



WORKING PAPER

WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

Agenda Item 2 : Examination of Key Issues and Related Regulatory Framework

Agenda Item 2.3: Consumer protection

**CONSUMER PROTECTION
AND DEFINITION OF PASSENGER RIGHTS IN DIFFERENT CONTEXTS**

(Presented by the Secretariat)

EXECUTIVE SUMMARY

This working paper examines various issues relating to consumer protection in air transport, notably with respect to assistance in cases of denied boarding, flight delays, and cancellations. It also reports on the coordination between the International Civil Aviation Organization (ICAO) and the World Tourism Organization (UNWTO) pertaining to the development of a draft Convention on the Protection of Tourists and Tourism Providers. Issues relating to price transparency and the relevance of facilitation for the consumer are discussed separately under Agenda Item 2.3, Consumer protection. Additionally, in accordance with a recommendation of the Eleventh Air Transport Regulation Panel (ATRP/11, 4–8 June 2012), detailed information on consumer protection regimes and related effectiveness will be presented under this agenda item.

Action: The Conference is invited to:

- a) review the information and assessments presented in this paper;
- b) endorse the conclusions presented in paragraph 5; and
- c) adopt the recommendations presented in paragraph 6.

References: ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

1. INTRODUCTION

1.1 Travel by air is commonly accepted as a commodity and no longer considered a luxury. Nevertheless, and despite a general reduction in airfares, passenger expectations remain high with respect to facilitation, comfort and timeliness of flights and, according to studies, the overall air travel experience today is often perceived as not meeting expectations.

1.2 This perceived deterioration in quality is tied to several factors, including operational delays due to airspace or airport congestion and insufficient contingency planning in cases of severe weather. Also of significance is the increased travel time associated with the passenger compliance of

security measures. In addition, many consumers have reacted negatively as airlines, seeking to offer low fares in an intensely competitive business environment, have progressively “unbundled” their services to give passengers a choice: passengers can purchase the core product only, namely basic transportation from origin to destination, or passengers can choose to pay additional fees for enhanced services (e.g., food, drink, seat selection, and checked or carry-on baggage).

1.3 In the past decade, the issue of consumer protection has attracted increasing attention, highlighted by instances of air travel disruptions caused by severe weather conditions or natural disasters, such as the closure of European airspace triggered by the Icelandic volcano eruption in April 2010.

2. RECENT DEVELOPMENTS

2.1 Regulatory activity has expanded rights for issues linked to events such as flight delays, cancellations, and overbooking. These rules sometimes coexist with voluntary airline commitments, and have been applied in cases of massive travel disruptions. In 2004, the European Union (EU) adopted Regulation No. 261/2004, *Establishing common rules on compensation and assistance to passengers in the event of denied boarding, cancellation or long delay of flights*, the scope of which has been broadly construed in decisions by the European Court of Justice. In 2011, the European Commission decided to launch a public consultation on the possible revision of Regulation No. 261/2004. The United States (U.S.) Department of Transportation (DOT) has promulgated a 2011 rule, applying to U.S. and foreign air carriers operating aircraft of 30 seats or more to or from a U.S. airport. The rule increases compensation for passengers involuntarily denied boarding and establishes a maximum time (i.e. three hours for domestic flights and four hours for international flights, during which time an aircraft may stay on the tarmac without allowing passengers to disembark).

2.2 Various consumer protection initiatives have been taken in other regions. In November 2004, the Latin American Civil Aviation Commission (LACAC) adopted Recommendation A16-8 (*Rights of the Users*), urging its Member States to promulgate a set of rules protecting passengers holding confirmed reservations who have been denied boarding involuntarily. The regime provides passengers with the option to choose between reimbursement and alternative transport (including assistance relating to food/drinks, communications, and accommodations). China (Rules of civil aviation passenger and baggage, Decrees No 49 and 70 CAAC), Saudi Arabia (Consumer Protection Regulation in 2005) and Israel (Airline Passenger Rights law in 2012) have also developed consumer protection rules. In Singapore, the Civil Aviation Authority has taken a different approach by working with consumer representatives to educate passengers on the key aspects of air travel, including what to consider when purchasing airline tickets and recourse options in the event of an airline service lapse.

2.3 The World Tourism Organization (UNWTO) is currently developing a draft Convention on the Protection of Tourists and Tourism Service Providers. The proposed scope of the draft instrument is concerned with, inter alia, State assistance obligations in “force majeure” situations, the protection of the tourist in the event of insolvency of the travel organizer, as well as package travel related issues. It should be noted that a definition for the term “force majeure”, as used in the draft instrument, is also under development. Bearing in mind that more than 50 per cent of tourists are air travellers, the ICAO Secretariat is collaborating with the UNWTO with a view to avoiding duplication of efforts or inconsistencies with existing air law instruments.

2.4 The multiplicity of “unbundled” service options has complicated price transparency, which in turn has triggered substantial regulatory activity. The issue of price transparency is addressed under Agenda Item 2.3.

3. ICAO WORK

3.1 ICAO has developed guidance material on consumer interests in areas such as conditions of carriage, fare guarantee, baggage, tariff disclosure and denied boarding. This guidance is contained in the *Policy and Guidance Material on the Regulation of International Air Transport* (Doc 9587). Guidance material for users of air transport was also published in the *Manual on the Regulation of International Air Transport* (Doc 9626, Appendix 5) in order to assist States in publishing or encouraging the publication of booklets intended to inform air passengers and shippers of their rights and obligations. It should be noted that issues relating to passengers with reduced mobility are addressed in the context of the ICAO Facilitation Programme and that Doc 9984, *Manual on Access to Air Transport by Persons with Disabilities*, is presently under preparation.

3.2 ATConf/5 (Montréal, 24–28 March 2003) concluded that States should minimize differences in the content and application of regulations, with a view to avoiding legal uncertainty that could arise from the extra-territorial application of national laws. As recommended by ATConf/5, and in order to assist States, the Secretariat developed a summary of airline and governmental responses to some of the more prominent consumer protection issues, the latest version of which is provided in Appendix A.

3.3 In 2010, the ICAO Assembly adopted Resolution A37-20 on ICAO's continuing policy in the air transport field, which includes notably a new clause stating that "consumer interests should be given due regard in the development of policy on regulation of international air transport."

3.4 As directed by ATRP/11, a study on the effectiveness of regulatory interventions in different regions with respect to consumer protection, including respective advantages and disadvantages of regulation and voluntary industry commitments, was conducted by ICAO; the conclusions of the study are presented in a separate working paper.

4. DISCUSSION

4.1 The dominant trend since ATConf/5 has been a strengthening of regulatory responses, which has led to a vigorous discussion of whether specific new measures are appropriate or overly prescriptive, effective in practice or unduly burdensome. Studies show, for example, that the proportion of delayed flights for which airlines are responsible (around 40 per cent) has not substantially changed since the enactment of Regulation No. 261/2004, while an increase in the percentage of on-time flights (approximately 73 to 83 per cent) has been observed over the past five-year period in the U.S.

4.2 Some have argued that market forces alone should be relied upon since under-performing services are ultimately driven out of the market, but this remains a minority view. While serious air transport occurrences attract public attention, levels of airline performance in areas such as comfort, timeliness, and price transparency are not widely known to the travelling public and are seldom the determining criterion for airline selection. Moreover, market access restrictions may limit passengers' choices.

4.3 A major problem is the fragmentation of regulatory responses taken by different States. In certain cases, the regulations apply based on the location of the airport or on the State of registration of the air carrier; still others apply generally to flights to and from a State territory. An example of possible overlap or conflict between regulations would be a passenger on an EU carrier flight inbound from the U.S. to the EU, who could be tempted to take advantage of both sets of regulations. Carriers have a compelling need to know which rules apply to their operations and concern has been voiced with respect to overlapping regulatory requirements. In a business with generally thin profit margins, the cost of

complying with multiple or inconsistent consumer protection rules can be detrimental. Also to be considered is that within a single regulatory system, there is room for uncertainty due to competing interpretations. For example, Regulation No 261/2004 has generated abundant case law, particularly with respect to the interpretation of “extraordinary circumstances”, including during massive disruptions. There is a growing view that the interests of all concerned stakeholders (passengers, airlines, airports, etc.) would be served by a clear delineation of rights and responsibilities and, where possible, by efforts to achieve greater regulatory convergence, if not fully harmonized rules.

5. CONCLUSIONS

5.1 In light of the discussion above, the following may be concluded:

- a) the principles determined by ATConf/5 are recognized in some air services agreements, where the importance of protecting the interests of consumers is acknowledged and the need for compatible approaches is encouraged;
- b) regulations adopted in different regions do not have the same scope nor the same consequences. A more coordinated approach to this issue may be a multilateral approach through ICAO, including the development of core principles on consumer protection, in the form of the example provided in Appendix B. Guidance on concepts such as “extraordinary circumstances” or “force majeure” could be added if necessary; and
- c) there is need for a coordinated approach amongst organizations. Since UNWTO is focussed on developing an international instrument within the very near future, special care should be taken to avoid inconsistencies between ICAO and UNWTO work, and to ensure ICAO leadership in areas linked to air transport matters.

6. RECOMMENDATIONS

6.1 The following recommendations are proposed for consideration by the Conference:

- a) ICAO should develop a set of core principles on consumer protection under the form of the indicative framework proposed in Appendix B;
- b) ICAO should continue to play a leadership role in developing policy guidance to address emerging issues concerning airline consumer protection at the global level, taking into account the interests of States, the industry, air travellers and other aviation stakeholders;
- c) ICAO should continue to monitor consumer protection issues with a view to enabling States to decide, in due course, on the need for the development of a more formal arrangement, such as that of a “global code of conduct”; and
- d) ICAO should continue to cooperate and coordinate with other international organizations concerned in order to avoid an overlap of efforts, particularly with respect to UNWTO work presently underway.

APPENDIX A

SUMMARY OF CONSUMER PROTECTION RULES

Item	Voluntary Commitments by airlines			Legislation/ Regulation*			International Liability
	ATA Airline Customer Service Commitment	European Airline Passenger Service Commitment	IATA Global Customer Service Framework & RP	U.S.A.	EU	Other	
Before the travel							
Inform passengers of identity of carrier					*27	*30	
Offer the lowest fare available	√	√	√	-	-		-
Inform of possible availability of lower fares at web site	-	√	√*1	*3	*13		-
Honour the agreed fare after payment	-	√	√*2	*23	-	*30, *31	-
Allow reservations to be held or cancelled	√	√	√	*23	-	*30, *31	-
Provide prompt ticket refunds	√	√	√	-	-	*30, *31	-
Waive ticket restrictions (non-refundable, sequential use of flight coupons) in special circumstances	-	-	√*2	*4	-		-
Ensure pricing transparency	-	-	-	*5, *23	*13, *14	*26, *29	-
Advise passengers regarding an airline's commercial and operational conditions	√	√	√	*6	*15		*21
Protect passengers against carrier insolvency					*28		
Inform passengers of future flight disruptions						*24, *30	
Publish contingency plans, customer service plans and contracts of carriage (carrier website)				*23			
During the travel							
Ensure good customer service from codeshare partners	√	√	√	*7	*16		*21
Take measures to expedite check-in	-	√	-	-	-		-
Provide notification of delays, cancellations and diversions	√	√	√	*8, *23	-	*30	-
Provide notification of opportunity to deplane if possible				*23		*30, *31	
Assist in case of delay including long on-aircraft delays	√	√	√	*8, *23	*17		-
Handle passengers denied boarding with fairness and consistency	√	√	√	*9	*17		-
Deliver baggage on time	√	√	√	*23	*18	*30, *31	*21
Properly accommodate the disabled and special-needs passengers (i.e. reduced mobility or allergies)	√	√	√	*12	*17, *20	*25, *29, *32	-

Item	Voluntary Commitments by airlines			Legislation/ Regulation*			International Liability
After the travel							
Submit data for regular consumer reports	-	-	-	*11, *23	*19	*29, *33	-
Respond to customer complaints	√	√	√*1	*8, *23	-		-
Passenger compensation							
Support an increase in baggage liability limit	√	-	-	*10	*18		*22
Compensate for lost bags				*23		*29, 30, *31	
Compensate for flight cancellation/denied boarding/delay	-	-	-	*23	*17	*29	*21, *22

* Even if regulations or voluntary commitments are subsequently amended or withdrawn, they are nonetheless listed in this table for information purposes.

Note:

- *1: Global Customer Service Framework;
- *2: Recommended Practice ([RP 1724](#));
- *3: The Department of Transportation (DOT) issued a [notice](#) on disclosure of airfare variations: web vs. other sources in 2004 (based on 49 U.S.C. 41712 and 14 CFR 399.84);
- *4: DOT issued an [industry letter](#) on refund when flight is cancelled in 1996 (based on 49 U.S.C. 41712); The similar [guidance message](#) was issued in 2001;
- *5: United State Code prohibiting unfair or deceptive practices or unfair methods of competition (49 U.S.C. 41712); Price advertising rules (14 CFR 399.84);
- *6: Disclosure of codesharing agreements and long-term wet leases ([14 CFR 257 and 399](#), partially [amended](#) in 2005), and change of gauge services ([14 CFR 258](#)); Disclosure of cancellation policy (contracts of carriage as required by 14 CFR 253.5);
- *7: [Code-share Safety Program Guidelines](#);
- *8: DOT issued [new proposals](#) in 2007 to enhance airline passenger protections (such as to require airlines to create legally binding contingency plans for extended tarmac delays, respond to all consumer complaints within 30 days, and publish delay data and complaint information online);
- *9: DOT updated airline oversales rules in 2003 and 2008 ([14 CFR 250](#));
- *10: DOT increased the domestic baggage liability limit from \$1 250 to \$2 500 in 2000, \$2 800 in 2004 and \$3 000 in 2007 ([14 CFR 254](#)); DOT issued [guidance](#) on baggage liability on international codeshare trips in 2009;
- *11: DOT publishes [Air Travel Consumer Reports](#), which report flight delays, mishandled baggage, oversales and consumer complaints. DOT also started to collect disability-related complaints from US and foreign airlines in 2003 ([14 CFR 382](#)) and additional data elements when flights are cancelled, diverted or experience gate returns in 2008 ([14 CFR 234](#));
- *12: Rules on non-discrimination on the basis of disability in air travel ([14 CFR 382](#)) under Air Carrier Access Act; The [revised rule](#) became effective in May 2009;
- *13: EC [Regulation 1008/2008](#) requires airlines to publish fares, which include all taxes and charges; The European Commission investigated airline ticket selling websites under [Directive 93/13](#) on unfair terms in consumer contracts and [Directive 2005/29](#) on unfair commercial practices; A final [report](#) was published in 2009;
- *14: [Directive 84/450](#) on misleading advertising as amended by [Directive 2005/29](#);
- *15: CRS code of conduct (EC [Regulation 80/2009](#) replacing [Regulation 2299/89](#) as amended by [3089/93](#) and [323/99](#)) contains related provisions;
- *16: CRS code of conduct (ditto) contains related provisions; ECAC Recommendation on Consumer Information Protection Needs (1996);
- *17: EC [Regulation 261/2004](#) repealing [Regulation 295/91](#) to establish common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights;

- *18: EC [Regulation 889/2002](#) amending [Regulation 2027/97](#) to include a provision on liability for baggage;
 - *19: The European Commission launched a pilot project named [Community Air Passenger Reporting system](#), under which airlines provide information on a voluntary basis ([COM\(2005\)046](#));
 - *20: EC [Regulation 1107/2006](#) concerning the rights of disabled persons and persons with reduced mobility when travelling by air; [ECAC Policy Statement in the Field of Civil Aviation Facilitation](#), section 5;
 - *21: [Warsaw Convention](#) as amended at [the Hague 1955](#) and by [Protocol No.4 of Montreal 1975](#); [Montreal Convention](#) entered into force on 4 November 2003 replacing Warsaw Convention for countries that ratified new Convention.
 - *22: [Montreal Additional Protocol No.2 1975](#); [Montreal Additional Protocol No.1 1975](#); [Warsaw Convention](#) as amended at [the Hague 1955](#) and by [Protocol No.4 of Montreal 1975](#); [Montreal Convention](#) entered into force on 4 November 2003 replacing Warsaw Convention for countries that ratified new Convention.
 - *23 DOT rule Enhancing Airline Passengers Protection ([DOT-OST-2010-0140](#)).
-

APPENDIX B

EXAMPLE OF CORE PRINCIPLES ON CONSUMER PROTECTION

GENERAL PRINCIPLE	POSSIBLE CONTENT
Before the travel	
Price transparency	The passenger shall be accurately informed of the full ticket price, including all taxes, fees, charges, or other levies. The information shall be provided to the passenger in a clear and prominent manner [TO BE DEFINED]. After payment has been made, no fare increase shall apply.
Passenger information	The passenger shall receive appropriate information, as soon as possible, about flight delays, cancellations and diversions.
Carrier insolvency	States should ensure that priority is given to protecting and refunding passenger funds in the event of airline insolvency.
Passenger education	Air carriers shall cooperate with appropriate national or regional authorities with a view to enhance passengers' awareness of the different characteristics of the air transport product.
During the travel	
Timeliness	As prescribed by States' laws and regulations, carriers shall provide accurate information to consumers on the timeliness of the arrivals and/or departures of their flights.
Denied boarding	As prescribed by States' laws and regulations, carriers shall provide adequate assistance [TO BE DEFINED] to consumers in the event of denied boarding.
Baggage handling	As prescribed by States' laws and regulations, carriers shall provide accurate information to consumers on their performance with respect to lost and mishandled baggage.
Flight delay assistance	Passengers shall be provided appropriate assistance [TO BE DEFINED] by the carrier in cases of flight delays. In case of a major disruption [TO BE DEFINED], the passenger shall be entitled to assistance during [NUMBER OF HOURS/DAYS TO BE DEFINED]
Passenger information	The passenger shall receive appropriate information, as soon as possible, on the flight status, especially in cases of delays, cancellations and diversions at least every [FREQUENCY].
After the travel	
Data collection/analysis process	Air transport operators shall cooperate with States or relevant organizations in order to collect data on consumer protection, including on passenger satisfaction, timeliness, comfort and all other issues related to the passenger experience. With a view to optimizing consumer protection rules, States shall also carry out common analyses on the effectiveness of regulations and voluntary commitments, on the complaints handling processes, and on other relevant issues.
Complaints handling system	Passengers shall have access to a complaint's handling procedure which is expeditious, fair and practicable.
Passenger compensation	
Lost baggage support	In cases of lost or delayed checked baggage, the passenger shall be provided with immediate support, including adequate information on the status of the baggage, estimated time of delivery [which shall not exceed xx].