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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

**on the application of Regulation 261/2004 establishing common rules on compensation
and assistance to passengers in the event of denied boarding and of cancellation or long
delay of flights**

{SEC(2011) 428 final}

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1. INTRODUCTION

Freedom of movement, one of the most important individual rights of EU citizens and an essential aspect of the internal market, is vital for the competitiveness and integration of the EU economy. Travelling is a necessary prerequisite for the exercise of the freedom of movement. (EC) Regulation 261/2004¹ (hereinafter "the Regulation") became applicable on 17 February 2005. The Regulation set a minimum level of quality standards for passenger protection, adding an important citizen's dimension to the liberalisation of the aviation market.

The novelty of some provisions of the Regulation has led to different interpretations, and thus varied application, among air carriers and national enforcement authorities (NEBs), rendering it difficult for passengers and stakeholders to understand the scope and limits of the rights set out. In 2007 the Commission issued a Communication² where the main shortcomings related to the application of the Regulation were identified with a set of remedial measures. The Commission has committed to stakeholders and EU institutions to continue the efforts to improve the application in order to ensure harmonised interpretation and enforcement of the Regulation and to report on it regularly.

In line with this commitment, after 6 years of application, the Commission is assessing again the implementation of the Regulation. This report is part of the Commission's work to remove obstacles to preventing citizens from effectively exercising their rights under EU law, as launched by the EU Citizenship Report 2010 "Dismantling the obstacles to EU citizens' rights"³. In that report the Commission announced its intention to ensure adequate enforcement of air passengers' rights in particular in the case of long delays and cancellations.

Thus, the objective of this report is threefold: to list the developments since the adoption that may have an impact on the application of the Regulation; to follow up the measures undertaken since 2007, taking stock of the improvements in its application and the remaining obstacles; to identify further actions to ensure at short term further improvement of its application within the current legal framework provided by the Regulation, and to evaluate possible changes that may help to better achieve its political goals.

¹ JO L46/1 of 17-2-2004

² COM 168 (2007)

³ COM 603 (2010)

2. DEVELOPMENTS SINCE 2007

2.1. Changes in the market

Over recent years the completion of the liberalisation of the aviation market, the boom of new companies and business concepts as well as the expansion of new routes have combined to create new travel opportunities for passengers. The number of passengers has increased by roughly 35% since 2000. Travelling by air is no longer perceived as a luxury, but has become a necessity to meet business needs and a self-evident right for European citizens.

However, with this growth the perceived quality of air transport has been negatively affected in some respect. This deterioration is due to many reasons, inter alia: avoidable delays due to airspace congestion, crowded airports and insufficient contingency planning in case of severe bad weather; stricter security measures; bigger airports with longer distances which imply, for passengers, risks in retrieving luggage and missing flights; and some commercial practices of air carriers which may negatively impact upon passengers - the weaker party to the transport contract – (such as the so-called "no show policy" or practices linked to the mishandling, of luggage that show loopholes and deficiencies in the application of current legislation). These problems may prove, in some cases, to be as costly for passengers as a cancellation or a long delay. Since the broad use of these commercial practices has developed after the adoption of the Regulation, further reflection is needed as to whether to tackle some of these questions at European level.

The means and purpose of travelling have also evolved, in line with the evolution of our society towards a more intensive use of time and the greater importance to travel and holidays. In the event that a journey is disrupted, the inconvenience for passengers is likely to be higher than was previously the case. Thus, the main objective of the Regulation - to improve the situation of passengers if their journey is disrupted - is more pertinent than ever.

2.2. Changes in EU Passenger Rights legislation

The Regulation on Rail Passenger Rights came into force in December 2009⁴. In 2010 Council and Parliament adopted a Regulation on maritime and inland waterway passenger rights⁵ and in 2011, a Regulation on bus and coach passenger rights⁶.

Due to the distinct characteristics of the different transport modes and their markets, both for the industries (differences in the company size, revenues or number of routes) and passengers (differences in the length and the conditions of the trip), the precise contents of these rights vary, but the typology of rights guaranteed by the three existing regulations for the transport by air, rail, sea and inland waterway and bus and coach are comparable; namely the right to information, reimbursement, re-routing, assistance while waiting to travel, and compensation under certain conditions.

2.3. Changes in the international dimension

The EU is no longer alone in the international arena in having set rules on minimum standards for passenger rights. The authorities of the largest air transport markets also increasingly

⁴ OJ L 315/14 of 03-12-2007

⁵ OJ L 334/1 of 17-12-2010

⁶ OJ L55/1 of 28-02-2011

enhance Air Passenger Rights (APR). The United States, Canada and other third countries are currently improving their APR legislation, while some other European and North African countries will apply the Regulation as part of their aviation bilateral or multilateral agreements with the EU. However, the EU is so far the only part of the world where minimum standards for passenger rights have by now been set across all transport modes.

2.4. Case law

Case law has had a decisive impact on the interpretation of the Regulation. In the **IATA**⁷ ruling, the ECJ confirmed its full compatibility with the Montreal convention and the complementarities between the two legal instruments. In case C-549/07 **Wallentin-Herrman**⁸ the Court clarified when a technical problem in an aircraft cannot be regarded as an 'extraordinary circumstance'. Better delineation of what may be considered as *force majeure* in aviation -taking into account the interpretation provided by the ECJ and lessons from experience- seems advisable. In the case of the **Sturgeon**⁹ on long delays, the ECJ held that a long delay of at least three hours at arrival may entitle passengers to the same amount of compensation as in the case of a flight cancellation, since the inconvenience suffered by passengers is similar. Since the ECJ rulings are directly applicable and legally binding from the date that the relevant Regulation came into force, all the carriers are legally obliged to respect them.

2.5. Volcano crisis of April 2010

The closure of European air space because of the ash cloud from an Icelandic volcano in April 2010 was an unprecedented event. The Regulation remained fully applicable, with the closure being immediately qualified EU-wide as an exceptional circumstance.

A first assessment of the application of EU law on APR during the volcano situation shows that the vast majority of airlines, airports and other travel operators worked effectively to minimise the impact on travellers. There is no doubt that, without the Regulation, the chaos and cost for both European citizens and society as a whole would have been much bigger. NEBs now have to take the necessary measures against those few carriers which have refused to comply with the Regulation, to avoid both distortion of competition among carriers and passengers' frustration at any lack of compliance with the law.

Nonetheless, the volcano has illustrated some of the structural limits of the Regulation, which have been tested under the magnified scale of the crisis. The proportionality of some current measures, like the unlimited liability regarding the right to care under major natural disasters, may merit assessment. Member States and the Commission need to reflect on how to ensure that, in the future, this vital support which in the volcano crisis was provided solely by part of the industry is correctly shared and financed. An assessment of the financial cost of the crisis is currently ongoing; however this requires industry to provide the necessary relevant data, which may not yet be available given that a large number of passenger claims are still pending with NEBs or the competent national Courts. A full assessment of reliable figures, current provisions and possible future measures is required to ensure no excessive burden is placed on the aviation industry whilst also ensuring that citizens do not bear the financial cost and inconvenience of natural catastrophes alone.

⁷ C-344/04 of 10-01-2006

⁸ C 549/07 of 22-12-2008

⁹ Joined cases C-402/07 and C-432/07 of 19-11-2009

Among the measures aimed at preserving the mobility of passengers in a crisis situation, the Commission will explore possible ways to enhance the level of preparedness of all the different actors concerned. The temporary lifting of operational restrictions such as night flight restrictions could be envisaged.

3. FOLLOW UP OF THE MEASURES UNDERTAKEN SINCE 2007

The Commission monitors data relating to the application of the Regulation, drawing on a number of sources, like information published by carriers and consumer associations or by NEBs and Commission related services such as the Consumer Centres network (ECC-Net)¹⁰ and the "Europe Direct Call Center" (EDCC); a number of studies and surveys carried out to examine the application of the Regulation, notably the 2008 Report on carriers' contract conditions and preferential tariff schemes¹¹, the 2009 Eurobarometer on Passenger Rights, the 2010 Consumer Market Scoreboard and the 2010 Report on the evaluation of Regulation 261/2004¹²; the results of a public consultation on APR closed in 2010, which also tackled questions relating to issues such as mishandled luggage¹³ and the relationship between the APR and the rights and duties stemming from the Package Travel Directive¹⁴ in case of a carriers' bankruptcy. This work, available at the Commission website, may serve as complementary information to this report¹⁵.

According to the information gathered, some of the shortcomings are related to the wording and the content of the Regulation, thus they cannot be solved without an amendment of current rules and are not, therefore, tackled in this report. That being said, for the sake of completeness, the main criticisms to the content of the Regulation are listed here.

For industry, the main criticisms are linked to the Regulation's complexity; to the lack of a limitation of liability to provide care in the event of extraordinary circumstance beyond the carrier's control; to the difficulties in ensuring the costs incurred in applying the Regulation are covered by the responsible third party; to the lack of a better outlining of extraordinary circumstances both beyond and within the carriers' control; and to the lack of uniform interpretation and enforcement.

For passengers, the main criticisms are that the Regulation may not be correctly applied by carriers (e.g. right to be offered re-routing at the earliest opportunity by any comparable transport condition and to receive care whilst waiting to be re-routed); that NEBs do not handle complaints quickly and efficiently; that the decisions of NEBs are not binding and therefore are not always followed by carriers or recognised by judges; and that there is a lack of monitoring, measuring and publication of information on the performance of operators, relating to the application of the Regulation and to consumer satisfaction levels.

¹⁰ http://ec.europa.eu/consumers/ecc/index_en.htm

¹¹ By Steer Davies Gleeve http://ec.europa.eu/transport/passengers/studies/passengers_en.htm

¹² By Steer Davies Gleeve, same webpage.

¹³ OJ L140/2 of 30-5-2002

¹⁴ OJ L158/59 of 23-6-1990

¹⁵ SEC (2011) 428 Commission Staff Working Paper, accompanying document to this Communication

Regarding the application of the Regulation the Commission in its Communication of 2007 identified different areas for improvement, namely, the lack of:

- uniform interpretation and enforcement throughout the EU;
- clear and easily accessible means of complaint handling; and
- adequate information to passengers.

To overcome these, the Commission has encouraged stakeholders to reach an understanding as to how the Regulation could be applied satisfactorily. Two voluntary agreements have been reached clarifying both NEB and airline obligations on complaint handling, in particular in extraordinary circumstances. Moreover, two interpretative documents to help harmonise the application and enforcement of the Regulation have been agreed by NEBs under the leadership of the Commission, one in 2007 (a Questions & Answers "Q&A" document), and another in 2010 related to the volcanic crisis. The Commission has chaired several NEB meetings every year, encouraged constant informal exchanges of information between NEBs, and maintained an open and constant dialogue with the industry and all relevant stakeholders, with multilateral meetings every year. Such dialogue has helped all parties to better understand both the context within which the Regulation is applied and the requirements of the competent national authorities. The Commission attaches great importance to this dialogue with all interested parties, and seeks to develop it further.

According to the different sources of information, there are three main conclusions to draw at this stage. First, the difficulties in the application linked to the lack of both uniform interpretation and consistent enforcement at national level are still high. Secondly, the striking differences between complaint handling procedures, deadlines to answer passengers and the non-legally binding nature and the scope of the NEBs' opinions frustrate passengers as well as weaken the application of the Regulation. Finally, passengers' awareness of their rights does not appear to have increased.

While some of the shortcomings are directly linked to the Regulation, part of them stems from fragmented consumer protection legislation and the enforcement of such legislation in practice, particularly in cross-border situations.

3.1. Lack of uniform interpretation

Due to the novelty of APR legislation and the lack of definition of some of the terms used by the co-legislators, some of the articles have been subject to divergent interpretations from the beginning. For most of the questions discussed in 2007, the interpretation provided then by NEBs and the Commission is now largely accepted by all stakeholders. Some other questions, however, have been rendered obsolete further to the interpretation provided by the ECJ while new ones have added up. An update of the "Q&A" document is thus necessary.

The exceptional natural events that occurred in 2010 - the volcano crisis and the severe weather conditions - have stressed the need to underline that, in those cases where the responsibility for the disruption belongs to any other person, including third parties (air service providers, airport managers, ground-handlers, tour operators, national administrations, etc.) air carriers can seek compensation from them. Article 13 clearly establishes a shared liability, whereby the operating carrier has the responsibility to assist passengers, but not the obligation to pay all the costs. The purpose of using the operating carrier as the focal point for

the obligations of the Regulation is to ensure the effective application of the Regulation to the benefit of passengers, while allowing cost-sharing with any other person, private or public, responsible for the disruption¹⁶.

Under the new light shed by the general principles developed by the jurisprudence some other terms in articles have become clear enough not to be any longer subject to divergent interpretations, notwithstanding future ECJ opinions. This is the case of the right to be re-routed at the earliest opportunity under comparable transport conditions (Art. 8.1.b) in case of cancellation or denied boarding, and the right to the provision of care (Art. 6) at connecting points.

As the Court has made clear in its case-law, it is necessary, in interpreting a provision of EU law, to consider not only its wording but also the context in which it occurs, the objectives pursued by the rules of which it is part and the reasons which led to its adoption¹⁷. For passengers, the first and most essential right is the reassurance that they will get to travel in conditions similar to those stipulated in their tickets, notably regarding the scheduled times. In line with both the political objectives of the Regulation to reduce inconvenience for passengers and to offer them reasonable re-routing¹⁸ as well as with the reasoning of the ECJ, the provisions conferring rights on air passengers must be interpreted broadly¹⁹.

Under Article 8 passengers have the right to choose to be re-routed "under comparable transport conditions"; this may be conducted by another mode of transport or by another carrier covering the same route or a very similar one, in the same or similar fare class. Carriers are obliged to offer such a choice to their passengers. The "comparable transport conditions" must be defined on the basis of the same or similar class and not on the ticket price paid by the individual passenger, since the price of a plane seat changes continuously as part of the commercial strategy of the company, depending on many different factors. This is demonstrated by the fact that on the same flight, in the same fare class, passengers sitting next to each other may have paid substantially different prices for identical seats.

The same principles apply to the provision of care at connecting points regardless of the point of the journey where the long delay - or the first delay that triggers the long delay - occurred. The Regulation must be interpreted in accordance with primary law as a whole, including the principle of equal treatment, which requires that comparable situations must not be treated differently²⁰. What is essential to define the carrier's obligations is the single contractual relation which ensures passengers to get to their final destination at the scheduled time. For passengers, a connecting point in their tickets linking two different legs of their journey has no other purpose than helping them reach their final destination. Meanwhile under the Regulation carriers are not prevented from offering the service themselves (either directly or via connecting flights) nor are they prevented from using another carrier's flights under any agreement between the carriers. This is clearly stated by the legislator in article 2 (h) where it provides the definition of final destination and it limits carriers' liability by specifying that "alternatives connecting flights shall not be taken into account if the original planned arrival time is respected".

¹⁶ Recitals 7 and 8

¹⁷ p 41-42 of Sturgeon

¹⁸ Recital 12

¹⁹ p.17 Wallentin-Hermann; p. 45 Sturgeon

²⁰ p.95 of IATA Case

The legislator has consistently chosen the concept of the final destination to determine both the carrier's liability (which may be reduced if arrival time is respected) and the appropriate rights of passengers (to minimise any inconvenience suffered). Article 6 imposes the obligation to care on the operating carrier when it reasonably expects passengers to be delayed beyond the timeframes fixed in this article, and this obligation covers passengers that find themselves delayed at a connecting point towards their final destination. Article 13 affirms the right of the operating carrier (which must provide the care) to seek redress from the carrier responsible for causing the delay, e.g. the contractual carrier or the carrier operating a preceding (delayed) flight.

If the ECJ has played a key role in clarifying some of the most controversial points, the Commission is aware however that, given the complexity of current rules, the number of questions that may still need ECJ interpretation remains high.

Moreover, as mentioned in point 2.4, the volcano crisis highlighted the importance of clear interpretation. Air Passenger Rights must be analysed as a whole, thus it becomes necessary to assess whether loopholes in current legislation -i.e. on luggage related issues- or new practices from the market should be addressed. Therefore, in the light of experience and recent developments, the Commission considers that an assessment of current measures is necessary and that, in this context, proper coordination with the ongoing revision of the Package Travel Directive is required.

The Commission will work with the NEB Network to agree on harmonised interpretation, and it will launch in 2011 an Impact Assessment to assess the proportionality of the current measures in the light of experience and the costs of the regulation for stakeholders, with a view to propose further measures on Air Passenger Rights (APR), including of a legislative nature, in 2012.

3.2. Lack of uniform enforcement through the EU

The 2010 Report concluded that problems with enforcement at EU level are due to the fact that, in many Member States, enforcement is not effective, proportionate and dissuasive enough to provide carriers with an economic incentive to comply with the Regulation. As a consequence, these national differences in the approach to enforcement risk of distorting competition in air transport.

In 2010 the Commission has encouraged several joint NEB actions against carriers to ensure the successful harmonised correction of any improper practice. NEBs have started carrying out new measures, like the monitoring both the information published by the carriers as well as letters sent to passengers in order to correct any wrong, misleading or incomplete information. This work is supported by structured contacts with carriers when non-compliance is suspected, and the use of official warnings to encourage compliance. Even if these warnings and NEB joint actions have improved enforcement at EU level, shortcomings which require further actions remain:

3.2.1. Differences in national laws and procedures

The 2010 Report analysed and explained the main reasons that make enforcement in most of Member States too complex, too slow or, in practice, inapplicable. These divergences in national legal frameworks, administrative systems and judicial procedures increase costs and legal uncertainty for both the aviation industry, which is heavily reliant on cross-border traffic

for business, and passengers. Working with Member States to detect and overcome obstacles in national law hampering proper application of the Regulation –including, if necessary, the opening of infringement procedures- will improve enforcement at EU level.

Regulation 261/2004 is covered by the Regulation EC 2006/2004 (CPC Regulation)²¹ to investigate and to enforce cross-border infringement on collective consumer interest. However, national authorities have not made use of these possibilities presented by the CPC Regulation in the past. Regulation 261/2004 provides for the appointment of its own national enforcement authorities which have to apply their national penalty schemes on both national and non-national operators working on their territory. This may have contributed to a limited use of the CPC Network in this sector. All options aiming at ensuring better enforcement of Regulation 261 at cross border level should be explored.

The Commission will work with relevant Member States to identify and overcome obstacles in national law hampering proper application and uniform enforcement of the Regulation, and will assess the opportunity to remove them by the opening of infringement procedures if necessary.

3.2.2. *Lack of clear mandate and internal rules of the "NEB Network" Group*

Article 16 of the Regulation envisages enforcement at national level without establishing any tool to ensure the necessary harmonised, consistent and efficient application of the regulation at EU level. To overcome this shortcoming the Commission has encouraged NEBs to work as an informal group (the NEB Network) within which they may agree on enforcement matters. This experience has shown the benefits of ensuring that NEBs agree on a common interpretation of the Regulation and that coordinated enforcement measures are coordinated.

Experience has identified three main obstacles that currently prevent agreements reached within the NEB Network from being fully respected: the lack of adequate mandate defining the tasks allocated to it; the lack of officially appointed members with capacity to take decisions on behalf of their national administrations; and the lack of internal rules defining, notably, the effects of its decisions and how they are adopted. This can be achieved by setting up mechanisms designed to ensure that agreements on the application of the law within the current NEB Network are honoured by all Member States. This network of enforcement authorities will cover the various EU regulations on APR, by adapting the appointed members to the regulations under discussion, notably, Regulations 261/2004, 1107/2006²² or 889/2002²³.

²¹ OJ L 364/1 of 9.12.2004

²² OJ L 204/1 of 26-7-2006

²³ OJ L 140/2 of 30-5-2002

The Commission will implement a mandate and internal working rules for the existing NEB network -which will cover the various APR regulations- to improve their coordination at an appropriate level and to facilitate the adoption of common and relevant decisions on the interpretation and enforcement of the Regulation, including further clarification on extraordinary circumstances and on a reasonable and proportionate right to care.

3.2.3. *Lack of carriers' provision of information on their procedures to comply with the Regulation*

In order to operate carriers are not obliged, either under EU law or national law, to have a certified APR contingency plan. This means that a NEB has to be extremely proactive and judge how each carrier interprets and fulfils their obligations under the Regulation on the basis of the information they receive from indirect sources. The lack of obligation to inform NEBs in advance of the procedures in place to comply with the Regulation unnecessarily complicates the NEB's task of preventing unfair practices. This may be improved by better coordination at national level between the licensing authority and the NEB, and by increased cooperation with all relevant stakeholders. An expert group will be set up to provide opinions to the Commission on all APR legislation.

The Commission will:

- encourage better coordination at national level between the authority that issued the operating licence and the NEB to enhance enforcement measures, and between the different national bodies appointed as NEBs to step up the exchange of information about carriers' compliance;
- structure its contacts with all other key stakeholders through the creation of an Air Passenger Rights Consultative Group, reflecting industry and passenger perspective on all issues related to air passengers' rights.

3.2.4. *Lack of integrated data, reporting obligation and "recueil" of jurisprudence*

The 2010 Report highlighted that better coordination at EU level of all the data available at national and EU Level could improve uniform enforcement. This could be achieved by agreeing within the NEB network group common definitions and categories of data to be shared; where information exchanged comprises of personal data, Directive 95/46²⁴ applies. Currently there is no compilation of national rulings on the application of the Regulation. This hinders harmonisation of the interpretation, even within the same country. A more harmonised enforcement of the Regulation by NEBs and national judges could be achieved by compiling and publishing relevant judgements both at EU and national level. Finally, NEBs do not publicly report on sanctions and other measures taken to ensure carriers' compliance and neither the NEBs nor the industry currently report on the operators' overall performance in complying with the Regulation. Public reporting on sanctions and carriers' performance would offer more transparency to the general public and thus help to achieve a more correct application of the Regulation and promote a level playing field among air carriers.

²⁴ OJ L 281 , 23/11/1995 P. 0031 - 0050

The Commission will:

- encourage NEBs to make use of effective tools to exchange information, including on relevant national administrative and judicial decisions, to seek further coordination of databases and further reporting on the application of the Regulation;
- promote a better level playing field among operators across the European area, amongst others by encouraging the publication of issued sanctions and/or of the operators' overall performance in complying with the Regulation.

3.3. Lack of harmonised and accessible complaint handling procedures and means of redress

Article 16 establishes two different tasks for the NEBs: the enforcement of the Regulation with recourse to sanction schemes in case of improper conduct, and the handling of individual complaints from passengers. The Regulation leaves complete freedom to Member States to decide the nature of the Body in charge of this latter task, which may or may not be the same authority as that in charge of enforcement. The Regulation does not provide a definition of complaint handling nor does it identify a specific competent NEB for complaint handling. Three major criticisms arise from a passengers' perspective: firstly, current deadlines by which carrier and NEBs respond to passengers are too long; secondly NEBs issue non binding opinions which may not be followed by carriers and not always be recognised by national Courts, notably when the decision is issued by NEBs of another Member State; and thirdly NEBs do not always mediate between passengers and carriers. The main points still unresolved are:

3.3.1. Divergences on the role of NEBs and the scope of their opinions

Different models of complaint handling have been developed since 2005 and have been explained at length in the 2010 Report. The roles of NEBs, the scope of their opinions and the deadlines for handling complaints are thus still very different in the EU. According to the spirit of the Regulation, the complaint handling should provide passengers with a meaningful answer on their specific rights within a reasonable deadline, and not only with information on the degree of the carrier's compliance with the law or on possible sanctions. Several NEBs acknowledge an increase in the number of passengers' complaints in recent years. This is a good sign in terms of increased awareness of citizens' rights while travelling by air, but on the other hand, current NEB structures may not be able to handle properly an increasingly big number of complaints within a reasonable deadline. Working with Member States to identify and overcome shortcomings in their appointed national complaint handling bodies and procedures -while ensuring the necessary flow of information to the enforcement authority- could lead towards a more efficient and harmonised complaint handling at EU level. Secondly, efficient means for private redress at national and EU level, e.g. establishing arbitration or mediation bodies that could help passengers seek binding, quick and inexpensive redress, will help to improve application and passengers' satisfaction.

The Commission will:

- work with relevant Member States to identify and overcome shortcomings in their current national complaint handling bodies and procedures to lead towards a more efficient, quick and consistent complaint handling at EU level while ensuring the indispensable flux of information between the complaint handling and the enforcement bodies;
- ensure proper coordination with the ongoing revision of existing or future EU measures on enforcement and redress, like those on alternative dispute resolution mechanisms or collective consumer redress.

3.3.2. *The competent NEB to handle a complaint; Reasonable deadlines*

The two voluntary agreements on complaint handling are currently not fully respected by all parties. According to reports from ECCs and consumer organisations, it is difficult to find out how to lodge a complaint with some airlines. The timeframes within which a passenger can expect a final opinion from the NEB may currently vary roughly between four and 18 months, in addition to the time taken by the carrier to answer a claim. Currently, for two similar incidents relating to the same return ticket with the same carrier -for instance lack of care during two long delays, one on the outbound and another on the inbound flight- passengers must complain to two different NEBs, go through two different procedures with different deadlines, to get two different kind of opinions, one that might quantify his specific rights, the other regarding the status of compliance with the Regulation. Further political engagement of Member States to respect the deadlines set up in the voluntary agreements and to work in a more consistent manner would improve the current situation.

These differences, still prevalent at EU level, cause passengers frustration due to the imbalance between their expectations regarding the NEBs' role and what NEB may actually do within the framework of their own national procedures. Language issues may present another barrier. These are all the more apparent because of the cross-border nature of air transport and the agreed principle of "incident based" competence for NEB complaint handling. Experience shows that sometimes, due to the closer relation of the passenger with another relevant point of the trip, passengers seem to prefer to be given a choice regarding the competent NEB to handle a complaint (as it is the case regarding competent jurisdictions²⁵). The possibility of offering passengers a similar choice regarding the competent NEB to handle their complaint could be explored as this may facilitate not only any legal actions by passengers but also the follow up of NEB decisions by the competent Court of the same country.

The Commission will:

- promote a more uniform and quick handling of complaints, notably by submitting to the NEB network Group a common standard form to request information from carriers and a proposal on the competent NEB;
- work with the future APR Consultative Group to encourage air carriers to establish reasonable and precise timeframes to handle passenger claims.

²⁵ Case C-204/08, Rehder p. 43 and 45

3.4. Lack of information provided to passengers

Passengers need to receive correct information to assess whether their rights have been properly respected and to know where they may turn in case of dissatisfaction. Inaccurate or misleading information -provided to passengers through carriers' contractual terms and conditions, general information in their publicity and press statements and specific information provided in the carrier's answers to passenger claims- is a major wrong which should be prosecuted in all cases, even in the absence of complaints. Immediate reaction from NEBs is essential. Disparities are still perceived whenever an air carrier must provide passengers with information under article 14.2 about the cause for the disruption of their trip. Encouragement from NEBs for the industry to increase the use of new technologies (e.g. SMS, internet and social networking sites) to reach the affected passengers as soon as possible may help to minimise inconvenience to passengers and costs to carriers.

Robust quantitative data are an invaluable tool for operators, consumers and decision-makers alike. The Regulation would be more effective if carriers provided more information to NEBs that would facilitate the publication of information on issues such as punctuality, number of flights affected by disruption and the APR measures applied, in full compliance with Directive 95/46/EC. This would also serve to increase competition, based on customer care standards, between carriers and the general flow of information to the public, thus helping to achieve a level playing field among air carriers.

The Commission will work with the NEB Network and the APR Consultative Group to encourage airlines and other relevant operators to regularly report to NEBs on relevant data on the application of the Regulation for publication.

The number of passenger complaints when a carrier fails to fulfil its obligations in case of incident remains low²⁶, which shows, among other possible reasons, a certain lack of passengers' awareness of their rights. In 2010 the Commission launched a Europe-wide information campaign to increase citizen's awareness. Further measures carried out by NEBs, consumer associations or Commission-related services like the ECC Network may further increase passenger's awareness of the scope of their rights and how to exert them. In the framework of its cross-modal approach to passenger rights, the Commission will continue to seek stakeholders' support to progressively transform transport hubs, including airports, into places where citizens can get easy access to information about their EU Rights, especially when travelling across the EU.

The Commission will raise passengers' awareness on their rights, through widespread communication, such as the on-going Commission information campaign on passengers' rights, as well as through existing consumer networks, as the ECCs and in coordination with the NEB network.

4. CONCLUSIONS AND FURTHER STEPS

In spite of the progress made since 2007, the Commission considers that there are three areas where measures are still necessary to improve the application of the Regulation: effectively

²⁶ Less than 7% from the 2009 Eurobarometer

harmonised enforcement of EU rights, facilitation of their enjoyment in practice, and raising awareness about these rights.

In this report the Commission has identified 12 actions to overcome the obstacles that passengers and the industry still face when applying and enjoying the rights provided by the Regulation. In the short term, these actions build on the mechanisms and procedures already in place, to better structure and use them. In the medium term, the Commission will carry out an assessment to evaluate the impact of the current Regulation and the different scenarios that may help to improve the protection of APR and to keep pace with evolving socio-economic realities. This should allow the Commission to announce in 2012 which further measures, including those of a legislative nature, may appear necessary.

Thus, the Commission will:²⁷

- (1) Work with relevant Member States to identify and overcome obstacles in national law hampering proper application and uniform enforcement of the Regulation, and will assess the opportunity to remove them by the opening of infringement procedures if necessary;
- (2) Implement a mandate and internal working rules for the existing NEB network -which will cover the various APR regulations- to improve their coordination at an appropriate level and to facilitate the adoption of common and relevant decisions on the interpretation and enforcement of the Regulation, including further clarification on extraordinary circumstances and on a reasonable and proportionate right to care;
- (3) Encourage better coordination at national level between the authority that issued the operating licence and the NEB to enhance enforcement measures, and between the different national bodies appointed as NEBs to step up the exchange of information about carriers' compliance;
- (4) Structure its contacts with all other key stakeholders through the creation of an APR Consultative Group, reflecting industry and passenger perspective on all issues related to air passengers' rights; Work with the future APR Consultative Group to encourage air carriers to establish reasonable and precise timeframes to handle passenger claims;
- (5) Encourage NEBs to make use of effective tools to exchange information, including on relevant national administrative and judicial decisions, to seek further coordination of their databases and further reporting on the application of the Regulation;
- (6) Promote a better level playing field among operators across the European area, amongst others by encouraging the publication of issued sanctions and/or of the operators' overall performance in complying with the Regulation;
- (7) Work with relevant Member States to identify and overcome shortcomings in their current national complaint handling bodies and procedures to lead towards a more efficient, quick and consistent complaint handling (at EU level) while ensuring the indispensable flow of information between the complaint handling and the enforcement bodies;

²⁷ These conclusions repeat the boxes in the text above

- (8) Ensure proper coordination of passenger rights legislation with the ongoing revision of existing or future EU measures on enforcement and redress, like those on alternative dispute resolution mechanisms or collective consumer redress;
- (9) Promote a more uniform and quick handling of complaints, notably by submitting to the NEB network Group a common standard form to request information from carriers and a proposal on the competent NEB;
- (10) Work with the NEB Network and the APR Consultative Group to encourage airlines and other relevant operators to regularly report to NEBs on relevant data on the application of the Regulation;
- (11) Raise passengers' awareness on their rights, through widespread communication tools, such as the on-going Commission information campaign on passengers' rights, as well as through existing consumer networks, as the European Consumer Centres;
- (12) Launch in 2011 an Impact Assessment to assess the proportionality of the current measures in the light of experience and the costs of the regulation for stakeholders, with a view to propose further measures on Air Passenger Rights and in coordination with the ongoing revision of the Package Travel Directive (90/314/EEC), including of a legislative nature, in 2012.