AIRLINES FOR EUROPE

POSITION PAPER
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PROPOSAL ON MULTIMODAL PASSENGER RIGHTS (2023/0436)

Introduction

European airlines are generally supportive of efforts to promote multimodal travel and recognise that a consumer protection framework will eventually become necessary as the market develops.

At present, however, there are relatively few integrated multimodal offers (i.e. where there is an established relationship between the two transport operators), such as the air-rail cooperation seen in France, Germany, and Italy, or the air-bus cooperation in Spain. In A4E's view, two separate transport services bundled together by an intermediary in a single transaction does not constitute a multimodal travel offer per se, but rather a combination of distinct services. Nevertheless, it is important to clarify which consumer protection rights and obligations apply in such a context. The third category, where a consumer selects and purchases two legally separate transport services at their own initiative, is less relevant in this context.

A4E cautions against introducing an overly prescriptive or burdensome regulatory framework at this stage. In a nascent market, it is important to ensure that there is room for cooperation and integrated offers between transport operators to develop further, and a risk that an imbalanced framework may impede the innovation that will deliver efficient and widely available multimodal travel services.

There is also a risk that a new horizontal passenger rights framework adds further complexity on top of the existing sector-specific passenger rights regulations. It is essential to ensure that the new proposed framework is consistent with existing legislation on air passenger rights (both Regulation 261/2004 and Regulation 1107/2006) to avoid the risk of legal uncertainty. For example, the terminal operator shares responsibility for providing assistance to passengers with disabilities or reduced mobility under Regulation 1107/2006. Similarly, consistency must also be ensured with the proposal for a regulation on the enforcement of passenger rights (2023/0437) during the legislative process.

This calls for a "less is more" approach, with clearly defined liability between carriers and intermediaries and a basic set of rights and obligations. Information sharing and reporting obligations must be proportionate and feasible. As a guiding principle, multimodal passenger rights obligations for transport operators should only be put in place where there is a commercial agreement or legal relationship between the relevant parties, including intermediaries.

The proposal's provisions on providing passengers with information about the nature of the multimodal ticket they buy is crucial. The proposal makes it clear that integrated multimodal

tickets (category A), which consists of an agreement between different transport operators, are the only version of multimodal transport offers that effectively delivers on consumer protection. It is important that intermediaries are held liable for how they market and sell combined multimodal tickets (category B), where no such agreements may be in place. While the proposal does not seek to address the commercial relations between carriers and intermediaries, we welcome the initial steps taken for greater scrutiny of the role they play in the distribution of travel offers and with respect to consumer protection.

We are concerned, however, that in the event of travel disruption, an intermediary that has received a refund from the carrier is not made liable for ultimately reimbursing the passenger, with the carrier acting as a fallback if the intermediary falls to meet this obligation. This creates a risk of double payment. There should be penalties for intermediaries that fail to pay the passenger on time on recurring basis and the National Enforcement Bodies (NEBs) should be required to take enforcement action against repeated non-compliance. It is the transport operator that incurs the cost of enabling multimodal transport and intermediaries must shoulder some of the responsibility for compliance with consumer protection.

The proposed obligations for carriers and the more stringent liability for integrated multimodal tickets (Category A) would lead to additional administrative and commercial burdens, which is at odds with the Commission's intention to reduce reporting requirements and red tape. The proposal should not inadvertently reduce the commercial attractiveness of developing integrated multimodal transport offers, which may benefit intermediaries selling separate transport services as combined multimodal tickets, at the expense of passenger protection standards.

Categories of multimodal transport

A4E recognises the effort made by the Commission to distinguish between different multimodal ticket types and offers. However, the different ticket types should be clarified and better defined. Single multimodal contracts or tickets (Category A) provide for the clearest definition of liability and set of rights, given that there is generally an underlying legal or contractual relationship between the two operators. This is, in A4E's view, the primary form of multimodal travel offers.

By contrast, combined multimodal tickets may simply be separate transport services bundled together by an intermediary or carrier that are sold for an overall price. Particular attention should be paid to these Category B tickets, as the individual transport operators may not have any relationship with each other or with the intermediary combining the services. This requires more regulatory scrutiny of the business practices of intermediaries, some of whom sell tickets without authorisation or a commercial agreement or without informing the passenger of the price of the

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actual air fare. Similarly, Category C separate multimodal tickets should be more clearly defined. This is essentially a consumer purchasing two completely separate transport services for the purpose of a particular journey. In such cases the obligations and rights pertaining to each individual transport mode should apply.

As a general principle, obligations should mainly be imposed where there is a specific contractual or commercial relationship between the transport operators, on the one hand, and the operators and the intermediaries, on the other hand. We believe the proposal should be clearer on such relationships and the ultimate liability for assistance and passenger protection. In the absence of such relationships – if, for example, an intermediary bundles separate travel services together under Category B – the liability for transport operators should be limited and they should be exclusively responsible for their own services. As a general principle, a party should not be held liable for a loss it is unable to anticipate.

It is already a prevalent practice by intermediaries to include multiple flights in a booking that are operated by separate carriers with no legal relationship and to sell them at an overall price. They are not connecting flights per se, but rather separate contracts of carriage on different tickets (e.g. point-to-point flight A to B and point-to-point flight B to C). The intermediary creates a "virtual itinerary" and books the different tickets, but these are not flights that are ticketed together. In such cases, the first carrier which operates a flight from A to B may unfairly be held liable for the overall execution of the journey (i.e. B to C) as a result of a third party combining separate flights with whom the carriers do not have a commercial relationship.[1] There is a high risk that this significant and disproportionate burden is replicated to a greater extent in the broader context of multimodal travel, including different means of transport.

A4E therefore believes that the definitions in Articles 3(7), 3(8) and 3(9) should be revised to establish clearer criteria to distinguish between the different contracts and tickets. The payment method itself is not a useful criterion for this distinction (i.e. Category B single payment by the passenger vs. Category C separate payments). The definitions could be based on the simpler categories set out in the table in the explanatory memorandum:

- Category A: Single contracts
- Category B: Separate tickets combined and sold by a ticket vendor (which should include carriers)

[1] This practice has led the CJEU to significantly expand the scope of Regulation 261/2004, having concentrated on there being a single itinerary or a single booking, when in fact the flights were legally separate. See, for example: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62021CJ0436. By contrast, the courts in North America have tended to focus on the existence of a contractual relationship between the carrier and the passenger.

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- Category C: Separate tickets combined at the passenger's own initiative

A4E would also recommend that a definition of "contracting carrier" is added to the definitions.

Travel information for passengers (Article 5)

To enhance consumer protection and tackle the practice of unauthorised selling of tickets by intermediaries, they should also be obliged to inform the passenger at the time of booking if they have a commercial relationship with the carrier(s). In addition, to ensure consistency with the separate proposal on the enforcement of passenger rights, intermediaries should also be required to inform carriers that they are booking as an intermediary, at least for combined (Category B) tickets, which could be addressed in Article 6.

Carriers would not be able to provide general guidance on minimum connecting times in the absence of a commercial or legal relationship, especially if it is not known to one of the carriers that its services have been sold together with a service on another transport mode. Given the broad networks that airlines operate, it is difficult to provide information on minimum connecting times for every single possible itinerary at all destinations.

The requirements for carriers to provide information on the "fastest trip for the multimodal journey" and "all available fares" while "highlighting the lowest fares" is also not practical in all circumstances and can mainly be ensured for single contracts (Category A). Real-time information sharing obligations on travel disruptions are particularly difficult to meet in practice, especially when they occur on other transport modes, as they require a level of integration among transport operators, access to information and substantial resources (staff, IT systems, etc.) that they often do not have at present. In addition, there are legitimate practical constraints in this context – for example, it would be challenging for an airline to provide information on a rail disruption while the aircraft is in flight. The same is true for providing travel information regarding disruptions and delays when a passenger uses a "flexible ticket". In the absence of a contractual relationship with an intermediary, extensive information sharing obligations may not be feasible, certainly not for combined tickets (Category B). The list of information that should be provided to passengers before and during the multimodal journey must be limited to what is feasible in practice.

It is essential – and welcome – that intermediaries will be required to provide the passenger's contact and booking details to carriers, especially where intermediaries are selling tickets unauthorised. In such cases, an airline may not be aware that its flight has been sold by an intermediary together with other transport services. This is already a significant problem in air travel. However, even in the case of an authorised sale, information about the complete itinerary, including all modalities, may not be available. Even for accredited intermediaries, it is a prevalent

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practice that the contact details and the payment method in the booking belong to the intermediary, which affects the carriers' ability to meet information and refund obligations. An obligation to delete the data received from intermediaries 72 hours after the completion of the contract of carriage creates practical challenges and should be extended. For example, carriers may still need this information for claims handling at a later stage.

Access to travel information for carriers and intermediaries (Article 6)

Parts of Article 6 address commercial matters between market participants which are not directly related to consumer protection. It is not within the scope of passenger rights regulations to address broader issues, such as the underlying commercial arrangements or technical interfaces between transport operators and intermediaries. If necessary, these issues should be addressed through other regulatory frameworks.

A4E believes that carriers offering single multimodal contracts should only be obliged to share travel information with other carriers or intermediaries selling the tickets to the extent that there is a commercial agreement or legal relationship between them. This would also make it practical for carriers to comply with the information sharing obligations under Article 5.

More broadly, and not limited to single multimodal contracts, A4E believes that carriers should only be obliged to share information with intermediaries where there is a legal or commercial relationship between the parties or a legitimate reason, for example to allow tour operators to adjust parts of a package if needed. The proposal will enable airlines to directly inform passengers about their flights, as they will now receive the passengers' contact details in all cases. It is therefore important to ensure that carriers are not placed in a situation where they would be required to share information with unauthorised intermediaries selling their tickets, which would be a significant additional burden and raise concerns about sharing potentially sensitive commercial information.

A "one-off" request for information by other carriers or intermediaries should not be sufficient to obtain "continuous access". Carriers should not be obliged to share the information if no agreement is concluded, or if, for example, the intermediary refuses the air carrier's terms and conditions. This is essential to preserve the right of airlines and transport operators in general to choose their distribution channels and retain control over how their services are sold.

In any case, it would be important to specify that intermediaries cannot use such information for commercial purposes or retain the information longer than necessary to meet the obligations under the Regulation.

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Reimbursement and re-routing (Article 7)

Carriers should only be obliged to offer refunds and re-routing if a missed connection actually occurs due to the delay or cancellation of the preceding service. It is unclear what "reasonably expected to occur" means in practice, which would inevitably be open to different interpretations.

The provision of a return service to the first point of departure, continuation of the journey or re-routing "at the earliest opportunity" should be clarified. There are already disputes over how quickly a carrier should re-route passengers for individual transport modes (especially air) and whether this requires the carrier to consider earlier alternative options through a competitor or different transport modes, which is a significant burden, or if it is sufficient to re-route on its own later service. In a multimodal context, this becomes even more complex. It would therefore be reasonable to expect that carriers offer re-routing through the same means of transport as that of the original booking (e.g. an air-rail journey).

In practice, it may also be difficult for an airline, for example, as the contracting carrier to ensure that a rail company offers passengers with disabilities or reduced mobility "a level of assistance and accessibility comparable to the missed transport service" or vice versa. We believe that carriers should be required to make "reasonable efforts" in this respect.

There is an important question about liability in this context. While the contracting carrier is held responsible under the proposal, in practice the operating carrier is likely to be better placed to offer continuation or re-routing if missed connections happen. This is also the approach taken in Reg. 261/2004. In general, it would seem more appropriate to impose obligations on the operators that have caused the disruption. It is most practical and efficient for each carrier to meet those obligations for its own services. The inconsistency with Reg. 261/2004 should be avoided and addressed .

Reimbursement when the single multimodal contract was booked through an intermediary (Article 8)

It is positive that the proposed refund process addresses the role played by intermediaries and enables carriers to issue refunds directly to passengers if they choose to. However, it does not address the risk of double payment or the lack of incentives for intermediaries to comply. In a scenario where the carrier processes the refund through an intermediary and makes the payment on time (within 7 days of the request), it may still be forced to act as a fallback if the intermediary does not pay the passenger after 14 days. **This is major concern for European airlines.**

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Airlines face the risk of double payment in cases where the airline transfers the refund to the intermediary on time, but the intermediary then fails to pay the customer in a timely manner or at all. In such cases, where reimbursement is delayed or missing, passengers often turn directly to the airline. Some national authorities have taken the view that the airline must reimburse the passenger even if it has already paid the intermediary and should then seek redress. It is not fair or reasonable for airlines to be placed in this situation because intermediaries fail to do their part, which entails significant financial risks.

Airlines and other carriers have no means to track whether an intermediary has paid the refund to the passenger and would be relying on the intermediary acting in good faith. If the intermediary does not do so, the carrier risks paying twice and having to claim back the funds already transferred to the intermediary. Although a right of redress exists in principle, it has a limited effect in practice. In addition, it presupposes a contractual relationship with third parties.

It is therefore essential to add provisions which hold intermediaries to account for processing refunds if the carriers do their part. In the event that intermediaries are not made fully liable for reimbursing the passenger, as we believe they should be, **there should be penalties for intermediaries that fail on a recurring basis to pay the passenger on time and the NEBs should be required to take enforcement action against repeated misconduct**. The same should apply to the obligations to transfer information to airlines and adequately inform consumers. Without such regulatory oversight, the proposal does not incentivise intermediaries to meet their obligations.

A4E believes the proposal should leave open the possibility for the carrier and the intermediary to mutually agree on a different refund process, while respecting the proposed timelines, if they find that such arrangements would be more practical and ensure a more efficient process for the passenger.

If there is no commercial relationship between the carrier and an intermediary, which sells the travel service(s) without authorisation, it would not be possible for the carrier to inform customers about the proposed refund process at the time of booking. The onus should be on intermediaries – irrespective of their status – to inform passengers booking through them about the refund options.

Moreover, carriers should be granted a longer period than seven days to reimburse intermediaries in a multimodal context (Article 8.5). The number of days specified should be doubled to make it feasible in a context where several parties are involved in facilitating the journey. The proposed seven-day and 14-day periods specified in 8.5 (b) would be not workable .

It would in any case be important to clarify what is meant by “reimbursement through the intermediary shall be free of charge for passengers and all other parties concerned”.

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The amount to be refunded for bookings through an intermediary

Articles 7 and 8 should also specify that carriers are not obliged to reimburse any commissions, extra fees or mark-ups applied by intermediaries. This is consistent with the CJEU's case law for air carriers (see in particular the ruling in case C-601/17).[2] Carriers should only be required to reimburse the amount that they received from the intermediary. It is particularly important in the context of intermediaries selling tickets without authorisation or a commercial agreement with the carriers in question.

Assistance (Article 9)

The requirements to provide assistance in case of missed connections raises the same questions about liability, clarity and practical implementation. The liability regime should be aligned with Reg. 261/2004 to avoid legal complexity. For the sake of consistency with this framework, the carrier causing the disruption, i.e. the "operating carrier", should be liable and not the "contracting carrier". Article 9(a) for example, requires contracting carriers to provide meals and refreshments "in reasonable relation to the waiting time", if they are available on the transport service or in the terminal, or can be "reasonably supplied". This raises practical questions: If the contracting carrier is an airline but the passenger has missed a connection at the train station, it is not clear how the airline would be able to ensure such assistance on the ground. Staff from the railway company would likely be better placed to do so.

A4E also believes it would be clearer to state more generally that all carriers may limit the duration of hotel accommodation to three nights in the case of extraordinary circumstances instead of the specific reference to Regulation 2021/782 on rail passenger rights.

Liability (Article 10)

The proposal's provisions on liability for combined multimodal tickets are unclear and should be better defined. The liability regime must be aligned with the provisions of Reg. 261/2004 to avoid legal complexity and uncertainty.

A4E believes it would be important to add a clause that carriers are also not obliged to pay compensation if missed connections were caused by extraordinary circumstances (e.g. bad weather conditions, closure of airspace or essential infrastructure, natural disasters or public health crises); fault on the part of the passenger (e.g. not presenting themselves for boarding on time); or the actions of third parties which are beyond the control of the carrier and the consequences of which

[2] See: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62017CJ0601

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it was unable to prevent (e.g. law enforcement activities or strikes by air traffic controllers). This would be consistent with the individual passenger rights regulations.

Passengers with disabilities and reduced mobility

Airlines are committed to ensuring accessible air transportation but clear and proportionate rules are needed. A PRM can range from a passenger with a severe disability to a passenger in need of medical assistance during the journey to an elderly person with a walking impairment. It is a broad scope that is not even clearly defined for individual transport modes. Given the existence of Reg. 1107/2006 on the rights of PRMs travelling by air, the multimodal proposal must ensure that consistent definitions and wording for similar situations is used. It also needs to reflect that the terminal operator shares responsibility for providing assistance under Reg. 1107/2006. There is a risk that the proposal would lead to legal uncertainty unless this is addressed.

It is also the case that there are no common EU standards or definitions of key concepts such as "recognised assistance dog" or "mobility equipment". In a multimodal context, such assistance becomes more complex. Cooperation between different transport modes and terminal managers is assumed while it has only been established within each transport mode (for example the shared responsibility between airports and airlines to provide assistance under Reg. 1107/2006). A4E would urge the co-legislators not to impose onerous requirements in a multimodal context and to focus such requirements mainly on integrated (Category A) tickets, where it may be more practical to implement them. A4E would also propose that the EU seeks to introduce a definition of "recognised assistance dog" as the United States has done.

Article 12

A4E believes paragraph 2 should be redrafted to state that carriers "may refuse" to accept a reservation or issue a ticket if it is necessary to comply with national law or safety regulations. This is clearly set out in Reg. 1107/2006 and the multimodal proposal appears to take a more restrictive approach. Aviation is subject to the most stringent safety standards of any transport mode.

It should be clearly stated that assistance to PRMs is mainly foreseen for integrated or single multimodal contracts where carriers can apportion the liability and responsibility between them based on a legal relationship. For combined multimodal tickets, where an intermediary may have bundled different services together without the knowledge of the carriers in question, carriers can only ensure adequate PRM assistance on their own services but not throughout the journey.

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There is no specific requirement for (air) carriers to involve representative organisations of PRMs in developing their policies or "access rules" at present. Paragraph 3 therefore constitutes a burdensome regulatory intervention that goes beyond existing legal requirements for some transport modes. It should be left to the carriers to decide how they engage with such organisations.

The requirement to transport accompanying persons (e.g. safety assistants) for a PRM "free of charge" also goes beyond existing legal requirements, at least for airlines, and it is not specified which cases are covered. While it may be possible for the respective operators to make such arrangements for single multimodal contracts, it is not realistic to apply this requirement across combined or separate multimodal tickets. In addition, we would note that air carriers only require an accompanying person to comply with safety regulations that have been imposed by authorities (e.g. EASA Regulation). It is therefore not the choice of the carrier but rather a necessary measure to respect the applicable rules. We also note that taxes and charges are due for all persons transported by air. While airlines may be able to cover the cost of the air fare, it is reasonable that the accompanying person at least covers the costs of taxes and charges.

A requirement for carriers to inform PRMs upon request and in writing of the reasons it did not accept the reservation or issue the ticket within five working days is onerous in a more complex multimodal context. A longer timeframe should be provided, at least between 7 and 14 days.

Article 14

Effective assistance for PRMs is predicated on prior notification in a timely manner. Unfortunately, not all PRMs pre-notify and then arrive at the point of departure (e.g. airport) looking for assistance. While carriers and terminal managers should make reasonable efforts to provide assistance even in such cases, it cannot be assured, especially in a multimodal context. The proposal should be clearer about this. We note that Reg. 1107/2006 states the following condition: *"provided that the notification of the person's particular needs for such assistance has been made to the air carrier or its agent or the tour operator concerned at least 48 hours before the published time of departure of the flight."*

Considering the complexity of multimodal travel arrangements, which may involve multiple entities, pre-notification of assistance must be made more than 48 hours in advance. This should be extended to [96] hours in a multimodal context. Otherwise it may not be feasible for the respective parties to make the necessary arrangements in time.

It is essential that Article 14(f) as well as Article 16 refer to "recognised assistance dog" – to ensure consistency with Reg. 1107/2006 – and specifies that these are dogs that have received special

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training by accredited organisations for the purpose of providing assistance.[3] It would also be reasonable to require PRMs to provide proof (e.g. a certificate) of such training prior to departure.

It is important to ensure that passengers do not confuse trained assistance dogs with emotional support animals that are not accepted onboard, as the latter have not been trained or trained to the same standards. Unfortunately, some passengers abuse the system to the detriment of those with genuine needs. This has already proven to be problematic in an air transport context, given the lack of a common EU standard or definition of "recognised assistance dog". The EU should consider developing a common system of certification.

Point (f) should also specify that the carriage of recognised assistance dogs requires pre-notification. The draft wording could be read as implying that assistance dogs are permitted to travel in all cases and do not need to be pre-notified. We note that Reg. 1107/2006 states the following condition: "*Where use of a recognised assistance dog is required, this shall be accommodated provided that notification of the same is made to the air carrier or its agent or the tour operator in accordance with applicable national rules covering the carriage of assistance dogs on board aircraft, where such rules exist.*"

Article 16

At present, airlines' financial liability for compensation of damaged or lost mobility equipment and assistive devices is capped under the Montreal Convention (implemented into EU law by Reg. 2027/97). The multimodal proposal, however, establishes obligations to compensate the cost of replacing or repairing lost or damaged equipment without specifying any limit. This appears to contradict the current legal requirements for air carriers. It would lead to uncertainty and complexity. The proposal should therefore be adjusted.

In addition, the proposal also establishes an obligation to compensate the cost of treatment or replacement of assistance dogs that were injured or lost. To our knowledge, such a requirement does not currently exist for transport operators, at least not in air travel. We are concerned that the proposed standards go beyond what is required under the sector-specific passenger rights regulation.

Service quality standards

The proposed obligation for carriers to set, monitor and report on service quality standards (Article 17) constitutes a significant administrative burden for airlines. They also to some extent duplicate

[3] Airlines would generally accept assistance dogs that have been trained by organisations that have been certified by Assistance Dog International (ADI) and the International Guide Dog Federation (IGDF).

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the requirements that the Commission has proposed to introduce for individual transport modes (the proposal on enforcement of passenger rights). This runs counter to the European Parliament and the European Commission's aim to reduce red tape for businesses and to support the competitiveness of European industry.[4]

In case regulators see a need to introduce service quality standards, A4E believes they must be proportionate and limited to what is strictly necessary to avoid unnecessary additional burdens. The standards should also take into account the specific features of air travel, which are not comparable to other transport modes. In addition, transport operators should have some discretion over how they report on the standards listed in Annex II. For example, carriers may not be aware of missed connections taking place on other transport modes in case an intermediary has sold the ticket(s) without its knowledge or agreement. A4E believes the requirement should only be applicable to Category A contracts. In addition, carriers should only be obliged to report on the percentage of cases (e.g. missed connections, complaints or denied transport services) and not the number.

Moreover, it does not appear necessary or relevant for airlines to report on the "cleanliness of the means of passenger transport" which may be more appropriate for other transport modes. A requirement to report on the cleanliness of the terminal facilities would be more appropriate for airport managing bodies than airlines.

It is also important to note that airlines may not have access to all of the relevant information on assistance to PRMs, as this is usually sensitive and subject to data privacy rules. To ensure compliance with those rules, airlines may delete the information after a period of time. Moreover, in line with Reg. 1107/2006, airport managing bodies play an important role in handling mobility equipment and providing assistance to and from the aircraft. It is also a concern that there are no EU-level standards or definitions for "recognised assistance dogs" (unlike the United States) or mobility equipment, yet carriers are required to report on how they manage this.

[4] European Parliament, *Target to reduce the administrative burden*, 15 April 2023. European Commission, *Reducing burdens and rationalizing reporting requirements - factsheet*, 17 October 2023.

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