

Air Passengers' Rights Regulation 261/2004

Regarding passenger rights in the event of any delays, cancelled flights
and/or denied boarding

Position Paper

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Summary

- **APRA recognizes the need for a clear and unambiguous Air Passenger Rights Regulation. Legal certainty and maximum consumer protection are essential.**
- **The remit of Regulation (EC) 261/2004 is to ensure that air carriers are incentivized to transport people in a timely manner and to resolve any problems as quickly as possible.**
- **APRA warns that the current state of the revision of the Regulation (EC) No 261/2004 will worsen the situation for air passengers, instead of improving it, not only concerning the time and distance thresholds for delay compensation, but also on missed connections and extraordinary circumstances.**
- **The legal uncertainty created by the deadlock in the European Council is detrimental to the purpose of improving passengers' rights.**
- **Regulation (EC) No 261/2004 by and large functions properly: APRA data demonstrates that the number of delays have in fact been reduced as a result of the existing Regulation.**
- **In the key cases dealt with by the European Court of Justice (ECJ), the rights of passengers were reinforced and enhanced. Any new legislative proposal must be used to codify the ECJs important rulings. The current proposal fails to deliver.**
- **A proposed list of extraordinary circumstances in combination with the Commission's right to, at request of a Member State or at its own initiative, examine and clarify the provisions in the Regulation, in particular the extraordinary circumstances, is prone to be influenced by lobbying activities from air carriers and eliminates all legal certainty for the passenger.**
- **Air carriers have failed to provide evidence that the Sturgeon, Böck¹ and Nelson² court rulings have resulted in high costs for air carriers.**
- **Air carriers are unable to provide data that demonstrate an increased number of cancellations as a result of the current Regulation.**
- **Article 16 would create heavy administrative burdens by adding additional layers of bureaucracy and creating legal uncertainty. This goes right against the line the Juncker Commission is taking with regards to Better Regulation**
- **In conclusion: APRA strongly recommends for the European Commission to withdraw the proposal in its current form and to go back to the drawing board to adapt the proposal to truly benefit the air passengers.**

¹ Joined cases C-402/07 Sturgeon v Condor Flugdienst GmbH and C-432/07 Böck v Air France SA

² Case C-581/10 Nelson and Others v Deutsche Lufthansa AG



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Introduction

APRA is the European Association bringing together Passenger Rights Advocates throughout Europe. Through its membership, 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. APRA advocates an Air Passenger Regulation that offers legal certainty, improves conditions and truly protects the European traveler.

The Good

APRA recognizes some positive elements within the current proposal to revise **Regulation (EC) No 261/2004**.

PRA supports the European Parliament's amendment 1, which considers flight tickets to be "**result contracts**", whereby airlines guarantee to fulfill the obligation to take the passenger from one pre-determined place to another with the utmost care. This is a step in the right direction for strengthening the protection of air passengers.

The European Parliament's amendments 10 and 11 call for the creation of a **guarantee fund** or **insurance scheme** to ensure that passengers are protected when an air carrier goes bankrupt or loses its license.

The proposal would oblige air carriers to offer **re-routing** on other air carrier's services or other transport modes after a certain period of time has elapsed, which will enable faster re-routing. The proposal also explicitly mentions **missed connections and extraordinary circumstances** and would **include** provisions on **tarmac delay**.

APRA also supports the European Parliament's amendment 43 which states that **denied boarding** includes flights for which the **scheduled time of departure has been brought forward** with the consequence that the passenger misses that flight. The proposal would also **address the no-show policy** by prohibiting denied boarding **of passengers that did not take the outward journey** of a ticket.

Recital 8 would allow for reasonable correction of booking errors provided free of charge.

The European Parliament's amendment 55 would widen the scope of the regulation to cases where the passenger **travels under other modes of transport** in accordance with the ticket of the airline.

APRA believes it is reasonable that the proposal would limit the financial responsibility for air carriers in the case of extraordinary circumstances with regards to Article 9 of the proposal.

The European Parliament amendment 167 on Annex 1 would exclude planned labour disputes from the list of extraordinary circumstances.

The Bad

The remit of Regulation (EC) 261/2004 is to ensure that air carriers are incentivized to transport people in a timely manner and to resolve any problems as quickly as possible. However, both the European Commission's proposal and the amended text adopted by the European Parliament contain elements that negatively influence air passengers' rights, far outweighing the potential benefits as laid out above.

First and foremost, the underlying reasoning is incorrect. Recital 11 states that *'[...] the thresholds above which delays give rise to a right to compensation should be increased to take account of the financial impact of the sector and to avoid any increase in the frequency of cancellations as a consequence'*. However, **air carriers have never provided any evidence of the financial impact** of Regulation (EC) 261/2004, nor of any data to corroborate an increase in cancellations.

Even the Commission's own Impact Assessment³, which estimates the cost of the current Regulation (EC) 261/2004 to be 10.4 million euros, predicts only a very marginal cost decrease to 9.8 million euros. **Such a negligible difference does not justify a reduction in air passenger' rights.**

In a Commission working document⁴ on the impact of the 3-hour delay compensation, it was stated that less than 1 percent of medium-haul flights and 0.4 percent of short-haul flights were affected by the obligation to pay compensation.

While it is positive that the right to financial compensation for delayed passengers is explicitly mentioned in the proposal, the **proposed thresholds for delay compensation based on arrival time and distance (Article 6) are a huge step backwards**. It creates more complexity and weakens the enforcement of passengers' rights in the event of long delays. The Sturgeon and Böck, Nelson and Folkerts cases, as ruled by the ECJ clearly established the rights for passengers to financial compensation in the case of delays greater than 3 hours. **The Court argues that the trouble and inconvenience caused to passengers of a delay of 3 hours is comparable to that of a cancellation**. According to the new proposal passengers would have to incur longer delays before being entitled to compensation, **widening the gap between cancellations and delay**.

While it is positive that the proposal includes protection for passengers who miss their connecting flight, the European Parliament's amendment 79 states that passengers are only entitled to financial compensation in the case of a delay of more than 90 minutes at the transfer point. This **provision goes against the Sturgeon and Folkerts⁵ court rulings on equal**

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0063:FIN:EN:PDF>

⁴ http://ec.europa.eu/transport/themes/passengers/doc/sec_2011_428_staff-working-paper.pdf

⁵ Case C-11/11 Air France SA v Folkerts



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treatment that affirmed that compensation is based on delay at arrival, not on delay at transfer point.

The **proposal would allow for the loss of the right to care** under Article 9(1) for passengers that opt for re-imbusement of their flight under Article 8(1)(a) or re-routing under Article 8(1)(c).

The proposal would limit the time a passenger has to file a complaint to three months. This is unacceptable.

A proposed list of extraordinary circumstances in combination with the Commission's right to, at request of a Member State or at its own initiative, examine and clarify the provisions in the Regulation, in particular the extraordinary circumstances, is prone to be influenced by lobbying activities from air carriers, eliminates all legal certainty for the passenger, and does not reflect the European Court of Justice or national jurisprudence.

The European Parliament's amendment 54 explicitly excludes children under the age of two without a seat from receiving financial compensation, while children are usually affected most by long delays.

Lastly, Article 16 would create **heavy administrative burdens** by adding additional layers of bureaucracy and creating legal uncertainty. This goes right against the line the Juncker Commission is taking with regards to **Better Regulation** and the reduction of administrative and regulatory burden, led by Commission First Vice-President Frans Timmermans.

Conclusion

Whilst the improvement of passengers' rights in any way shape or form is to be welcomed and whilst well-intended at the time of its original drafting, **the negative effects of the proposal in its current and amended form far outweigh the potential positive effects on air passengers' rights.** The proposed revision of Regulation (EC) 261/2004 would thus de facto harm air passenger instead of help them. APRA recommends for the European Commission to return to the drawing board and strongly appeals for the withdrawal of the current proposal. APRA will remain at the Institutions' disposal to assist in any efforts to truly improve passengers' rights.