



## ASSEMBLY — 42ND SESSION

### ECONOMIC COMMISSION

#### Agenda Item 26: Economic Development of Air Transport

#### CELEBRATING 10 YEARS OF ICAO'S CORE PRINCIPLES ON CONSUMER PROTECTION

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

#### EXECUTIVE SUMMARY

In 2015, as endorsed by the Council and the 38th Assembly (A38) and in consultation with States, the International Civil Aviation Organization (ICAO) developed and adopted a set of Core Principles on Consumer Protection. The International Air Transport Association (IATA) applauds ICAO for its leadership in taking such a significant development in order to encourage greater compatibility and coherence between the approaches taken by different States in a context of a proliferation of national and regional consumer regulation regimes.

In the intervening decade, there has been a further increase in regulatory initiatives leading to a variety of implementation challenges. In addition, experience has highlighted that a number of important aspects were not fully addressed or anticipated by the Core Principles. It is therefore timely for the Assembly to reaffirm support for the Core Principles and to consider whether additional guidance may be appropriate to assist States in following the Core Principles and to ensure that they are relevant for the next decade and beyond.

**Actions:** The Assembly is invited to:

- a) reaffirm its support for the Core Principles;
- b) invite States to ensure that the Core Principles are reflected when developing new regulation or amending existing regulation; and
- c) request that ICAO consider the appropriateness of developing guidance to reflect developments since 2015.

<i>Strategic Goals:</i>	This working paper relates to Strategic Goal: <i>The Economic Development of Air Transport Assures the Delivery of Economic Prosperity and Societal Well-Being for All</i>
<i>Financial implications:</i>	Negligible since this work can be developed within existing ICAO working bodies.
<i>References:</i>	<i>Convention for the Unification of Certain Rules for International Carriage by Air</i> <i>ICAO Core Principles on Consumer Protection</i>

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

## 1. INTRODUCTION

1.1 The International Civil Aviation Organization (ICAO) been aware of the issue of consumer regulation since the Fifth Worldwide Air Transport Conference in 2003, which concluded that States should take steps to avoid the legal uncertainty that could arise from the extra-territorial application of national laws. In 2012, in accordance with the recommendations of the Air Transport Regulation Panel (ATRP), ICAO carried out a study on the effectiveness of consumer protection regulations. By the time of the Sixth Worldwide Air Transport Conference in 2013, ICAO acknowledged that more and more States were enacting consumer regulations in the field of air transport and that a coordinated approach was needed.

1.2 In 2015, as endorsed by the Council and the 38th Assembly and in consultation with States, ICAO developed and adopted a set of Core Principles on Consumer Protection (“the Core Principles”) as a response to the growing number of national and regional aviation-specific passenger rights or consumer regulations in recent years.

1.3 The Core Principles do not, and are not intended to, form part of the *Convention on International Civil Aviation* (Chicago Convention) framework. However, consumer regulation should not interfere with or contradict the Chicago Convention. In particular, national regulations should be compatible and consistent with the international treaty regimes on air carrier liability established by the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* (Warsaw Convention of 1929) and the *Convention for the Unification of Certain Rules for International Carriage by Air* (Montréal Convention of 1999). Moreover, national regulations should not interfere with another States’ ability to make legitimate policy choices, including the choice not to regulate. Consumer regulation should only apply to events occurring within the territory of the regulating State, or outside that territory with respect to aircraft registered there.

1.4 A second key principle is that consumer regulation should respect the need for proportionality. The Core Principles recognize that where States adopt consumer regulation, it is desirable to strike an appropriate balance between protection of consumers and industry competitiveness, taking into account States’ different social, political, and economic characteristics, and without prejudice to safety and security.

1.5 Third, the Core Principles state that consumer regulation should allow for consideration of the impact of mass disruption. The global air transport network is vulnerable to shocks such as volcanic eruptions, public health events such as COVID-19 or system outages such as the CrowdStrike incident in 2024. These incidents have network-wide consequences and affect all parties involved in the provision of air transport services.

1.6 Recognizing the dynamic nature of the air transport sector, the Core Principles were always intended to be a “living document”, which could and should be refined and improved from time to time, based on experiences gained and feedback received. After 10 years, it is timely for the Assembly to reaffirm support for the Core Principles and to consider whether guidance may be appropriate in certain areas to assist States in following the Core Principles.

## 2. RECENT DEVELOPMENTS

2.1 Practical experience has highlighted a number of aspects which require attention in order for the Core Principles to achieve their stated goals. Some of these were already envisaged at the time that the Core Principles were adopted while others have emerged as a function of the way that the air transport sector has evolved.

2.2 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 consumer regulations. Although certain laws recognize the possibility of concurrent claims, they do not go far enough in ensuring that multiple claims do not arise. It is also critical that the policy prerogative of individual States to determine whether or not to introduce aviation-specific consumer regulation should be respected. In the same vein, the adoption of consumer regulation by one State should not interfere with the sovereign decisions taken by third States with regard to their territory. Guidance on the consistent application of consumer regulation across jurisdictions would help in avoiding or mitigating such conflicts and overlaps.

2.3 Regarding the principle of proportionality, in practice many consumer regulation regimes create a significant financial burden that is ultimately passed on to passengers through higher ticket prices. Moreover, highly prescriptive examples of consumer regulation have been shown to be largely ineffective in reducing disruption such as delays and cancellations as the causes of disruption are frequently outside airlines' control.

2.4 In addition, experience over the past 10 years has highlighted several areas where development of guidance could be helpful. These include:

- a) Extraordinary Circumstances: The concept of *force majeure* or extraordinary circumstances has been incorporated into many consumer regulation regimes. However, there is not a clear or agreed definition of extraordinary circumstances nor is there a consistent list of scenarios considered to constitute extraordinary circumstances or *force majeure*.
- b) Massive Disruption: Although the Core Principles indicate that States should allow for consideration of the impact of massive disruptions, in practice there is not a consistent approach to responding to such disruption. ICAO should consider developing a set of practical principles or guidance for responding to mass-disruption episodes such as the Icelandic volcano, the COVID-19 pandemic or the global CrowdStrike outage. Such guidance should recognize the role of all stakeholders in responding to mass-disruption events, in particular the role of contingency planning.
- c) Shared Accountability: The Core Principles already recognize that all stakeholders have a role to play in responding to scenarios of massive disruption, however this whole system approach is equally relevant during normal operations. Air transport is a complex system in which a whole range of stakeholders are responsible for operational performance and service delivery. In order to ensure that all stakeholders in the value chain are properly incentivized, consideration could be given to developing guidance on shared accountability to properly reflect the interdependencies inherent in air transport operations.
- d) Role of Intermediaries: Where passengers purchase travel through an agent or intermediary, these parties have an important role in ensuring that passengers receive appropriate information and assistance in the event of disruption. This critical function is frequently omitted from consumer regulation regimes and ICAO guidance would be helpful in providing a consistent approach for States to adopt.

### 3. CONCLUSION

3.1 The work of ICAO should include the following tasks:

- i. Develop guidance to address the risk of jurisdictional issues such as extra-territorial application and regulatory duplication.
- ii. Develop a common definition of extraordinary circumstances (or similar terms to describe the same concept) as well as establishment of a non-exhaustive list of scenarios that should be understood as constituting extraordinary circumstances.
- iii. Develop guidance for preparing for and responding to mass-disruption events, including the role of contingency planning.
- iv. Develop guidance to reflect the concept of shared accountability in normal operations as well as in the event of massive disruption in order to properly reflect the interdependencies in the aviation system and to ensure that all stakeholders are properly incentivized to minimize disruptions.
- v. Recognize the role of intermediaries and consider developing guidance to reflect the responsibilities of intermediaries with relation to consumer regulation.

3.2 The adoption of ICAO's Core Principles in 2015 was an important development in attempting to foster consistency and compatibility in regulatory regimes around the world. Nonetheless, the patchwork of consumer regulation today continues to create unintended consequences for consumers, inhibiting connectivity, increasing cost and reducing choice. After 10 years, the time is right to reaffirm support for the Core Principles and to develop additional guidance to ensure that they are fit for purpose for the next decade and beyond.

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