

Air Passengers' Rights Regulation 261/2004

Response to the Public Consultation on:

**Draft information notice on relevant EU consumer protection,
marketing and data protection law applicable to claim
agencies' activities in relation to Regulation 261/2004 on air
passenger rights**

Summary

- **APRA welcomes the Commission's initiative to raise awareness and enforce the rules for claim agencies and to avoid malpractice.**
- **We therefore support the necessity to produce a clear power of attorney.**
- **Malicious agencies harm consumer confidence as well as the reputation of honest agencies. APRA supports efforts to uncover these malicious agencies.**
- **APRA advocates increased cooperation between claim agencies and the European (and national) institutions. We remain at their disposal, offering our expertise.**
- **APRA agrees that the passenger should always seek to contact the operating carrier before considering other means to seek redress. However, the way in which the passenger chooses to do so should be left entirely up to the passenger.**
- **Whilst it is important that NEBs are made aware of misbehavior by airlines, NEBs generally do not help the passenger get restitution. Rather, the NEB can fine the airlines for (repeated) non-compliance.**
- **APRA urges the Commission to change some of the wording in the information notice, as the general tone of the document might be interpreted as being very negative towards claim agencies. Misbehavior or incorrect practices by some claim agencies should not be made to reflect negatively on honest agencies that comply with the rules. It is the Commission's duty to ensure consumer protection, but it is not its duty to interfere with the free choice of the consumer by dissuading them from using the services of an entire group of commercial entities.**

Introduction

APRA is the European Association bringing together Passenger Rights Advocates throughout Europe, advocating aviation regulations that offers legal certainty, improve conditions and truly protect the European traveler. Through one of its members, APRA possesses a database, analyzing some 13 million flight and weather statistic every day, making the database more comprehensive than the ones used by air traffic regulators and even the airlines themselves. This database puts APRA in the position to comprehensively *analyse* the working of the functioning of the sector and *identify* unnecessary burdens and shortcomings. APRA advocates a well-functioning European aviation sector that offers legal certainty, improves conditions and truly benefits the European traveler.

1. The information notice: positives

APRA welcomes the European Commission's overall efforts to raise awareness for passengers' rights, as these must be protected at all times. To help guarantee the protection of these rights, it is important the consumers can depend on honest and reliable services. As in any other sector, it is important, both for the consumer and the sector, that bad apples are removed. Malpractice and dishonest conduct cannot be tolerated and APRA therefore wholeheartedly supports the Commission's efforts to identify these practices and to raise awareness as regards the existing rules.

1.1. Power of Attorney

As claim agencies represent the passengers largely in civil litigation proceedings in national Courts, it speaks for itself that such representation must be carried out, in accordance with the law, by qualified and registered legal professionals. APRA welcomes the Commission's call for claim agencies to be able to provide a clear power of attorney, as it is a valid and straightforward method of separating legitimate agencies, that operate in accordance with the law, from those who do not. APRA works solely with fully documented legal professionals and considers proper representation of the passenger its highest priority.

1.2. Transparency and pricing

APRA believes that it is good practice to inform any consumer of the cost of a service clearly, transparently and ahead of entering in contractual obligations. We strongly condemn misleading and unfair practices as these harm consumer confidence and ultimately the sector. APRA refers to its pricing structure prominently on the home page¹ of its website. Furthermore, we work on the basis of a success fee or a 'no-cure-no-pay' basis. This means that the consumer will pay nothing when a claim is not successful. In August 2016, leading German consumer organization 'Stiftung Warentest' praised APRA member EUclaim for its transparency, fair pricing and its flexibility in terms of the possibility to end a contract at any time².

¹ <https://www.euclaim.nl/onze-service>

² Stiftung Warentest, TEST magazine, www.test.de, issue 8 (1 August 2016), p.14-16
<https://www.test.de/Fluggastrechte-Der-Weg-zur-Entschaedigung-4667375-0/>
<https://www.test.de/Fluggastrechte-Der-Weg-zur-Entschaedigung-4667375-5049363/>

1.3. Promotion of services

Whilst it is important to raise passengers' awareness as to their rights in the case of delayed or cancelled flights, APRA shares the views of the European Commission that telemarketing is not an appropriate way to do this. Whether it would fall under the scope of unfair commercial practices is debatable but it can simply not be regarded as good conduct and can ultimately harm both the consumer and the sector.

1.4. Data Protection of Passengers

APRA agrees that personal data must be protected and treated with the greatest care at all times. Whether tour operators, claim agencies or airlines, we must always ensure to be compliant with the current EU data protection regulation.

2. The information notice: recommendations

As stated above, it is important to protect the consumer against bad apples in the industry. Malicious agencies harm consumer confidence as well as the reputation of honest agencies. APRA supports efforts to uncover these malicious agencies. We do, however, believe that the Commission might want to consider revising some of the wording in the Information Notice, as the overall tone of the document reads quite negatively towards claim agencies. It is unfair to law-abiding and bona fide agencies to group them with those who engage in incorrect practices. Here it is important to note that there is a clear *raison d'être* for honest agencies, as many passengers are helped by enforcing their rights, often after having been wrongly rejected by the airlines.

2.1. Checks and balances

The European Commission states that where the passenger chooses to use claim agencies, they should be made aware that a number of allegations have been brought to the attention of the Commission. APRA agrees that it is the Commission's duty to ensure that Member States put checks and balances on claim agencies in the same manner as they would put checks and balances on any other commercial entity, whereby the rule of law is the appropriate frame of reference. However, misbehavior or incorrect practices by some claim agencies should not be made to reflect negatively on honest agencies that comply with the rules. It is the Commission's duty to ensure consumer protection, but it is not its duty to interfere with the free choice of the consumer by dissuading them from using the services of an entire group of commercial entities.

2.2. The right to representation

APRA agrees that the passenger should always seek to contact the operating carrier before considering other means to seek redress. However, the way in which the passenger chooses to do so should be left entirely up to the passenger. The European Commission's own guidelines on

the application of Regulation 261/2004 clearly state that: “A passenger should have the right to decide whether he/she wants to be represented by another person or entity”³.

2.3. The role of the NEBs

Whilst it is important that NEBs are made aware of misbehavior by airlines, NEBs generally do not help the passenger get restitution. Rather, the NEB can fine the airlines for (repeated) non-compliance. Article 7.1 of the European Commission’s Interpretative Guidelines reiterate this and state that: *“The Commission recommends that the air carrier should reply within 2 months and that no restrictions are imposed regarding the use of one of the EU official languages. However, the Court considered that under the Regulation, national enforcement bodies are not required to act on such complaints in order to guarantee in each case, individual passengers’ rights. Hence, a national enforcement body is not required to take enforcement action against air carriers with a view to compelling them to pay the compensation provided for in the Regulation in individual cases, its sanctioning role as referred to in Article 16(3) of the Regulation consisting of measures to be adopted in response to the infringements which the body identifies in the course of its general monitoring activities provided for in Article 16(1)”*. It is not reasonable to put the burden of engaging in such a lengthy and complex procedure on the passenger, with no real prospect of receiving restitution.

3. Transparency and cooperation

Fully appreciating the relevance of the current European Commission initiatives to raise awareness of the existing rights and to protect the passenger, APRA advocates increased cooperation between bona fide claim agencies and the European (and national) institutions. We remain at your disposal, offering our expertise as well as the use of our unparalleled database, which we are happy to share for the purpose of achieving these objectives. Please do not hesitate to contact us:

³ [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0615\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0615(01)&from=EN)