

PROPOSAL ON THE ENFORCEMENT OF PASSENGER RIGHTS (2023/0437)

Introduction

European airlines strive to provide the information, care and assistance that passengers need when disruptions occur. However, there are key parts of the current Regulation 261/2004 (EU261) on air passenger rights that are not well-defined, such as “extraordinary circumstances”, which causes confusion, complexity and burdens for all parties. Different interpretations have caused countless legal disputes. New standards have been set by the courts rather than the legislators, expanding the original scope of the law. Airlines and passengers need clarity and legal certainty.

The Commission’s new proposal addresses issues that were not part of its 2013 proposal for a comprehensive reform of EU261. However, a broad reform of EU261 remains necessary, with the aim of making the rules clearer and simpler to apply. The 2013 proposal remains a good basis which should be pursued further. With the new elements on the table, there is an opportunity for the Council and the European Parliament to conclude the long overdue revision of the whole framework.

It is positive that the new proposal addresses the role played by intermediaries in the distribution of air tickets and their impact on passenger rights and the ability of airlines to meet consumer protection obligations. Intermediaries must be required to share the contact details of passengers with airlines, which is frequently not the case, to enable airlines to meet their obligations to inform passengers of schedule changes or disruptions, offer re-routing, and process refunds efficiently. While a more transparent refund process that enables airlines to choose to directly refund passengers is welcome, there is a need for stronger regulatory oversight and appropriate sanctions for intermediaries if they fail to meet their obligations. The proposal must go further in holding intermediaries to account for providing accurate information to airlines and consumers, ensuring timely refunds, and avoiding the risk of double payment by airlines.¹

The new service quality standards and reporting requirements for airlines represent a substantial administrative burden on top of new reporting obligations for the sector under different EU laws like ReFuelEU for Aviation or the revision of EU ETS Directive, among others. These standards should be proportionate and limited to what is strictly necessary to avoid any additional unnecessary administrative burdens. It is also important to ensure that the standards reflect the specific nature of air travel. Such reporting obligations should be consistent with the European

¹ It is also unfortunate that the proposal makes no provision to encourage passengers to first submit a refund or compensation claim to the airline before they engage with and assign their rights to a claim agency, which would allow passengers to obtain the full amount. Claims agencies take a percentage of the amount as a fee.

Parliament's and European Commission's work on reducing administrative burdens and reporting requirements in order to support EU carriers' competitiveness.²

As regards the proposed rules for passengers with disabilities or reduced mobility, airlines are committed to ensuring accessible air transportation. However, a new requirement for airlines to carry an accompanying person free of charge raises several questions and must be clarified to target assistance at those with genuine needs. It must also take into account that airlines would only require an accompanying person in order to comply with safety regulations.

Refunds and intermediaries

Depending on the business model, some airlines will have established relationships with travel intermediaries while others focus more on direct distribution. It is, however, a problem for all airlines that some intermediaries (mainly online travel agents) sell their tickets without authorisation or a commercial agreement (e.g. by screen scraping), which harms consumers and creates substantial burdens for air carriers that remain accountable towards the final consumer.

Even for accredited intermediaries, it is a prevalent practice that intermediaries use their own contact and payment details to make the booking instead of the passenger's. With no access to other contact or payment details, airlines will normally use the intermediary's details to provide information on the flight (especially in case of disruptions) or provide reimbursement. Under EU261, airlines are held liable for the obligation to inform passengers even where schedule changes or cancellations are communicated well in advance (i.e. two weeks or more before departure) if the intermediaries do not pass on this information to the passenger on time. Airlines are often required to pay compensation in such circumstances creating an unfair imbalance.³

In addition, airlines are facing a risk of double payment in cases where the airline transfers the refund to the intermediary in good time (within 7 days of the request), but the intermediary fails to pay the customer in a timely manner or at all. In an extreme example, one of A4E's members transferred a large sum of refunds to a travel agent, which did not pay its customers for six months and eventually declared bankruptcy. In such cases, where reimbursement is delayed or missing, passengers may turn directly to the airline for a refund. 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, which is often impractical and burdensome. It is not fair or reasonable for airlines to be placed in this situation, which entails significant financial risks, because

² European Parliament, [Target to reduce the administrative burden](#), 15 April 2023. European Commission, [Reducing burdens and rationalizing reporting requirements - factsheet](#), 17 October 2023.

³ As established by the Court of Justice of the EU in cases C-302/16, C-263/20 and C-307/21.

intermediaries, who were selected by the passenger, fail to do their part and face no concrete consequences.

The refund process when a ticket is booked through an intermediary (Article 8a)

The proposed refund process is an improvement on the current situation, as it acknowledges the role played by intermediaries and enables airlines to issue refunds directly if they choose to. It will also improve transparency for consumers. **However, the process does not address all of the current issues, notably the risk of double payment, the extra fees applied by intermediaries, and the lack of incentives for intermediaries to comply.**

In a scenario where an airline chooses to process the refund through the intermediary – and makes the payment in good time (i.e. within 7 days of the request), the air carrier may still be required to step in as a fallback in case the intermediary does not pay the passenger after a total of 14 days.

Airlines 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 airline is still exposed to the risk of paying twice and having to claim back the funds already transferred to the intermediary. Although a right of redress exists in principle (Article 13 of EU261), it has a limited effect in practice. In addition, it presupposes a contractual relationship with third parties. A further complication is that some intermediaries use a single-use virtual credit card⁴ to make the bookings, which cannot be refunded automatically. In such cases, there may be delays in the reimbursement process.

It is therefore essential to add provisions which hold intermediaries to account for processing refunds if the airlines do their part. A4E believes there should be penalties for intermediaries that fail on a recurring basis to pay the passenger on time and that 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. It would be consistent with Article 16ab, which foresees that NEBs also monitor the intermediaries' compliance with the Regulation. Without such regulatory scrutiny and possible sanctions, the proposal does not incentivise intermediaries to meet their obligations.

A4E believes the proposal should leave open the possibility for the air 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.

⁴ A single-use virtual credit card – also known as a disposable credit card – is a digital-only card that re-generates with a new, unique card number after each use. It can be used for one successful authorisation before a new number is generated.

Where there is no commercial relationship between an airline and an intermediary, which sells the flights without authorisation, it may not be possible for the airline to inform customers about the proposed refund process at the time of booking (Article 8a 2). The onus should be on intermediaries – irrespective of their status – to inform passengers booking through them about the refund options.

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” (Article 8a 3). In line with the CJEU’s ruling in case C-601/17, the text should also specify that airlines are not required to reimburse any commissions, extra fees or mark-ups applied by intermediaries. **Airlines should solely be required to reimburse the amount that they receive from the intermediary.**⁵

The requirement for airlines to publicly state (e.g. on their websites) whether they agree to process refunds through intermediaries, and which ones they accept, appears well-intended and aimed at giving airlines the choice of refunding passengers directly. However, it may be difficult in practice for airlines to keep track of all the intermediaries in the market distributing their tickets. For example, IATA-accredited agents that are part of IATA’s Billing and Settlement Plan (BSP) can by definition sell airline tickets, and an airline that is part of this system would explicitly need to decline cooperation with the accredited agent. In addition, there are many online travel agents on the market which change frequently.

While the list should be available to aid consumers in making an informed choice, there is no guarantee that consumers will consult the list. Moreover, the mere existence of such a list does not imply that airlines can prevent unauthorised intermediaries from selling their tickets. To enhance consumer protection and counter the practice of intermediaries selling flights without a commercial agreement, **A4E believes that intermediaries should also be obliged to inform consumers at the time of booking whether or not they have an agreed commercial relationship with the airline whose flights they are selling.**

Transfer of information between air carriers and intermediaries (Article 14a)

It is essential – and welcome – that the proposal creates an obligation for intermediaries to provide the passenger’s contact and booking details to airlines, especially where intermediaries are selling tickets without authorisation or a commercial agreement (Article 14a 2.4).⁶ In such cases, an airline may otherwise not be aware that its flight has been sold by an intermediary, and **it is positive that the proposal also obliges intermediaries to inform airlines when they make a booking** on behalf of a passenger (Article 14a 4). **Intermediaries should also be held liable for**

⁵ See: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62017CJ0601>

⁶ It may be necessary to specify that intermediaries must transfer contact details “where they hold such information” or “where they have received such information from the passenger”. In some cases, travel organisers may include a third-party airline in a package which is sold by a third-party intermediary. In such cases, they may not hold the contact details.

providing accurate information to airlines and passengers, to ensure there are sufficient incentives to provide the relevant details.

The proposal also states that intermediaries can request the same information about the booked flights that airlines provide to passengers. A4E believes that this provision should only apply 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 airlines are not placed in a situation where they would be required to share information with unauthorised intermediaries selling their flights, which would represent a significant additional burden and raise concerns about sharing potentially sensitive commercial information. **Article 14a(4) should be limited to intermediaries with whom the airline has a commercial relationship and it should also specify that intermediaries cannot use such information for commercial purposes, mirroring the clause for airlines.**

A4E accepts the requirement that the contact and booking details provided by intermediaries cannot be used for commercial purposes. However, an obligation to delete this information 72 hours after the completion of the contract of carriage (Article 14a(3)) creates practical challenges. For example, where an airline has transferred the refund to the intermediary in good time, and the intermediary has not paid the customer after 14 days, the airline would still need the contact details to access and resolve reimbursement issues. Customers can request refunds for up to 5 years. In addition, airlines may need these details for compensation claims filed months after the flight has taken place. The 72-hour retention policy may also prove burdensome for some airlines, who would be required to separate bookings made by intermediaries from direct bookings which is not practically possible when dealing with unauthorised intermediaries. While there is a general clause that airlines may hold onto the information for a longer period in order to meet their obligations under EU261, **A4E believes the 72-hour timeframe should be extended in the proposal. Alternatively, the proposal could specify in more detail the situations or purposes for which it is legitimate for airlines to store the information for an extended period.**

Service quality standards and NEB oversight

While A4E recognises that service quality standards and reporting requirements have been introduced for other transport modes, this does not in itself justify the introduction of similar requirements for airlines. For example, the reasons for delays and cancellations are more complex in aviation. It represents a substantial additional administrative burden at a time where the Commission has stated that it is important to cut red tape for businesses to ensure European competitiveness. The standards should be proportionate and limited to the strictly necessary. This

is particularly important as airlines are already facing an increasing level of reporting requirements in other areas of EU policy, especially for climate legislation.

The data proposed to be published in the Annex is not indicative of a particular air carrier's performance and may in fact lead to confusion amongst consumers. For example, some routes are more prone to delays than others, such as flights to destinations frequently affected by adverse weather conditions or flights crossing airspace that is regularly affected by ATC strikes. It may give consumers or NEBs the incorrect impression that certain airlines are less reliable than others when the opposite may be true.

Having to disclose the percentage of flight cancellations and the reasons for them, especially those caused by extraordinary circumstances for which there is no definition or list in the current Regulation, along with the absolute number of complaints and their outcome, will lead to inaccurate or misleading comparisons and may inadvertently reveal sensitive information from the airline. It could, for example, be used by claims management agencies for commercial gain. We would also note that information on delays and cancellations is already available from Eurocontrol.

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.

Apart from general IATA guidance, there are no industry standards on the weight and dimensions of hand luggage at present. It is premature to require airlines to report on such standards until the time where industry alignment may be found. In any event, airlines would communicate such standards to passengers directly and there appears no need to require reporting on this metric.

Passengers with disabilities or reduced mobility (Regulation 1107/2006)

While A4E understands the intent behind offering free fares for safety assistants accompanying passengers with disabilities or passengers with reduced mobility, there are important practical issues which must be carefully considered.

Air carriers are subject to more stringent safety requirements than other transport modes and would only require an accompanying person to comply with safety regulations that have been imposed by the authorities (e.g. EASA Regulation).⁷ It is therefore not the choice of the carrier but rather a necessary measure to meet the applicable requirements that have been set to provide the highest standards of safety in air travel.

⁷ See in particular CAT.OP.MPA.155, "Carriage of special categories of passengers (SCPs)", in Regulation 965/2012.

As an example, on certain flights safety requirements dictate that there can only be two unaccompanied PRMs and, on a general basis due to safety constraints, a maximum of 10% of the certified capacity for the type of aircraft when they are accompanied. This means that if the number of unaccompanied PRMs exceeds this limit, the airline has to ask for a safety assistant. The proposed rule could theoretically lead to a flight with a considerable number of safety assistants, required to provide aid in the unlikely case of an emergency, which has both operational and financial impacts.

. It is therefore necessary to clarify the scope of application of this obligation, as it is not clear which cases it covers or if there are justified exceptions. **A4E suggests that this right should be granted “except where national law or safety regulations apply”**, which are in exclusively place to guarantee the highest standards of safety and protection in the event of an emergency. In addition, to ensure that the rule is targeted at passengers with genuine needs, it is worth considering third-party verification that a PRM needs to be accompanied. Airline staff may not be in best position to assess the level of disability and assistance needed.

In this context, to ensure compliance with safety requirements, it is crucial that proposal mentions that only airlines can request that a person with disabilities or reduced mobility is accompanied by an assistant. Intermediaries should not be able to determine whether an accompanying person is required or if they can travel free of charge, which could create a significant risk of misuse.

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.

As regards the specific quality standards and reporting requirements in Annex 3, airlines may not have access to all of the relevant information, 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, airport managing bodies play an important role in handling mobility equipment and providing assistance to and from the aircraft. Also here, A4E calls on the legislators to avoid the introduction of additional, unnecessary reporting requirements.