



## POLICY POSITION ON AIR PASSENGER RIGHTS



MOBILITY

### Executive Summary

The long-awaited revision of the Air Passenger Rights Directive 261/2004 aims at clarifying and reinforcing this key piece of consumer protection legislation. The Commission notably proposed to incorporate the clarification of the notion of extraordinary circumstances, based on the ECJ jurisprudence. The introduction of the possibility to change booking errors for free up to 48 hours before departure is also a positive development. While the proposal addresses a number of issues of relevance, a number of improvements could still be achieved:

- Compensation for long delays and cancellations should be given after 3 hours delay rather than from 5 to 12 hours delay at arrival, as proposed by the Commission;
- The definition of 'extraordinary circumstances' should be further specified, so as not to encompass problems which originate from the airlines' personnel (e.g. strikes) and the non-exhaustive list of circumstances that can be considered extraordinary should be revised accordingly;
- In addition to increased States control on airlines finances and provision of rescue fares, a concrete objective should be set for carriers to ensure that passengers protection is granted;
- Increase price transparency should be given to consumers and additional fees linked to means of payment and luggage should be restricted;

The FIA and its Clubs will contribute to informing passengers about their rights.



## FIA Region I Position

### Cancellation & long delays

In the case *Sturgeon v. Condor*, the European Court of Justice ruled that passengers reaching their final destination three hours or more after the scheduled arrival time may seek compensation from the airlines, unless the delay was caused by extraordinary circumstances. This puts travellers suffering from delays on an equal footing with travellers, whose flight has been cancelled. Unless caused by extraordinary circumstances, a three hours delay entitles passengers to a flat-rate compensation of between EUR 250 and EUR 600.

While Clubs understand that the right balance needs to be struck between the economic interests of the airlines and compensation, we call on the Parliament and the Council to re-establish the three-hour threshold, given that this will encourage airlines to swiftly find solutions for passengers. A five hours delay for a passenger causes significant detriment and should be adequately compensated for. A recent survey carried out by the Dutch Touring and Automobile Club (ANWB) shows that passengers generally support the principle of compensation proportionate to the ticket price, which could help reduce the financial burden on airlines.

### Extraordinary circumstances

FIA Region I welcomes the clarification of the term 'extraordinary circumstances' in the Commission proposal, based on the European Court of Justice Wallentin-Hermann Judgement. Jurisprudence played an instrumental role in clarifying the regulation for consumers and should be incorporated in the legislation, in order to ensure adequate protection of passengers and legal certainty.

More should be done to clarify under which conditions non-technical problems may qualify as extraordinary circumstances. Practice has shown diverging opinions on the use of non-technical reasons as extraordinary circumstances; take for example labour strikes (both air carrier's staff and third parties'), bird strikes or bad weather (e.g. when the airport and Air Traffic Management conditions allow landing and taking off but the airplane's equipment does not). While the proposed annex with a non-exhaustive list of circumstances that may be considered extraordinary is to be welcomed, the inclusion of "strikes in essential service providers such as airports and Air Navigation Service providers" goes beyond existing rulings. We support either a limitative list of essential providers to be given or the provision to be removed altogether.

FIA Region I calls for a narrow definition of extraordinary circumstances sufficient to exempt airlines from payment of compensation. Circumstances must not be "inherent to the normal exercise of the activity" and must be "beyond its actual control" to be deemed extraordinary and therefore allow carriers to waive their responsibility.

According to this definition, 'extraordinary circumstances' do not encompass problems originated by the airlines' personnel, aircrafts, and subcontractors. Specifically, a "labour dispute at the operating air carrier" should not be considered as an exceptional circumstance, since the position of the carrier



allows him to manage alternative solutions in order to re-route passengers. Exceptional circumstances should only apply when air carriers could not have taken any measure to prevent the problem.

The ECJ pointed out that air carriers are confronted as a matter of course in the exercise of their activity with various technical problems to which the operation of those aircraft inevitably gives rise. The resolution of a technical problem which comes to light during aircraft maintenance or is caused by failure to maintain an aircraft cannot therefore constitute as such an “extraordinary circumstance” within the meaning of Article 5(3) of the Regulation.

### Re-routing

The Commission proposal provides for an obligation for air carriers to consider re-routing via another carrier or another mode of transport where the carrier cannot transport the passenger to his/her destination within 12 hours. While we welcome the introduction of alternative re-routing option, we call on the co-legislators to lower the requirements to benefit from this measure to 9 hours delay at arrival. In this case, one full day can be considered lost, which will have significant consequences on passengers. Nine hours delay at arrival still provides carriers with a reasonable timeframe to find a solution within its own offer.

In the event of cancellation, delay or change of schedule caused by extraordinary circumstances, air carriers should provide assistance to stranded passengers for a maximum of 5 nights. We support the Parliament’s position to give compensation up to EUR 125 per night, per passenger. The obligation to pre-notify the airlines of specific needs at least 48 hours before the flight to benefit from extended support is unduly burdensome for people with specific needs and should therefore be removed. People with specific needs are especially vulnerable and constitute a very small proportion of passengers overall. In these circumstances, it is our belief that passengers with reduced mobility, unaccompanied minors and pregnant women should benefit from increased assistance, regardless of pre-notification requirements.

### Airline insolvency

76% of passengers are currently not protected in the event of airline insolvency. In light of the growing number of insolvencies, FIA Region I calls for action to be taken, in order to repatriate stranded passengers. More stringent controls from Member States on the financial position of airlines and preventive suspension of operations could limit the number of passengers affected in the future.

In addition, the formalisation of voluntary agreements between airlines and the broader provision of rescue fares is an interesting step forward to ensure swift and cheap repatriation. Airlines should be bound to guarantee compensation and/ or repatriation to stranded passengers via these means within a year of the entry into force of the regulation.

The FIA supports the setting up of a mandatory guarantee fund for all airlines at European level, which should complement existing protection systems provided via the means or payment or else. This fund



should be financed by all airlines at no additional cost for consumers and provide for a guarantee in case of insolvency, regardless of how a ticket is effectively purchased.

#### Booking costs & transparency

FIA Region I welcomes the inclusion of a provision to allow passengers to correct spelling mistakes free of charge up to 48 hours before boarding.

There is a need for increased transparency in the airlines pricing policy. To ensure full compliance with the Directive 2005/29/EC on unfair commercial practices, prices should be prominently visible on carriers' website when travel options such as date and class have been selected by the customer. This price should at least include the elements set out by the Parliament Internal Market & Consumer Affairs Committee, i.e.:

- a) All operational costs indispensable to transport passengers
- b) All aspects essential for travel from a passengers' perspective (providing tickets, boarding cards, carrying minimum amount of personal luggage)
- c) All costs related to payment (credit card fees)

As booking tickets online has become the standard purchasing method, it is not acceptable that consumers are charged extra to use this payment means. We strongly support the European Parliament resolution calling for "effective implementation and enforcement of the existing legislation on price transparency and unfair commercial practices in order to ensure that the advertised price is an accurate reflection of the final price and that all non-optional operational costs and all administrative and payment method charges are included in the tariffs and indicated/distributed with the required information; calls on airlines, in connection with the various means of payment, and especially payment by credit card, only to charge for the real cost of their services, in line with Directive 2011/83/EU on consumer rights".

#### Obligations when baggage is delayed or lost

Baggage should be considered as lost after 15 days. We would welcome the setting up of a minimum amount to be available on the first day, in order to cover passengers' immediate expenses when their luggage is delayed or lost. Airlines should also be required to provide automatic compensation per day in cases of delayed baggage. Furthermore, air carriers' current requirements for carry-on luggage are highly confusing for consumers. Additional harmonisation would be welcome on this issue.

#### Alternative Dispute Resolution (ADR) & redress

ADR is particularly important for consumers when claiming for compensation against air carriers. Carriers' headquarters are usually located in cities other than the consumer's city of residence, and consumer claims are often linked to small amounts, for which they would not consider hiring a lawyer.



FEDERATION INTERNATIONALE DE L'AUTOMOBILE  
REGION I - EUROPE, THE MIDDLE EAST AND AFRICA

The FIA supports the Parliament's amendments aligning the provisions on claims and complaint procedure with the Directive 2013/11/EU on ADR which forces Member States to create national bodies to deal with out-of-court resolution. We also believe that air carriers which fail to reply to a complaint within two months should be deemed to have accepted the passenger claims.

June 2015 | ©FIA 2015 | All rights reserved



FEDERATION INTERNATIONALE DE L'AUTOMOBILE  
REGION I - EUROPE, THE MIDDLE EAST AND AFRICA



## Fédération Internationale de l'Automobile (FIA) Region I office

FIA Region I is a consumer body representing 105 Mobility Clubs and their 36 million members from across Europe, the Middle East and Africa. The FIA represents the interests of our members as motorists, riders, pedestrians and passengers. FIA Region I is working to ensure safe, affordable, clean and efficient mobility for all. Learn more at [www.fiaregion1.com](http://www.fiaregion1.com)