

## Passenger Rights in Aviation

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### A. Introduction

#### I. General Remarks

The aviation sector in the European Union has changed considerably over the last twenty years. Before the **liberalisation in air traffic**, the national markets were regulated rather strictly and practically without competition. Meanwhile, a largely free market, characterized by increasing competition, was created in the European Union by means of three liberalisation packages.

Since the creation of the European single aviation market in 1992, the consumers have gained a better choice in destinations and suppliers. For example, the number of flight routes within the EU has increased by 170 % since then<sup>1</sup>. More cities and more remote areas are being flown to. Since 1997, cabotage in aviation is also allowed, i.e. any European airline may serve any flight route within another Member State. Moreover, the passengers are no longer facing monopolistic providers. Over the last few years, more and more low-cost carriers<sup>2</sup> started doing business. These so called no-frills airlines introduced new business models and thereby changed the travelling habits of the European citizens. The low-cost carriers already had a market share of 12 %<sup>3</sup> in 2005, with an upward trend. Especially the acquisition of new customers is a decisive factor. 59 % of their customers only chose these carriers because of their low prices and would not have chosen an aircraft as means of transport otherwise<sup>4</sup>.

Between 1990 and 2006, the number of movements has already risen by 87 %<sup>5</sup>. From 2004 to 2005 alone, a growth rate of 8.5 %<sup>6</sup> was achieved and there seems to be no foreseeable end to this tendency. It appears that the European citizens travel increasingly often by plane, either for professional or private reasons, many times for prices as low as they have never been before.

#### II. Consumer protection in cases of defaults

The changes in the aviation sector must not lead to a deterioration of quality in performance. According to a Communication from the Commission<sup>7</sup> of 2000, the **complaints concerning the quality of service**, lack of information and the handling of mishaps are steadily on the rise. Considering these facts, a strategy to protect passengers in the EU was developed. At the

same time, over-regulation was to be avoided because it would reduce the range of competition and derail the cooperation between air carriers which is important for the international tourist travel. Thus, it was considered important to find the right proportion between voluntary agreements and legal provisions in aviation.



In order to enforce the legal rights of the consumers in cases of quarrels, legal provisions are necessary, though. First of all, this is a consequence of the rather weak negotiating position of a single passenger against the airlines. In addition, there are the problems of diverging national provisions as well as the question as to whom the consumer should address his claims in case of objections. Last but not least, the Community felt obliged to strengthen passengers' rights on the basis of the treaty of Amsterdam granting **consumer protection** precedence.

### **III. Consumer protection against discrimination**

Protecting the consumer in the aviation sector should not be limited to the field of defaults, though. Another important field is **protection against discrimination**.

About 10 % of the population within the European Union are reduced in their mobility<sup>8</sup>. This does not only mean people with a handicap, but also – with a view to the demographic change in Europe – the increasing number of the elderly. They have to be granted the same access to air transport than anyone else.



#### **IV. Right to transparency**

The passengers have a **right to transparency**, which means the right to know the identity of the operating air carrier. The lacking transparency is also being criticized referring to the indication of ticket prices. Today, we see the lowest prices being advertised everywhere which, after a closer look, turn out to be nothing but teasers. Fees, levies or so called taxes are added on to the assumed price so, in the end, four or even five times as much as originally calculated has to be paid.

#### **V. The contract of carriage by aircraft and its legal regulation**

A contract of carriage by aircraft is, in principle, a **contract for work**, to which – if it is concluded in Germany – the provisions of the paragraphs 631 and the following of the German Civil Code (Bürgerliches Gesetzbuch, BGB) are applicable. They are superimposed by numerous special regulations, though, that are embodied partly in international agreements, Community law and different national regulations (in Germany, for example, in the German Aviation Act).

On an international level, the **Warsaw convention**<sup>9</sup> of 1929 created the first basic set of rules in civil law in aviation. The major elements concerned:

- concluding a contract on the transport of passengers by air
- doing business in baggage and freight transport
- the specialties of mixed transports up to “Code-Sharing”
- enforcing the law
- liabilities, both tortuous and contractual

In 1999, **the Montreal Protocol**<sup>10</sup> was negotiated by the contracting states of the ICAO (International Civil Aviation Organisation) which modernised the regulations of the Warsaw convention. A uniform legal framework was created concerning the liability of air carriers for damages suffered by travellers on international flights and for such caused to baggage or cargo. The Montreal Protocol was ratified by about 70 contracting states, among them all EU Member States as well as the USA, Canada and Japan. Moreover, it was transferred into European law by Regulation (EC) 889/2002 which also extended the scope of its application to all flights, domestic and international.

The details of Community law are described in the following section.

### **B. Existing legislation in the European Community**

#### **I. Regulation (EC) No 889/2002 on air carrier liability in the event of accidents**<sup>11</sup>

##### **1. Liability in the case of bodily injury**

Regulation (EC) No 889/2002 states the principle of unlimited liability of the air carrier in the case of death or injury of air passengers. For damages up to an amount of 100000 Special Drawing Rights (SDR), the **air carrier bears liability without fault** and cannot contest claims for compensation. Above that amount, the air carrier can defend itself against a claim, but only by proving that it was not negligent or otherwise at fault.

### Special Drawing Right

SDR is an artificial currency unit that was created by the International Monetary Fund in 1969 and is not traded on foreign exchange markets. SDR is designed as a basket of currencies that consists of the Euro, the Japanese Yen, Pound Sterling and US-Dollar today. The value of one SDR is determined and published daily by the International Monetary Fund. Currently, the value of 1 SDR equals roughly 1.08 €

Relief from liability can only be reached in cases of contributory negligence by the respective passenger.

Furthermore, the Regulation also determines the **principle of an advance payment** if a passenger is killed or injured. Within 15 days from the identification of the person entitled to compensation, the air carrier must make an advance payment to cover immediate economic needs; the amount is relative to the seriousness of the case, at least 16000 SDRs in the event of death. The advance payment does not constitute recognition of liability and may be offset against any subsequent sums paid or even reclaimed later under certain circumstances.



## **2. Liability in the case of delay**

In cases of **passenger delays** the air carrier's liability for damage is limited to 4150 SDRs per person. The carrier can exonerate itself by proving that it took all reasonable measures to avoid the damage or it was impossible to take such measures or it wasn't its fault (for example due to adverse weather conditions).

In cases of baggage delays the air carrier's liability for damage is limited to 1000 SDRs per passenger regardless of negligence or fault, unless the baggage was defective. In the case of loss or damage to unchecked baggage, the air carrier is liable only if at fault. A passenger can benefit from a higher liability limit by making a special declaration at the latest at check-in and by paying a supplementary fee.

## **3. Other provisions**

The Montreal Protocol, ratified with this Regulation, also introduced a **worldwide compulsory coverage for cargo carriers**. An air carrier has to be insured up to a level that guarantees that all persons entitled to compensation for damages receive the full amount for which they qualify after the Montreal Protocol.

The passengers must be informed on all important regulations.



## **II. Regulation (EC) No 261/2004 on passenger rights**<sup>12</sup>

The Regulation entered into force on 17 February 2005. It determines the rights of air passengers in cases of flights being overbooked, annulled and delayed. The Regulation replaces the one on passenger rights in force until 1991. It extends the rights of passengers and is, in contrast to the previous regulation, also applicable to charter flights. Thus, it also includes persons flying by plane as part of a package holiday. The passengers wanting to exercise their rights must have a confirmed reservation and present themselves for check-in as stipulated and at the time indicated in advance and in writing or, if no time is indicated, no later than 45 minutes before the published departure time.

The Regulation applies to passengers departing from an airport located in the territory of an EU Member State. It also applies to passengers departing from an airport located in a third country to an airport situated in the territory of an EU Member State if the operating air carrier is a Community carrier. It is not applicable, though, to passengers travelling free of charge or at a reduced fare not available to the public. This does not include price reductions within the context of a frequent flyer programme or similar customer programmes.

The Regulation states rights to **reimbursement** (Art. 8 and 9) and monetary **compensation** (following Article 7). The latter can only take effect in cases of denied boarding against the will of the passenger (due to overbooking) and cancellation of the flight.

### **1. Cancellation**

In case of the **cancellation of a flight**, the passenger has a right to reimbursement according to Articles 8 and 9 as well as to compensation following Article 7, if applicable.

#### **1.1 Right to compensation**

Should the booked flight be cancelled, the passengers have the right to compensation in accordance with Article 7, unless they are informed of the cancellation at least two weeks before the scheduled time of departure or if they are informed at least seven days before the scheduled time of departure and are offered re-routing.

If they are offered re-routing, this alteration must allow them to depart no more than two hours before the scheduled time of departure and reach their final destination less than four hours after the scheduled time of arrival. If they are informed of the cancellation less than seven days before the scheduled time of departure, their claim can only be excluded if the re-

routing offered allows them to depart no more than one hour before the scheduled time of departure and they reach their final destination less than two hours after the scheduled time of arrival.

The following chart summarizes the liability exclusions in case of cancellations for other reasons than “extraordinary circumstances”:

Notice of cancellation	Alternative offer
at least two weeks before the scheduled time of departure	-
at least seven days before the scheduled time of departure	departure no more than two hours before the scheduled time + reach final destination less than four hours after the scheduled time of arrival
less than seven days before the scheduled time of departure	departure no more than one hour before the scheduled time + reach final destination less than two hours after the scheduled time of arrival

Furthermore, the claim for compensation is excluded according to Article 7 if the air carrier can prove that the cancellation is caused by **extraordinary circumstances** that could not even have been avoided if all reasonable measures had been taken.



The recitals mentions meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and cases of political instability and strikes that affect the operation of the air carrier as examples for such extraordinary circumstances. The recitals state that extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay or cancellation of one or more flights by that aircraft.

This is another problem of the Regulation. The extraordinary circumstances aren't defined sufficiently. In the past, the air carriers invoked such circumstances too many times in order to avoid having to pay compensation. This was also described by the Commission in its Communication<sup>13</sup> of April 2007, in which it analysed the application of the Regulation. It stated that interpreting this clause was one of the biggest problems. Any difficult weather conditions or technical problems were declared as extraordinary, whether or not they actually disrupted air traffic. There were even cases where the sickness of a pilot was claimed to be an extraordinary circumstance. Such misuse of the exclusion clauses must be prevented.

The amount of compensation depends on the flight distance:

- flights of 1500 km or less: 250€
- flights of 3500 km or less: 400€
- flights of more than 3500 km: 600€

## **1.2. Right to reimbursement or re-routing**

In case of cancellation, passengers are entitled to reimbursement or re-routing according to Article 8. This Article states two options:

1. Reimbursement of the full cost of the ticket within seven days, even for the part or parts of the journey already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan together with, when relevant, a return flight to the first point of departure, at the earliest opportunity
2. re-routing, under comparable transport conditions, to their final destination at the earliest opportunity
3. re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to the availability of seats.

Number 1 also applies to passengers whose flights form part of a package. When, in the case where a town, city or region is served by several airports, an operating carrier offers a passenger a flight to an airport alternative to that for which the booking was made, the operating carrier also bears the cost of transferring the passenger from that alternative airport either to that for which the booking was made or to another close-by destination agreed with the passenger.

The right to re-routing isn't described unambiguously either. According to the Commission, the air carriers usually only offer the passengers refunding their ticket prices if they do not offer an alternative flight with their own aircraft. The provisions of the regulation leave it open whether air carriers should offer the passengers an alternative transport by another air carrier or other modes of transport instead. The term "under comparable transport conditions" is interpreted in different ways.

## **1.3 Right to care**

In case of cancellations the passengers also have to be offered the following services (cumulatively) free of charge according to Article 9:

1. Meals and refreshments in reasonable relation to the waiting time
2. Hotel accommodation in cases when a stay of one or more nights becomes necessary
3. Transport between the airport and the place of accommodation.

In addition, the passengers must be offered free of charge two phone calls, telex or fax messages or two e-mails.

In applying the provisions of the Article on services, the operating air carrier has to pay particular attention to the needs of persons with reduced mobility and any persons accompanying them as well as to the needs of unaccompanied children.

## 2. Delay

In principle, the Regulation only applies to **delays** of two hours or more. In those cases, the passengers are also entitled to the assistance specified in Article 9, in detail depending on the flight distance and the duration of the delay.

Flight distance and duration of delay	Claim
1500 km or less/two hours or more	meals and refreshments (where applicable hotel accommodation) free phone calls etc. Article 9 para. 1a, 2
3500 km or less/three hours or more	meals and refreshments (where applicable hotel accommodation) free phone calls etc. Article 9 para. 1a, 2
more than 3500 km/four hours or more	meals and refreshments (where applicable hotel accommodation) free phone calls etc. Article 9 para. 1a, 2
five hours or more	reimbursement of the full cost of the ticket Article 8 para. 1a

Hotel accommodation is offered only if necessary, i.e. when the reasonably expected time of departure is at least the day after the time of departure previously announced.

This clause, too, meets practical problems. Many times, delays add up to several days, but they are not considered as cancellations. In Germany, multiple lawsuits are pending. The Federal Supreme Court (Bundesgerichtshof, BGH) has referred a legal action<sup>14</sup> to the European Court of Justice in order to have decided at what point a delay ends and passengers can claim compensation. In this aspect, too, there is a need to clarify the provisions of the Regulation and formulate clear distinctions between delays and cancellations.

## 3. Denied boarding

In cases of **overbooking** or when an operating carrier reasonably expects to deny boarding on a flight, the air carrier first has to call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed. In addition to these benefits, the volunteers have the right to reimbursement and re-routing according to article 8 (as stated above). If an insufficient number of volunteers come forward to allow the remaining passengers with reservations to board the flight, the operating carrier may then deny boarding to passengers against their will. According to Article 11, air carriers must give priority to carrying persons with reduced mobility and any persons accompanying them, as well as unaccompanied children.

Passengers denied boarding against their will are entitled to reimbursement and care according to Article 8 and 9 as well as immediate compensation according to Article 7.



#### 4. Upgrading and downgrading

If an operating air carrier places a passenger in a class higher than that for which the ticket was purchased, it may not request any supplementary payment. If it places a passenger in a class lower than that for which the ticket was purchased, it must within seven days reimburse a share of the price of the ticket for flights of

- 1500 km or less: 30 %
- 3500 km or less: 50 %
- longer distances: 75 %



#### 5. Other provisions

##### 5.1 Persons with reduced mobility

In all cases, operating air carriers have to pay particular attention to the **needs of persons with reduced mobility** and any persons or certified service dogs accompanying them, as well as unaccompanied children, who also have the right to care (according to Article 9) as soon as possible.

##### 5.2 Right to information

The Regulation also states a **right to information** for passengers meaning the air carriers have to ensure that at check-in a clearly legible notice containing the following text is displayed in a manner clearly visible to passengers:

"If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regard to compensation and assistance".

This written notice has to set out the rules for compensation and assistance in line with this Regulation. The carrier also has to provide each passenger affected by a delay of at least two hours with an equivalent notice in written form containing the contact details of the national designated body. In respect of blind and visually impaired persons, these provisions must be applied using appropriate alternative means.



### 5.3 Enforcement bodies and infringement

Each Member State designates a **body responsible for the enforcement** of this Regulation to make sure the rights of the passengers are being adhered to. This body is responsible as regards flights from airports situated on its territory and flights from a third country to such airports.

According to the Regulation, the enforcement body takes the measures necessary to ensure that the rights of passengers are respected, where appropriate. The sanctions laid down by Member States for infringements of the Regulation have to be effective, proportionate and dissuasive.

In Germany, the Luftfahrt-Bundesamt (LBA) has been designated as enforcement body. Passengers affected by overbooking, cancellation or delay of a flight can turn to this body. In Germany, the LBA will first check the complaint and come to a first assessment of whether one of the cases the Regulation is fulfilled. If so, the complaint is forwarded to the respective air carrier requesting for comments to the appellant, cc to the LBA. Each complaint will undergo an individual case check by the LBA. If the breach is verified, for example it is proven that compensation wasn't paid despite the conditions of the Regulation being fulfilled, the LBA can open an administrative offence procedure.

In this aspect, too, the provisions of the Regulation aren't precise enough. As expressed by the Commission in its Communication of April 2007, there are significant legal differences between the Member States. Moreover, the handling of the complaints varies immensely. The countries with the most efficient procedures are Denmark and Belgium according to the Commission. In order to enhance enforcement, the cooperation between the bodies in charge should be improved, time limits for filing complaints determined and the terms of forwarding a complaint to the enforcement body fixed.

### **III. Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air**<sup>15</sup>

Achieving **equal opportunities for disabled persons** is an important goal of the European Community. The factor "mobility" plays an important role in securing the participation of disabled persons in the economic and social life. Mobility is a right everyone is entitled to. If access to transport isn't secured, this means a restriction of their right to participation. It's not only disabled persons who are affected, though. In view of the increasing number of elderly

people in the European population, the number of people with reduced mobility also increases steadily resulting in a higher demand for the appropriate services in the transport sector.

In this respect, too, emphasis was placed on voluntary commitments at first. Thus, European airlines and airports agreed to the “Airline Passenger Service Commitment” in May 2001, which, inter alia, strengthened the rights of passengers with reduced mobility. It was agreed that disabled passengers should be granted the highest degree of independence, their dignity be honoured and staff be trained accordingly. Most of the airlines and airports did, indeed, make considerable efforts to do justice to the requirements. Offers for help were not available everywhere complete and free of cost, though.

The **Regulation 1107/2006** therefore rules in detail the duties of the industry to achieve an equal treatment of persons with reduced mobility. It contains a catalogue of the corresponding passenger rights.

The provisions of the Regulation apply to persons using commercial air services on departure from an airport situated in the territory of a Member State. It also applies to passengers departing from an airport situated in a third country to an airport situated in the territory of a Member State, if the operating air carrier is a Community air carrier. Articles 3 and 4 entered into force on 26 July 2007, the other provisions entered into force on 26 July 2008.

## 1. Equal treatment

According to the Regulation, refusal of carriage on the grounds of disability or reduced mobility is not allowed. Derogations from this **equality principle** are only admissible in order to meet the applicable safety requirements or if the embarkation or carriage of that person is physically impossible. In the event of refusal on such grounds, the air carrier has to make reasonable efforts to propose an acceptable alternative to the person in question. Moreover, the air carrier or tour operator must inform this person of the reasons immediately, on request in writing within five working days of the request.



In order to meet safety requirements, an air carrier may require a person with reduced mobility be accompanied by another person who is capable of providing the assistance required by that person. The applicable safety rules as well as any restrictions in the carriage of persons with reduced mobility or on that of mobility equipment due to the size of aircraft must be made publicly available.

A person with reduced mobility who has been denied embarkation on the grounds mentioned above (safety requirements or physical impossibility) has a right to **reimbursement of the ticket costs** or re-routing as provided for in Article 8 of the Regulation (EC) 261/2004.

## 2. Assistance at EU airports

Persons with reduced mobility have a **right to assistance**. This includes the entire range of assistance and arrangements necessary to enable the person to check-in and register baggage, proceed to the aircraft, board the aircraft and disembark from it. **Points of arrival and departure** must be **designated** within the airport boundary at which persons with reduced mobility can, with ease, announce their arrival at the airport and request assistance. These points have to be clearly signed.



The responsibility for ensuring the provision of the assistance lies with the managing body of an airport. It must make sure that it is offered without additional charge and that the person with reduced mobility is able to take the flight for which he or she holds a reservation. The managing body may provide such assistance itself or contract with a third party for the supply of the assistance. This should enable the managing body to use already existing services at the airport concerned. The air carriers and airport managing bodies have to ensure that their personnel are being trained appropriately.

The managing body of an airport can levy a specific charge on airport users in close cooperation with them for the purpose of funding the assistance. This specific charge must be reasonable, cost-related and transparent and must be shared among airport users in proportion to the total number of all passengers that each carries to and from that airport.

## 3. Assistance on board

On flights departing from a European airport, air carriers have to provide certain services free of charge. For example, they have to transport up to two pieces of mobility equipment per person with reduced mobility. Carriage of recognised assistance dogs in the cabin also has to be provided for and assistance to the person with reduced mobility in moving to toilet facilities if required. Where a person with reduced mobility is assisted by an accompanying person, the air carrier must make all reasonable efforts to give such person a seat next to the person concerned.

#### **4. Other provisions**

Furthermore, the Regulation contains **obligations to transmit information**. On one hand, the person concerned has to notify the air carrier of his or her particular needs at least 48 hours before the published time of departure. On the other hand, when an air carrier receives a notification of the need for assistance at least 48 hours before the published departure time, it has to transmit the information concerned at least 36 hours before the departure to the managing bodies of the airports of departure, arrival and transit and to the operating air carrier, if necessary.

Where wheelchairs or other mobility equipment or assistive devices are lost or damaged whilst being handled at the airport or transported on board aircraft, the passenger to whom the equipment belongs must be compensated, in accordance with rules of international, Community and national law.

Just like in the Regulation 261/2004, the Member States have to designate bodies responsible for the enforcement of the Regulation. These also have to ensure that the rights of the disabled persons or persons with reduced mobility are respected.

Passengers concerned who consider that the Regulation has been infringed may bring the matter to the attention of the managing body of the airport or to the attention of the carrier concerned, as the case may be. If they cannot obtain satisfaction that way, they can file complaints to the designated enforcement bodies.

### **IV. Regulation (EC) No 1546/2006 relating to hand luggage**<sup>16</sup>

#### **1. Liquids**

As a reaction to the terrorist attacks planned in London in August 2006, the Commission passed a Regulation **restricting the amount of liquids in hand luggage** in October 2006. This was a reaction to the threats caused by liquid explosives. The provisions are applicable to all EU-flights, independently from the destination and the nationality of the air carrier.

Since the Regulation entered into force in November 2006, carrying liquids on board is restricted to 100 ml per container. All containers with liquids have to fit completely into a transparent re-sealable bag of no more than one litre capacity. Each passenger is only allowed to take one bag on board.

Liquids include not only beverages, but also articles with a similar consistency, for example gels, sprays and creams. Medicines, baby foods and other liquids like insulin or juices for diabetics if needed during the flight are exempt. The necessity to carry these medicines and foods has to be shown credibly upon request by security staff (for example with a medical certificate or equivalent documents).

These new security regulations not only had impacts on waiting times at check-in, but also turned out to be quite costly. At peak days, up to seven tons of liquids are confiscated at German airports that have to be disposed of as hazardous waste which is expensive. The rules on carrying liquids are a nuisance especially for passengers in transit, because even duty-free

products purchased in third countries have to be turned in when in transfer and during a security check in Europe.



The delegates of the parliament see a need for amendments here. Of course, all security measures to prevent terrorist attacks are supported as long as they are appropriate and efficient. This seems to be questionable concerning the Regulation 1546/2006, though. If passengers in transit acquire goods outside the EU in the duty-free shops in good faith and then those are being taken away from them, this is a disproportionate interference in their property rights. Moreover, this flat-rate seizure is opposed to an individual analysis and prosecution.

Therefore, the Parliament passed a resolution in September 2007 in which it called on the Commission to check the Regulation and repeal it, if necessary.

In July 2007, the European Commission already passed a Regulation<sup>17</sup> which states that the limitations in carrying liquids causes certain operational difficulties at airports and discomfort for the passengers. The Commission promised to reassess the measures. Furthermore, third countries can be exempt from the prohibition, i.e. passengers entering the EU from these countries are allowed to keep the tax-free liquids purchased there with them even on connecting flights. Such exemptions are only granted if the respective third country fulfils security requirements complying with those in the EU. The first time such an exception was accepted was in December 2007. Since then, passengers arriving from Singapore and changing planes at an EU airport are allowed to take the duty-free goods purchased in Singapore on to the connecting flight.



## 2. Size of hand luggage

Regulation 1546/2006 of October 2006 also stipulated a limitation of the **size of hand luggage** which was supposed to enter into force as of 06 May 2007. The implementation of this Regulation was postponed for a year due to the pressure of the European aviation industry. A study was commissioned to investigate the possibly higher risk coming from larger sizes of luggage. Checking the Regulation for its gain in security resulted in stating that the size of luggage hardly has any influence at all on security. The withdrawal of the Regulation was based on the review clause saying that the measures should be checked every six months.

## V. Regulation (EC) No 2111/2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier and repealing Article 9 of Directive 2004/36/EC

### 1. The Community list

In order to prevent uncertainties caused by inconsistent clearances for landing or take-off within the EU as in 2005 concerning the Turkish airline Onur Air, the Parliament, Council of Ministers and Commission agreed on creating a common list of air carriers subject to an operating ban within the Community. In 2005, the operating authorization of the Turkish airline Onur Air was withdrawn in several Member States due to safety deficiencies. This led to uncertainties among the European citizens because Onur Air was still allowed operations in some countries while it wasn't in others.

Until the creation of this first Community list, there were various national lists of airlines subject to operating bans. As a result, the travellers in Europe found themselves confronted with different levels of safety. Certain airlines were considered as safe in some Member States while they weren't allowed to start or land in others for safety reasons. Therefore, standardization on a Community level was necessary. While the Commission proposed to merely publish a consolidated version of the national lists, the Parliament advocated a **Community list** relying on common criteria.

After all Member States had informed the Commission on the identity of those airlines subjected to an operating ban in their territory within a month after entry into force of the Regulation, the Commission then established the common list in March 2006, based on common criteria.

#### The common criteria for checking an operating ban

Does an air carrier fulfil the applicable safety standards taking into account the following aspects?

1. Solid proof of serious deficiencies on the side of an air carrier
2. Lack of ability and/or willingness of the air carrier to remedy deficiencies
3. Lack of ability and/or willingness of the authorities responsible for the control of the air carrier to remedy deficiencies

The list of air carriers subject to an operating ban or restriction is updated when necessary. At least every three months, the Commission verifies whether an update is appropriate. Meanwhile, the Community list has been updated for the sixth time<sup>20</sup>. While the first list was based solely on contributions by the Member States, today the Commission can also act on its own initiative and update the list, if information gathered by itself, the European Aviation Safety Agency (EASA), the Member States or the International Civil Aviation Organisation (ICAO) call for such action. There are different programmes to evaluate safety deficiencies on the part of an air carrier, for example SAFA (Safety Assessment of Foreign Aircraft), established by the ECAC (European Civil Aviation conference), and USOAP (Universal Safety Oversight Audit Program) of the ICAO.

The so called “**Black list**” as well as its modifications is **published** immediately in the Official Journal of the European Union. The Commission<sup>21</sup> and the Member States facilitate public access to the Community list, in particular via internet. Air carriage contractors, national aviation authorities, the EASA, airports and ticket sellers also bring the Community list to the attention of the passengers according to the Regulation.



## 2. Right of information

Passenger rights were strengthened in this area as well. The European Parliament pushed numerous improvements to their benefit with the aim of achieving the highest possible transparency and meeting the needs of consumer protection to the full extent.

Air carriage contractors (including **ticket sellers** according to Article 2) are **obliged** to **inform** the customers on the identity of the operating air carrier, whatever the means used to make the reservation.

Where the identity of the operating air carrier is not yet known at the time of reservation, the air carriage contractor has to ensure that the passenger is informed of the identity of the air carrier **as soon as it is established**.

Furthermore, the passengers have to be informed in the event of a **change of the operating air carrier as soon as possible**, at the latest at check-in or on boarding where no check-in is required for a connecting flight. The air carrier or tour operator has to ensure that the relevant air carriage contractor is informed of the identity of the operating air carrier.

Passengers are given a **right to compensation** if, after reservation, the air carrier has been entered on the Community list which has led to a cancellation of the flight concerned.



Compensation must be, upon request, in the form of an equivalent voyage or reimbursement of the total costs of the ticket.

## C. Scheduled regulations

### I. Fare transparency

Initiated by the so called low-cost carriers, the air fares became cheaper over the years and allowed the mass market access to travelling by plane. The consumers often see prices, though, that, in the end, turn out to be nothing but a **teaser** because various fees and taxes which seemed to be included at first sight are in fact added up on the originally indicated price.



A Regulation creating transparency in prices is scheduled to remedy such lack of transparency with a view to consumer protection. Thus, a Commission proposal of 2006 which sums up, simplifies and partially amends the third liberalisation package to create a common European single aviation market of 1992, also includes provisions on fare transparency.

The regulations were substantiated by the Parliament in such a way that, apart from the final price, additional costs have to be indicated. These should be categorized in the following groups:

- Taxes, other public charges and levies
- Costs, duties and fees for the benefit of the air carriers
- Costs, duties and fees for the benefit of the airport operators

These specifications provide for precise information on the actual prices for the consumers so their right to transparency is protected.

The Regulation was in a first plenary reading in July 2007 and is about to be passed after an agreement with the Council of Ministers has been found.

The Commission did not wait for the Regulation to enter into force, though, but already carried out a survey on misleading advertisement or unfair practices concerning ticket sales on the internet. The findings revealed that more than half of all websites show irregularities. In

particular, the indications of prices, the conditions of contract and the comprehensibility of other conditions were incorrect or misleading. Consumer protection Commissary Meglana Kuneva set a time limit of four months for the companies to react. She warned them indicating that she would publish the names of the companies concerned should they not remedy the defects.

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<sup>1</sup> COM brochure “flying together” 2007

<sup>2</sup> Study on the situation of low-cost-carriers „The consequences of the growing European low-cost airline sector”, retrievable at:  
<http://www.europarl.europa.eu/activities/committees/studies/download.do?file=19370#search=%20Low%20Cost%20Carrier%20>

<sup>3</sup> COM 2005/578, Communication from the Commission “Extending the tasks of the European Aviation Safety Agency – An agenda for 2010”

<sup>4</sup> See footnote 2

<sup>5</sup> COM 2006/818, proposal for a Directive amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community

<sup>6</sup> Eurostat 8/2007 Aviation in the EU25

<sup>7</sup> COM 2000/365, Communication from the Commission “Protection of air passengers in the European Union”

<sup>8</sup> COM 2000/284, Communication from the Commission “Towards a barrier free Europe for people with disabilities”

<sup>9</sup> [http://www.transportrecht.de/transportrecht\\_content/1145516920.pdf](http://www.transportrecht.de/transportrecht_content/1145516920.pdf)

<sup>10</sup> [http://www.transportrecht.de/transportrecht\\_content/1145518442.pdf](http://www.transportrecht.de/transportrecht_content/1145518442.pdf)

<sup>11</sup> Regulation (EC) No 889/2002 of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents (Ratification of the Montreal Convention); in force since 28 June 2004

<sup>12</sup> Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 of 11 February 2004; in force since 17 February 2005

<sup>13</sup> COM 2007/168, Communication from the Commission pursuant to Article 17 of Regulation (EC) No 261/2004 on the operation and the results of this Regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

<sup>14</sup> Reference number: X ZR 95/06

<sup>15</sup> Regulation (EC) No 1107/2006 of 05 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air; Articles 3&4 in force since 26 July 2007, the rest since 26 July 2008

<sup>16</sup> Regulation (EC) No 1546/2006 of 04 October 2006 barring liquids from being carried in hand luggage; in force since 06 November 2006

<sup>17</sup> Regulation (EC) No 915/2007 of 31 July 2007 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security

<sup>18</sup> Regulation (EC) No 300/2008 of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002

<sup>19</sup> Regulation (EC) No 2111/2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier and repealing Article 9 of Directive 2004/36/EC

<sup>20</sup> Current version of the Blacklist, updated on 11.04.2008

<sup>21</sup> Published at [http://ec.europa.eu/transport/air-ban/list\\_en.htm](http://ec.europa.eu/transport/air-ban/list_en.htm)

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*Remarks:*

*Opinions expressed in this contribution are those of the authors.*



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