



RETHINKING THE FUTURE OF MC99 IN AN ERA OF EXPANDING PASSENGER RIGHTS

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Outline

What needs to be done?

Should MC99 be reconceptualised as a Minimum Standard Framework?

Does MC99 provide UNIFORMITY as to limits of Compensation?

Does emerging regimes undermine UNIFORMITY?



Is Compensation under MC99 Sufficient?

How can MC99 accommodate Non-Contracting States?

How does regional and domestic regulations interact with MC99?

Do they violate exclusivity?

Modern Aviation Reality

Annual Airline/Insurer Payouts

Global annual airline/insurer payouts: **USD 100m – USD 350m**

Insurance Premium: **1–2%** of total Operating Expenses

Average Airfare

USD 252

Passenger Traffic

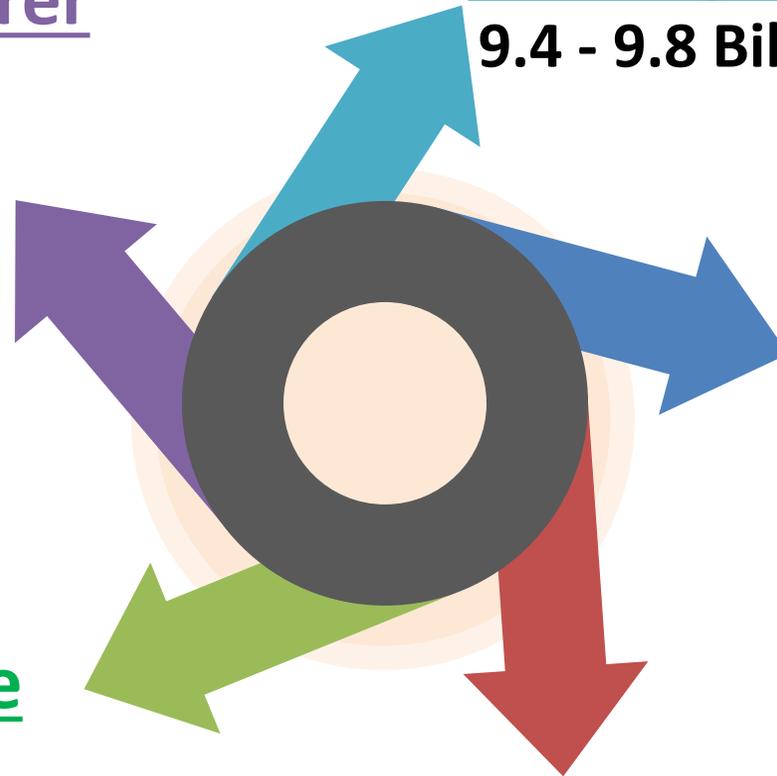
9.4 - 9.8 Billion

Airline Revenue

USD 693 – 744 billion

Average Profit Per Passenger

USD 7.2





Why MC99 was Needed?

- Unification of international air carrier liability is central to the stability of Global aviation
- Warsaw initiated but gradually evolved to fragmented regime characterised with multiple protocol, inconsistent liability limits, and jurisdictional complexity. (varying State adherence to different protocols)
- MC99 was adopted to restore coherence, modernize liability rules, and balance passenger protection with operational sustainability



Restoration of Uniformity

- Coherence/uniformity
 - Exclusive Applicability (MC99 applies regardless of where the case is brought i.e uniform legal standard)
- Modernise Liability Rules
 - Introduction of Two-tier liability System
 - Strict liability - airline liable for proven damages upto a set limit regardless of fault/negligence
 - the focus is solely on whether the prohibited action occurred or the harm was caused
 - Strict liability limits makes airlines aware of their exposure.
 - Unlimited liability unless the carrier proves absence of negligence (Article 21).
 - Burden of Proof shifting mechanism: once the damage exceeds the strict liability threshold, the carrier must demonstrate absence of negligence
 - Financial accountability creates a deterrent
 - Updating Liability Limits (Review every 5yrs to adjust for inflation)
 - Incorporating digital processes
- Balance Protection and Sustainability
 - Introduction of 5th Jurisdiction Clause (Suits to be filed in the passenger Country of residence)
 - Rapid Compensation
 - Provides airlines with predictable, capped financial risks

Global Ratification

- [141 States](#) have ratified MC99 out of 193 ICAO Member States
- Why 52 State Have Not Ratified?





Emerging Trends

- Emergence of standardized compensation regimes for denied boarding, cancellation, and long delay
 - Unlike MC99's damage-based structure, these regimes provide fixed compensation irrespective of proven loss, reflecting a shift toward consumer redress efficiency
- Administrative Enforcement
 - moved from judicial mechanisms to administrative oversight, including fines, compliance reporting, and digital complaint systems.
- The dual-layer system requires careful harmonization to avoid fragmentation.
- Interpretative divergence risks undermining treaty exclusivity or creating overlapping liability exposure for carriers.

De Facto Minimum Standard Structure

- If every region creates different standardized compensation schemes:
 - Airlines face multiple compliance models
 - Insurance predictability weakens
 - Exposure varies by jurisdiction
 - Forum shopping risk increases
- Yet from a consumer perspective:
 - CP regimes improve accessibility
 - Compensation is faster
 - Litigation burden is reduced
- MC99 increasingly operates as a baseline liability framework beneath regional or domestic legal instruments that regulate passenger rights
- The floor protects consumers from **under-compensation**, while the open upper range holds carriers **accountable**
- Courts still rely on **precedent**, **proportionality**, and **principles of fairness**, which **create de facto limits** over time.



Fragmentation

- Article 22(2): a passenger may declare a higher value for baggage and pay an additional fee. If baggage is lost, Compensation may exceed the standard limit upto the declared amount.
- Article 22(6): The provided limits does not prevent the national court from awarding, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest
 - [Turkish Airlines vs Hassan Othman Hassan Civil Appeal No. 4063 of 2025](#)
 - Court awarded compensation of USD 14,400 as general damages above the set limit of USD 1,311 (SDR 1000) for delayed baggage
- Article 25 allows carriers to agree to higher limits of liability, or waive limits entirely
- Some regional regimes provides for a standardized compensation, fixed amounts, payable without proof of damage which are more than the limits of liability provided under MC99.
- *If MC99 allows contractual and judicial increases, does this preserve uniformity and/or tolerate regulatory fragmentation?*

Standardized and Individualised Compensation

- Article 29 of MC99 provides that any action for damages arising out of international carriage can only be brought subject to the conditions and limits of the Convention.
- This provision was designed to prevent:
 - Domestic tort claims bypassing treaty limits
 - Different national compensation standards
 - Fragmentation of liability exposure
- So the legal question is:
 - If a region/State creates a law that gives passengers automatic compensation for delay (without proof of loss), is that “action for damages” prohibited by Article 29?
 - If yes → the regional law conflicts with MC99.
 - If no → both systems can coexist.
- *If they coexist, can a passenger claim automatic compensation under a regional regime AND still claim additional proven loss under MC99?*



Case Law

- Courts have interpreted the MC99 in a way that allows regional & domestic passenger compensation schemes to operate alongside it, without violating the Convention's exclusivity clause (Article 29).
 - [International Air Transport Association v. Canada \(Transportation Agency\), 2024 SCC 30 \(Supreme Court of Canada\)](#)
 - the compensation provided for under the Air Passenger Protection Regulations is not an action for damages, and that cancellation, denial of boarding, and delay are factual and legal concepts that do not fall within the scope of the exclusivity principle.
 - an “action for damages” points towards an action that shares the characteristics of a judicial proceeding and that seeks individualized compensation that is tied to an injury caused by another.
 - An action for damages is distinct from standardized compensation, which may be owed identically to all claimants irrespective of the harm (if any) they have suffered.



Case Law

- [Emeka Nelson, Bill Chinazo Nelson, Brian Cheimezie Nelson v. Deutsche Lufthansa AG \(C-581/10\), Case C-629/10](#)
- [TUI Travel plc, British Airways plc, easyJet Airline Company Ltd, International Air Transport Association v. Civil Aviation Authority \(C-629/10\)](#)
- The obligation to pay compensation which stems from Regulation No 261/2004 is additional to Article 29 of the Montreal Convention
- the loss of time inherent in a flight delay, which constitutes an inconvenience within the meaning of Regulation No 261/2004 cannot be categorised as ‘damage occasioned by delay’ within the meaning of Article 19 of the Montreal Convention, cannot come within the scope of Article 29 of that convention.
- the adoption of Regulation No 261/2004, the legislature was also seeking to strike a balance the interests of air passengers and those of air carriers.
- air carriers are not obliged to pay compensation if they can prove that the cancellation or long delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken



Results

- Legal Complexity & Burden of Proof
 - MC99's damage-based liability model requires proof of actual loss.
 - excludes pure psychological harm
- Economic Constraints and Enforcement Weaknesses
 - Airline liquidity issues and limited enforcement powers in some States delay compensation
- Overlap with regional CP regimes creates confusion
 - The rise of regional CP regimes introduces a complementary but complex regulatory layer
- Awareness & Information Gap
 - Passengers are often uninformed about their rights and fail to preserve necessary documentation,
- National judicial inefficiencies can delay or frustrate access to justice.
- Uneven protection and limited access to justice for passengers



Conclusion

- Uniformity is preserved formally, but layered functionally.
- Transforming it into a pure minimum standard regime may strengthen consumer rights but risks destabilizing its foundational objective of substantive uniformity.
- The Montreal Convention is a uniform liability treaty, not a consumer protection statute.
 - Convention for Civil Aviation Consumer Protection?
- Strengthen CP enforcement mechanism
- Passengers see MC99 as necessary but insufficient on its own.
- It provides a baseline of protection but does not fully meet modern consumer expectations for Speed, Accessibilit, User-friendly claims process and automatic redress for minor disruptions



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