

Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

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The Commission presents a Communication on the application of Regulation (EC) 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.

The Regulation became applicable in 2005 and in 2007 the Commission issued a [Communication](#) where the main shortcomings related to the application of the Regulation were identified with a set of remedial measures. After 6 years, the Commission is again assessing 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".

Thus, the objective of this report is threefold: (i) to list the developments since the adoption that may have an impact on the application of the Regulation; (ii) to follow up the measures undertaken since 2007, taking stock of the improvements in its application and the remaining obstacles; (iii) 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.

The paper discusses **developments since 2007** and notes that the number of passengers has increased by roughly 35% since 2000. It examines relevant case law and the lessons drawn from the **volcano crisis of April 2010**, stating that 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 taking place. 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. 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.

Follow up since 2007: 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.

The paper outlines the actions taken to help harmonise the application and enforcement of the Regulation. It concludes, however, that:

- the difficulties in the application linked to the lack of both uniform interpretation and consistent enforcement at national level are still high;
- 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;
- 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.

The report identifies **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 already in place. 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:

- 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;
- 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;
- 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 APR Consultative Group, reflecting industry and passenger perspective on all issues related to air passengers' rights. It will also work with the future APR Consultative Group to encourage air carriers to establish reasonable and precise timeframes to handle passenger claims;
- 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;
- promote a better level playing field among operators across the European area, particularly by encouraging the publication of issued sanctions and/or of the operators' overall performance in complying with the Regulation;
- 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;

- 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;
- 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 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;
- raise passengers' awareness on their rights, through widespread communication tools, such as the ongoing Commission information campaign on passengers' rights, as well as through existing consumer networks, as the European Consumer Centres;
- 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 revision of the Package Travel Directive (Directive 90/314/EEC) in 2012.