



WORKING PAPER

ASSEMBLY — 40TH SESSION

ECONOMIC COMMISSION

Agenda Item 32: Economic Regulation of International Air Transport — Policy

CONSUMER PROTECTION MEASURES

(Presented by the Dominican Republic)

EXECUTIVE SUMMARY

As a result of the decisions of the 38th Session of the ICAO Assembly, the core principles on consumer protection before, during and after travel were adopted.

In this working paper, the Dominican Republic refers to the background that gave rise to the approval of the aforementioned core principles on consumer protection, the main objective of which is to serve as a guide to the Member States for developing their policies and internal regulations. They also serve industry as a concerned stakeholder. This paper is a living document and may be amended in future revisions.

Additionally, we present to States for consideration a proposal to continue progressing the issue and to weigh whether it would be useful to have an instrument or international convention in harmony with international civil aviation that would set compensation amounts to passengers for delays, cancellation of flights with a confirmed reservation, denied boarding, or for damage, loss, or damage to checked baggage.

When considering set compensation, the type of flight could be taken into account, as could the business strategy used by the airline – whether traditional or low-cost – the type of aircraft that it uses, and the operational cost.

Action: The Assembly is invited to discuss the feasibility of concluding an instrument for the regulation of compensation amounts to passengers, taking into consideration the reasons why the claim was made.

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| <i>Strategic Objectives:</i> | This working paper relates to Strategic Objective – <i>Economic Development of Air Transport</i> . |
| <i>Financial implications:</i> | The financial implications will depend on the activities in this area approved by ICAO for the 2020-2022 Regular Programme Budget. |
| <i>References:</i> | Report of the Sixth Worldwide Air Transport Conference (ATConf/6); A39-WP/8, WP/14 – <i>Consolidated statement of continuing ICAO policies in the air transport field</i> Warsaw Convention of 1929 Montreal Convention on the Unification of Certain Rules for International Carriage by Air, 1999 |

¹ Spanish version provided by Dominican Republic.

1. BACKGROUND

1.1 During its 38th Session, the ICAO Assembly instructed the Council to draft, over the short term, a set of high-level, non-mandatory and non-prescriptive core consumer protection principles *to be used as policy guidance* to achieve the proper balance between consumer protection and the maintenance of industry Competitiveness, while keeping in mind States' need for flexibility resulting from their *different social, political and economic contexts*. These principles must be consistent with the instruments in force, and in particular with the Convention for the Unification of Certain Rules for International Carriage by Air, signed on 28 May 1999 in Montreal.

1.2 At the 205th Session of the ICAO Council, on the *17th of June 2015*, the text of the core principles on consumer protection principles drafted by the ATRP/12 (Air Transport Regulation Panel) was *adopted* after circulation to States and revision by the ICAO Air Transport Committee.

1.3 The core principles on consumer protection are meant to serve as a guide to the Member States for the development of their policies and internal regulations. They also serve the industry as a concerned stakeholder and constitute a living document that can be amended in future revisions.

2. ANALYSIS

2.1 The approval of the core principles on consumer protection represents an achievement by ICAO in developing guidelines for drafting standards to efficiently regulate the compensation that the industry must provide to passengers, aiming to ensure their satisfaction and, to the greatest extent possible, avoid problems during the contracted flight, no matter what the reasons for travel, be they business, health, study, or simply leisure.

2.2. We believe that there is still a long way to go, even on the core principles on consumer protection, since level achieved thus far still leaves it up to States to set passenger compensation for delays, cancellation or denied boarding, as well as to determine when a waiting period constitutes a delay, which varies from one regulation to the next. This situation continues to create significant gaps in the regulations governing the issue and to confuse passengers boarding airlines of different nationalities on one or more flights. Furthermore, in the vast majority of States, the protection of consumers' rights is governed by a body, which universally applies a specialized law to an activity which, by its nature, requires a specialized instrument.

2.3 The principles of harmonization and codification for indemnity setting as set out by the Montreal Convention for the unification of certain rules related to air transport are an example to be followed. Their aim is to achieve a balance of equal interests between airlines and passengers; both the aviation authorities of the Parties and the courts authorized to handle the claims have a clear-cut schedule of indemnities applicable to each situation that could potentially give rise to a claim from a passenger or an airline.

2.4 Another good practice to take into account is the prerogative enshrined in the Chilean Air Code, which establishes the right of passengers to uphold, or not, the contract for transport, in the event that the airline of their choice fails to board them. In the case of delays and cancellations, similar provisions also exist with respect to boarding the next flight or requesting reimbursement if the delay extends beyond three hours.

2.5 We think it is feasible, when developing a basic passenger compensation framework, to take into account the type of flight, the business strategy used by the airline (whether traditional or low-cost), the type of aircraft used by the company, and the operational cost.

2.6 Safeguards could also be considered for the airlines in the event that a large number of simultaneous claims for compensation have a negative effect on a company's financial sustainability.

3. **CONCLUSION**

3.1 The Dominican Republic would like to highlight the importance of continuing to work on an instrument for the protection of consumers' rights, which we advocate, because the core Principles on consumer protection approved by ICAO continue to evolve towards an instrument that would set out for the States Parties, on a case by case basis, the amounts to be paid by the airlines in each case, as well as any grounds which could serve to exempt the airline from this obligation.

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