent question the airline associations and several airlines emphasised the potential legal issues with extending the scope of the Regulation - this issue is discussed further below. Those that favoured extending the Regulation generally highlighted the distortion of competition that arose from applying it to EU carriers only, although some network airlines said that this should be addressed by exempting EU carriers on flights to the EU.
- 1.225 The public authorities which responded to the consultation were also divided on the issue. In the bilateral interviews, several identified difficulties, both legal problems in terms of sovereignty and extra-territoriality (discussed below), but also practical issues for example with enforcement of the Article 14 requirements for provision of information on the ground in respect of non-EU carriers at non-EU airports.
- 1.226 Amongst the other stakeholder groups, ACI agreed that the Regulation should be extended but most other airports did not express any views.

FIGURE 32 STAKEHOLDER VIEWS: QUESTION 18

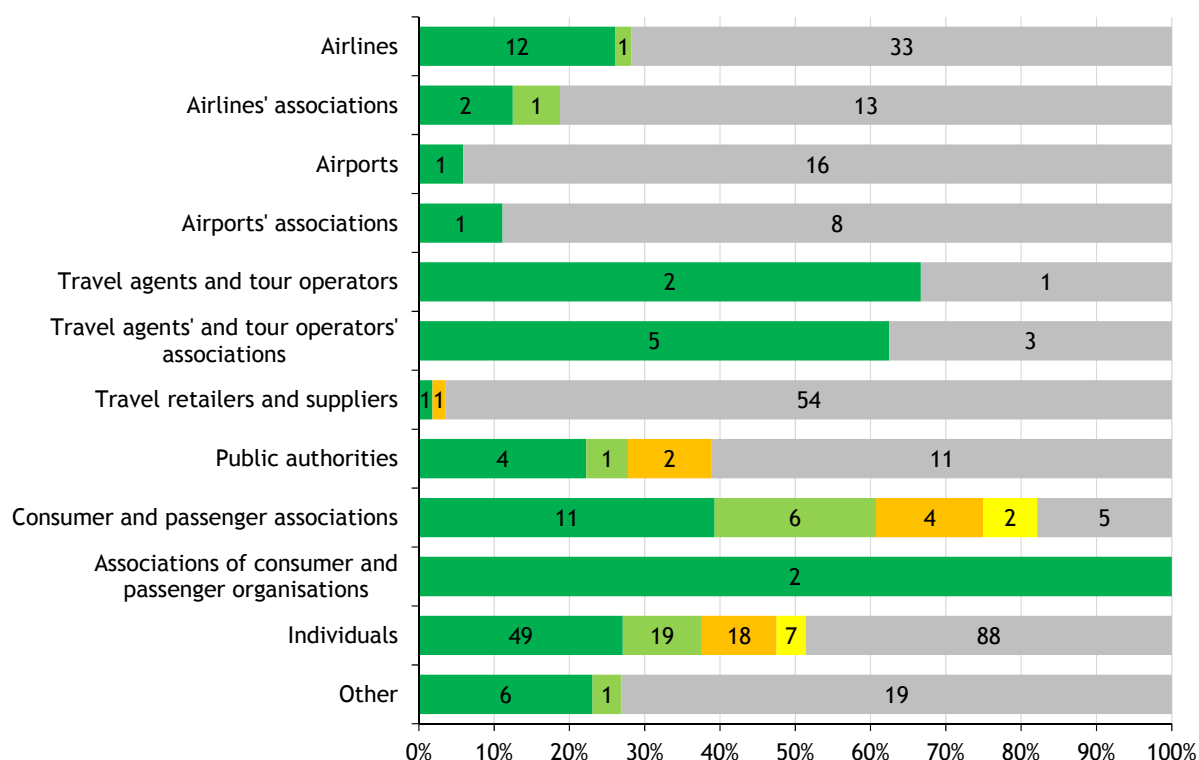


Question 18b: If yes, under which of the following circumstances should the Regulation also apply to non-EU airlines when not departing from an EU airport?

- 1.227 The responses of the stakeholders who answered yes to Question 18 are illustrated in Figure 33; as many airlines and airline associations did not believe the Regulation ought to

be extended, many did not respond to this question. Of those that did, both the majority of those industry stakeholders who thought that the Regulation should be extended, and consumer/passenger representatives, preferred the most extensive approach of extending the Regulation to cover any other flight to the EU from a non EU airport. In the bilateral interviews, several airlines highlighted practical problems with applying the Regulation to codeshare passengers only, as this would mean that some passengers on a flight would have one set of rights whilst other passengers would have different (probably more limited) rights. This could be quite difficult to implement particularly during a period of major disruption.

FIGURE 33 STAKEHOLDER VIEWS: QUESTION 18B



- Any other flight to the EU from a non-EU airport.
- Flights to the EU from non-EU airports where the flight is operated as a codeshare with, or on behalf of, an EU airline.
- Flights to the EU from non-EU airports where the sale of the ticket took place in the EU.
- Flights to the EU from non-EU airports which are operated as charters on behalf of an EU tour operator (even if already covered by the Package Travel Directive 90/314).
- No response

Question 18c: do you see legal impediments to extending the scope of the Regulation to flights from non-EU airports operated by non-EU carriers? (e.g. third country sovereignty, international agreements)

1.228 **Airline and airline associations:** The majority of airlines and airline associations, including IATA, AEA and a large number of (mostly network) carriers, responded in similar terms that the EU lacks jurisdiction to extend the Regulation to flights from third countries to

the EU operated by non-EU carriers. A4A, and some other airline respondents, also said that country-specific regulations also often cover flights from third countries, and extension of the Regulation in this way could lead to conflicting obligations being placed on carriers. AEA and a number of network carriers said that the Regulation should be limited to situations where it could be applied to all carriers (i.e. EU carriers flights to the EU should be excluded).

- 1.229 However, a minority of respondents (including ELFAA and some, mostly low cost, carriers) said that the EU did have authority to impose obligations on third country carriers that chose to fly to EU airports, and some pointed towards the recent judgement of the Court of Justice with respect to the Emissions Trading Scheme (ETS). One airline said that he envisaged difficulties but that failure to extend the Regulation meant a distortion of competition.
- 1.230 **Airports and airport associations:** ACI Europe considered that it should be possible to extend the Regulation to codeshares, charters, and flights where the ticket was sold in the EU. Other airports and airport representatives did not respond to this question.
- 1.231 **Travel agents and tour operators:** Most comments from travel agents and tour operators were supportive of an extension to non-EU carriers' flights to the EU. ECTAA and ABTA both said that to avoid distortion of competition the Regulation should apply to non-EU carriers. Thomas Cook and TUI both said that they would welcome a level playing field as far as possible, and Thomas Cook said that this situation was comparable to the recent decision about the ETS. The Association of Danish Travel Agents and Tour Operators said that there could be a problem with enforcement of decisions rendered against non-compliant airlines from non-EU countries, and there would have to be some agreement as to how it would be enforced.
- 1.232 **Travel retailers and suppliers:** Most travel retailers and suppliers did not respond to this question.
- 1.233 **Public authorities:** Some of the public authorities which responded supported the Regulation being extended to cover non-EU carrier flights to the EU, in order to avoid distortion of competition. However, the Finnish Consumer Agency and Ombudsman said that enforcement could prove problematic for these flights, and some other NEBs said that there could be problems in terms of sovereignty and conflicting with the legal regimes of the third countries. AESA said that the Regulation should be extended to all journeys where the contract of transport was concluded in the EU; this would by implication cover codeshares and also packages.
- 1.234 **Consumer and passenger associations:** Most consumer and passenger representatives supported an extension of the Regulation to cover non-EU carriers' flights to the EU. BEUC, Fédération Nationale des Associations des Usagers des Transports (National Federation of Associations of Transport Users, FNAUT), CECU and other respondents said that companies which provide services in the EU should comply with EU law; some pointed towards specific examples of difficulties that had arisen with flights operated by non-EU carriers as codeshares with EU carriers. EPF said that there could be legal issues but it should be possible to resolve these, and noted that the public authorities of other major markets (such as the USA) are increasingly following the EU's example in developing passengers' rights provisions.

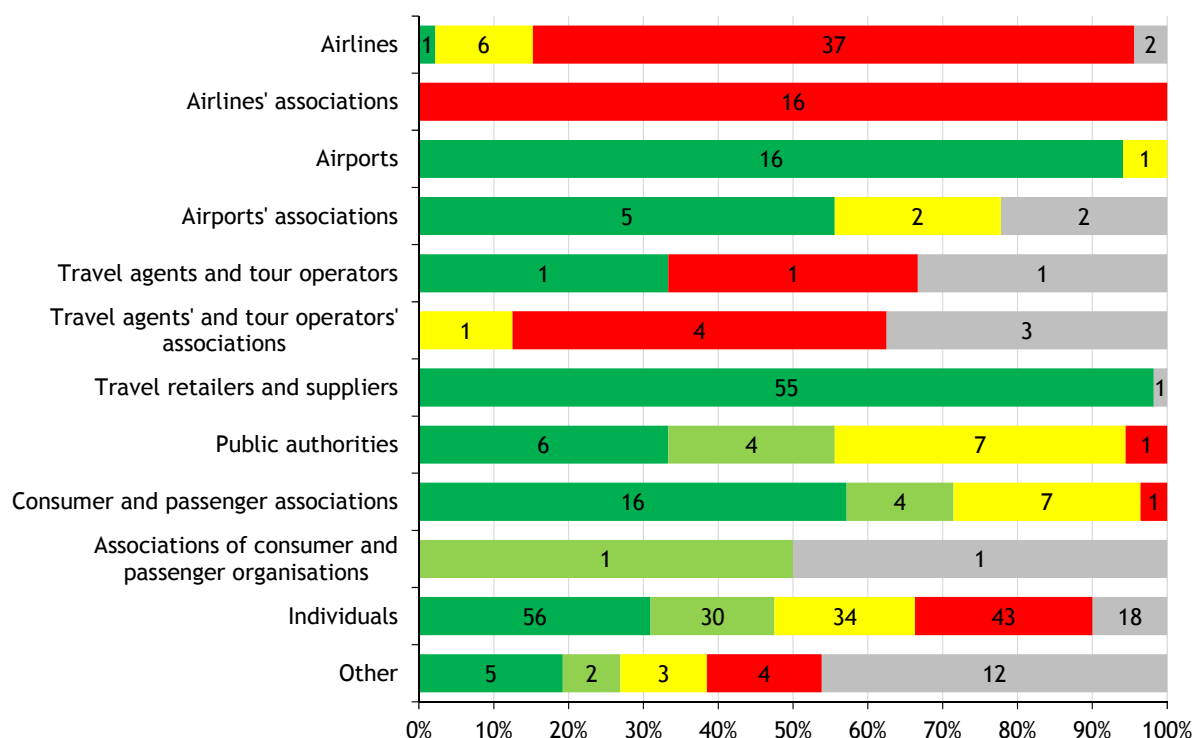
- 1.235 **Individuals:** Most individual respondents supported the extension of the Regulation in this way, particularly to cover cases where the ticket was purchased in the EU, and one emphasised that the scope of the Regulation should be defined simply so that all passengers could understand it. However, a minority said that this would conflict with the law of third countries. One said that there would be difficulties with enforcement because national authorities could not impose fines or obtain the evidence necessary to investigate infringements.
- 1.236 **Other:** Deutsches Verkehrsforum responded that this could conflict with Air Services Agreements with third countries, but that these should be renegotiated to harmonise passenger rights. Other respondents were divided between those who considered an extension to be necessary to ensure fair competition, and those who considered that the EU lacked authority to do this.

Options related to baggage and additional services

Comparability of ticket prices, taking into account luggage allowances and other optional elements

- 1.237 The consultation document noted that there are significant differences between airlines on what is included within the standard ticket price that they advertise for purchase, in particular with respect to the entitlements to checked and cabin baggage.
- Question 19.1: How could the comparability of ticket prices be improved, especially with regard to luggage allowances?*
- 1.238 As can be seen in Figure 34, airports, travel retailers and consumer associations were most likely to choose that a definition of a certain basic level of service should be included in all air tickets. Reflecting many of the previous questions, all of the airline associations and almost all individual airlines opposed any change from the current situation. In contrast ACI Europe and most of the individual airports thought that a minimum level of service should be included in the ticket price (these views are discussed in more detail under question 19.2 below). ECTAA/GEBTA did not respond to this question and there was no consistent view amongst the other travel agent and tour operator representatives.
- 1.239 BEUC also did not provide a response to this question, and EPF supported the presentation of an indicative ticket price including standard baggage allowances, but most individual consumer representatives supported a certain basic level of service being defined and included in all tickets. In the bilateral interviews, BEUC and most other consumer representatives said that the differences between companies in terms of luggage policy were confusing for passengers and some harmonisation was necessary in this area.
- 1.240 The views expressed by the airlines and airline associations closely reflect the views expressed at the bilateral interviews, where most argued that any form of ‘standard ticket’ would be an infringement of airlines’ commercial freedom, and would limit consumer choice. They also argued that consumers benefited from separation of additional services, as those that did not wish to purchase the additional services (such as baggage) then did not need to pay for them.

FIGURE 34 STAKEHOLDER VIEWS: QUESTION 19.1



- Definition of a certain basic level of service to be included in all air tickets, for example carriage of a defined minimum amount of cabin or hold baggage
- Presentation of an indicative price including standard luggage allowances only for the purpose of comparison between carriers (allowing to opt out of certain services and to opt in others)
- Include basic information into the before-mentioned key facts document
- No change needed
- No response

Question 19.2: In case of the last option, what services should be included in all air tickets (for example: cabin baggage; hold baggage; boarding pass; anything else) and how could this be defined?

- 1.241 **Airline and airline associations:** Airlines and airline associations had almost all replied to question 19.1 to say that no changes were needed, and consistent with this, almost all did not answer this question.
- 1.242 **Airports and airport associations:** ACI Europe, the German Airports' Association (ADV), Dortmund, Frankfurt and a number of other airports said that all tickets should include an allowance for hold and cabin baggage. They expressed concern about the 'one bag rule' applied by some carriers, which it said hinders airports' ability to generate revenue from retail (travel value, duty free, etc.) and changes the parameters of the business model on which deals were concluded with air carriers. ACI Europe said this had led to a reduction of up to 40% in retail sales, and that this threatened airports' ability to offer competitive airport charges and fund the development of their facilities. Several other airports provided responses equivalent to the travel retailers and suppliers (discussed below).

- 1.243 **Travel agents and tour operators:** Thomas Cook said that the only compulsory elements which should always be included in the ticket price were the means to travel and the steps which were essential for this, such as the means of boarding, but as not all passengers need services such as baggage, this should not be required to be included. It said that if airlines were charging extra for essential services, this was already prohibited by existing rules, and it was important that these were enforced which they had not always been. Other travel agents and tour operators did not respond to this question.
- 1.244 **Travel retailers and suppliers:** We received a large number of mostly identical responses, from the European Travel Retail Council (ETRC) and individual travel retailers and suppliers. They argued that passengers should have the right to carry purchases made in airport shops on board the flight, in addition to the cabin baggage allowance specified by the airline, and specifically that the ‘one bag rule’ applied by some airlines should be prohibited. They argued that airlines were making excessive financial demands from passengers for services, for no reason other than to create an additional revenue stream for the airline (they cited increases in LCC ancillary revenues of 26% last year); they considered that the effect was to reduce consumer choice, as those wishing to purchase products could only do so on board the aircraft. They further argued that the variation in rules between carriers resulted in uncertainty for passengers, causing them to limit purchases even when not travelling with airlines that applied the ‘one bag rule’, and therefore it had had a dramatic impact on their revenue. They also said that the principle had been established over 60 years that airport shopping could be taken free of charge on board the aircraft. The Asociación Española de Travel Retail (Spanish Association of Travel Retail, AETRE) said that it was not true that this rule was applied for operational reasons, as carriers applied it at some airports but not others.
- 1.245 **Public authorities:** AESA said that at least the cost of transporting baggage should be included, and the costs for excess baggage should be clearly shown; the printing of a boarding pass should also be included, if the passenger is not able to print this themselves. Another NEB said that some airline practices were frustrating and unacceptable to passengers, in particular charges for issue of boarding passes; charges for use of standard credit/debit cards; and unnecessary restrictions on cabin baggage. The Finnish Consumer Agency and Ombudsman said that services should be included where the passenger has no choice but to procure the service if they wished to travel; essential services would include a free method of check-in (including for passengers who do not have access to the internet); and standard-sized cabin baggage. It suggested clarity should be improved by a clear ‘Key facts’ document.
- 1.246 **Consumer and passenger associations:** BEUC said that some airline practices relating to pricing policies and advertising of fares caused consumer detriment; in particular, it argued that charges for payment with credit or debit card were unfair. It also said that the approach airlines had adopted made it difficult to compare prices between airlines. CEACCU said that Spanish national law gave passengers the right to carry baggage, and specified that they had the right to carry with them personal items including items purchased in airport shops. BAK and several other consumer representatives said that the ticket should include the boarding pass, cabin baggage, at least one item of checked baggage, and a means of payment. CSF said that some airlines were behaving abusively towards passengers, forcing them to abandon bags at check-in or in the boarding area,

under threat of being denied boarding; it said that regulations should define minimum baggage sizes which passengers would have the right to carry. Holiday Travel Watch said that there was significant consumer confusion as a result of different airline rules and this should be addressed through a Key Facts document and greater clarity at the point of sale. However, ECC Ireland said that only one item of cabin baggage should be included in the ticket price.

- 1.247 **Individuals:** Most individual respondents which expressed any view said that passengers should be entitled to reasonable cabin and checked baggage and issue of a boarding pass at check-in (not necessarily just online check-in). Some also said that tickets should include credit or debit card fees, and in some cases also food and drink, or at least drinking water. Several ‘individuals’ also responded with identical text to that submitted by the travel retailers, discussed above.
- 1.248 **Other:** A submission was received from the International Federation of Musicians (FIM). It highlighted the difficulties faced by musicians carrying fragile musical instruments on board aircraft. It argued that any musical instrument should be permitted on board if there is space in the overhead bins or under seats when the passenger boards the aircraft. Others should be permitted to occupy a seat, subject to safety conditions, and any fare levied should be excluding taxes (government taxes and per-passenger airport charges generally are only levied on people). FIM also said that appropriate measures should be taken to protect musical instruments in the hold, and that the carrier should not be able to deny liability if it damaged the item.
- 1.249 ERV said that it was acceptable to charge extra for genuinely optional items but that these charges should be visible and bookable through all means of sale, including computer reservation systems, so that passengers had adequate information early in the booking process.

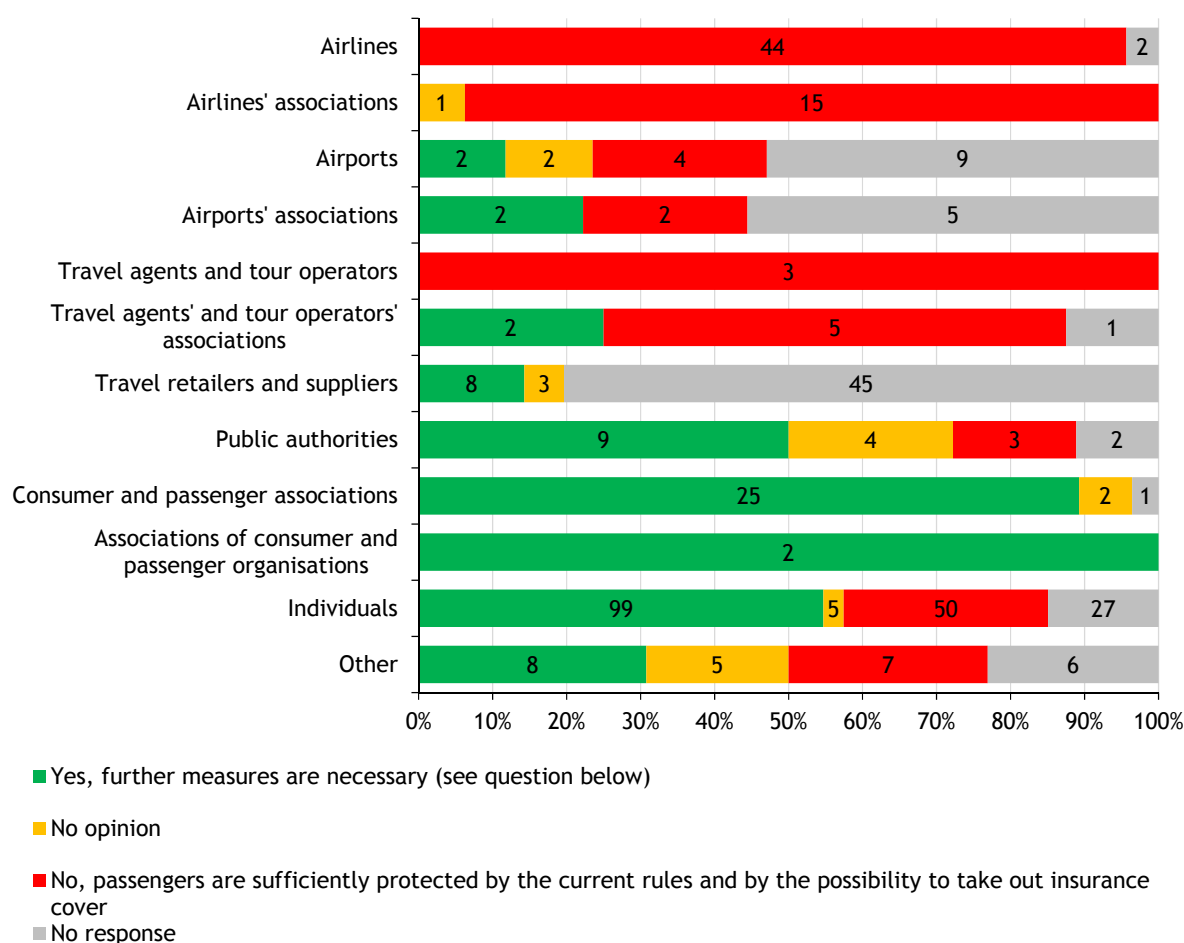
Obligations when baggage is delayed or lost

- 1.250 The consultation document noted that, although airlines are liable under current legislation for delay, loss and damage to baggage, there are several limitations. In addition, it asked whether passengers should be left to take out their own insurance, or whether it is preferable to have standardised forms of assistance provided by airlines.
- Question 20.0: Are the present rules (e.g. Regulation 889/2002) with regard to delayed and lost luggage sufficient or are further measures needed to protect passengers?*
- 1.251 The opinions of respondents for this question are shown in Figure 35. Airlines and tour operators, and their representative associations, almost universally disagreed that further measures regarding delayed and lost luggage were required to protect passengers, whereas most of the non-industry stakeholders agrees that further measures should be introduced. Both EPF and BEUC and virtually all individual consumer associations agreed that further measures were necessary. ACI Europe also agreed, although most other airport respondents did not express any opinion.
- 1.252 In the bilateral interviews, the airlines, travel agents / tour operators and their representative associations emphasised that their existing provisions were sufficient for passengers given the low number of complaints, and that any proposed measures which would change the current rules would be inconsistent with the Montreal Convention.

Although several respondents acknowledged that airline policies in the event of delayed or lost baggage were inconsistent, standardisation via further regulation was rejected on the grounds that such differentiation allows airlines to differentiate themselves from their competitors. Many also added that the measures which could be proposed to address this were impractical, particularly the definition of a standardised ‘emergency pack’ to assist passengers whose bags were lost or delayed.

1.253 In contrast, many of the consumer organisations expressed the view that the existing redress available to passengers under the Montreal Convention was insufficient. Some public authorities expressed similar views although they also echoed the views expressed by the airlines that many of the measures which could be adopted might be impractical and would also conflict with the Montreal Convention.

FIGURE 35 STAKEHOLDER VIEWS: QUESTION 20



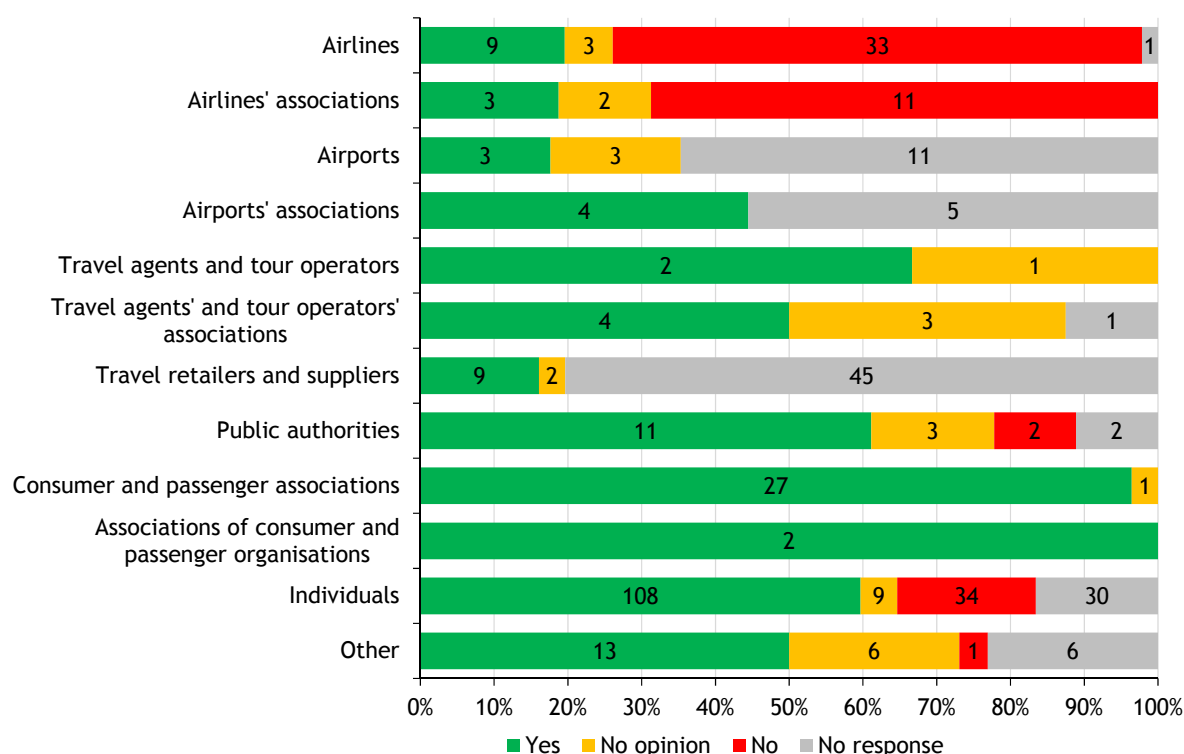
Question 20.1: Should airlines be required to transport delayed baggage to passengers' final destination (not only to the airport, but also to their residence (home/hotel)?

1.254 Figure 36 displays the stakeholders' responses to this question. Amongst most stakeholder groups, a large majority of those that expressed any opinion supported this proposal, but airlines and their representative associations mostly did not. As can be appreciated from the chart, the opinions of airlines and travel agents' and tour operators' associations and

their individual members were closely aligned. Of the main pan-EU airline associations, IATA, IACA, AEA and ELFAA opposed any such requirement, whereas ERAA expressed no opinion. The minority of airlines that did support the proposal had no common characteristics (for example in terms of business model) which would explain why they took a different view from others. In the bilateral interviews, almost all of the airlines and associations that discussed this issue argued that such a provision was unnecessary, given that airlines already transport delayed baggage to passengers' final destinations. ECTAA/GEBTA also expressed no opinion although most travel agent and tour operators that expressed any view supported the proposal.

- 1.255 ACI Europe also suggested that airlines should be required to transport delayed baggage to passengers' final destinations, as did most individual airports that expressed any view, although most did not respond.
- 1.256 BEUC and EPF both expressed support for the proposal, a view shared by almost all individual consumer associations. Whilst, in the bilateral interviews, most agreed that airlines already usually provided this service, some said that they could be unwilling to do so when the passenger lived at a remote location. Most public authorities that responded to the consultation also supported the proposal; although, in the bilateral interviews, many NEBs also said that most airlines were already providing this service to passengers, AESA said that some carriers were requiring passengers to visit the airport every day to check whether their baggage had been found.

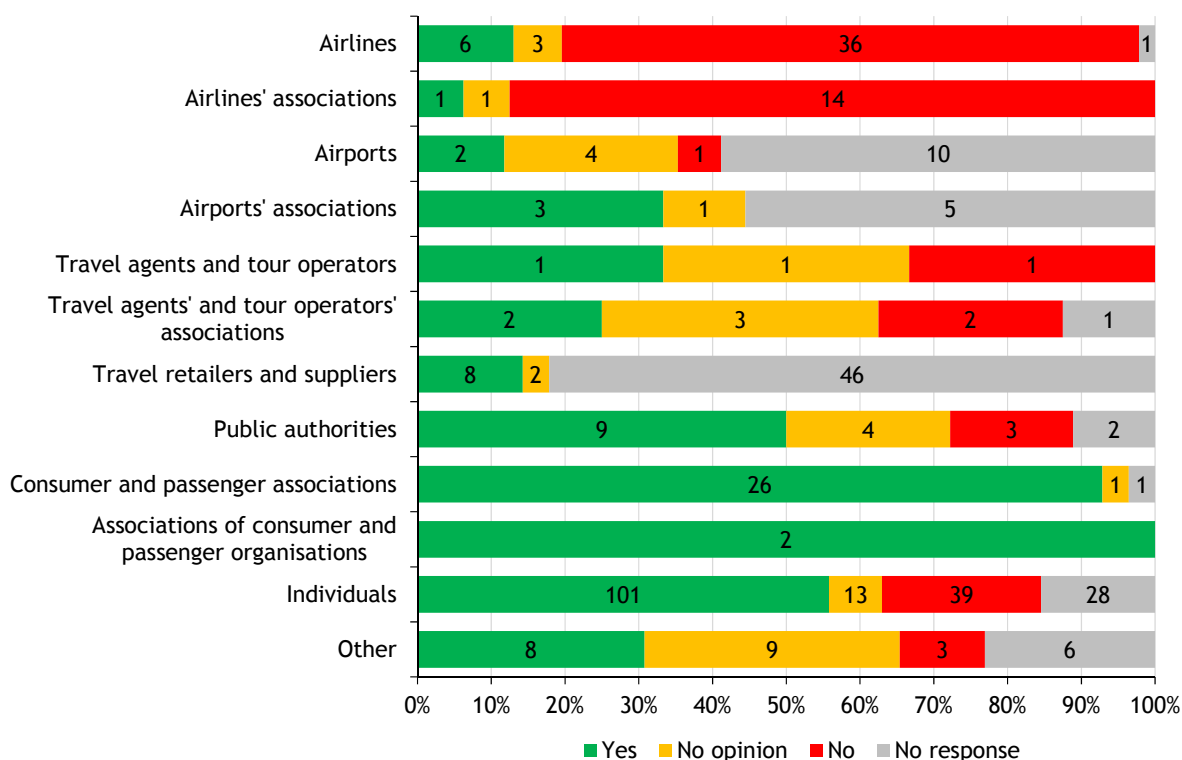
FIGURE 36 STAKEHOLDER VIEWS: QUESTION 20.1



Question 20.2: Should airlines be required to refund any baggage fees where the baggage is lost, on top of the possible compensation due?

- 1.257 A similar pattern of responses is evident for this question. As is portrayed in Figure 37, consumer and passenger associations were again most likely to agree that additional requirements should be imposed on airlines, whereas the airlines were mostly opposed to the measure being proposed; four of the main pan-EU airline associations (IATA, IACA, ELFAA and AEA) opposed the proposal whereas ERAA expressed no opinion. The responses of the main industry and consumer associations were identical to those for question 20.1, and were a close reflection of the views of their member organisations.
- 1.258 In the bilateral interviews most airlines and airline associations also expressed opposition to this option. They argued that any such proposal would conflict with the Montreal Convention; some also cited difficulty in separating the costs of baggage transport from the rest of the ticket price, and the fact that a service had still been provided even if baggage was lost. Although some airlines indicated that they already offered a refund of baggage fees in these circumstances, none went on to translate this into support for further legislation.
- 1.259 The public authorities which responded to the public consultation were divided on this issue, although a majority supported the proposal. In the bilateral interviews, some also supported the proposal, but others argued that the option would be difficult to reconcile with the Montreal Convention, or that the legal basis for the option was dubious given that the airline had already provided and incurred costs for the service.
- 1.260 BEUC, EPF and almost all consumer representatives supported the proposal. In the bilateral interviews, they mostly did not provide specific opinions on this option, instead arguing for a general increase in the scope and level of baggage compensation. However, one consumer organisation argued that refund of baggage fees was essential, as if baggage had been lost the airline had not provided the service paid for by the passenger.

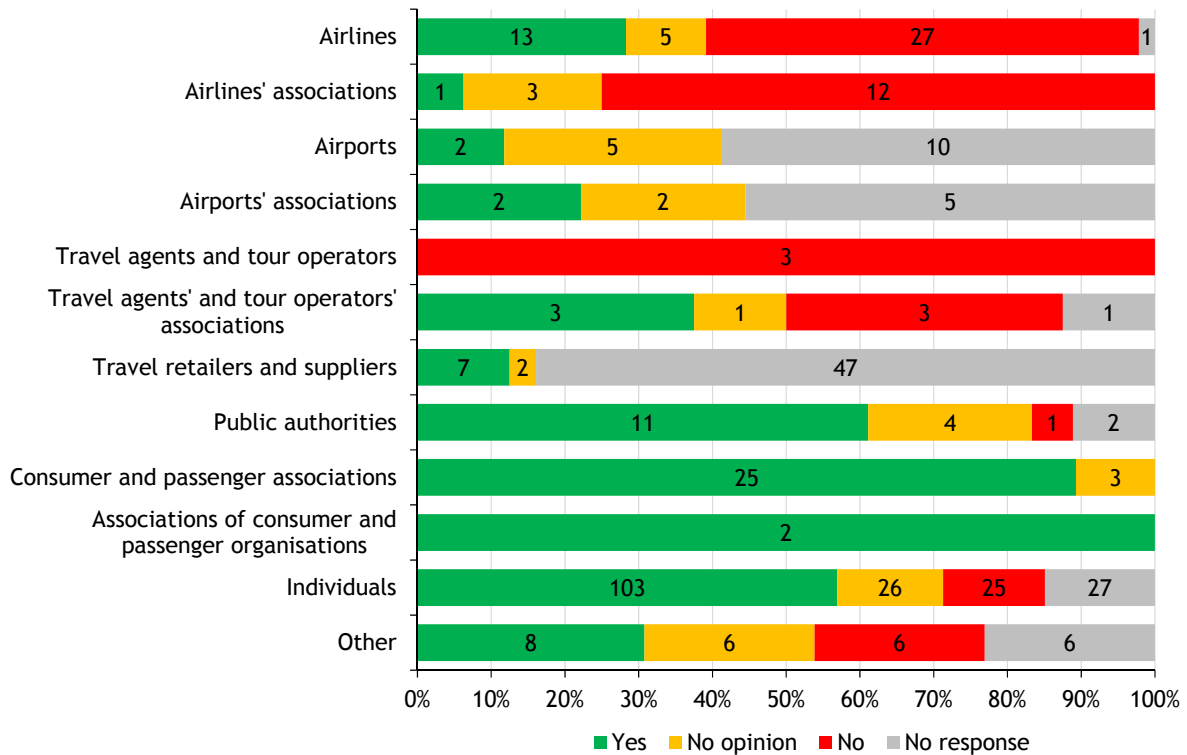
FIGURE 37 STAKEHOLDER VIEWS: QUESTION 20.2



Question 20.3: Should baggage be considered as lost after a certain period of time?

- 1.261 Figure 38 displays the stakeholders’ responses to this question, which again reflect those of the preceding questions within this category. Consumer associations, public authorities and travel retailers were most likely to agree that baggage should be considered as lost after a certain period of time. Airlines and travel agents / tour operators were the least likely to agree, although of the main industry associations, ERAA and IACA did not express any opinion, and a minority of individual airlines agreed. Reflecting previous questions, ACI Europe supported the option, but there was no clear consensus amongst the individual airports which responded. Both BEUC and EPF, as well as most individual consumer organisations, supported the option.
- 1.262 This question was not directly addressed in the bilateral interviews, and consequently none of the stakeholders made any reference to this option, although some NEBs and consumer associations raised a related issue, that the period during which a passenger is required to submit a complaint about delayed or damaged baggage should be extended, and that a Property Irregularity Report (PIR) should be allowed to constitute a written complaint. Lack of awareness of the rules set out by the Montreal Convention was also cited as an issue by some stakeholders.

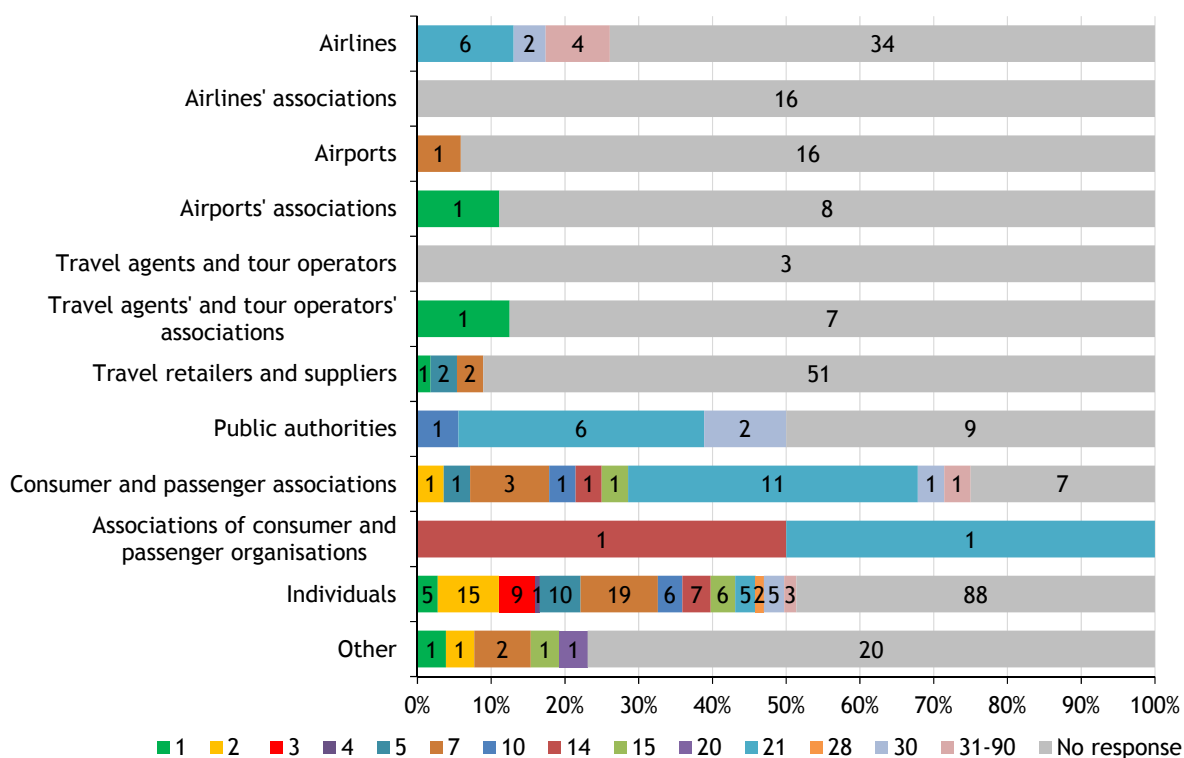
FIGURE 38 STAKEHOLDER VIEWS: QUESTION 20.3



Question 20.3b: If yes, how many days?

1.263 Of the stakeholders who responded to Question 20.3, consumer associations and public authorities were most likely to choose a period of 21 days after which missing baggage should be declared as lost, although a wide variety of answers were received. The few airlines who responded were also most likely to choose a period of 21 days. ACI Europe was the only airport association which provided a response, suggesting that baggage should be considered lost after 1 day. Differing views among the consumer and passenger associations are reflected in the views of BEUC and EPF: the former opting for 21 days, and EPF for 14.

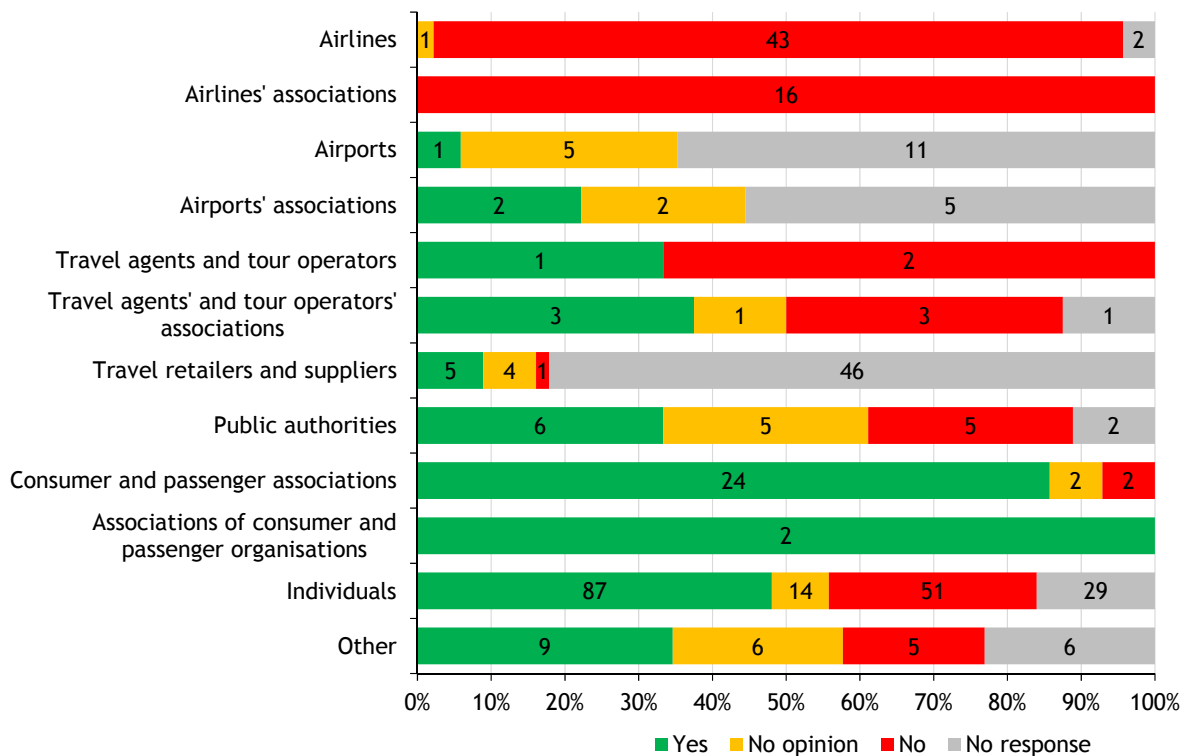
FIGURE 39 STAKEHOLDER VIEWS: QUESTION 20.3B



Question 20.4: Should airlines be required to provide automatic compensation per day, in cases of delayed baggage?

- 1.264 Figure 40 shows that the airlines and their representative associations almost universally disagreed with the proposal for a requirement for them to pay automatic compensation in cases where baggage is delayed. Similarly, ECTAA/GEBTA and most travel agents / tour operators disagreed with the automatic compensation option, whereas ACI Europe and most airport representatives did not express any opinion. In the bilateral interviews, many airlines and airline associations emphasised that in their view any requirement to pay automatic compensation would conflict with the Montreal Convention and therefore violate international law. Some noted that some airlines already provide automatic or per-day compensation as part of their general commercial policy.
- 1.265 Public authorities were divided on the issue. In the bilateral interviews, AESA said that passengers should receive a minimum level of compensation per day, but it acknowledged that this would be difficult in light of the potential contradiction with the Montreal Convention. BEUC and EPF supported the proposal as did the vast majority of individual consumer associations; in the interview, BEUC said that automatic compensation should be awarded to cover immediate needs in case of delay and that this compensation should be increased as the delay persists.

FIGURE 40 STAKEHOLDER VIEWS: QUESTION 20.4



Question 20.4b: If yes: how should the amount of compensation be defined and from when until when should compensation be granted?

- 1.266 **Airline and airline associations:** Consistent with the result that almost all airlines and airline associations believe that there should not be any obligation to pay automatic compensation, no airlines or airline associations responded to this question.
- 1.267 **Airports and airport associations:** One airport group said that compensation should be payable from the first day until the baggage is designated as lost. Other airport representatives did not respond to this question.
- 1.268 **Travel agents and tour operators:** The Association of Danish Travel Agents and Tour Operators said that it could either be a fixed sum per day or the compensation could be on a case by case basis with the passenger proving that the amount was reasonable; the issue came when the passenger tried to get the airline to pay the sum that they were entitled to. Thomas Cook said that compensation could not be fixed rate because the impact on passengers would vary; for example it was much greater for passengers on the outbound journey for their holiday than the return. Other travel agents and tour operators generally did not respond to this question.
- 1.269 **Travel retailers and suppliers:** One travel retail representative suggested that an average cost per day be set to compensate passengers affected by delayed baggage, with the amount at a level sufficient to cover clothing and food costs. The entity urged an additional payment for the damage caused to the passenger due to the late delivery of their baggage. Another respondent said that the compensation should be €75 for the first day and €25 per day thereafter. Most others did not respond to this question.

- 1.270 **Public authorities:** CAA Norway said that compensation for delay should be paid for delay between one and 30 days, and that beyond that baggage should be considered lost. AESA said that the current regime defined by the Montreal Convention was not sufficient for passengers; in most cases they could only get compensation by resorting to legal action, which deterred them from claiming, and in any case did not address immediate needs. It also noted that it was difficult for them to quantify and prove damage in order to claim. It suggested a fixed rate payment of €60 per day, and suggested other measures to assist passengers, such as publication of baggage performance indicators for each carrier. However, another Member State said that any EU Regulation on this issue would violate Article 29 of the Montreal Convention.
- 1.271 **Consumer and passenger associations:** Several ECCs responded that there should be a fixed payment per day. Several suggested that the amount should be €50/day, but the EPF and FNAUT said that compensation should be €200/day. The Norwegian Consumer Ombudsman said that it supported automatic compensation, because airlines would usually be liable anyhow and it saved time for passengers and carriers if the compensation was fixed rate; it would also give airlines an economic incentive to improve their performance. The Greek Consumers' Protection Centre (KEPKA) said the rate of compensation should be higher for the first night because one-off costs would be incurred.
- 1.272 **Individuals:** Individual respondents suggested amounts which varied from €15 to €200 per day, up to €2,000 per item. However, some considered that compensation should reflect costs for the destination concerned, or be defined based on the price of a 'basket' of products which the passenger could reasonably be expected to need. Some considered that compensation for delayed baggage should only be paid if the passenger is away from their home.
- 1.273 **Other:** There was no consistent view from the other respondents. One ground handling company suggested €30 per day; the Union of Agricultural Cooperatives of Limnos suggested €100 per day. The Utrecht University Molengraaff Institute for Private Law said that any such measure would conflict with the Montreal Convention.

Items missing from baggage

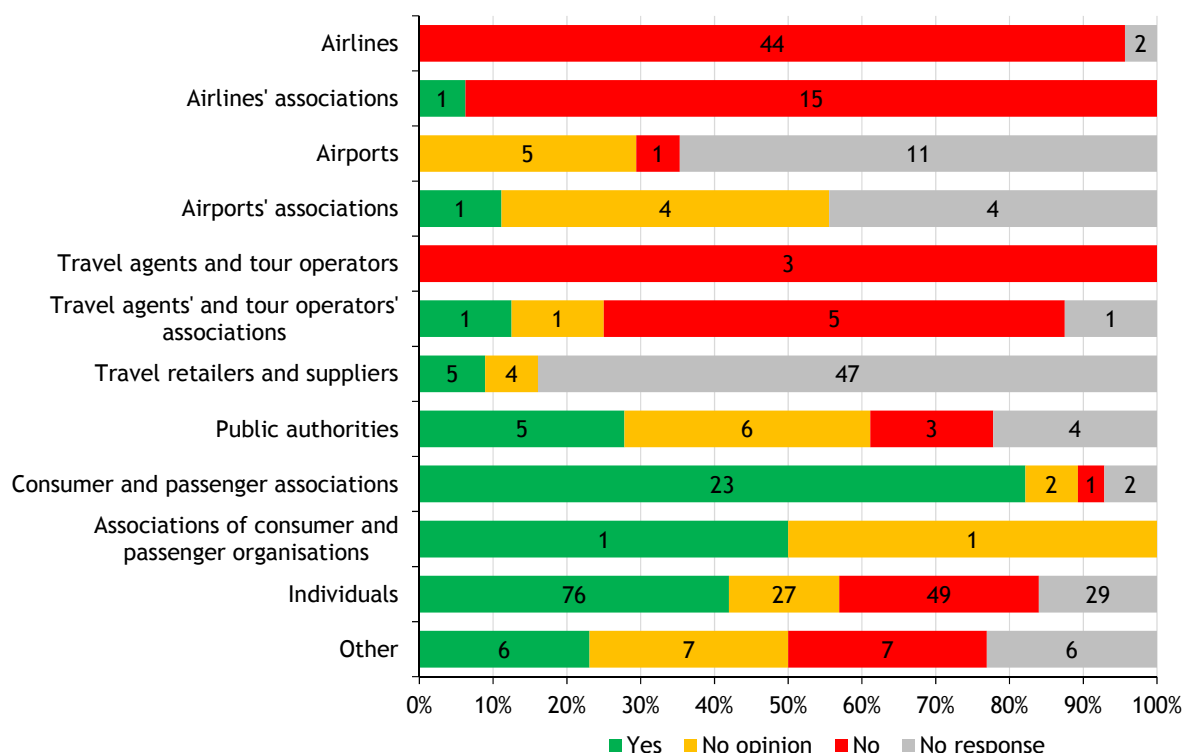
- 1.274 The document stated that, although airlines are in principle liable if items go missing from checked baggage, it may be difficult for the passenger to prove that an item had gone missing, and therefore to claim compensation. It asked whether measures should be taken to assist passengers in these cases.

Question 21.1: Should action be taken to make it easier for passengers to claim against airlines when items have gone missing from their baggage?

- 1.275 Figure 41 demonstrates the respondents' viewpoints for this question. BEUC and most other consumer representatives agreed that action should be taken to make it easier for passengers to claim against airlines when items have gone missing from their baggage, although EPF and some others expressed no opinion. Some public authorities also considered it should be easier for passengers to claim. In contrast, airlines and travel agents / tour operators and their representative associations, almost without exception, disagreed. In the interviews, and as discussed further under question 21.2 below, they said

that there was no practical way to do this and also highlighted the risk of fraudulent claims.

FIGURE 41 STAKEHOLDER VIEWS: QUESTION 21.1



Question 21.2: How could the problem of items going missing from baggage be addressed?

- 1.276 **Airline and airline associations:** Swiss, Qantas and several other respondents said that in many cases items had only allegedly gone “missing” and that making it easier for passengers to claim for these items could encourage questionable claims. Monarch said that this could be addressed through better security at airports, and Ryanair and others said that passengers should not place valuable items within checked baggage. A4A said it was already straightforward to file a claim, and carriers usually would reimburse passengers if there was a prompt and reasonable claim. Flybe said that passengers could be given to option to declare all items in the luggage with their value prior to flight. Another carrier suggested that the weight at the point of check-in could be used as evidence.
- 1.277 **Airports and airport associations:** No airports or airport associations responded to this question.
- 1.278 **Travel agents and tour operators:** ECTAA and most other travel agents and tour operators that responded said that there was no practical way to prove what was inside a checked bag, and there was a risk of fraudulent claims. DRV said that the Montreal Convention already provided a system for determining liability in cases of damage and EU legislation should not conflict with this. Thomas Cook said that this should be addressed through adequate policing of baggage handling staff at airports where there is perceived to be a theft problem.

- 1.279 **Travel retailers and suppliers:** Most travel retailers and suppliers did not respond to this question; one said that the weight could be used as evidence.
- 1.280 **Public authorities:** The public authorities did not express a consistent view. AESA suggested that the weight of the baggage could be used as evidence. The Finnish Consumer Agency and Ombudsman said that passengers should be better informed about their rights and about complaint procedures, and the Catalan Consumer Agency said that passengers should be reminded that the carrier could not accept responsibility for valuable items in checked baggage. One Member State said that no measures should be taken by the EU as this would violate the Montreal Convention; another said that it would be impossible for the passenger to prove that items were missing and therefore this should be addressed through private insurance.
- 1.281 **Consumer and passenger associations:** Most consumer representatives recognised that this was potentially a difficult issue for both the passenger and the airline. CSF said that airports were responsible for controlling staff involved in baggage handling. Consumentenbond and some other consumer representatives said that passengers should be informed of their right under the Montreal Convention to make a special declaration; the declaration should be free of charge. CEACCU said that the regime could be based on the case law in Spain with respect to cases of items missing from hotel rooms. Another respondent said that the legislation should limit carriers' rights to refuse to accept certain items within checked baggage.
- 1.282 **Individuals:** Most individual respondents also recognised that this was a difficult issue and that it would be difficult to prove whether a particular item was included in baggage. Several said that the passenger could obtain insurance, but some suggested that it was the airline that should be insured. Some suggested that it should be possible to seal the baggage at check-in, or that the passenger should be able to make a declaration at check-in of the items in their baggage. One respondent suggested that there should be an equivalent of the 'TSA approved' baggage lock used in the US, which seals the baggage but can be opened by security personnel if necessary. Some pointed towards a need for better security at airports, such as vetting of baggage handling staff. One respondent suggested that the solution lay solely with the passenger, who should not place any valuables in their baggage.
- 1.283 **Other:** Most other respondents did not respond to this question. The Utrecht University Molengraff Institute of Private Law said that this was already adequately addressed by the Montreal Convention and the EU should not violate this by introducing its own rules.

Compensation for lost or damaged mobility equipment

- 1.284 The consultation document explained that airlines' liability for loss of mobility equipment is generally limited by the Montreal Convention. EU Regulations for other modes of transport do not specify equivalent limitations, and some non-EU countries have legislated to ensure that there is no such limit for domestic flights.

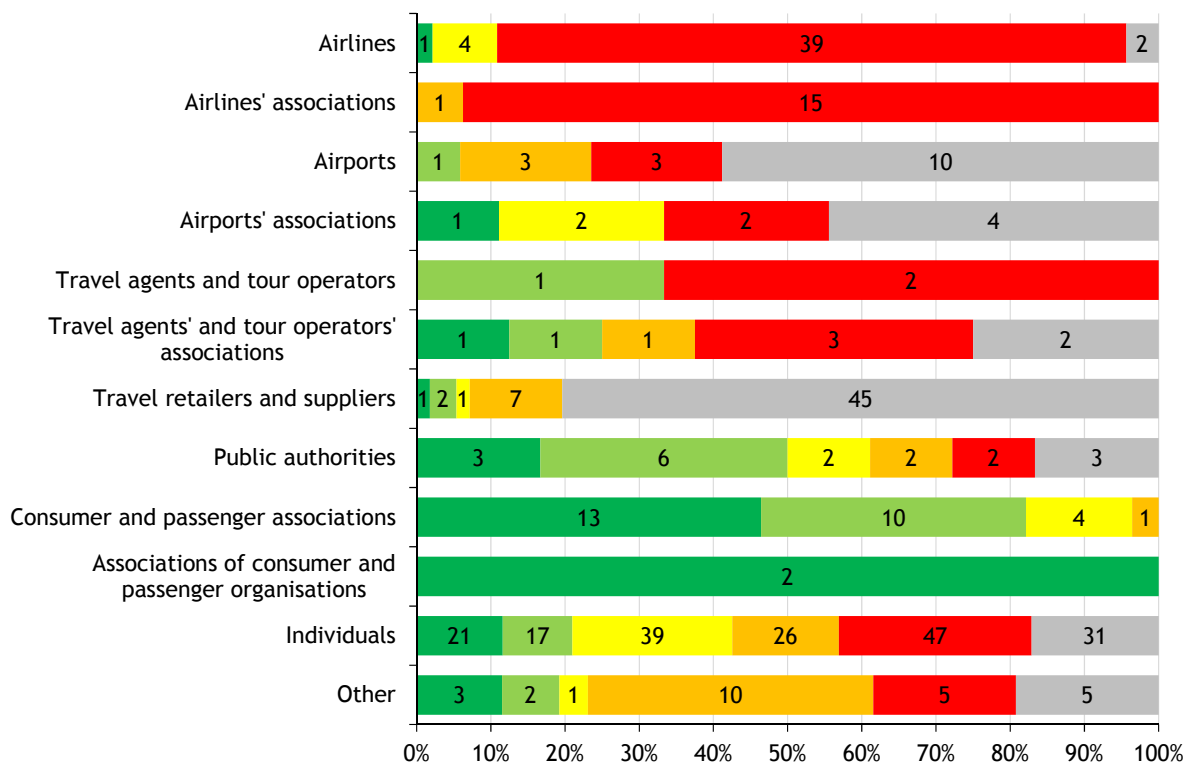
Question 22: Should the rules on liability for loss or damage to mobility equipment be changed?

- 1.285 Figure 42 displays the stakeholders' responses to this question. BEUC, EPF and many other consumer representatives believed that the limit should be abolished at least for intra-EU

flights; most other consumer representatives argued that the limit should be increased. The only representatives of disabled passengers and PRMs that responded, the European Disability and ONCE (the Spanish National Institute for the Blind), also responded that the limit should be abolished. In the interviews, some highlighted that the limit was much too low to cover the costs of some mobility equipment. Most public authorities also supported increasing or abolishing the limit.

1.286 In contrast, all of the main airline and travel agent and tour operator associations considered there should be no change to the limit, as did most individual airlines and tour operators. In the interviews, many airlines said that their commercial policy was to waive the limit, but nonetheless they did not support any regulatory change. ACI Europe supported airlines being required to offer insurance, but most other airport respondents did not express any views.

FIGURE 42 STAKEHOLDER VIEWS: QUESTION 22



- Yes - the limit on liability should be abolished (i.e. unlimited liability) for domestic and intra-EU flights.
- Yes - the limit on liability should be increased.
- Yes - airlines should be required to offer insurance, at a moderate price, to cover the risk of loss or damage to mobility equipment.
- No opinion.
- No - no change to the current rules.
- No response

Options to limit the economic burden on airlines and improve compliance

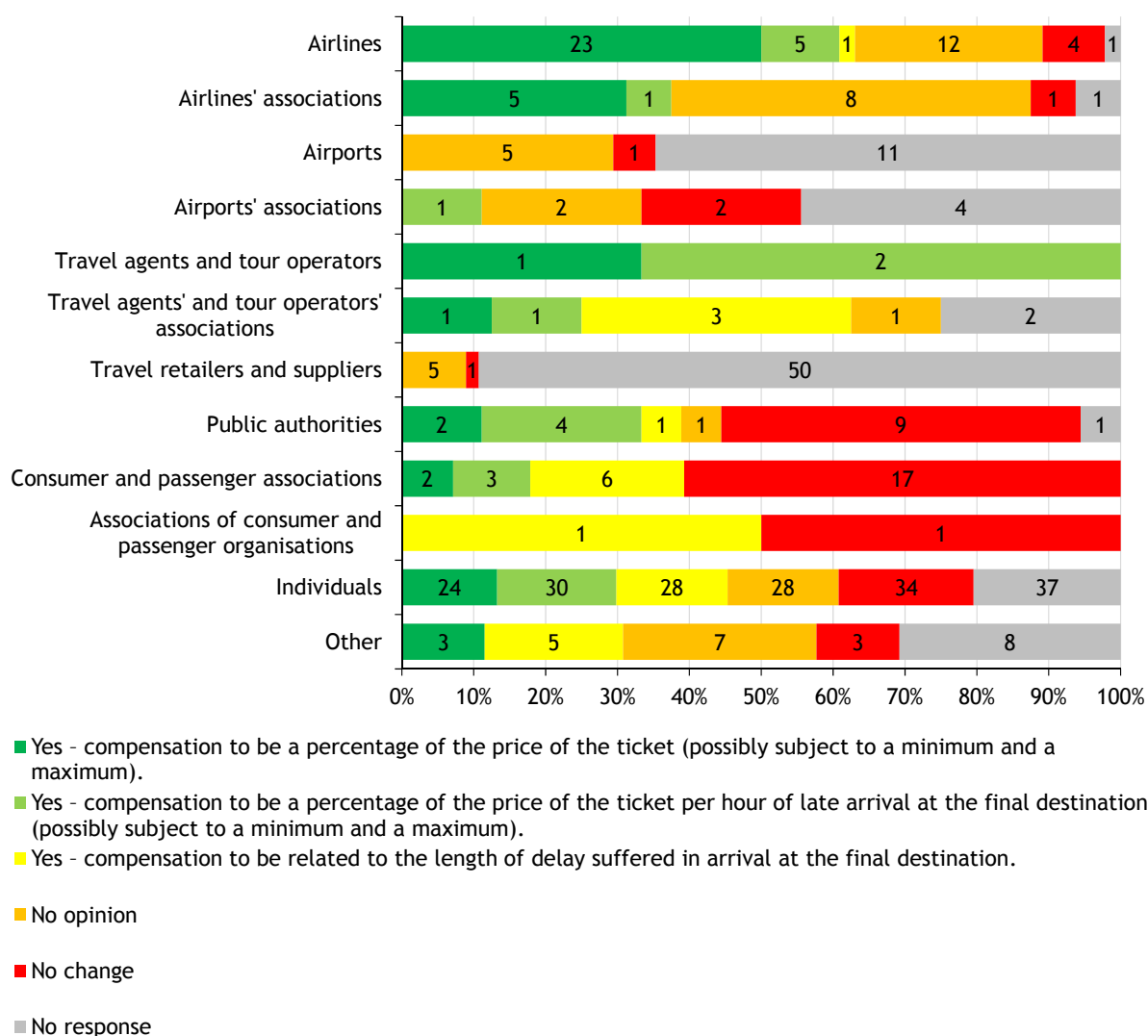
Amend right to compensation

- 1.287 The consultation document explained that the Regulation's current compensation provisions do not reflect the ticket price or (in most cases) the length of delay the passenger faces, and compensation is considered by some airlines to constitute an unreasonable economic burden. The document set out several options which could potentially be adopted to address this issue.
- Question 23: Should airlines' liability to pay compensation be further limited, and if so, how?*
- 1.288 Figure 43 shows the respondents' responses to this question. Airlines were most likely to choose that compensation should be a percentage of the price of the ticket, although a substantial proportion did not express an opinion on the matter. Of the main airline associations, IATA and ELFAA believed that compensation should be a function of the ticket price, whereas AEA, ERAA and IACA expressed no opinion. In the interviews, they argued that the original purpose of the right to compensation defined in the Regulation was to deter overbooking and commercial cancellations; if compensation was to be applied to a wider range of circumstances the amounts defined in the Regulation were disproportionate.
- 1.289 However, IATA noted that some of its member airlines do not support compensation being a function of ticket price, possibly because of the potential costs this would imply in relation to flexible and premium class tickets. In the interviews many also emphasised that there should be no link to length of delay, because they did not support the concept of any compensation for delays (see discussion under question 7.1 above), and also because the time of arrival at the final destination could be impacted by a number of other factors outside the control of the airline and unrelated to the original delay (for example, wind direction can make a material difference to the journey time for a long haul flight).
- 1.290 ECTAA/GEBTA expressed no opinion on this issue. The individual travel agents and tour operators that responded supported compensation being based on ticket price although in the bilateral interview one highlighted the potential difficulty of calculating this with respect to flights sold as part of a package holiday.
- 1.291 In contrast, BEUC and most other consumer representatives said no change should be made to the liability to pay compensation. EPF and those other consumer representatives that did support any change considered compensation should be related to the waiting time. In the interviews, BEUC and several others said that the damage suffered by a consumer in cases of journey disruption was not related to the price of the ticket; one consumer organisation said there already was an indirect link in any case because of the link to the distance of the flight.
- 1.292 Most public authorities who responded to the consultation did not support any change. In the interviews, some said that flat-rate compensation should be retained as it was fairer to passengers, but others indicated support for compensation being a function of ticket price, as this would be a more proportionate economic burden for airlines. One respondent said that it should be clarified how much compensation was payable in the case of a long delay due to a missed connection, when the delay to the first flight was not significant.

Both the Polish and French NEBs said that if compensation was related to ticket price, it would also need to be clarified what would be payable for flights purchased as part of a package. DGAC France also expressed a concern that compensation which was proportional to ticket price might not be an effective deterrent at the lower rates.

1.293 ACI Europe did not support any change to the compensation provision; but most other airport representatives did not express any opinion.

FIGURE 43 STAKEHOLDER VIEWS: QUESTION 23



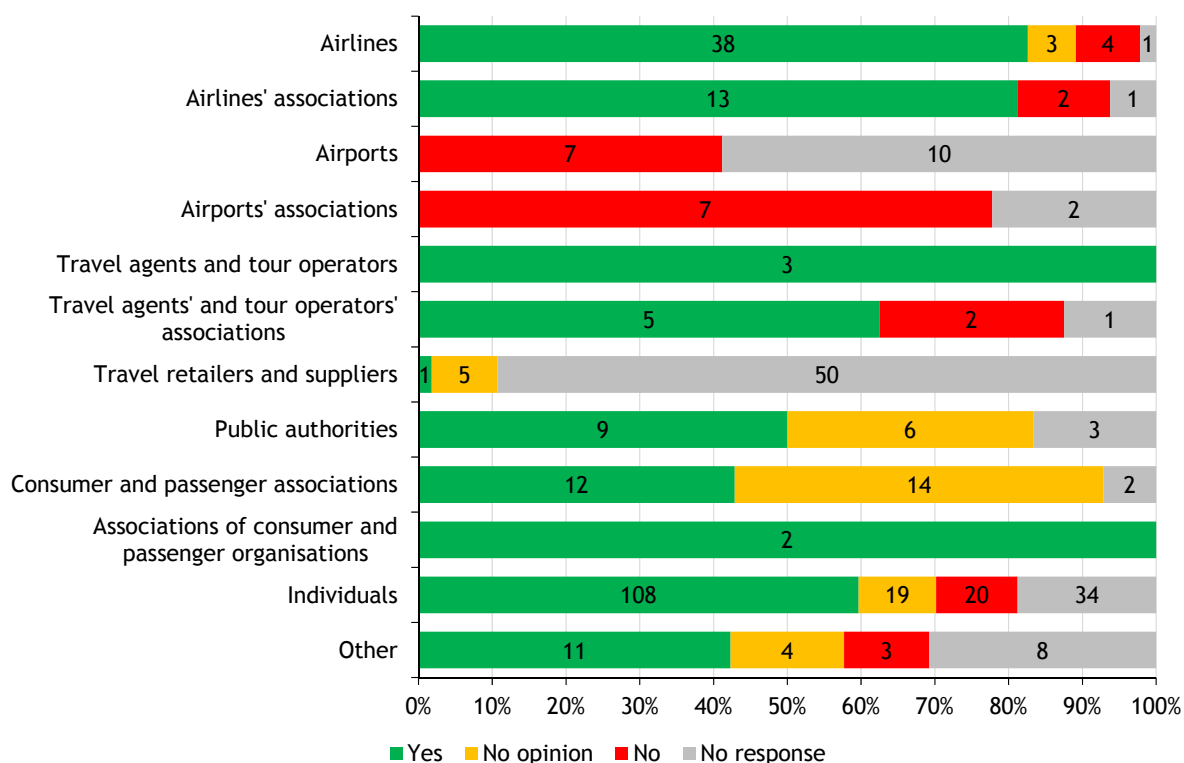
Recourse against third parties (burden sharing)

1.294 Although Article 13 does not prevent airlines from claiming compensation from responsible third parties, the consultation document said that most had not done this to date, partly due to the restrictive terms of the contracts they have with these entities. This issue could be addressed by amending the Regulation to state that airlines can claim against specified third parties, and that any condition in a contract which defines otherwise shall be void.

Question 24.1: Should airlines explicitly be given the right to claim costs of compliance from third parties, where these are responsible, even if this is not permitted by their contract?

- 1.295 Most stakeholders agreed that airlines should be given an explicit right to claim costs association with compliance from third parties, as can be seen in Figure 44. All of the main airline associations, and most individual airlines, argued that airlines should be able to claim; there were no common characteristics to those that did not agree which would explain why they had adopted a different position. In the interviews, and as discussed further under question 24.2 below, many said that this was one of the most important issues in the Regulation to be addressed, but some expressed a concern that they would end up paying for it through higher airport or air navigation charges in subsequent years. ECTAA/GEBTA and most travel agent and tour operator representatives agreed.
- 1.296 EPF, BEUC and some other consumer representatives also thought the Regulation should be revised to allow this - although in the interviews some expressed the view that as consumer representatives their concern was that passengers were compensated, not how the costs of this were allocated, and that it was important that passengers still only had to claim against one body (the airline). Most public authorities which expressed any view also thought that airlines should be able to claim. In the interviews they noted that it was difficult for airlines to recover these costs at present under Article 13. The UK CAA said that introducing a right for airlines to recover these costs could create an incentive for other parties to improve their performance. SPF Mobilité (Belgium Ministry of Transport) said that there would be an issue with disruption caused by strikes, as it would not be possible to take legal action against the trade union.
- 1.297 Airports were the only group which strongly disagreed with the proposition. In the interviews, they explained that Article 13 already provides such a mechanism (this is discussed under question 24.2 below). One airport group said that it should be taken into account that airports, as well as airlines, already suffer costs when there is disruption, because airlines do not pay charges for flights that do not operate, and the reduction in passenger numbers impacts airport commercial revenues.

FIGURE 44 STAKEHOLDER VIEWS: QUESTION 24.1



Question 24.2: Can you suggest any other mechanism by which such burden sharing between airlines and responsible third parties could be facilitated?

1.298 **Airline and airline associations:** IACA, ERAA and several individual airlines emphasised that although Article 13 does not prevent airlines from claiming compensation from third parties, it does not provide any means by which they can do so, and attempts had not been successful. Airlines usually had no scope to negotiate the contract terms imposed by airports or other third parties, and these usually precluded claims. They also pointed out that some third parties might have State or other immunity from claims. Where they discussed how this should be addressed, most airlines said that they should still compensate the passenger but should have a right to reclaim costs from the third party; Alitalia suggested that passengers should be able to claim directly against the third party. Several also said that there should be no obligation to compensate passengers where there was no responsible third party (an ‘act of God’). AEA and several of its member airlines said that there should be better allocation of responsibilities in particular for providing information and care in cases of generalised disruption.

1.299 However, despite the strong support for this proposal expressed by airline representatives in response to the previous question, some practical concerns were raised in the detailed responses. United Airlines said that this was a matter for commercial negotiation between the parties, and Singapore Airlines said this could be addressed through service level agreements with liability limited for both parties. Other carriers said that any costs passed on to service providers would be charged back to the airlines through higher fees, and Monarch said that any such provision would only benefit lawyers. SAS said that airports

should be prohibited from levying additional charges to cover costs of additional services they had to provide.

- 1.300 **Airports and airport associations:** ACI Europe and several airports said that Article 13 already provided such a mechanism, and said that where the airport was responsible for disruption, the carrier would always have the right to redress. Manchester Airport Group said that most airports were not monopoly providers as airlines could and did readily move their operations between airports. Copenhagen Airports said that passenger rights would ultimately be financed by the passenger, regardless of who pays compensation. The UK Airport Operators Association (AOA) said that arrangements for managing disruption should be addressed as part of the overall commercial arrangement between the parties. Fraport, Munich and several other German airports said that they opposed the Regulation defining a right to reclaim costs that were excluded in the contract with the airport.
- 1.301 **Travel agents and tour operators:** ECTAA and several tour operators and travel agents that responded said that any costs passed on to service providers would ultimately be charged back to carriers in the form of higher fees; some said that national regulators would have to get involved to monitor such costs, and this might be regarded as unnecessary interference in commercial activities. Several thought the issue would be best addressed by reducing the burden rather than reallocating it. ECTAA and the Association of Swedish Travel Agents and Tour Operators said that if airlines were to be given a right to reclaim costs from third parties, tour operators also should be given a right of redress against airlines for damages suffered as a result of flight cancellations and delays. However, the DRV said that it would be fair to have a better form of burden sharing.
- 1.302 **Travel retailers and suppliers:** Most travel retailers and suppliers did not respond to this question.
- 1.303 **Public authorities:** Most public authorities did not respond to this question and those that did, did not suggest how burden sharing could work. One Member State said airlines should define in their contracts with third parties terms of liability, but the UK CAA said that airlines often do not have contracts with airports and most ANSPs are part of the State.
- 1.304 **Consumer and passenger associations:** Most consumer and passenger representatives that expressed any view supported airlines being given a right to reclaim costs from third parties, provided it was clear that passengers' right to recourse was against the contracting party, the airline. The Norwegian Consumer Ombudsman said that this would give third parties an incentive to improve their service, to the benefit of consumers. BEUC considered that the ability of airlines to claim against airports should not be limited by contract terms which reduce airports' liability. However, Holiday Travel Watch and CSF said that these contract terms were an issue between airports and airlines, not for consumers.
- 1.305 **Individuals:** Most individual respondents that expressed any view also supported airlines being able to claim against third parties, although some expressed concerns that it would lead to higher airport charges, or increased administrative burden; several said that it should not lead to airlines being able to exclude their liability to passengers.
- 1.306 **Other:** The ground handling company Swissport said that the IATA Standard Ground Handling Agreement provided an established mechanism for relations between airlines and

handlers, and should not be changed as a result of any revision to the Regulation. This defines that ground handlers are already liable in some circumstances; they also have service level agreements with airlines which lead to lower fees if there is poor service. If there was a further right to recourse, this would lead to higher ground handling charges, higher insurance costs (as liability would be unclear), and higher administrative costs (as it would be difficult to determine the consequential liability in each case). CER said that the sector itself should define the contract terms applicable between airports and airlines.

Liability for costs of assistance in extraordinary circumstances

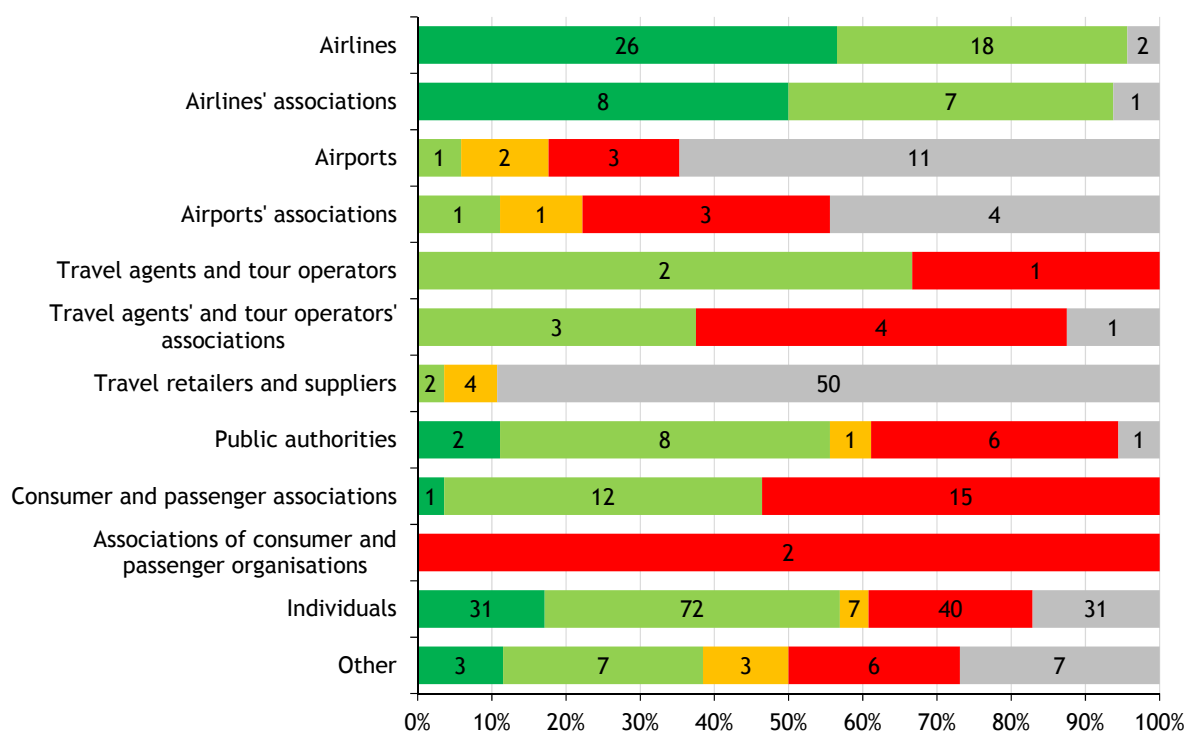
- 1.307 The consultation document cited the 2010 volcanic ash crisis as incurring particularly significant care costs for airlines, and suggested that this could be addressed by limiting airlines' liability for assistance costs in cases of extraordinary circumstances, in particular with regard to accommodation.

Question 25: Should airlines' liability be limited for providing accommodation in exceptional circumstances?

- 1.308 Figure 45 displays the responses of stakeholders for this question. The airline industry almost universally thought there should be a limit, arguing for a partial or complete exclusion. IACA, ERAA, IATA and the majority of individual airlines said that there should be no right to accommodation in exceptional circumstances; AEA, ELFAA and the remaining airlines thought there should be a right but that it should be limited in terms of number of days or cost. In the interviews, airlines and airline associations pointed towards the substantial costs that had been incurred during the volcanic ash crisis; one said that it had had to enter bankruptcy protection as a result. They emphasised that it was unreasonable and disproportionate for airlines to be liable for events that they could not control; IATA said that insurance usually has an exemption for 'force majeure' and airlines could not be expected to be the insurer of last resort. Several suggested that the same limits (in terms of cost and number of nights) could be adopted as in the passenger rights' Regulations for other transport modes.
- 1.309 ECTAA/GEBTA also thought there should be a limit on the number of nights or cost. In the interview it suggested that there should be no right to accommodation if the disruption was caused by bad weather or natural disasters, as in the Regulation on passenger rights in bus/coach transport. However, some other travel agent and tour operator representatives did not agree with any limit.
- 1.310 In contrast, EPF, BEUC and most other consumer representatives thought that there should be no limit. In the interview, BEUC said that the volcanic ash crisis demonstrated the need for the Regulation; passengers could not be left stranded or sleeping at an airport in the event of disruption, and the cost of providing assistance was a risk inherent in the business. Another consumer representative said that legislation should not be changed on the basis of one genuinely exceptional event; another noted that whilst it may have been problematic for airlines, the companies had not ceased to exist as a result. However, a minority of consumer representatives thought that there should be a limit in terms of cost or number of days.
- 1.311 Whilst public authorities generally did not support the view expressed by some airlines that there should be no right to accommodation in extraordinary circumstances, many did

think that there should be a limit on the number of nights and/or cost. In the interview, the UK CAA said that the Regulation should not be significantly revised on the basis of a one-off event such as volcanic ash, and noted that changes to safety rules now meant an equivalent eruption would not cause the same effect; it did however think that the liability could pass to States beyond a number of days. IFW (the Netherlands NEB) said that there should be a distinction between an ‘act of God’ such as volcanic ash, and a more regular event such as an air traffic control strike. One respondent said that it could be appropriate to have a limit in terms of number of nights but there should not be a monetary limit as the cost of accommodation varied so much between airports.

FIGURE 45 STAKEHOLDER VIEWS: QUESTION 25



- There should be no right to accommodation where the delay/cancellation is due to exceptional circumstances.
- There should still be a right to accommodation, but the number of nights and/or the cost of the accommodation should be limited in exceptional circumstances.
- No opinion
- No change to the current rules.
- No response

Question 25b: Do you have other comments with regard to the right for accommodation?

1.312 **Airline and airline associations:** Most airlines and airline associations which responded to this question argued that unlimited liability in circumstances beyond their control was unreasonable and disproportionate, and that (as in other transport modes) at least both the number of nights and the cost of accommodation should be limited. Many airlines argued that it was unfair for airlines to be treated as insurers of last resort, and that passengers should be encouraged to arrange their own insurance for exceptional

circumstances. However, several also conceded that airlines were often the best placed body for providing assistance to passengers, and were willing to assist with making arrangements. The Board Of Airline Representatives Switzerland (BAR Switzerland) believed that one night's accommodation at an airline's expense was reasonable, while A4A and US carriers suggested that airline liability should be restricted to two days' care, with daily limits of €80 for accommodation, €30 for refreshments and €20 for communication. SATA raised two issues regarding what action should be taken when insufficient hotel accommodation is available: whether passengers should be compensated, and whether the airline should be required to provide space for passengers in this situation.

- 1.313 **Airports and airport associations:** The only respondent to this question from this category was ACI Europe. It stated that NEBs should ensure proper enforcement of the Regulation.
- 1.314 **Travel agents and tour operators:** Many travel agents and tour operators had a similar position to airlines, that it was not proportionate or fair for this risk to be allocated to carriers. ECTAA argued that the rights of passengers travelling by air should be consistent with those travelling by other modes. Several respondents believed that any changes to this element of the Regulation should be consistent with the Package Travel Directive, to avoid market distortions. For example, the Association of Danish Travel Agents and Tour Operators was concerned that travel agents and tour operators did not become liable for providing accommodation or meals where a carrier does not meet its obligations. The Association of Swedish Travel Agents and Tour Operators believed that under exceptional circumstances, an airline should only be liable for one night's accommodation, but that in all other situations the airline should be obliged to provide accommodation until a flight is provided.
- 1.315 **Travel retailers and suppliers:** One travel retailer responded to this question. They believed that it would be helpful to list extraordinary circumstances to avoid abuse by airlines, and to encourage airlines to work with hotels to obtain lower rates for stranded passengers.
- 1.316 **Public authorities:** Responses to this question from public authorities did not have a consistent view. One agreed with the airlines, that in exceptional circumstances the number of nights' accommodation and value of assistance should be capped; it also suggested working with the insurance industry to allow passengers to obtain cover for exceptional events (such as the volcanic ash crisis). AESA agreed with this viewpoint, suggesting a limit of 3 nights and €90 per night. In contrast, the Danish Transport Authority argued that the right to accommodation should be extended to cover flights from non-EU airports to EU airports operated by non-EU airlines. The Finnish Consumer Agency and Ombudsman believed that the passengers should have a right to assistance in exceptional circumstances, but that there should be a reasonable sharing of the economic burden for absolutely extraordinary events of long duration.
- 1.317 **Consumer and passenger associations:** Most consumer and passenger associations argued that the rights of passengers to receive assistance during extraordinary circumstances should remain, and should not be put into question as a result of the volcanic ash cloud crisis. EPF argued that the passenger is the weaker party to the contract, and that operators must take responsibility for the risks inherent in their business. BEUC noted that

the Commission's report on the costs of compliance in the aftermath of the ash cloud showed that its financial impact on airlines was often overestimated, and argued that most of the disruption caused by heavy snowfalls in 2010 could have been avoided through having appropriate contingency plans in place. The UK ECC also noted the issues around obtaining insurance for extraordinary circumstances, and suggested that a mandatory payment could be made with each ticket purchase to provide a fund to cover such circumstances. CSF (and Holiday Travel Watch believed that extraordinary circumstances should be genuinely extraordinary (such as earthquakes or war) and could be decided by the Commission; Holiday Travel Watch suggested the introduction of a 'crisis clause' in the Regulation, which would permit the Commission to declare a crisis, and thereby change the rights available to passengers.

- 1.318 **Individuals:** Individual respondents had mixed responses to this question. Some agreed with airlines that in extraordinary circumstances such as the volcanic ash cloud crisis it would be appropriate to limit the liability of carriers. One suggested that airports should have a role in similar circumstances, such as providing temporary accommodation. However, most believed that the Regulation should not be changed; several suggested that airlines should purchase insurance to cover such risks.
- 1.319 **Other:** The rail industry stakeholders (CER, International Rail Transport Committee (CIT), and ÖBB) held the same position as airlines, that carriers should not be made liable for circumstances outside their control, and that passengers should be encouraged to purchase insurance to cover such circumstances. The European Disability Forum (EDF) noted that it was important for disabled passengers that any information, transport and hotel accommodation provided were accessible.

Helicopters, small aircraft and specific routes

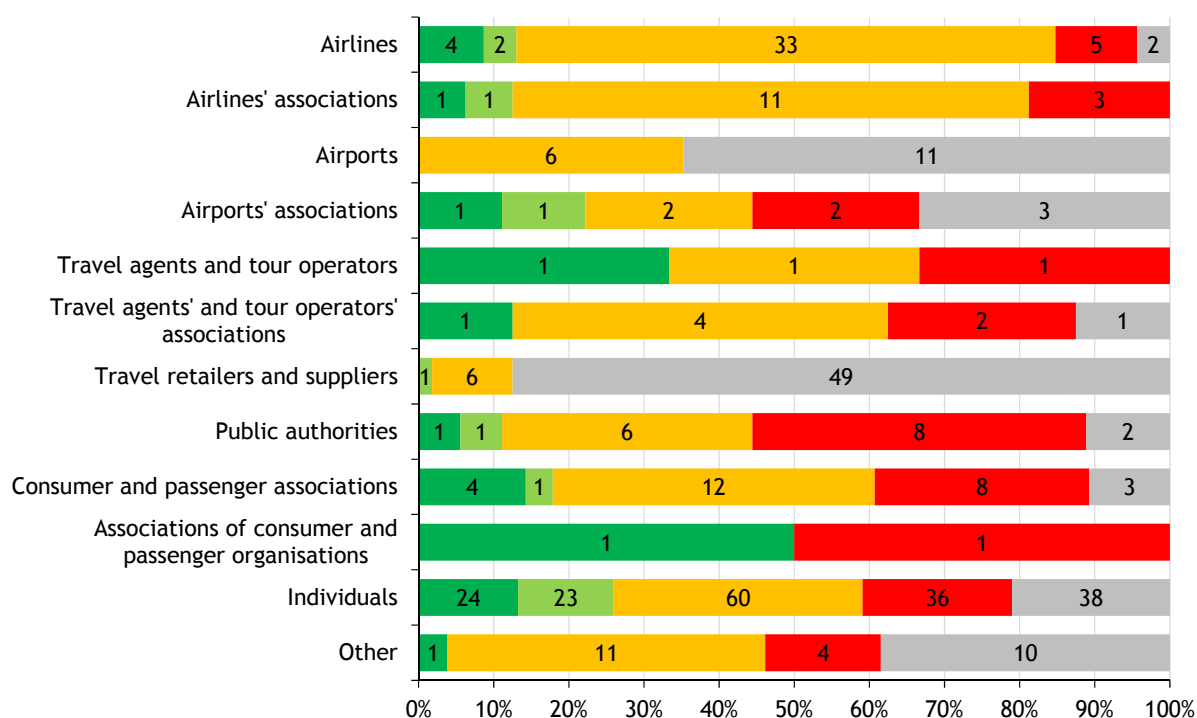
- 1.320 The Regulation currently applies only to fixed-wing services, and the consultation document suggested that competition could be distorted where helicopter and fixed-wing services operate on the same route. Similarly, certain routes (often operated by small aircraft) may be subject to more frequent disruption due to local weather conditions, and the provision of rerouting via other modes might be difficult; in particular, the document cited services operated with sea planes or landing on unpaved runways.

Question 26.1: How should flights with small aircraft and helicopters be treated?

- 1.321 As is clear from Figure 46, the large majority of airlines, airline associations, tour operators and travel agents had no opinion on this matter. None of the main pan-EU airline associations or ECTAA/GEBTA expressed any view on this issue; they also had few comments on this issue when we raised it with them in the bilateral interviews. This may reflect that most airlines that responded do not operate services likely to be covered by the proposed exemption: the only airline that does operate such services said that they should be fully or partially exempted.
- 1.322 The only helicopter operator that responded, British International Helicopter Services, said in both its comments on the public consultation and in a direct submission to the study team that if the Regulation was extended to cover helicopter services it would have to stop operating, with a negative impact on regional accessibility. It said that the 'shuttle' nature of the service means there is an increased risk of a knock-on impact of any delay.

1.323 Most public authorities thought that no change to the current Regulation was required; in the interview, the French NEB (DGAC) said that helicopters were not mass transportation, and the Finnish NEBs said they were a minor issue. The UK CAA said it would not support a blanket exemption for all small aircraft; helicopters could be brought within scope if there was evidence that they were causing consumer detriment at present. Most consumer associations also had no opinion or thought that no change to the current Regulation was required, although EPF considered that the Regulation should be extended to cover helicopter services. ACI Europe also thought this, responding in the bilateral interview that it was unclear why they were exempt - although no other airport respondents did.

FIGURE 46 STAKEHOLDER VIEWS: QUESTION 26.1



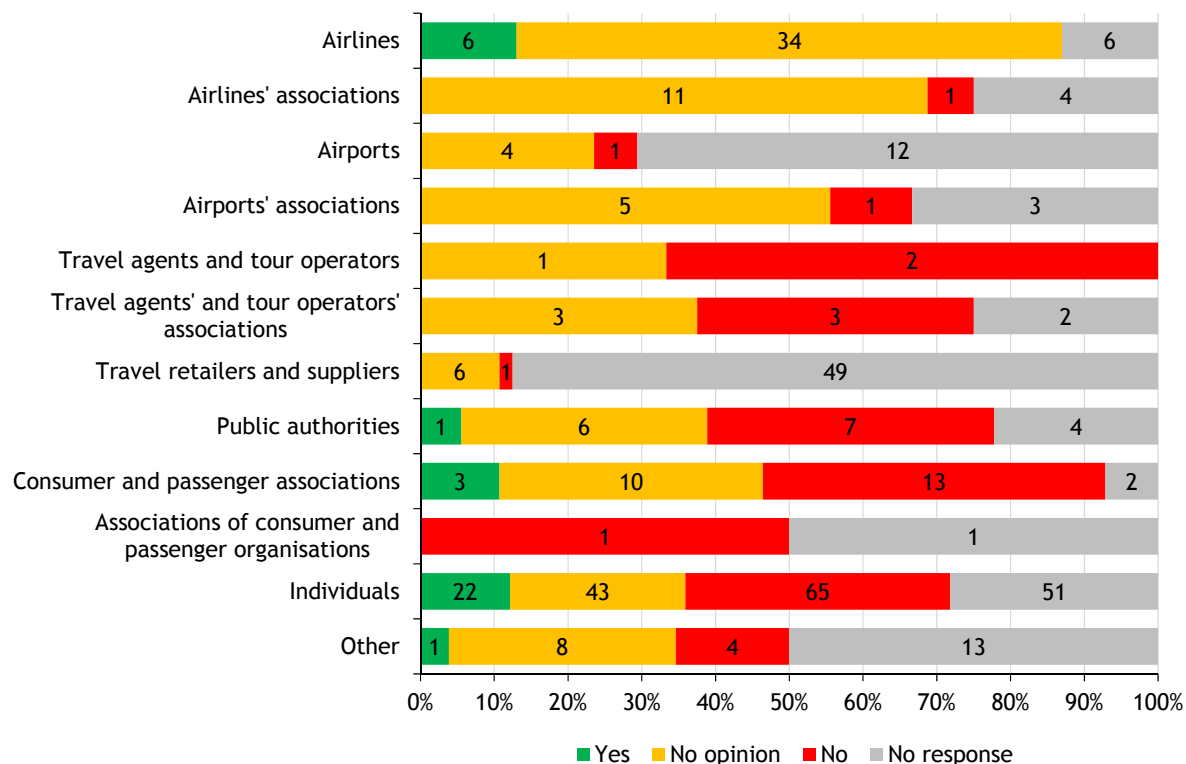
- Extend the Regulation to include helicopter services (which are currently not covered).
- Partly or fully exempt flights with very small aircraft - i.e. small helicopters (as today), but also small fixed-wing aircraft (e.g. with less than 20 seats)- from the Regulation
- No opinion
- Do not change the current Regulation with regard to this issue.
- No response

Question 26.2: Should certain routes, which are particularly vulnerable to disruptions, be fully or partially exempted from the Regulation?

1.324 Figure 47 shows the stakeholders' replies to this question. These largely reflect the responses to the previous question. None of the main airline associations expressed any view on this issue, and most individual airlines also had no opinion. However, some airlines did support an exemption: mostly these were those operating services in remote regions, such as Flybe, which operates to many remote airports in Scotland and Scandinavia.

1.325 EPF and some other consumer associations said that routes which were particularly vulnerable to disruptions should not be fully or partially exempted from the Regulation. Some public authorities agreed, but more had no opinion on the issue. ACI Europe opposed the introduction of any exemption but most other airport representatives, and most other stakeholder groups, either did not respond or expressed no opinion.

FIGURE 47 STAKEHOLDER VIEWS: QUESTION 26.2



Question 26.2b: If yes, which criteria should apply?

- 1.326 **Airline and airline associations:** Relatively few airlines responded to this question. Of those that did, three suggested that routes subject to weather difficulties should be exempted from the Regulation, such as mountains in winter, or routes to small islands. SATA suggested that routes covered by public service obligations should be excluded. Isles of Scilly Skybus added that aircraft types with restricted operational limits (due to their size or nature of their equipment) should be exempt.
- 1.327 **Airports and airport associations:** Airports and airport associations did not respond to this question.
- 1.328 **Travel agents and tour operators:** Travel agents and tour operators did not respond to this question.
- 1.329 **Travel retailers and suppliers:** Travel retailers and suppliers did not respond to this question.
- 1.330 **Public authorities:** The Principality of Asturias' Directorate of Trade and Consumption stated that in such cases compensation should not be provided, but assistance and rerouting should still be required. Others did not respond to this question.

- 1.331 **Consumer and passenger associations:** Holiday Travel Watch suggested that regular, predictable seasonal extreme weather problems should be exempted. However the EPF stated that vulnerable routes are frequently those performing a public service to remote communities, and that exceptional costs on these routes should not be borne by the passenger. CSF believed that exemption of public service routes should only be permitted where no possibility of rerouting (including by other modes) exists.
- 1.332 **Individuals:** Of the four individuals who responded to this question, two stated that any exemptions should be made clear at the point of booking. Two also suggested that extreme weather conditions could be considered grounds for exemption.
- 1.333 **Other:** Other stakeholders did not respond to this question.

Improving enforcement

Harmonizing enforcement policies

- 1.334 The consultation document suggested that the divergent policies adopted by NEBs may affect the level playing field between carriers. It added that a more proactive enforcement approach might be more effective, and cited the practices adopted in other countries, where compliance with passenger rights legislation is a condition for an airline to have an operating license.

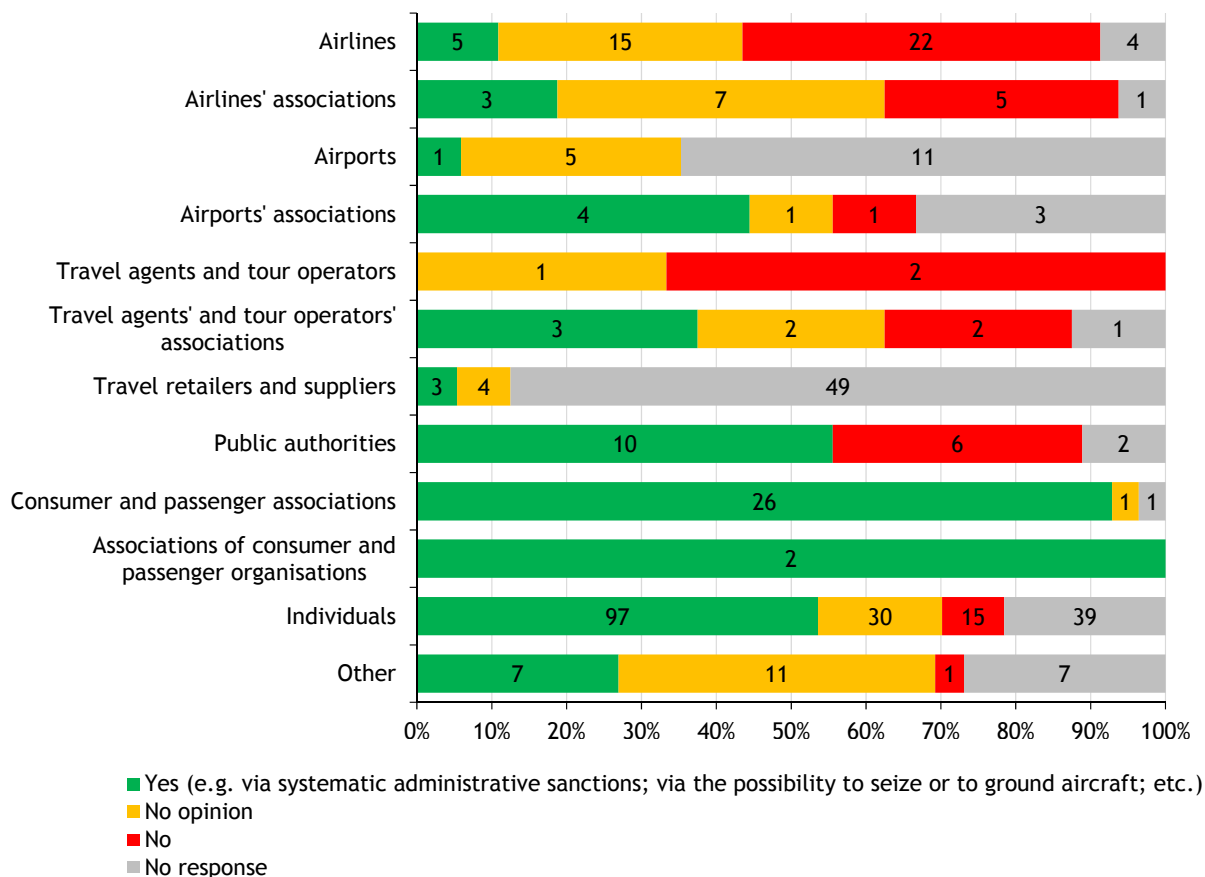
Question 27.1: Should Member States' sanctioning policies be better harmonised?

- 1.335 Figure 48 displays the respondents' answers to this question. EPF, BEUC and almost all other consumer associations that responded to the consultation agreed that Member State's sanctioning policies should be better harmonised. In our interview, BEUC emphasised that the current enforcement system was not effective enough in most Member States to provide airlines with an incentive to comply with the Regulation, and as a result airlines did not apply it or interpreted it in ways which minimised their obligations. It also emphasised that the fines that were imposed for infringements were not sufficient to be dissuasive.
- 1.336 In contrast, although in the bilateral interviews we undertook for this study many airlines and their representative associations identified inconsistencies in enforcement as being a significant issue, there was little support for this proposal from the industry. AEA and ELFAA, and the majority of individual airlines and tour operators, were opposed, whilst the other main pan-EU industry associations (IACA, IATA, ERAA and ECTAA/GEBTA) expressed no opinion.
- 1.337 The public authorities that responded to the public consultation were divided on this issue. In the bilateral interviews some said that they already investigated every complaint. IFW (Netherlands NEB) said that there were too many inconsistencies between NEBs, and that penalties could be standardised. AESA suggested that Member State's application of consumer protection procedures could be audited by the Commission. However, some other NEBs indicated practical difficulties with harmonisation, particularly arising from differences in national law. Whilst some NEBs had a legal requirement to impose a sanction in every case where they identified an infringement, some others said that this was not an efficient use of limited resources and might in any case be pointless - for

example if there was a breach of the information requirements in Article 14 identified which the carrier immediately rectified.

1.338 Of the other stakeholders, ACI Europe agreed but most other airport respondents did not express any opinion.

FIGURE 48 STAKEHOLDER VIEWS: QUESTION 27.1



Question 27.2: Should the airlines' operating manuals and procedures with regard to flight disruptions regularly be checked by the competent authority (NEB or licensing authority)?

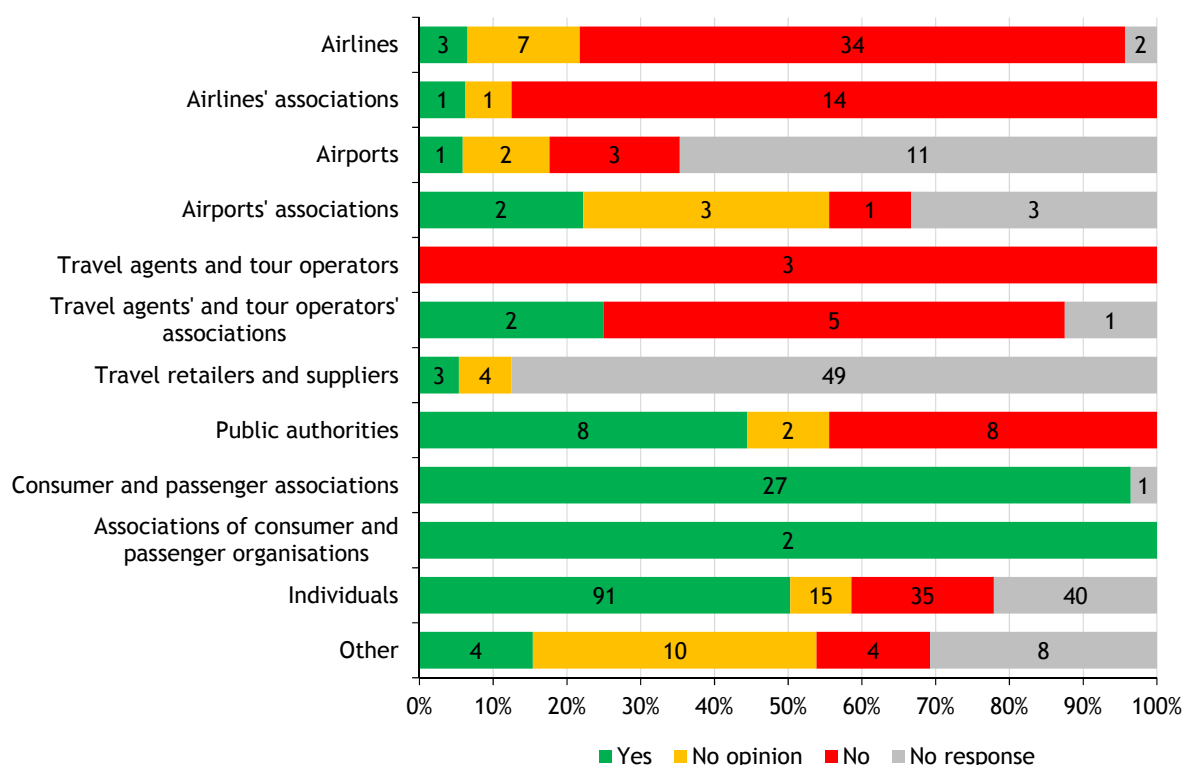
1.339 The responses of stakeholders' to this question can be viewed in Figure 49. EPF, BEUC and almost all other consumer associations agreed that a competent authority should regularly check airlines' operating manuals and procedures.

1.340 In contrast, the airline industry was strongly opposed to this proposal. Although IATA expressed no opinion, all of the other pan-EU airline associations (AEA, ELFAA, ERAA and IACA) were opposed as was ECTAA/GEBTA, all tour operators, and the large majority of individual airlines. In the bilateral interviews, most airlines focussed on the issue of whether this would imply compliance would become a license condition (see question 27.2 below); one airline said that operational procedures were already approved by airlines' licensing authorities.

1.341 Government respondents were divided on this issue. In the bilateral interviews, AESA and some others suggested that they could check airlines' procedures and that the cost and

time involved in doing so would be limited; however, AESA also said that some of the most important conditions would not be in operations manuals but in airlines contracts with ground handling companies. IFW said that it had already made plans to check airlines' operational procedures. However, the UK CAA said that even a review of airline practices would not necessarily provide a basis for enforcement action at present, as it has to be proven whether the practices have been followed; it also expressed a concern that national Freedom of Information legislation could lead to it being required to divulge information obtained from airlines in the course of such a process. Another NEB expressed concern that it would be excessively onerous to check the procedures of all airlines which operated at its airports. One NEB said that, as a consumer authority, it would not have the technical expertise to do this (most but not all NEBs are civil aviation authorities).

FIGURE 49 STAKEHOLDER VIEWS: QUESTION 27.2



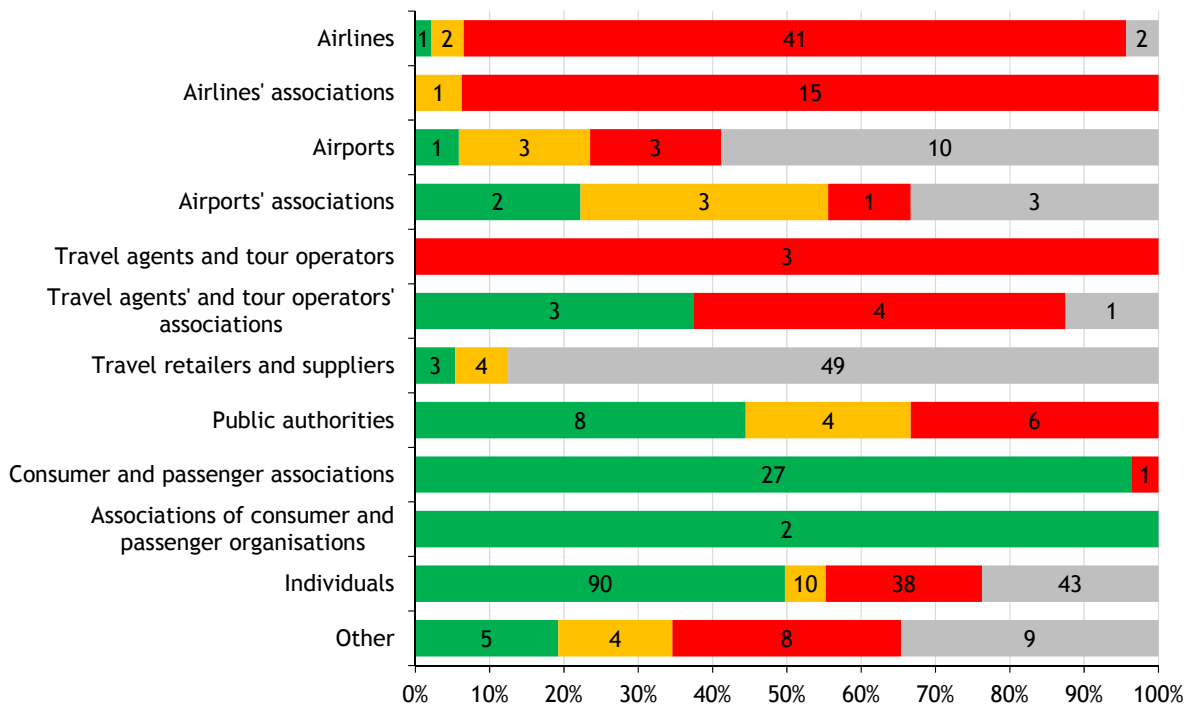
Question 27.3: Should compliance with consumer protection legislation become a condition for issuing or maintaining an air carrier's operating license?

1.342 Figure 50 displays the stakeholders' replies to this question, which take on a similar pattern to that observed for the preceding question. BEUC, EPF and almost all other consumer representatives agreed that compliance with consumer protection legislation should become a license condition. In the bilateral interviews, one association said that passenger rights Regulations were in effect international law, and airlines should not be able to have an operating license if they do not comply with international law. Despite the support for this option in the public consultation, in the interviews some expressed concern that this could be too extreme, or that national authorities would not have the necessary political will to shut down an airline for non-compliance, particularly if it was a

national flag carrier - one consumer representative cited the efforts that had been made by the Italian authorities to prevent Alitalia from going bankrupt.

- 1.343 There was almost universal opposition to this proposal from the industry, including from all of the main airline associations and individual airlines, as well as from ECTAA/GEBTA and the tour operators. In the bilateral interviews, they cited a number of reasons why they believed this was inappropriate and disproportionate. Most said that the licensing authorities should focus on their primary tasks of ensuring compliance with safety regulation and minimum financial standards. AEA also pointed out that there would be significant inconvenience to passengers if an airline's operations were suspended by a licensing authority for this reason. IATA also said that compliance with consumer protection legislation could not be measured objectively, and also noted that such a requirement could only be applied to EU carriers - it would not be possible to suspend traffic rights for non-EU carriers as this would conflict with bilateral Air Service Agreements.
- 1.344 Public authorities were divided on this issue. In the bilateral interviews, some said that it would be helpful to consider compliance as part of the process for issuing a license; one NEB said that it had proposed this as part of the recast of Regulation 2407/1992, and it considered this might instil carriers with more discipline. One NEB also said that its national law already allowed withdrawal of a license on this basis. However, some others considered that withdrawal of a license would be a disproportionate response, because of the potential political consequences, and because of the impact on passengers. The Finnish NEBs said that for this reason it might not be a credible deterrent.
- 1.345 Of the other stakeholders, ACI Europe also expressed support for this option. In its direct submission, it said that the key problem with the Regulation was ineffective enforcement, and there was a need for NEBs to be able to impose effective sanctions rapidly. Most other airport respondents did not express any opinion.

FIGURE 50 STAKEHOLDER VIEWS: QUESTION 27.3



- Yes, serious infringements of air passenger rights legislation or of other consumer protection legislation could lead to the re-examination of the operating licence
- No opinion
- No
- No response

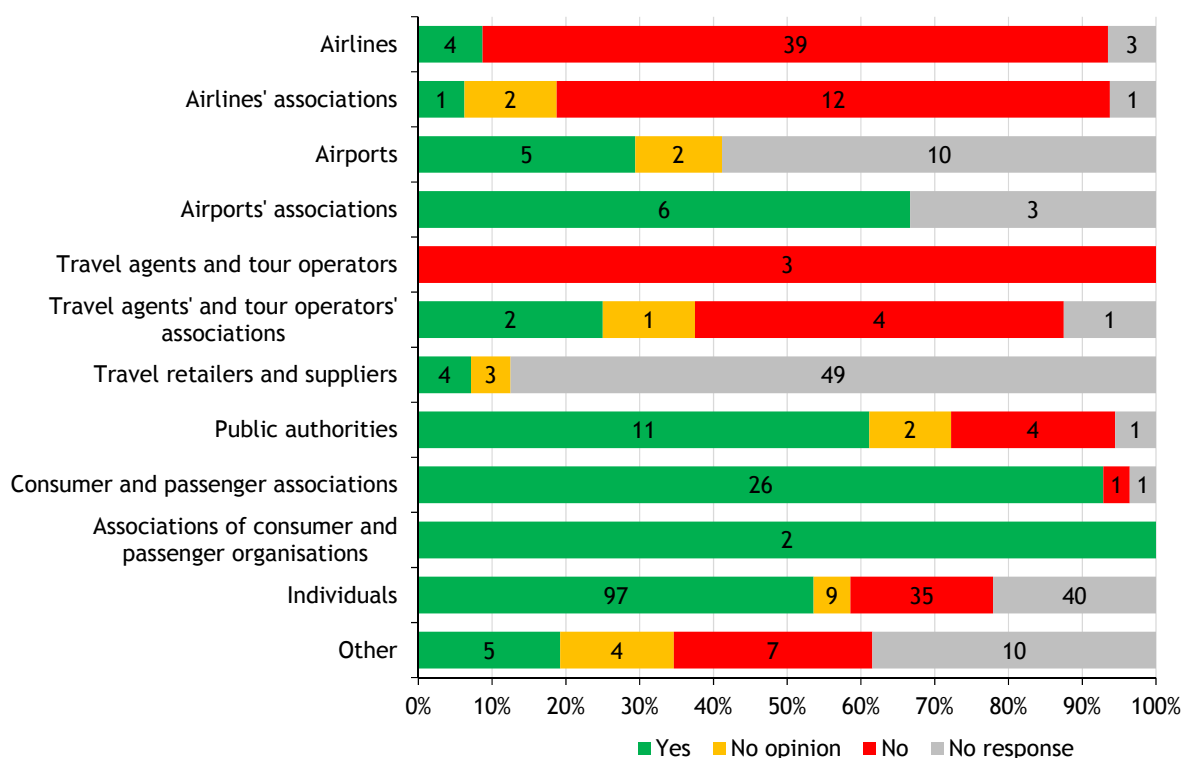
Contingency plans

- 1.346 The document suggested that the production by airlines of contingency plans for mass disruption might improve passenger care, and cited the adoption in other markets of requirements to produce such plans.
- Question 28: Should airlines be required to produce contingency plans to manage major disruption, and provide these to the relevant authority (e.g. NEB, licensing authority) which could sanction non compliance?*
- 1.347 The answers from stakeholders to this question can be seen in Figure 51. The responses were, in most cases, equivalent to those for question 27.2 (NEBs to check carriers' procedures), although there was more support for this proposal amongst public authorities.
- 1.348 As for the previous questions, BEUC, EPF and almost all other consumer representatives agreed with the proposal. Most public authorities also supported it. In the bilateral interviews, some drew attention to inadequate planning by airlines for mass disruption, and provision of inadequate resources for assistance to be given. The UK CAA had undertaken analysis after heavy snow closed the London airports in December 2010, which indicated poor performance by airlines during this period. However, another NEB said that

airlines should be aware of their obligations to provide care and should not need NEBs to check their plans; the key issue was whether they implemented them effectively.

1.349 Most of the pan-EU industry associations (AEA, ELFAA, IACA, IATA and ECTAA/GEBTA) and the vast majority of individual airlines and travel agents / tour operators opposed the proposal for airlines to produce contingency plans; ERAA did not express a view. In contrast, ACI thought airlines should prepare the plans. In the interviews, IACA said that incidents which affected individual airlines tended to be smaller-scale than incidents that impacted whole airports, and therefore it made more sense for the airport to produce any such plan. AEA said that if there was to be such a requirement, it should be a joint requirement applying to both the airport and the airline. IATA said that many airlines already do have contingency plans but it could not see any advantage in providing this to the NEB. However, one individual airline did say that its contingency plans were set out in its ground handling manual and this was already shared with its licensing authority; it would have no problem sharing it with the NEB as well.

FIGURE 51 STAKEHOLDER VIEWS: QUESTION 28



Baggage - need for a national enforcement body

1.350 The document highlighted that no authorities have any specific obligation to ensure that airlines comply with the legislation relating to their obligations in cases of loss, damage or delay to baggage; and suggested that this could be addressed with new or extended NEBs.

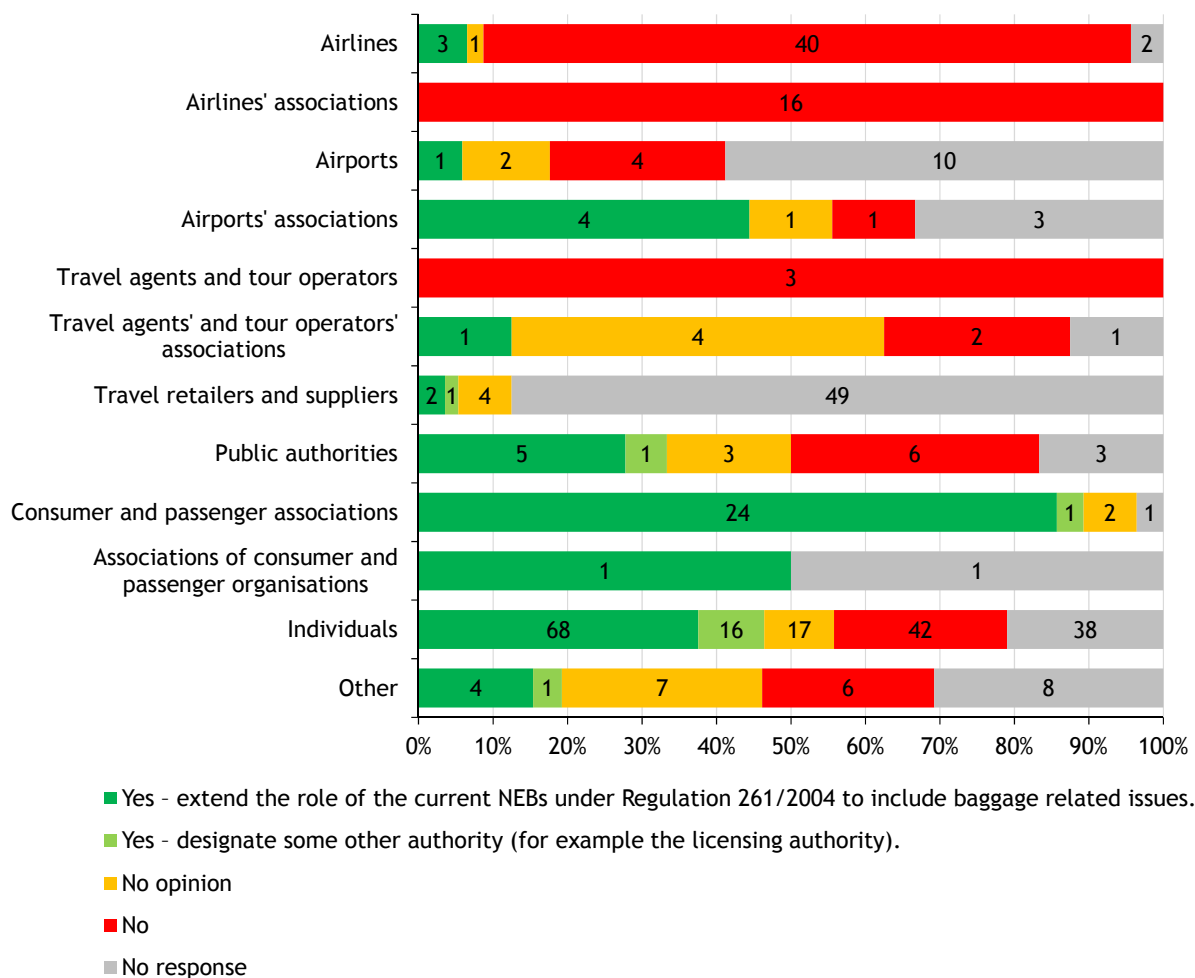
Question 29: Should enforcement bodies be designated with responsibility with ensuring that airlines comply with their obligations in relation to baggage?

1.351 The replies of stakeholders to this question are shown in Figure 52. BEUC and most other consumer representatives considered that the role of the current NEBs should be extended

to include baggage related issues, although EPF did not express any view on the issue. In the interview, BEUC said that provision of assistance in case of delayed baggage was poor - passengers were given no immediate assistance to cover urgent needs, compensation was inadequate, and if the passenger wished to claim against the airline there was no alternative but to go to court, due to the lack of any enforcement body. It cited a Eurobarometer survey which indicated that 30% of passengers were dissatisfied with airlines' baggage handling.

- 1.352 In contrast, all of the airline associations and almost all individual airlines and travel agents / tour operators opposed this proposal. ECTAA/GEBTA and most other travel agent and tour operator associations expressed no opinion. In the interviews, airlines and their representative associations argued that airline's responsibilities in case of mishandled baggage were adequately regulated by the Montreal Convention, and that they did provide passengers with compensation when this required.
- 1.353 Public authorities were divided on this issue, with some NEBs (for example AESA) supporting this proposal and others (for example the UK CAA) against. ACI Europe and some other airport associations also supported extending the role of NEBs to cover baggage, but there was limited support for this amongst individual airports.

FIGURE 52 STAKEHOLDER VIEWS: QUESTION 29



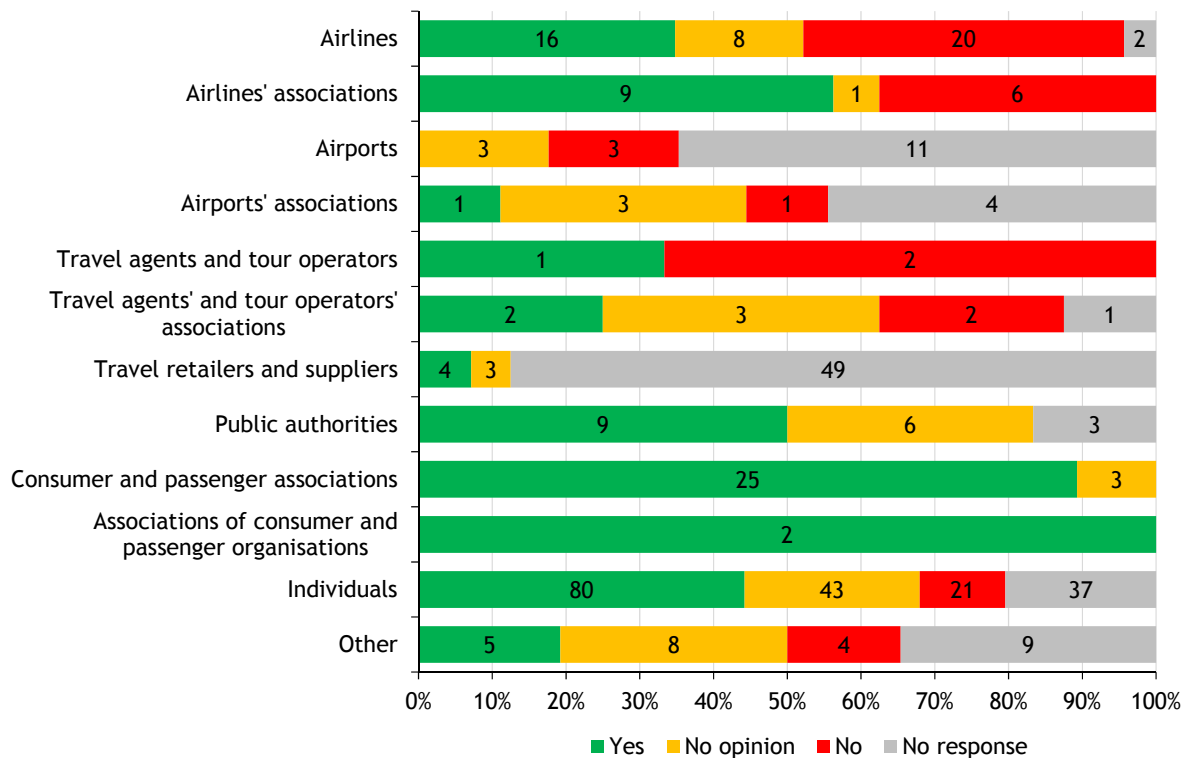
Baggage - declaration of special interest

- 1.354 The Montreal Convention allows passengers to make a special declaration of interest in delivery of a particular item, but the consultation document explained that passengers had limited awareness of this option. It also suggested that many carriers had attempted to further limit their liability by excluding possibly expensive everyday items from carriage as checked baggage; this could create difficulties for passengers due to limits on how much cabin baggage could be carried.

Question 30.1: Should the obligation under the Montreal Convention to allow passengers to make a declaration of special interest be better implemented?

- 1.355 Figure 53 displays the responses of stakeholders to this question. BEUC, EPF and most other consumer associations agreed that the obligation to allow passengers to make a special declaration should be better implemented; BEUC said that this needed to be widely published, including being written on the ticket, although it also noted that most airlines state in their terms and conditions that they are not liable for valuables in checked baggage. Government bodies were also mostly in favour of this proposal.
- 1.356 Most of the main airline associations (AEA, ELFAA, ERAA and IATA) were in favour of this proposal although a small majority of individual airlines were against; there were no common characteristics of those who agreed or disagreed which would explain why some took a different view. Where this was discussed in the bilateral interviews, airlines said that the option of making a special declaration was rarely if ever used; one airline said it had never known of a case where a passenger had tried to make this.
- 1.357 Of the other stakeholders, ECTAA/GEBTA did not express any view on this issue whilst most individual travel agents and tour operators were opposed. ACI also did not express any view.
- 1.358 Further comments on this issue are set out below under question 30.1b below.

FIGURE 53 STAKEHOLDER VIEWS: QUESTION 30.1



Question 30.1b: If yes, how could this obligation be better implemented?

- 1.359 **Airline and airline associations:** Most airlines and airline associations who submitted further comments disputed the premise of the question, believing that it was already sufficiently well implemented. In particular, they believed that baggage was well defined, that passengers chose whether or not to agree to a contract which might exclude specific types of item, that the Convention does not require airlines to facilitate the making of special declarations by passengers, and that there is little demand for the special declaration of interest. They also noted that it would be difficult to implement for interlining tickets. Monarch suggested that it was not practical for airlines to sell insurance at check-in, and that Article 22(2) of the Convention pre-dates conventional travel insurance coverage and should be scrapped. However, AEA and several airlines suggested that better information could be provided both to passengers and to airline check-in agents. ACETA (Asociación de Compañías Españolas de Transporte Aéreo) stressed the importance of informing passengers of baggage restrictions prior to their arrival at the airport.
- 1.360 **Airports and airport associations:** Airports and airport associations did not respond to this question.
- 1.361 **Travel agents and tour operators:** Few travel agents and tour operators responded to this question. The Association of Danish Travel Agents and Tour Operators believed that the focus should be placed on proper enforcement of the Convention. Thomas Cook argued that it was appropriate for passengers to arrange their own insurance for specific items,

and that carriers should not be required to accept both absolute liability and higher limits on value.

- 1.362 **Travel retailers and suppliers:** One travel retailer suggested placing information on this element of the Convention on the scale where baggage is weighed for check-in.
- 1.363 **Public authorities:** Several public authorities suggested ways in which information on this provision in the Convention could be disseminated better to passengers: inclusion within the key facts document, within the carrier's Conditions of Carriage, or on the airline's website. The Catalan Consumer Agency noted that several complaints had been made regarding low cost carriers requiring hand luggage to be placed in the hold, without allowing the passenger sufficient time to remove all valuable items. AESA suggested improving information and extending liability to cover airlines from third countries. The Finnish Consumer Agency and Ombudsman believed that airlines should not be permitted to make unilateral exclusions of items which passengers could reasonably require, as they already have a limit on their liability.
- 1.364 **Consumer and passenger associations:** All consumer and passenger associations who submitted further comments believed that better information regarding the possibility of making special declarations should be made available. Most suggested that this should be during the booking process (e.g. when a passenger ticks a box to request hold luggage; several also suggested information could be made available in the key facts document, at check-in, or with baggage receipts. Many believed passengers were not currently aware that they could make special declarations. A significant number thought that such declarations should be free of charge to passengers. CEACCU suggested that the fee offered by the airline for additional coverage could be displayed alongside quotes from other insurance providers. Holiday Travel Watch noted that passengers making special declarations would need to demonstrate both ownership of the item and appropriate packaging for it. The Norwegian Consumer Ombudsman suggested that the law could be clarified so that where airlines accept an exempted item for carriage without informing the passenger that it is exempt, the airline should be liable.
- 1.365 **Individuals:** Many individual respondents agreed with consumer and passenger associations, believing that carriers should provide better information on special declarations to passengers. Several suggested that additional liability should be made available to passengers at no extra cost. One individual believed that there was no need to change the Convention, and that better information provision to passengers was necessary, but argued it was unfair for the costs of this to only be borne by airlines.
- 1.366 **Other:** The Utrecht University Molengraff Institute for Private Law argued that airlines could voluntarily raise their liability limits in their general conditions (as in the 1966 Montreal Agreement).

Passenger redress

Air carrier complaint handling procedures

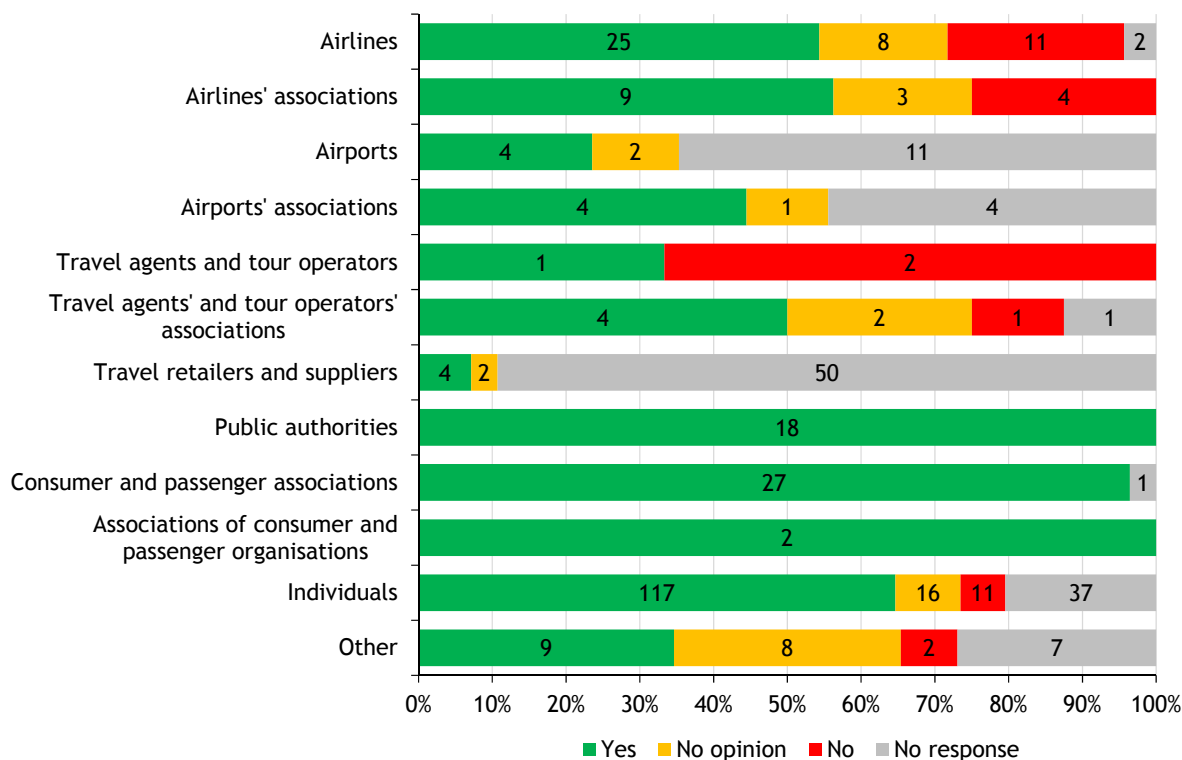
- 1.367 As stated in the consultation document, passenger rights' legislation in some other transport sectors requires operators to provide a substantive response to passenger complaints within a limited time period. This proposal was supported in the 2009-10

consultation by consumer associations, whilst being resisted by industry. The document asked various questions about how passenger redress could be improved.

Question 31.1: Should airlines be required to clearly indicate their complaint handling procedures and to allow easy and non-costly submission of complaints in accessible formats (e.g. phone numbers at no special fee, e-mail addresses and complaints forms on their websites and in various languages)?

- 1.368 The respondents' answers to this question are displayed in Figure 54.
- 1.369 Despite this option imposing an additional requirement, the majority of industry respondents were also in favour, including three of the main airline associations (AEA, ELFAA and IATA), although ERAA, IACA and ECTAA/GEBTA expressed no opinion. The airlines that disagreed were disproportionately non-EU airlines. However, in the bilateral interviews (and in responses to question 31.3 below), almost all of the airline representatives that expressed any view on this issue opposed legislation defining requirements for complaint handling procedures, mostly because airlines already provided a range of means, or because they considered that this was a means by which airlines should be able to differentiate their services and compete. AEA and IATA said that there should be no requirement to accept complaints by phone because documents would often have to be attached to make a claim. ERAA said it would be an additional cost to provide a free-phone number although acknowledged that only providing a premium rate number might be unreasonable.
- 1.370 Almost every consumer representative that responded to the consultation, and each public authority, supported a requirement for airlines to clearly indicate their complaint handling procedures and to allow easy submission of complaints in accessible formats. In the interview, BEUC said that airlines should be obliged to set up an effective, quick and easily accessible complaint handling system with free phone numbers, e-mail addresses and complaints forms, available through the same means of communication used for reservations and in the language of the consumer. It noted that one major EU airline charges €1/minute to call its call centre. It said that if there is a law which is not supported by adequate provisions on complaints, the consumer is in effect not protected. Some NEBs mentioned that it could currently be difficult to find out how to complain; one said that as well as a phone number, the airline should answer calls within a reasonable time and/or offer a call-back service. The UK CAA cautioned that a standard land line number might be better than a free-phone number, as mobile phone providers may charge to call a traditional 'free-phone' number, but calls to standard numbers would often be included.
- 1.371 ACI Europe and most airport stakeholders that expressed any view also agreed.

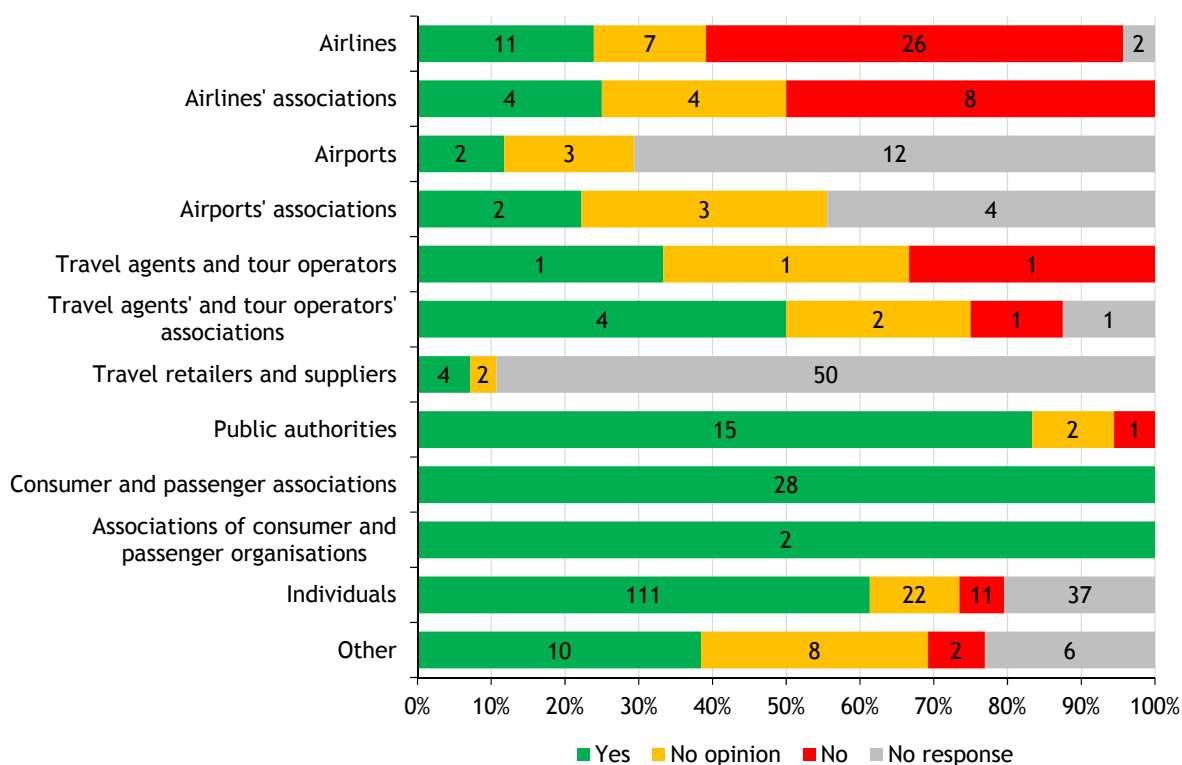
FIGURE 54 STAKEHOLDER VIEWS: QUESTION 31.1



Question 31.2: Should airlines be required to provide a substantive response to passenger complaints within a specified time period?

- 1.372 As is apparent from Figure 55, all consumer associations and the vast majority of public authorities agreed that there should be a requirement for airlines to provide a substantive response to passenger complaints within a specified time period; whereas airlines were most likely to disagree. In our bilateral interview, BEUC said that airlines should provide an initial response within a maximum of 15 days and a full response in no more than 6 weeks. However, one NEB noted that the Regulation already requires airlines to pay refunds within 7 days; it said that such a short deadline was unrealistic.
- 1.373 In contrast, the industry was divided on this issue, and there was no clear pattern to the responses which would explain the different views. Of the main airline associations, ELFAA and IATA supported the proposal, whereas AEA (representing many of the same airlines as IATA) opposed it. IACA and ERAA expressed no opinion. In the bilateral interviews, and as discussed further below, some industry respondents said that although a short timescale should be achievable in most circumstances (one large airline said it usually responded to complaints within 7 days), after exceptional events such as the volcanic ash crisis, the number of complaints would increase and so they would take longer to process.
- 1.374 ECTAA/GEBTA also expressed no opinion although some other travel agent and tour operator representatives were in favour. ACI Europe also supported the proposal but most other airport representatives did not express any view.

FIGURE 55 STAKEHOLDER VIEWS: QUESTION 31.2



Question 31.3: Do you have other suggestions or comments with regard to complaint handling procedures?

- 1.375 **Airline and airline associations:** In general, airlines and their associations believed that no regulation should be introduced. Many argued that such procedures are part of the service offered by airlines, and are important for product differentiation. They also argued that the balance of cost against the service provided should be considered, and that unrealistic expectations should not be encouraged in passengers. XL Airways France noted that any requirement to handle multiple languages would be disadvantageous to smaller operators. Many airlines also argued that fixed time limits would significantly increase airline costs when there was severe disruption (such as during the volcanic ash crisis); Air Berlin also noted that its traffic was very seasonal, and that this could make meeting fixed deadlines difficult. Several airlines believed that severe disruption should be treated as a special case. One airline commented that in some cases the response time was outside the control of the airline (e.g. where a response was sought from a manufacturer). Danish Aviation argued that short response times could lead to poor decisions. Swiss and German airline associations also argued that requiring free phone numbers was costly and irrelevant, as most claims require documents to be submitted. A4A and United Airlines stated that it was important for airlines to maintain control over the design of the process.
- 1.376 **Airports and airport associations:** Airports and airport associations did not respond to this question.
- 1.377 **Travel agents and tour operators:** Many of the comments by travel agents and tour operators were similar to those made by airlines: several believed that it was important to

recognise the balance between customer service and costs. TUI supported this argument, but was also supportive of mechanisms that seek to improve customer awareness of airline complaints mechanisms. ABTA stated that it would be happy with fixed timescales, subject to exemptions where there are extraordinary circumstances. ABTA and some other operators did not believe free phone lines or multi-lingual complaint forms were appropriate. Studiosus Reisen München and DRV noted that there is already an EU-wide standardised complaint form, and also noted that seasonality was an issue with regard to complaint volumes.

- 1.378 **Travel retailers and suppliers:** Only one travel retailer responded to this question, stating that, where an airline's response is not satisfactory, the passenger should be able to complain to the NEB.
- 1.379 **Public authorities:** Few public authorities responded to this question. Three of those that did believed that access must be ensured for all passengers, and therefore that postal addresses and free telephone lines are necessary. One body noted that this could potentially include call-back systems where passengers cannot get through, and it also noted that if complaints handling timeframes were imposed on NEBs, then they should also be imposed on airlines. The Catalan Consumer Agency believed that airlines should be required to provide a substantive response to passenger complaints within 1 month, and in the language chosen by the passenger at the time of buying the ticket.
- 1.380 **Consumer and passenger associations:** Most consumer and passenger associations supported the introduction of obligations on carriers regarding complaint handling. The Irish ECC noted that airlines occasionally received vexatious claims, but argued that this should not undermine legitimate passenger demand for good complaint handling process. The most common obligations suggested were the requirement to allow complaints by email, an online complaints form, by letter or by a free phone number. It was also noted (by an ECC) that publishing an email address would give passengers proof of the date of complaint. The UK ECC believed that it was important for the passenger to be able to choose which contact medium to use, and the UK Consumer Council thought this was particularly the case for passengers with a disability or without internet access. Consumentenbond argued that passengers should be able to use the same means for complaints as used for booking flights, and the BAK believed that there should be a choice of languages. Many of the associations believed that high charges for making complaints by phone were unreasonable; the UK ECC argued that airlines should not be permitted to make a profit when a passenger complains. It also suggested that the passenger should be able to request an escalation of the complaint to a more senior member of staff.
- 1.381 Several consumer representatives (including the Norwegian Consumer Ombudsman) believed that some standardisation of complaint handling procedures could be beneficial to consumers. This standardisation could include common complaint forms, common handling procedures, or fixed time limits for responses. The time limits suggested varied: one ECC argued for acknowledgement of receipt/first response within 24 hours, although 3 others suggested 15 days; 6 associations argued for a substantive response within 1 month, while 3 suggested 6 weeks would be appropriate. The Norwegian Consumer Ombudsman stated that in Norway the deadline for replying to complaints is 3 weeks, which can be extended to 8 weeks, and that this system was working well. It also suggested that passengers should be permitted to file complaints directly to NEBs where air carriers do

not have an address or a system for submitting complaints. EUClaim believed that there should be a time limit for airlines to reflect any decisions by the Court of Justice. Holiday Travel Watch advocates the introduction of a pre-action protocol to expedite the complaint handling process.

- 1.382 CECU believed that the main issue in this area was a lack of action by NEBs, noting that enforcement was particularly important in cross-border complaints. EPF argued that NEBs should be required to collect and publish data on complaints received by the airlines they are responsible for. The Norwegian ECC believed that where an airline declines a passenger's claim, it should inform the consumer of which NEB is competent, and of the NEB's contact details. KEPKA suggested that while the Regulation should be amended so that, for multi-segment tickets, all carriers are liable for compliance with the Regulation, but that the passenger would only have to complain to the marketing carrier.
- 1.383 **Individuals:** Many individuals believed a choice of contact method should be available when complaining, including: online complaint form, toll-free number and email address. Many also argued that harmonised deadlines should be put in place, ranging from 24 hours to 4 months, although 7 days was the most common suggestion. One passenger suggested that a system with an automatic reply stating the expected date of first response would be helpful. Another individual requested that the airline response should include details of all means of passenger redress. Several argued for the introduction of independent passenger representation, including passenger ombudsmen based within the airline. One believed that airlines should be required to publish delays and delay causes, to facilitate passenger complaints.
- 1.384 **Other:** CER and CIT argued that the same time limits should apply to airlines as to rail and other sectors: passengers must submit a claim within 2-3 months, and the carrier must respond within 1 month. EDF believed that airlines should be required to clearly state their complaint handling procedures, and make them available in accessible formats. Three other stakeholders argued that additional regulation would lead to higher fares and lower customer choice, and that response deadlines in particular would lead to higher fares.

Marketing carrier or operating carrier

- 1.385 The consultation document explained that passengers can currently only bring claims against the operating carrier, which may make it more difficult for the passenger to make a claim, especially where a journey involves travel on multiple airlines. It asked whether passengers should be able to make claims against the marketing carrier as well.

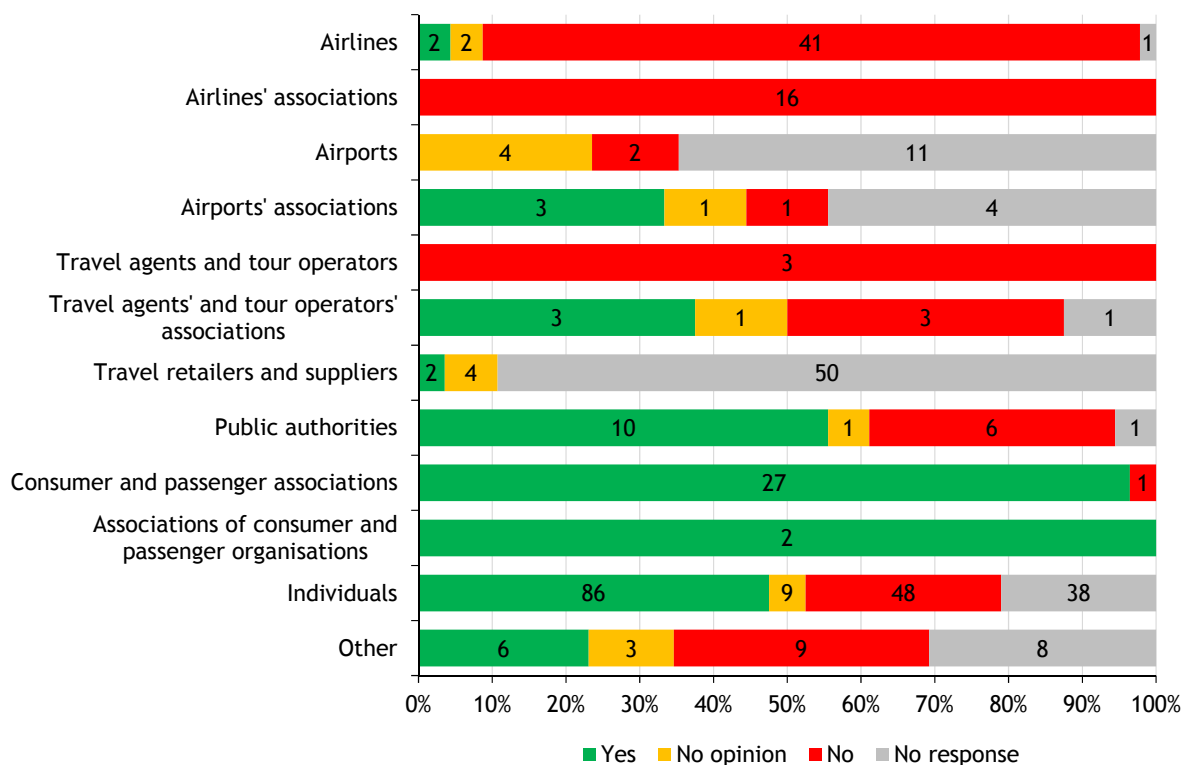
Question 32.1: With regard to financial compensation, should the Regulation be amended to allow passengers to make claims against the marketing carrier, as well as the operating carrier?

- 1.386 The views of stakeholders regarding this question are shown in Figure 56. Almost all consumer associations agreed that the Regulation should be amended to allow passengers to make claims against the marketing carrier as well as the operating carrier, while airlines were almost unanimous in their disagreement. When this was discussed in the bilateral interviews, airlines said that any disruption would be out of the control of the

marketing carrier, and it might also be difficult for the marketing carrier to obtain sufficient information from the operating carrier in order to contest a claim.

1.387 Public authorities were divided on this issue; most did not express any views in the bilateral interviews although one said that Article 3(5) could be read as already meaning this. ECTAA/GEBTA and all individual travel agents / tour operators also opposed this. In contrast, ACI Europe was in favour but most airport representatives did not express any view, reflecting the limited relevance of this to them.

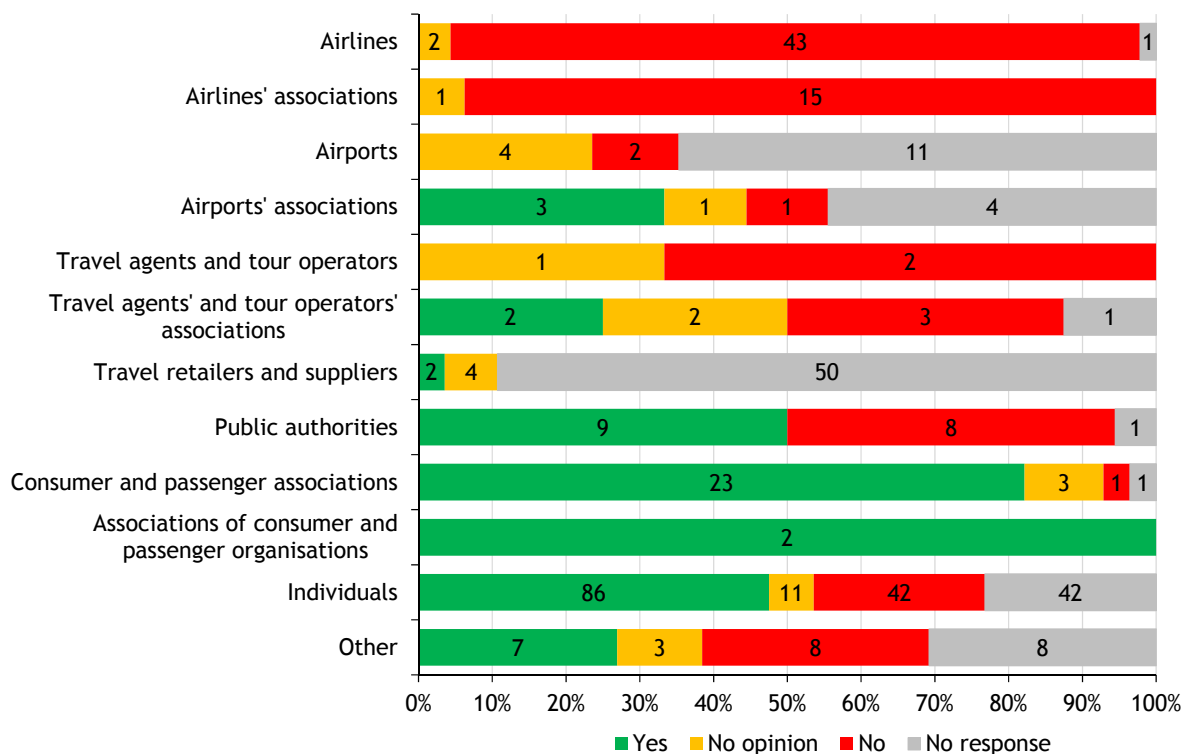
FIGURE 56 STAKEHOLDER VIEWS: QUESTION 32.1



Question 32.2: With regard to care and assistance, and for multi-segment journeys with several operating carriers under the same transport contract, should the Regulation be amended to allow passengers to hold all involved operating carriers jointly and severally liable for compliance with the Regulation?

1.388 Figure 57 displays the responses of stakeholders to this question. Consumer associations almost all agreed that the Regulation should be amended to allow passengers to hold all involved operating carriers jointly and severally liable. Airlines and their representative associations, almost without exception, disagreed with this. The only exceptions were ELFAA and one of its member airline, who expressed no opinion, possibly because most ELFAA members do not codeshare and therefore would not be affected by the proposal. The public authorities which responded were divided on this issue, a pattern reflected to a lesser degree by the responses of the other stakeholder groups.

FIGURE 57 STAKEHOLDER VIEWS: QUESTION 32.2



NEB complaint handling procedures

1.389 The consultation document noted the Regulation’s lack of clear complaint handling guidance for NEBs, particularly in terms of the lack of a requirement for delivery of a substantiated response within a reasonable time period. The document also highlighted the issues associated with the handling of complaints by the NEB of the country where the incident took place.

Question 33.1: Should NEBs be required to provide a substantive response to passenger complaints within a specified time period?

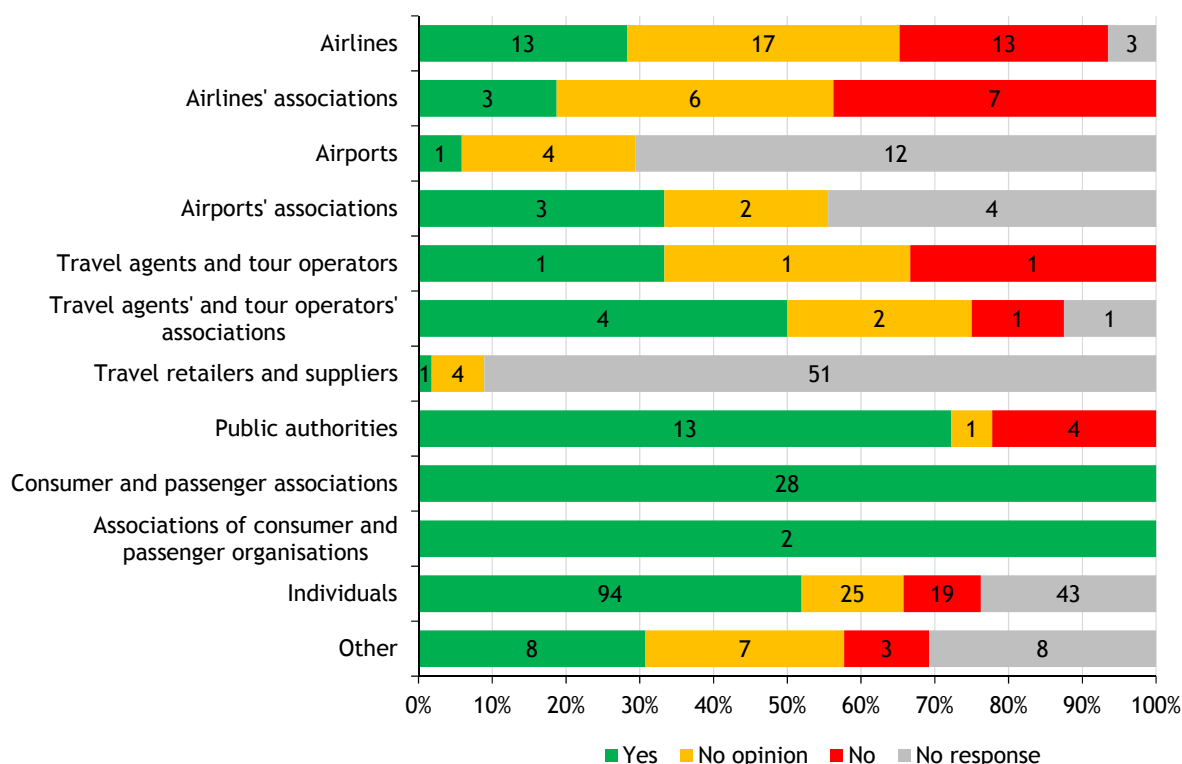
1.390 Figure 58 shows the stakeholder’s answers to this question. Every consumer representative who responded to the consultation thought that NEBs should be required to provide a substantive response to passenger complaints within a specified time period. In the bilateral interview, BEUC said that the NEB network was not functioning adequately at present, either in terms of monitoring and enforcement, or complaint handling and individual redress. It considered that NEBs needed the competence and resources to handle individual complaints, and that there needed to be harmonisation of NEB complaint handling procedures. However, it also indicated that the priority was to have at least one effective means available for redress.

1.391 The majority of public authorities (most of whom were NEBs) that responded to the public consultation also agreed. However, in the bilateral interviews, although some said that they already did achieve targets for fixed timescales, several expressed concern about this proposal. The UK CAA said that it was important that NEBs were able to prioritise their resources, and that a requirement to provide a substantive response to every individual

complaint could take their focus away from more important issues. ENAC said that the duty of NEBs under Article 16(1) was not to help with individual claims but to ensure that air carriers in general comply with the Regulation. Another NEB said that it was not possible to commit to a timescale because an NEB's ability to respond depended on the air carrier responding to it within a reasonable time. Two NEBs said that staffing had been impacted by the economic crisis and that this could impact complaint handling times.

1.392 In contrast, the industry was divided on this issue, and four of the five pan-EU airline associations (ELFAA, IACA, IATA and ERAA) expressed no view on this question; ECTAA/GEBTA also expressed no opinion. AEA was opposed. In the bilateral interviews, several airlines and airline associations expressed a concern that this would increase costs, which might ultimately get charged back to airlines; some also said that, for certain individual claims, there would be no point the NEB attempting to find a solution and therefore this would not be a useful requirement. ACI Europe supported the proposal, but most other airport representatives did not express any opinion.

FIGURE 58 STAKEHOLDER VIEWS: QUESTION 33.1

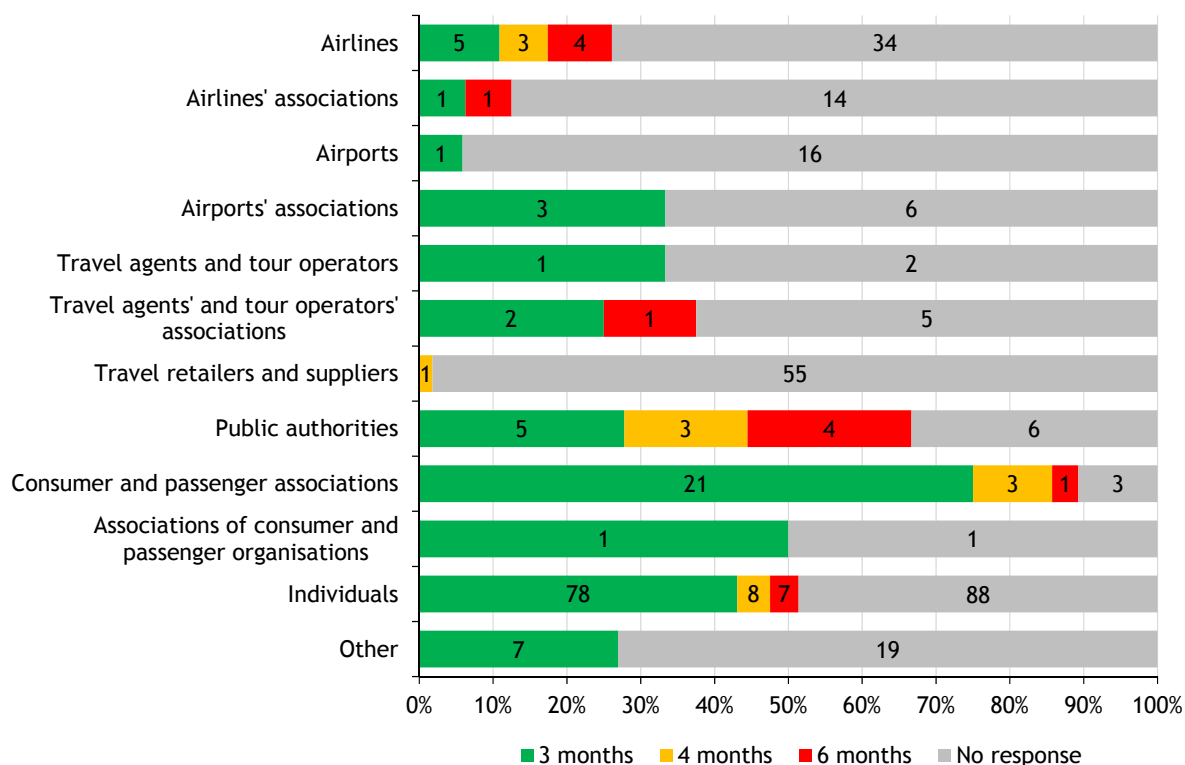


Question 33.2: If yes, how long should this period be at the least?

1.393 For those that answered yes to Question 33.1, their responses to Question 33.2 are displayed in Figure 59. BEUC and most other consumer associations that expressed any view selected a period of three months, whereas the public authorities (most of whom were NEBs) were more likely to be in favour of longer periods being permitted. In the bilateral interviews, many emphasised that their ability to respond quickly to passenger complaints was dependent on airlines providing a quick response to their questions (and also the airline response containing sufficient information to enable them to make a

decision). None of the main pan-EU airline or travel agent and tour operator associations expressed any view on this, and most individual airlines did not express any view.

FIGURE 59 STAKEHOLDER VIEWS: QUESTION 33.2



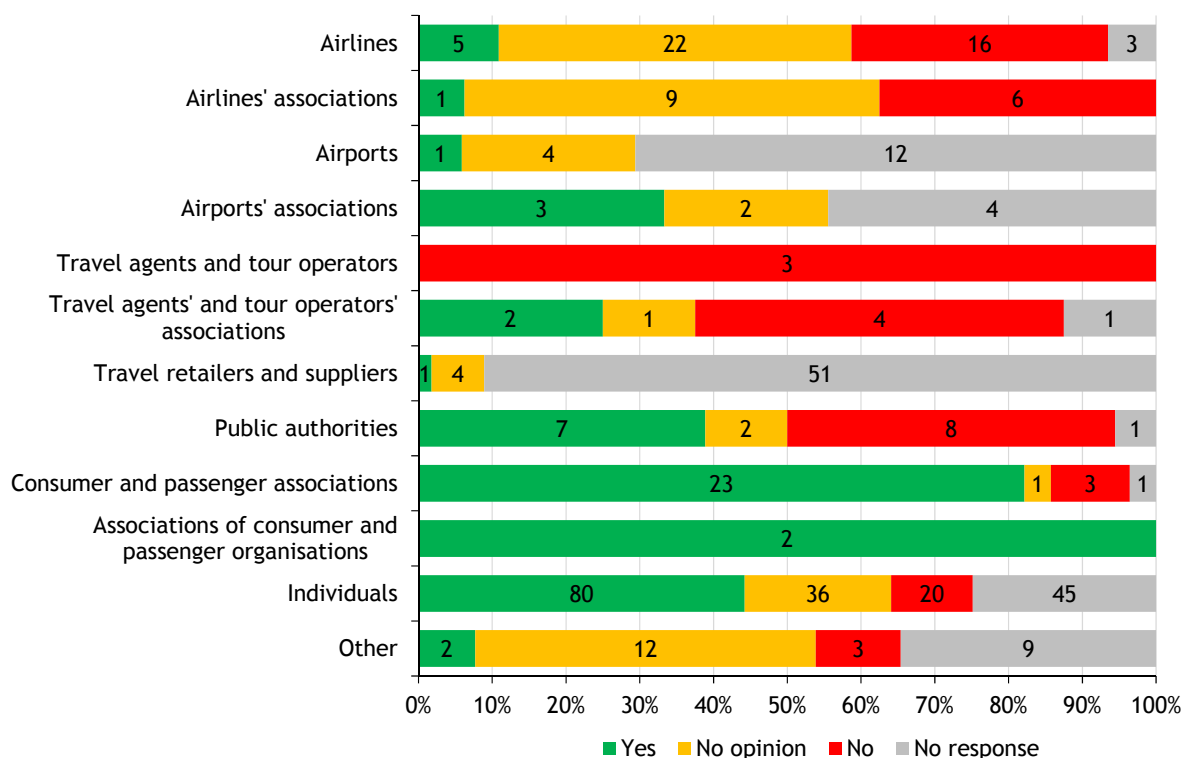
Question 33.3: Should passengers be given the choice of having their complaint handled by the NEB of the Member State that issued the airline's operating licence or the NEB of the Member State of departure or the NEB of the Member State of arrival (thereby requiring closer cooperation between NEBs)?

- 1.394 At present, NEBs are only competent to enforce the Regulation with respect to flights departing from airports within their State (and flights from non-EU countries back to these airports). Although a small number do assist residents of their own country with other complaints, most forward these complaints to the competent NEBs.
- 1.395 Figure 60 shows the responses of stakeholders to this question. BEUC, EPF and almost all other consumer associations that responded agreed that passengers should be given the choice of either NEB to handle their complaint. In bilateral interviews, some highlighted the practical problems (particularly language) that passengers can face when having to complain to NEBs other than that of their home State. A particular issue is that some problems may be more likely to arise on a return journey: for example, if a return flight is cancelled, the passenger will probably need accommodation to be provided, whereas if the outward flight is cancelled, they may be able to go home.
- 1.396 Government respondents, most of whom were NEBs, were divided on this issue, with some such as the UK being in favour whereas others such as Spain being against. Although this issue was not specifically discussed with NEBs in the bilateral interviews for this study, we

did discuss this issue with NEBs for our 2006/7 study on the Regulation³. At the time, NEBs expressed a number of views: some said it was easier for consumers to complain to the NEB of their own Member State and so this was preferable; some said enforcement and complaint handling were easier with respect to airlines licensed in the Member State, so this would be preferable; whereas others noted that relevant alternative sources of information on an incident (such airports) would be in the State where the incident occurred.

- 1.397 In contrast travel agents and tour operator mostly expressed no opinion about this issue, and most of those that did express any were opposed. Of the main pan-EU industry associations, ELFAA and ECTAA/GEBTA were opposed whereas AEA, ERAA, IATA and IACA expressed no view. Most individual airlines and travel agents / tour operators that expressed any view were also opposed. Again, this was not generally discussed in the interviews for this study, but at the time of the 2007 study, airlines expressed concern about any arrangement that could lead to multiple NEBs investigating the same complaint, adding administrative burden for both NEBs and air carriers, and potentially leading to inconsistent decisions being made by different NEBs about the same case.
- 1.398 ACI Europe was in favour of this proposal but most other airport representatives expressed no opinion.

FIGURE 60 STAKEHOLDER VIEWS: QUESTION 33.3



³ Steer Davies Gleave (2007): Review of Regulation 261/2004

Alternative dispute resolution (ADR)

- 1.399 The document described the proposed Directive and proposal for a Regulation on consumer ADR, and asked whether these two horizontal proposals would need to be accompanied by complementary proposals for the air transport sector.

Question 34: Are sector-specific complementary measures needed with regard to the ADR entities that will deal with consumer complaints in the air transport sector pursuant to the above-mentioned proposals on consumer ADR and ODR? If ADR processes are introduced, what if any specific characteristics or expertise would these need to be able to handle air transport cases?

- 1.400 **Airline and airline associations:** A large number of airlines and airline associations responded to state that EU passenger rights legislation was not the appropriate place to introduce ADR mechanisms which must take account of national judicial systems. Several (including Bundesverband der Deutschen Fluggesellschaften (German Airline Association, BDF) and BAR Switzerland) believed that the customer relations services of airlines meant that ADR mechanisms were not necessary. Many (including ELFAA) also argued that if any ADR mechanisms were to be introduced, they should be implemented consistently across the EU, be at no additional cost to carriers, and have access to appropriate aviation-specific expertise. Some also argued that they should apply to all airlines, and that decisions should be binding. Alitalia and several other airlines believed that if implemented following these conditions, ADR mechanisms could reduce costs for airlines. A4A warned that its experience with ADR mechanisms introduced in other States was that decisions were always made in favour of passengers, and that any ADR mechanism must have a mechanism for appeal. Air Berlin suggested that an access fee of €50 could discourage frivolous claims.
- 1.401 **Airports and airport associations:** Airports and airport associations did not respond to this question.
- 1.402 **Travel agents and tour operators:** Most travel agents and tour operators which responded to this question did not see a need for additional ADR structures to be implemented, as mechanisms already exist at a national level. DRV argued that if they were introduced, they should follow similar conditions to those specified by airlines, and that NEBs should be excluded from the process. In contrast, the Association of Danish Travel Agents and Tour Operators believed that NEBs should be included in the mechanisms, to improve their international communication.
- 1.403 **Travel retailers and suppliers:** Travel retailers and suppliers did not respond to this question.
- 1.404 **Public authorities:** There were varied responses by public authorities to this question. Several argued that ADRs seeking to provide individual redress should be separate from enforcement processes, and that ECCs should be limited to providing information to passengers. The UK CAA believed that if ADRs were to have impact in aviation, they would need to be mandatory, binding and apply to both domestic and international tickets; it believed that costs and benefits of this were unclear. The Finnish Consumer Agency and Ombudsman noted that Finland has a long-established ADR system for consumer issues, and did not need a separate passenger rights ADR. It also argued that business passengers

should not be permitted to use the ADR. The Catalan Consumer Agency did not believe the 30 day deadline proposed for the online dispute resolution system would be enough.

- 1.405 **Consumer and passenger associations:** Most consumer representatives were in favour of the introduction of ADR mechanisms with expertise in transport. BEUC believed that airlines should be obliged to abide by the decisions of ADRs. EPF believed that while familiarity with air transport issues would be beneficial to ADR staff, expertise in consumer protection was more important. In contrast, the Norwegian Consumer Ombudsman thought that including representatives from the aviation industry ensured that an ADR's decisions were respected. Some representatives argued for maintaining separation between NEBs and ADRs (ECC Norway) while others thought NEBs should be responsible for providing the ADR mechanism (CECU, UK ECC). The UK Consumer Council and Holiday Travel Watch believed that providing information to passengers regarding available ADR mechanisms would be important including contact details during the booking process, and detailed information on cases online.
- 1.406 **Individuals:** Individual respondents gave a range of answers to this question. Several suggested that ADR systems should have independent aviation experts available to them. One noted the issues of ensuring carrier compliance with ADR decisions if the system does not have sanctions. One argued that NEBs should be abolished and all procedures related to complaints and compensation should be centralised within DG SANCO.
- 1.407 **Other:** Other respondents also gave a range of answers to this question. Insurance providers (such as ERV) gave similar responses to travel agents and tour operators: that there was no need for additional ADR structures, but if they were introduced they should be competent, cost-effective, binding on all airlines and have a fee of €50. Deutsches Verkehrsforum believed that any ADR system introduced should have procedures harmonised at EU level.

Other issues to which you would like to draw our attention

Question 35: Are there any other issues with the operation of the current Regulation to which you would like to draw our attention, or which you consider should be changed? Please give details.

- 1.408 Some stakeholders submitted very long responses to this question, which in several cases duplicated responses they had already provided to earlier questions. This summary focuses on the issues which do not relate specifically to the earlier questions.
- 1.409 **Airline and airline associations:** AEA and a number of its member airlines said that the competitiveness of EU airlines was hampered by the relatively high cost of EU legislation compared to other regions, and this put European jobs at risks; this should be taken into consideration in any revision to the Regulation. They said that the EU air transport sector was deregulated and airlines should be free to differentiate their products according to passenger needs, and set prices accordingly.
- 1.410 More specifically, SAS, A4A and a trade association pointed towards the differentiation in enforcement and interpretation between different NEBs, and said this risked distorting competition. Another carrier said passengers should be banned from taking carriers to court if the NEB had not supported their claim. XL Airways France said that the

inconsistency with the Package Travel Directive should be addressed - in particular it noted the more extensive exemption for force majeure in this Directive.

- 1.411 Some airline representatives made comments on the design of the questionnaire or how it should be presented. IATA and several of its member airlines said that bodies representing airlines or large numbers of consumers should be given more weighting than individual respondents (to avoid this issue, we have not added together the views of different categories of stakeholder - the reader can determine what weight they wish to attribute to different categories). ELFAA and IATA complained that the design of some of the questions was biased or seemed to lead the respondent.
- 1.412 **Airports and airport associations:** The Union of French Airports said that it was clear at present that carriers are liable to passengers under the contract of carriage; this should not be changed, to avoid creating customer confusion, although the carrier could seek assistance from the airport. European Regional Aerodromes Committee (ERAC)() also said that it would create confusion to transfer responsibility for passengers to airports who, particularly in the case of smaller regional airports, simply provided infrastructure which airlines were free to use. Manchester Airport said that the Regulation only provided protection for departing passengers but protection might also be necessary for arriving passengers - for example where delays were caused on arrival because the airline did not provide for sufficient staff to handle incoming baggage.
- 1.413 **Travel agents and tour operators:** AITO said that in some respects there was a conflict between the Regulation and the Package Travel Directive, which should be addressed. ABTA and TourCom said that the revision of the Regulation should consider measures to protect passengers in case of airline insolvencies.
- 1.414 ECTAA, DRV and Thomas Cook highlighted the difficulty in calculating the right to compensation or refunds where passengers had purchased a package holiday.
- 1.415 There were several comments about price transparency or other issues related to the sale of air tickets. ECTAA noted that some low cost carriers were preventing people from booking through travel agents; it said this limited consumer choice, and people should have the right to choose an intermediary to book their flight if they wished. ECTAA and the Guild of European Business Travel Agents (GEBTA) noted that airlines presented fuel surcharges at the point of sale as if they were an additional fee (not included in the fare), but then considered them non-refundable; they said that fees initially presented by airlines as separate should not then be considered part of the fare. ECTAA and GEBTA argued that all additional services should be bookable through computer reservation systems. DRV also argued that package tours should be exempt from any requirement to refund taxes and charges to passengers that did not travel, because refunds were available depending on how far in advance the passenger cancelled. TUI emphasised that it provided excellent service to its customers that went well beyond the requirements of the legislation, and most tour operators had been providing assistance from well before the Regulation was introduced. It emphasised that it would create significant additional costs if passengers had a right to rerouting when their flight was still going to operate.
- 1.416 **Travel retailers and suppliers:** Travel retailers and suppliers did not respond to this question.

- 1.417 **Public authorities:** The Finnish Consumer Agency and Ombudsman said that there could be different rights for business and leisure passengers, as business passengers should be able to negotiate their own contractual arrangements and should not need consumer protection measures to the same extent. It also cautioned against the proliferation of different administrative networks and requirements for States in consumer protection, as Member States had limited resources available, and therefore this could be at the expense of actual enforcement activity.
- 1.418 The UK CAA raised several issues. It said that passengers should be required to complain to the airline within a reasonable time; consistency with the Package Travel Directive should be improved; and straightforward printed information emphasising the right to a choice of a refund, rerouting or rebooking should be provided to passengers. It also said that it would support removal of the limit on liability for mobility equipment, and that Article 8(3) should be removed as it caused confusion.
- 1.419 The Austrian Ministry of Labour and Social Affairs and Consumer Protection emphasised that the liability limits for mobility equipment were insufficient and only ordinary baggage should be subject to these limits. Another Member State said that airlines should be required to provide an address at which notices could be served, and to appoint a legal representative in each country they served. It also argued that rights should be equalised between modes of transport.
- 1.420 **Consumer and passenger associations:** BEUC, EPF and EUclaim said that more data should be made available on the relative performance of different airlines, in order to provide an incentive for improved performance; EPF also said that information should be published on the relative performance of NEBs. BEUC also emphasised that many carriers do not comply with the current Regulation, or they interpret it to their benefit where it is unclear. It said many NEBs did not handle complaints effectively, and that the fines that they imposed were not high enough to be dissuasive; it said the approach of different NEBs should be harmonised.
- 1.421 BAK pointed towards several problems with the Regulation which it said should be addressed to avoid passenger rights being levelled at the lowest level. In particular it pointed towards the need to ensure effective enforcement of the Regulation. ECC Ireland said that there should be a definition of what travel documentation should be considered adequate, as this varied between airlines and led to some passengers being denied boarding. Several consumer representatives said that action should be taken to address the issue of unfair contract terms, for example by developing a ‘blacklist’ of unacceptable terms, and that measures should be taken to protect passengers in cases of airline insolvencies. Several consumer representatives also called for the prohibition of unfair and difficult-to-avoid additional charges, such as charges for payment by debit card.
- 1.422 **Individuals:** A range of views were expressed by the individual respondents. The majority indicated support for the Regulation or considered that it should be strengthened, and several said that airlines fail to comply with the Regulation anyhow. There were also several comments about ineffective enforcement by NEBs. Some pointed to specific practices by airlines or airports which they considered to be unfair - such as refusal to allow names on tickets to be changed; disproportionate charges for excess baggage; high prices in airport retail or catering outlets. However, a minority considered that the

Regulation placed excessive burdens on airlines, and might lead to higher ticket prices; some cited the volcanic ash crisis as a specific example of this.

- 1.423 **Other:** FIM highlighted the importance for musicians of being able to take their instruments with them to enable them to perform across Europe. ONCE said that the Regulation should address limitations placed by some carriers on the number of disabled passengers permitted to travel on a flight. CER and some other railway respondents emphasised that the Regulation should define clear rules and limits on liability, consistent with the Montreal Convention, and should address the inconsistency between the rules applying to different modes of transport. (EDF said that the current limit on liability for mobility equipment was insufficient to cover the cost of the equipment, and this should be changed not just for intra-EU flights; it also said that it supported the development of a Key Facts document but that this should be available in a format accessible for passengers with disabilities.
- 1.424 The European Technology and Travel Services Association (ETTSA) expressed concern about the proposal to require travel agents to pass passengers' contact details to airlines, so that they could be contacted in the case of disruption; they said that the data was commercially sensitive and if sent outside the control of the agents, could be used for marketing purposes by the airlines. It suggested that travel agents instead should contact passengers in the event of disruption. ERV said that the revised Regulation should also address poor quality of service by airports, for example long queues for security control, and ensure that passengers were able to book flights and ancillary services via travel agents through the computer reservation systems.