



International Civil Aviation Organization

**WORKING PAPER**

A38-WP/73

EC/9

5/08/13

**Revision No. 1**

27/08/13

**Revision No. 2**

3/09/13

**English, French, Russian,  
Chinese and Spanish only<sup>1</sup>**

**ASSEMBLY — 38TH SESSION**

**ECONOMIC COMMISSION**

**Agenda Item 40: Economic Development of Air Transport - Policy**

**A PROPOSAL FOR A SET OF HIGH-LEVEL, NON PRESCRIPTIVE CORE PRINCIPLES ON  
CONSUMER PROTECTION**

(Presented by the International Air Transport Association (IATA))

**EXECUTIVE SUMMARY**

In recent years, there has been a proliferation of national and regional passenger rights regimes. The current patchwork of regulatory responses to consumer protection results in unintended consequences for consumers, such as reducing choice and increasing cost. The Sixth Worldwide Air Transport Conference (ATConf/6) concluded the need for greater compatibility and convergence of different regimes and the development of core principles on consumer protection. The industry unanimously adopted a set of such principles at the recent International Air Transport Association (IATA) Annual General Meeting in June 2013, based on lessons learned from existing regimes and the need to strike a balance between adequate protections for passengers and industry sustainability. These principles offer a way forward for air transport stakeholders to seek greater convergence in the area of passenger rights, for the benefit of consumers and the industry.

**Action:** The Assembly is invited to:

- a) request that ICAO, through the appropriate bodies, utilize the principles in the appendix as the basis for the development of ICAO's high-level, non-prescriptive core principles on consumer protection; and
- b) invite member States to consider incorporating these principles into existing and future passenger rights regimes.

<i>Strategic Objectives:</i>	This working paper relates to the Strategic Objective: "Contributing to the creation of a favourable global regulatory environment for the sustainable development of international air transport"
<i>Financial implications:</i>	None
<i>References:</i>	ATConf/6-WP/104, <i>Report on Agenda Item 2.3</i> C-WP/14044, <i>Outcome of the Sixth Worldwide Air Transport Conference</i>

<sup>1</sup> French, Russian, Chinese and Spanish versions provided by IATA.

## 1. INTRODUCTION

1.1 There has been a proliferation of national and regional passenger rights regimes in recent years. Today, 55 jurisdictions have some form of aviation-specific passenger rights regime; 30 of these have introduced regimes in the past seven years, with several more preparing to do so. The multitude of regimes today are not mutually recognized or coordinated. For example, for many common itineraries a passenger could be eligible to receive entitlements under two or even three passenger rights regimes. Although certain laws recognize the possibility of concurrent claims, they do not go far enough in ensuring that multiple claims do not arise. The potential for duplication in claims has profound cost implications for the industry.

1.2 Airlines are committed to ensuring the safety and comfort of passengers, and recognize the need for passengers to have access to basic protections during their journey. To that end, the industry unanimously agrees on, and extends to, passengers assistance in a variety of areas, including special procedures for passengers with reduced mobility, access to re-routing and refunds, care and assistance or compensation options in case of delays or cancellations, and efficient complaint handling procedures. In addition, airlines routinely take voluntary measures to protect their passengers, e.g. proactive cancellations in anticipation of weather events such as snow, so that passengers have time to plan for changes rather than being stranded at an airport.

1.3 Some passenger rights regimes contain provisions that have the unintended consequences of increasing passenger inconvenience, cost, and reducing connectivity as explained below.

1.3.1 Requiring compensation after a delay of a certain number of hours, irrespective whether any damage was occasioned by that delay, can have the knock-on effect of causing more cancellations, and more serious disruption to passengers, instead of protecting them. Airlines may no longer have an incentive to delay a flight rather than cancel it, since a delay will often incur more costs than a cancellation.

1.3.2 Higher denied boarding entitlements can result in higher ticket prices for passengers. The practice of overbooking allows as many people as possible to travel to their desired destinations. Higher, disproportionate compensation levels for denied boarding will incentivize airlines to reduce this practice and raise prices as a result of not being able to optimize load factors.

1.3.3 Passengers can also expect higher prices as airlines pass the costs of compliance with multiple regimes onto passengers. In a business with thin profit margins, the cost of complying with numerous consumer protection rules can also damage competitiveness and render routes unprofitable, reducing connectivity and its associated benefits on economies and societies, including small communities dependent on air services. For tourist destinations, this could make competing locations more attractive for airlines to operate in and for cost conscious tourists to visit. For consumers, this means less choice.

1.4 The *Convention for the Unification of Certain Rules for International Carriage by Air*, done at Montreal on 28 May 1999 (Doc 9740)(Montréal Convention 1999), ratified by 103 of the 191 ICAO Member States and which intended to replace the existing Warsaw-Hague regime, creates an exclusive and uniform legal framework for air carrier liability in the international air carriage of passengers and baggage, including damages caused by flight delays.

1.5 The competitive marketplace incentivizes carriers to provide a satisfactory customer experience to their passengers, lest passengers vote with their feet, and their wallets, for a competitor.

Even on routes with one carrier, the threat of competition by new entrants or competition from connecting services compels airlines to respond to customer needs and expectations on service quality.

## 2. RECENT DEVELOPMENTS

2.1 The issue of consumer protection was considered in March 2013 as Agenda Item 2.3 at ICAO's Sixth Worldwide Air Transport Conference. The Conference concluded that the importance of protecting the interests of consumers is universally supported, as is the need for convergence and compatibility of national passenger rights regimes. In line with these conclusions, the Conference recommended that ICAO develop a set of high-level, non-prescriptive principles that are consistent with the Montreal Convention 1999.

2.2 At the 69th IATA Annual General Meeting in June 2013, the IATA membership, representing 241 airlines and 84% of international air traffic, unanimously endorsed a set of core principles for governments to consider when adopting consumer protection regulation, available in the appendix. Based on lessons learned from existing regimes, the principles aim to offer a proposed way forward on greater global compatibility and convergence. They serve as industry acknowledgement of basic protections for consumers and strike a balance between these protections and ensuring industry competitiveness.

2.3 In summary, the principles call for consumer protection regimes that:

- a) Are clear, unambiguous, and aligned with existing international conventions, such as the Montreal Convention 1999;
- b) underline the key role of the marketplace in allowing customers to choose an air travel experience that meets their price and service expectations;
- c) in the case of denied boarding and cancellations, entitle passengers to re-routing, refunds or compensation where circumstances are within the airlines' control;
- d) in the case of delays, entitle passengers to re-routing, refunds or care and assistance where circumstances are within the airlines' control;
- e) encourage passenger access to information on their legal and contractual rights, applicability of passenger rights regimes, airline complaint handling systems, fare information, and the airline operating the flight in case of a codeshare service;
- f) ensure appropriate assistance for those with reduced mobility and efficient complaint handling procedures that are clearly communicated;
- g) reflect the principle of proportionality and acknowledge circumstances beyond an airline's control when determining passenger entitlements;
- h) are comparable with regimes in place for other modes of transport; and
- i) ensure any mandated entitlements related to care and assistance and compensation are fairly and clearly allocated among the different service providers involved.

### 3. **ACTION**

3.1 The Assembly is invited to take the following actions:

- a) Request that ICAO, through the appropriate bodies, utilize the principles in the Appendix as the basis for the development of ICAO's high-level, non-prescriptive core principles on consumer protection; and
- b) invite member States to consider incorporating these principles into existing and future passenger rights regimes.

### 4. **CONCLUSIONS**

4.1 The patchwork of passenger rights regimes today creates unintended consequences for consumers, reducing choice and increasing cost. Given the conclusions of the ICAO Sixth Air Transport Conference, air transport stakeholders have an opportunity to put in place a more coordinated approach. Such an approach is offered by the principles in the appendix, which provide benefits for consumers as well as the industry. These principles ensure a balance between protecting passengers and allowing the industry to grow sustainably, for the benefit of the economy and society.

-----

## APPENDIX

### CORE PRINCIPLES ON CONSUMER PROTECTION

1. National and regional legislation should be consistent and in accordance with the international treaty regimes on air carrier liability, established by the Warsaw Convention 1929 (and its amending instruments) and the Montreal Convention 1999;
2. National and regional legislation should not interfere with another States' ability to make legitimate policy choices. Passenger rights legislation, in accordance with the Chicago Convention 1944, should only apply to events occurring within the territory of the legislating State, or outside that territory with respect to aircraft registered there.
3. Passenger rights legislation should allow airlines the ability to differentiate themselves through individual customer service offerings, thereby giving consumers the freedom to choose an airline that corresponds with their desired price and service standards. Governments should consider acknowledging voluntary industry commitments; government regulations should form the "lowest common denominator" and market forces should be allowed to determine additional standards of service levels.
4. Passengers should have access to information on their legal and contractual rights and clear guidance on which regime applies in their specific situation.
5. Passengers should have clear, transparent access to the following information:
  - a) fare information, including taxes and charges, prior to purchasing a ticket; and
  - b) the airline actually operating the flight in case of a codeshare service.
6. Airlines should employ their best efforts to keep passengers regularly informed in the event of a service disruption.
7. Airlines will establish and maintain efficient complaint handling procedures that are clearly communicated to passengers.
8. Airlines should assist passengers with reduced mobility in a manner compatible with the relevant safety regulations and operational considerations.
9. Passenger entitlements enshrined in regulations should reflect the principle of proportionality and the impact of extraordinary circumstances:
  - a) there should be no compromise between safety and passenger rights protection:
    - 1) safety-related delays or cancellations, such as those resulting from technical issues with an aircraft, should always be considered as extraordinary circumstances such as to exonerate air carriers from liability for such delays and cancellations;

- b) the industry recognizes the right to re-routing, refunds or compensation in cases of denied boarding and cancellations, where circumstances are within the carrier's control;
- c) the industry recognizes the right to re-routing, refunds or care and assistance to passengers affected by delays where circumstances are within the carrier's control;
- d) in cases where delays or disruptions are outside an airline's control, governments should allow market forces to determine the care and assistance available to passengers; and
- e) the responsibilities imposed by the regulator, related to both care and assistance as well as compensation, must be fairly and clearly allocated between the different service providers involved and should not impact on the contractual freedom of all service providers.

10. Passengers should be treated comparably across transport modes, taking into account the particularities of each.

11. Legislation should be clear and unambiguous.

— END —