

Response to European Commission Consultation on Aviation package for improving the competitiveness of the EU Aviation sector

Focus:
Regulatory Burden and Hampered Competitiveness

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ASSOCIATION OF PASSENGER RIGHTS ADVOCATES

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.

Focus

For the purpose of this consultation, we will focus on the *identification of unnecessary regulatory cost and procedures arising from EU legislation posing a burden and this negatively affecting competitiveness* (question 2c of the online questionnaire) as this is where our expertise lies and where we believe we can make a valuable contribution.

The revision of Regulation 261/2004

Regulation 261/2004¹ sets out common rules for air passenger compensation and assistance in the event of denied boarding, flight cancellations and long delays. It repealed Regulation (EEC) No 295/91, and went into effect on 18 February 2005. In 2013, a revision of the Regulation was proposed by the European Commission, which should clarify, simplify and fortify the existing regulation. Whereas APRA fully supports any initiative that could strengthen the rights of EU air passengers and simplify procedures, the revision in its current form does the opposite. Well intended by the European Commission, **the proposal was heavily amended by the European Parliament and even more so by the European Council**, which is currently discussing the revision.

More layers and red tape

Our main concerns are that the amended Regulation 261/2004, as it currently stands will not only **add additional costs to airlines, airports and National Enforcement Bodies. It also creates extra layers of bureaucracy and procedures through the establishment of an Alternative Dispute Regulation (ADR) mechanism.** ECJ case law has created a solid basis on which any disputes between airlines and passengers are comfortably settled. **Adding a layer of ADR would thus not only increase bureaucracy, it would also weaken the legal certainty that has been so carefully accrued by the ECJ.** The ADR body would co-exist with the existing National Enforcement Bodies, which is not only superfluous but also illogical, creating

¹ http://eur-lex.europa.eu/resource.html?uri=cellar:439cd3a7-fd3c-4da7-8bf4-b0f60600c1d6.0004.02/DOC_1&format=PDF

unnecessary layers. More red tape is created by a provision, which would burden the European Commission with the examination and clarification of the Regulations' provisions, either at the request of Member States or at its own initiative. The ECJ is and has been perfectly capable of this task.

Next to the National Enforcement Bodies and Alternative Dispute Resolution schemers, the Commission intends to create a **Passenger Rights Committee**. This would mean creating yet **another costly layer of interpretation and administration** whilst any added value remains questionable.

Airlines will be expected to create contingency plans with all airports they fly to. Strong cooperation is needed for a proper implementation of these plans. **However, smaller non-European airports are overlooked by the European Commission vis-à-vis the implementation of this new proposal, creating uncertainties, rendering these plans ineffective.**

Through **delegated acts**, the European Commission endeavors assuming a more active role in the Regulation, creating **additional administrative burdens** on airlines, airports and National Enforcement Bodies. Moreover, the **legal uncertainty** created, due to the opaque nature of the procedures regarding delegated acts, for all stakeholders, including air passengers **benefits neither the efficiency nor the effectiveness of the revised Regulation**. The European Commission's First Vice-President Frans Timmermans has already acknowledged the complications regarding the lack of transparency in delegated acts by suggesting in his Better Regulation Agenda to publish delegated acts and providing a 4-week window for stakeholder consultation.

The proposed revision of the Regulation 261/2004 intends to **withdraw legal interpretation from the national civil courts, pushing for centralized interpretation by the European Commission**. A list of extraordinary circumstances will be appended to the Regulation, for interpretation by the Commission. **APRA strongly believes that this suggested approach would unnecessarily overcomplicate things**. Again, national courts, backed by clear decisions of the European Court of Justice, have been perfectly capable to interpret and arbitrate in these matters. We refer once again to the Juncker Commission's efforts to improve the Better Regulation agenda, whereby **subsidiarity is one of its core principles**. National civil courts are perfectly competent, ergo a move towards EU-level interpretation is unjustified.

The ongoing **debate**, notably between the UK and Spain, regarding **Gibraltar Airport** is causing the revision to drag on unnecessarily, to such an extent that the proposal currently remains in **total deadlock within the Council, severely hampering any progress or potential improvements**.

Conclusion

Considering the arguments as laid out above, it becomes apparent that, whereas the proposal to revise Regulation 261/2004 was intended to simplify, clarify and improve passengers rights - whilst reducing administrative burdens - it has instead become increasingly muddled and disorganized as it passes through the European policy cycle. In the highly unlikely event that an agreement would be reached on the Gibraltar issue and the proposal would become eligible for adoption, implementation in its current form would put EU airlines and airports at a direct competitive disadvantage vis-à-vis their non-European counterparts. **APRA therefore urges the European Commission to withdraw the current proposal and return to the drawing boards.** The Commission may decide to re-introduce a substantially improved proposal in due course.