



Study on the current level of protection of air passenger rights in the EU

Final report

Study contract

no. MOVE/B5/2018 - 541

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Unit B5 — Social Aspects, Passenger Rights & Equal Opportunities

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Glossary

Acronym	Definition
A4E	Airlines for Europe
AACO	Arab Air Carrier's Organisation
ACI	Airport Council International
ACTP	Association of Public Transport Clients (Belgium)
ADP	Aéroports de Paris
ADR	Alternative dispute resolution body
AENA	Spanish Airports and Air Navigation
AESA	Spanish Aviation Safety and Security Agency
ANA	Aeroportos de Portugal
ANAC	Portuguese Civil Aviation Authority
APC	Romanian consumer protection body
APF	The Passenger and Passenger Rights Agency (Austria)
APR	Air Passenger Rights
APRA	Association of Passenger Rights Advocates
AQST	Transport Quality of Service Authority (France)
ARN	National Board for Consumer Disputes (Sweden)
ASA	Airport Services Association
ATC	Air Traffic Control
ATFM	Air Traffic Flow Management
ATM	Air Traffic Management
BEUC	The European Consumer Organisation
BNAAC	Bulgarian National Association Active Consumers
CAC	The Croatian Alliance of Consumers
CAC	Consumers' Association of Canada
CAGR	Compound Annual Growth Rate
CAI	Consumers Association of Ireland
CB	Consumentenbond – Dutch consumer association
CCA	Cyprus Consumers Association
CEDR	Centre for Effective Dispute Resolution (CEDR)
CH	Switzerland
CHOICE	Australian consumer advocacy group
CIE	Consumatori Italiani per l'Europa
CNIACC	National Information and Arbitration Centre for Consumer Disputes (Portugal)
CODA	Central Office for Delay Analysis
CPC	Consumer Protection Cooperation
CRPC	Consumer Rights Protection Centre of Latvia
CTA	Canadian Transportation Agency
DECO	The Portuguese Association for Consumer Protection
DERKE	Regional Transport Association of Debrecen (Hungary)

Acronym	Definition
DG MOVE	Directorate General for Mobility and Transport for the European Commission
DGAC	French Civil Aviation Authority
DGCA	Directorate General of Civil Aviation
DOT	Department of Transportation (US)
EC	European Commission
ECA	European Court of Auditors
ECAA	Ethiopian Civil aviation Authority
ECC	European Consumer Centre
ECDR	European Centre for Dispute Resolution
ECTAA	European Travel Agents and Tour Operators Association
EDF	European Disability Forum
EEA	European Economic Area, includes EU countries and also Iceland, Liechtenstein and Norway
EFTA	European Free Trade Association
ENAC	Italian Civil Aviation Authority
EPF	European Passenger Federation
ERAA	European Regions Airlines Association
ETL	Estonian Consumers Union
EU	European Union (in the sense of EU28)
EU+3	EU28 + Iceland, Norway and Switzerland
FEOSZ	National Federation of Associations for Consumer Protection in Hungary
FNAUT	National Federation of Transport User Associations (France)
FOCA	Federal Office of Civil Aviation
FOMCA	Federation of Malaysian Consumers Associations
FRC	Consumers' Federation of French – speaking Switzerland
FSC	Full-service carrier or network airline
FTE	Full Time Equivalent (employees)
GBTA	Global Business Travel Association
IATA	International Air Transport Association
ICAO	International Civil Aviation Organisation
ILT	Human Environment and Transport Inspectorate
IPP	Scheduled Airline Failure Insurance Provider
ITM	Hungarian Ministry for Innovation and Technology
KEPKA	Greek Consumers Protection Centre
LBA	National Civil Aviation Authority of Germany
LCC	Low-cost carrier or low-fare airline
LPIAA	Latvian National Association for Consumer Protection
MAG	Manchester Airports Group
MTV	Tourism and Travel Mediation (France)
NAAP	National Association of Airline Passengers

Acronym	Definition
NCAA	Nigerian Civil Aviation Authority
NDA	Non – disclosure agreement
NEB	National Enforcement Body
NRF	Transport Complaints Board and Package Travel Committee (Norway)
OAG	Official Airline Guide
OCU	Organisation of Consumers and Users – Spanish consumer organisation
ODR	Online dispute resolution body
Pax	Passengers
PPL	Polish Airports State Enterprise
PRM	Persons with disabilities or reduced mobility
PTD	Package Travel Directive
SAC	Catania Airport Company
SAFI	Schedule Airline Failure Insurance
SAS	Scandinavian Airlines
SKP	Association of Polish Consumers
SITA	Information technology company
söp	Conciliation Body for Public Transport (Germany)
THD	Turkish Consumer Rights Association
Traficom	Finnish Transport and Communications Agency
TTJA	Estonian Consumer Protection Body
UAE	United Arab Emirates
ULC	Luxembourg Consumer Association
UTP	Public Transport Users' Association (Italy)
VKI	Austrians Consumer Association
VZBV	Federation of German Consumer Organisations
YLKI	Consumers Association Indonesia
ZM	Green Mazovia – Polish association
ZPS	Slovenian Consumer Association
ZSS	Slovakian Consumer Association

List of countries in scope for the analysis

The geographic scope of the study has been the EU28 Member States, Iceland, Norway and Switzerland, collectively described as “EU+3”. Ordered alphabetically, according to the original language, first EU28, followed by Iceland, Norway and Switzerland.

Country Code	Country Name
BE	Belgium
BG	Bulgaria
CZ	Czech Republic
DK	Denmark
DE	Germany
EE	Estonia
IE	Ireland
EL	Greece
ES	Spain
FR	France
HR	Croatia
IT	Italy
CY	Cyprus
LV	Latvia
LT	Lithuania
LU	Luxembourg
HU	Hungary
MT	Malta
NL	Netherlands
AT	Austria
PL	Poland
PT	Portugal
RO	Romania
SI	Slovenia
SK	Slovakia
FI	Finland
SE	Sweden
UK	United Kingdom
IS	Iceland
NO	Norway
CH	Switzerland

Executive summary

Background

The liberalisation of the European air transport market has generated significant benefits for consumers: a wider choice of air services and intense price competition between air carriers, which has resulted in significantly lower fares. To limit any potential negative impacts that this might have on the quality of service delivered to air passengers and consumers, a number of measures have been taken at European Union (EU)-level to protect them. The most significant of these, Regulation (EC) 261/2004, introduced rules on compensation and assistance in the event of denied boarding, cancellations, long delays and involuntary downgrading. A number of other key legislative texts provide a European framework for the establishment and protection of passenger rights for air travellers. However, there is consensus among the industry, regulators and passengers that there are issues with the application and enforcement of some areas of air passenger rights, particularly those stemming from Regulation (EC) 261/2004. In March 2013, the Commission proposed a revision of Regulation 261/2004, but the proposal has been on hold since November 2015.

Methodology

Data relevant to the study was collected through an extensive stakeholder consultation, two participatory workshops, publicly available data sources and a bespoke extraction from Eurocontrol's Central Office for Delay Analysis (CODA) database.

To develop the understanding of the issues that have arisen since 2011, a large programme of stakeholder engagement was defined by the European Commission, that included consumer and passenger organisations, EU and non-EU air carriers and representative associations, airports and representative associations, other industry associations (e.g. groundhandlers, travel agents); national enforcement bodies (NEBs); alternative dispute resolution bodies (ADRs); claim agencies; and non-EU authorities and consumer organisations. Research related to the expectations and views of passengers mainly drew from interaction with the consumer and passenger representative organisations, as well as desk-research including the latest 2019 Eurobarometer survey. A large programme of open consultation with passengers was not foreseen in the Terms of Reference of the study. Steer received more than 150 responses to the questionnaires issued as part of the study. In addition, 70 interviews were conducted with a balanced sample of selected stakeholders all across the EU+3, and two participatory workshops were organised, dedicated to air passenger rights in non-EU countries and ways forward in the EU, respectively.

Key to the quantitative analysis were inputs received directly from airlines, airports and claim agencies, particularly in relation to the level of disruption experienced by passengers and its classification with respect to extraordinary circumstances, alongside data on the extent to which eligible passengers claim compensation and the cost this represents. All inputs were cross-checked as much as possible against those provided by other stakeholders and publicly available information.

Key findings

Level of disruption

The number of flights disrupted, in terms of cancellations and delays over two hours, has increased significantly between 2011 and 2018, although the proportion of all flights disrupted remains relatively low: the number of cancelled flights accounted for 1.7% of the total flights in 2018, against 1.0% in 2011; the share of delayed flights above 2 hours went from 0.9% to

1.4% in the same period. The increased level of disruption corresponds with increasing levels of ATM delay generated in the single European sky (SES), which also causes further knock-on and reactionary effects throughout the system. Delay in the SES was 0.9 min per flight in 2017 and 1.7 min per flight in 2018, compared to a target level of 0.5 min per flight set in the performance scheme.

The number of passengers affected by flight disruptions follows the same trend as flight disruptions, but due to increasing load factors during the period, the number of passengers affected has increased at a greater rate. Overall in 2018, 17.6 million passengers were affected by a cancellation and 16.5 million by a long delay. Compared to the entire travelling population, the proportion of passengers affected remains relatively small, with the share of passengers affected by cancellations growing from 0.9% (2011) to 1.6% (2018) and that of those affected by delays growing from 1.0% (2011) to 1.5% (2018). The proportion of passengers affected by denied boarding and downgrading was very low: 0.14% of passengers denied boarding in 2018 and 0.01% of passengers downgraded in the same year.

Passenger claim rates for compensation have increased significantly between 2011 and 2018, reflecting the increasing awareness and the activity of claim agencies. In 2018, 38% of eligible passengers claimed compensation, up from 8% in 2011. There is a large disparity between claim rates from cancellations and delays. In 2018, close to 60% of eligible passengers affected by delays claimed compensation, as opposed to under 20% affected by cancellations. The claim rate measure used here does not differentiate between whether an airline provided compensation after a passenger submitted an eligible claim, or after the intervention of a NEB, ECC, ADR/ODR/court or claim agency.

Air passengers' perspective on their rights

The analysis indicates that passengers' priorities remain unchanged since 2011 (and since Regulation 261/2004 was implemented). By order of priority, they are:

1. Care and assistance to be provided in the event of travel disruption;
2. Re-routing to be offered so that passengers may arrive at their destination as soon as possible; and
3. Reimbursement and/or compensation to be paid, where relevant

Overall, passengers expect a simple system that ensures fair outcomes. Instead, they experience a complex system with limited transparency. The low intelligibility of Regulation 261/2004 and the related jurisprudence contributes to its complexity, resulting in a lack of trust between passengers and airlines. The time and the costs involved for passengers seeking redress vary depending on the outcome at each stage of the process. Elapsed time may range from a few hours to several months, while costs may range from zero to as much as half the compensation amount if a claim agency is engaged and opts for court action. At the same time, the level of know-how required for passengers to pursue a claim is high and may discourage them from starting the process or continuing with it if disputes arise.

Nevertheless, according to all stakeholders who participated in this study, awareness amongst passengers of their rights has increased. This has been driven by a number of factors, including traditional media and social media campaigns, as well as improved compliance by airlines with an obligation to inform passengers of their rights. Despite this, the complexity of the rules means that passengers often do not fully understand their precise rights even if they are aware of them. This sometimes also contributes to passengers having unrealistic expectations as a result of misunderstanding the protections available, further undermining passengers' trust in the system.

Passengers with disabilities and reduced mobility

All relevant stakeholders agreed that the number of persons with disabilities or reduced mobility (PRMs) is growing strongly, representing an increasingly larger proportion of total passengers. PRM representatives and NEBs agreed that the level of service provided by airports and airlines generally complies with the requirements of Regulation 1107/2006, and while PRM representatives noted that service quality can vary across airports, NEBs received very few complaints in relation to PRM issues. Despite this, there remain some areas of particular concern for PRMs, including:

- Denied boarding of PRMs at the gate: this usually happens on safety grounds and can be perceived as arbitrary (especially where denied boarding happens on the return leg of the journey when no denied boarding took place on the outbound flight) and incontestable (as it is not possible for PRMs to contest or disprove “safety reason” justifications at the gate). Denied boarding in such cases, leaves very little time or opportunity for the issue to be resolved or appealed before the flight departs;
- Damaged mobility equipment, depending on the severity of the disability, can have an immediate and significant impact on PRMs. Currently compensation is governed by the Montreal Convention and Regulation 889/2002 and capped to approximately €1,400 (1,131 SDR¹), sometimes very far from the value of some custom-made mobility equipment which may be several times this amount.

Cost of Regulation 261/2004 for airlines

Costs incurred by airlines through the implementation of Regulation 261/2004 have grown significantly since 2011. The average direct cost per passenger is estimated² to have increased at a compound annual growth rate (CAGR) of +13.6% from €1.8 in 2011 to €4.4 in 2018, driven by a combination of increased levels of disruption and increased claim rates for compensation. The cost of Regulation 261/2004 forms a relatively small part of airlines’ cost base, however, as the overall cost of this Regulation has increased, this share has also grown and in the case of LCCs has overtaken the cost of marketing and distribution activities. The average cost of Regulation 261/2004 per passenger affected by disruption is high, representing over 90% of airlines’ average fare in 2018. The Regulation was designed for this cost to be high to discourage airlines from taking commercial actions that would inconvenience passengers (e.g. overbooking), however, as more operational disruptions are also covered (e.g. technical defects inherent in the normal exercise of the activity of the air carrier), the cost per passenger affected by disruption may generate disincentives for airlines to actually operate severely delayed flights and incur operating costs in addition to the disruption costs.

In addition to the direct costs, administrative costs and legal costs for handling passenger claims are also incurred by airlines, as well as costs for measures taken to mitigate the risk of disruption. Administrative and legal costs were found to be up to 0.6% of the overall airline cost base in 2018, while the cost of mitigation measures (e.g. lease and maintenance costs for spare aircraft) contributed approximately 0.4% to the overall cost base. The extent to which all

¹ Special Drawing Rights are a form of international money, created by the International Monetary Fund, and defined as a weighted average of various convertible currencies

² Estimation based on the level of disruption recorded (CODA data) and the claim rates (airline and claim agency data) and cross-checked against cost data of 8 airlines accounting for 25% of the market.

of these costs may be attributed to Regulation 261/2004, as opposed to normal steps taken to ensure a level of operational resilience is not straightforward to evidence.

A key issue on Regulation 261/2004 costs is that the right to redress defined in Regulation 261/2004 is not guaranteed/effective and as a result there are many instances where airlines are not able to recover costs incurred in providing assistance and compensation to passengers for disruption generated by third parties (such as ANSPs, groundhandlers, airports and other parties). Airports generally do not incur Regulation 261/2004 costs, and in the minimal set of circumstances where they do, are normally able to indirectly pass these costs through to airlines.

Impact on passenger fares

The overall impact of the Regulation in terms of fares varies according to airline business model and the market they operate in. Where possible, airlines try to pass cost increases on to customers through an increase in air fares, although the impact may not be direct on a route-by-route basis. Where this is not possible, mainly for competitive reasons, Regulation 261/2004 costs are internalised by airlines with an impact on profitability, which might possibly result in a longer-term restriction in the number of routes operated or a reduction in connectivity offered.

Monitoring, enforcement and sanctioning

Monitoring and enforcement of Regulation 261/2004, as well as sanctioning under that Regulation are governed by national law. Therefore, significant differences exist across all Member States, both in terms of the way that NEBs are dealing with individual complaints, as well as the enforcement powers they have. The approach to enforcement and complaint handling varies between NEBs. Whereas some NEBs are able to accept and enforce individual complaints, others cannot support passengers through their complaints, but instead perform enforcement on a system-wide level only and may refer individual passengers to an ADR body.

Different NEB powers specified at national level and the binding/non-binding nature of NEBs decisions and sanctioning powers are creating different outcomes for passengers across the EU+3. For airlines, this may contribute to some competitive distortions. This is also the case for the assessment of extraordinary circumstances by NEBs which creates an uneven application of APR for passengers and all other stakeholders involved.

In recent years, most NEBs have noted a substantial increase in the number of complaints received under Regulation 261/2004. The number of complaints has been increasing steadily since 2011, presenting challenges for resources and timeframes for addressing complaints. This may result in a delay to complaint handling process for passengers and lack of systematic enforcement by NEBs. Very few sanctions have been applied across the EU+3, and where sanctions are applied, it is unclear whether they are effective and driving any systematic change in airlines' behaviour. Overall, NEB enforcement is very largely based only on complaints received as there exists no obligation for airlines to report on compliance and few other sources of information. Some NEBs do proactively carry out inspections at airports to monitor aspects of the regulation such as information provision and care and assistance, but this does not appear to be the case on compensation, which is provided ex-post.

Difficulties with enforcement may be a result of a wording which allows a case-by-case assessment (e.g. re-routing under "comparable transport conditions" at the "earliest opportunity") which creates different interpretations of what constitutes a violation of Regulation 261/2004. NEBs have noted a number of difficulties that emerge in assessing

compliance with aspects of the Regulation (e.g. the requirement to ask for volunteers for denied boarding) which are difficult to record or provide evidence for retrospectively.

General consumer protection framework and other means of redress

Air passenger rights protections are complementary to other wider protections offered by the general consumer protection framework (for example under the Package Travel Directive (PTD)). Similarly, air passenger rights enforcement mechanisms can be complemented by wider public enforcement mechanisms established under the Consumer Protection Cooperation (CPC) Regulation. In parallel, passengers may seek individual redress by turning to private enforcement tools or claim agencies.

The interaction between the system of redress dedicated to APR (airlines, NEBs) and the private enforcement tools available more widely (ADR, courts), coupled with the involvement of claim agencies, creates a lot of complexity, has poor intelligibility and generates delay and cost as part of the process.

In general, ADRs are a comparatively efficient and effective way for handling disputed claims within the existing air passenger rights framework, especially as compared to the courts. ADRs are less costly and quicker than going to court. They also tend to be more flexible in terms of process (e.g. it may be completed entirely in writing) and can provide a wider range of mediated outcomes. However, the coverage of ADRs across the EU+3 is fragmented and suffers shortcomings such as participation of airlines only being voluntary, lack of sector expertise at general consumer bodies, restricted legal scope and interpretation of the legislation (such as not including case law) and the non-binding nature of their decisions.

The emergence of claim agencies in recent years has been a particularly significant development in the area of air passenger rights. Claim agencies deal with claims enquiries, process eligible claims and monitor flight disruptions on very large scale with a high degree of automation that has shifted the balance in the air passenger rights system, generating a large number of cases in the courts and increased costs for airlines and also NEBs. At the same time, passengers may have to pay up to 50% of their compensation to the claim agencies in some cases, depending on steps taken for the claim to be resolved (i.e. whether this is resolved between the claim agency and the airline or whether the case is taken to court by the claim agency). A number of the practices used by claim agencies have been highlighted as problematic by NEBs, ECCs, passenger representatives and airlines. A particular concern is the readiness with which claim agencies resort to the courts. However, claim agencies have supported increased awareness of air passenger rights (since this drives their income), and by acting to ensure passengers' rights are fulfilled in situations where passengers might have encountered difficulties in doing so themselves fill a protection and enforcement gap.

Air passenger rights outside the EU

ICAO has established a set of Core Principles on Consumer protection for before, during and after travel. The EU legislative framework is generally consistent with these Core Principles through a combination of requirements specified in Regulation 1008/2008, Regulation 2111/2005 and Regulation 261/2004. The gaps between the ICAO Core Principles and the EU framework (e.g. on keeping passengers informed throughout their journey) are addressed by the 2013 Proposal for the revision of Regulation 261/2004.

In non-EU countries, the approach to protections available to air passengers ranges from regulatory regimes (as in the EU and Malaysia) to voluntary ones (as in Australia and the UAE). Typically, regulatory and voluntary regimes both recognise an obligation for re-

routing/reimbursement, but none of the voluntary regimes reviewed offer compensation to passengers affected by disruption. Furthermore, regulatory regimes in Brazil, China, Indonesia and Malaysia do not offer compensation in addition to reimbursement. The approach towards provision of care under extraordinary circumstances is also weaker under voluntary regimes than under regulatory ones. A number of good practices were identified through the review of air passenger rights outside the EU, such as the use of technology.

Airline insolvencies

Between 2011 and October 2019, 5.6 million passengers (or 0.04% of total EU passengers) were impacted by airline insolvencies. In 2017 only, which included the relatively large bankruptcies of Air Berlin and Monarch, this equated to 0.09% of total EU passengers being affected (i.e. unable to travel) or stranded due to airline failure. In 2019 this has grown to 0.14% due to the bankruptcies of Thomas Cook, Germania, Adria, Aigle Azur and WOW air. Over the period considered, the proportion of passengers affected or stranded was 0.02% in 2011, rising to 0.10% in 2012 and as low as 0.01% in 2015 and 2016.

On average, over the period 2011-June 2019, we estimate that passengers directly affected by insolvencies incurred €431 in costs, 83% of which (i.e. €357) were not recoverable under one of the protection mechanisms.

The level of protection obtained by a passenger depends mainly on *where* and *how* their itinerary was purchased. The most significant difference is between standalone (flight-only) tickets and those purchased as part of a package or linked travel arrangement. The current EU framework does not provide for any direct insolvency protection requirements for flight-only ticket holders and these passengers must instead ensure their own protection. Insolvency protections for flight-only (i.e. single travel service) ticket holders have not materially changed since 2011. However, some passengers who previously would have been considered flight-only ticket holders may, under the new Package Travel Directive, be covered by the provisions for linked travel arrangements. This is a change of trend since 2011, with all types of airlines (charter, low-cost, scheduled short-haul only, scheduled mixed short and long, long-haul) being concerned.

Across Europe, there only exists partial solutions for the protection of passengers in the case of airline insolvency. These protections overlap and none are universal, such that on one flight several passengers may be covered multiple times, for example if they had purchased their ticket with a credit card and were also covered by a travel insurance policy, whilst others may not have any protection at all, especially if they booked flight-only tickets directly from the carrier.

- In general terms, purchases of other travel services such as accommodation made at the same time as the purchase of a flight, will normally result in the creation of a package or linked travel arrangement and be subject to the protections set out in the Package Travel Directive;
- Scheduled Airline Failure Insurance (SAFI) has allowed passengers to insure themselves against some of the costs resulting from the insolvency of an airline on which they are booked. SAFI covers the costs of repatriation if the passenger is stranded, or reimbursement for the cost of the original flight tickets in the case that the passenger cannot recover it. However, SAFI is only available in a small number of Member States and excludes any carriers publicly known to be in financial difficulty. It is also not very well-known by passengers;

- Some Member States have put in place Travel Funds. In the event of insolvency, money can be extracted from the fund to assist with the repatriations of stranded passengers and the reorganisation of affected bookings. However, compensation will be paid out only if there is sufficient money remaining in the fund which may be an issue for large-scale events.
- Payments for tickets purchased via IATA travel agents are held by a central payment mechanism before being passed on to the airline, in settlements at regular intervals (usually monthly). If the airline becomes insolvent, passengers whose payments have not yet been passed on to the airline should be able to recover what they paid. Across Europe, this type of protection does not appear particularly useful;
- Other protections include those available through the payment system used (such as credit cards) but these are only available in a limited number of Member States to credit card holders only;
- Passengers may benefit from travel insurance policies which include supplier failure cover, although not all such policies do;
- Rescue fares may be offered by competing airlines (at their discretion) to stranded customers, allowing them to make their journey home at a reduced price, but there is little public awareness of these.

Ways forward

In general, NEBs and industry stakeholders welcome the review of Regulation 261/2004. The EC's 2013 proposal for the revision of Regulation 261/2004 sought to balance stronger enforcement policy with economic incentives for carriers. Different aspects of this are supported by different stakeholders, depending on their perspective, but overall stakeholders that were consulted in the context of this study are keen to see the revision move forward through the legislative process.

1 Introduction

1.1 This report for DG MOVE has been prepared by Steer with support from Clyde & Co.

Background

1.2 The liberalisation of the European air transport market has generated significant benefits for consumers: a wider choice of air services and intense price competition between air carriers which has resulted in significantly lower fares. To limit any potential negative impacts that this might have on the quality of service delivered to air passengers and consumers, a number of measures have been taken at European Union (EU)-level to protect them.

1.3 The EU has established, in 2011, a set of passenger rights rules in all transport modes³. The rules on passenger rights provide minimum protection for passengers and are based on three cornerstones: non-discrimination; accurate, timely and accessible information, immediate and proportionate assistance.

1.4 In air transport, these rights are protected by different legislative texts, among which:

- Regulation (EC) 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights;
- Regulation (EC) 1107/2006 concerning the right of disabled persons with reduced mobility when travelling by air;
- Regulation (EC) 889/2002 on air carrier liability in the event of accidents; and
- Regulation (EC) 1008/2008 on common rules for the operation of air services in the Community;
- Directive 2015/2302, the “Package Travel Directive”;
- Regulation (EC) 2017/2394 on Consumer Protection Cooperation (CPC);
- Regulation (EC) 2005/2111 on the establishment of a Community list of air carriers subject to an operating ban.

1.5 The most significant of these, Regulation (EC) 261/2004, introduced rules on compensation and assistance in the event of denied boarding, cancellations, long delays and involuntary downgrading. The Regulation requires air carriers to:

- Provide passengers with assistance, such as hotel accommodation, refreshments and telephone calls;
- Offer re-routing and refunds;
- Under certain circumstances, pay compensation of up to €600 per passenger; and
- Proactively inform passengers about their rights under the Regulation.

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2011:0898:FIN>

- 1.6 The Regulation also requires Member States in the EU+3 (EU28, Norway, Iceland and Switzerland) to establish national enforcement bodies (NEBs) and introduce dissuasive sanctions into national law.
- 1.7 In addition to these texts, air passenger rights protections interface with horizontal consumer protection rules or schemes such as Alternative Dispute Resolution bodies (ADRs) and/or Online Dispute Resolution bodies (ODRs), and European Consumer Centres (ECCs).

Need for the study

- 1.8 There is consensus among passenger representatives, the industry and regulators that there are issues with the application and enforcement of some of the 10 rights, particularly those stemming from Regulation 261/2004 such as:
- A lack of clarity in certain air passenger rights provisions, including those enshrined in Regulation 261/2004, for example the definition of “extraordinary circumstances” in Article 5(3) and re-routing at the “earliest opportunity” in Article 8(1b).
 - Areas with ambiguous meaning which can lead to divergent interpretations, which give airlines an opportunity to try and interpret it in ways which minimise their obligations;
 - No clear guidance on a number of issues/situations which frequently arise but are not covered by the existing Regulation, particularly with regard to baggage and types of travel disruption (such as mass-disruptions) which are not explicitly addressed within the Regulation;
 - Uneven levels of effective enforcement across Member States; and
 - Inadequate complaint-handling processes, coupled with complex and insufficient means of individual redress.
- 1.9 As a result, passengers face difficulties in enforcing their rights, while complaint handling procedures are long and complex. In addition, procedures vary considerably between Member States, potentially distorting competition between airlines while, in the view of some stakeholders, the cost of complying with the obligations imposed by Regulation 261/2004 is unduly onerous (acting as a strong disincentive to comply).
- 1.10 The Commission drafted a proposal in 2013⁴, which contained the measures presented below. Following a dispute between the United Kingdom and Spain over Gibraltar's airport, the proposal has been "on hold" since November 2015.

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0062:FIN:EN:PDF>

Table 1.1: Overview of 2013 proposal for the revision of Regulation 261/2004

Clarifying grey areas	New rights	Enforcement, complaint-handling and sanctioning	Disproportionate financial costs
1. Information on delayed or cancelled flights Obligation to keep passengers informed about the situation, as well as their rights.	6. Rescheduling Equality of treatment as with delays and cancellations for flights rescheduled less than 2 weeks before departure.	10. Monitoring and sanctions Improved NEB coordination. More preventive monitoring role. Provision of technical assistance to complaint-handling bodies.	13. Limit to assistance A limit of three nights in the case of extraordinary circumstances. Limit not applicable to PRMs and some other passengers with specific needs. (Balanced by 4. which provides for faster re-routing)
2. Extraordinary circumstances Clarification and provision of examples (list provided in Annex of proposal).	7. Misspelt names Correction of spelling mistakes up to 48 hours before departure.	11. Complaint handling and enforcing individual rights Clear complaint-handling procedures and deadlines provided by airlines. Disputes handled by out-of-court handling bodies.	14. Contingency planning Obligation for airports, air carriers and other airport users to prepare contingency plans to care for passengers stranded in mass disruptions.
3. Long delays and tarmac delays Care and assistance after 2 hrs for all. New compensation thresholds starting at 5 hrs. Explicit tarmac delay obligations.	8. No show policy Passengers may not be denied boarding on the return flight of their ticket on the basis of not having taken the outbound part of the return ticket.	12. Insolvency Coordinated approach by national authorities. Formal arrangements by associations for provision of rescue fares. Wider and systematic availability of insurance and other relevant protection products.	15. Regional operations No obligation to provide accommodation to passengers of short flights (<250km) and with small aircraft (<80 seats). Derogation not applicable to connecting itineraries, PRMs and some other passengers with specific needs.
4. Re-routing 12-hour threshold for re-routing on other air carriers or modes.	9. Mishandled baggage - <i>Mobility equipment</i> value declaration at check-in. - <i>Musical instruments</i> . - Ability to submit <i>complaints</i> to carriers at the airport. - Inclusion of mishandled baggage within <i>NEBs</i> remit. - <i>Transparency of baggage rules</i> .		16. Sharing the economic burden National law may not restrict air carriers' right to seek compensation from responsible third parties.
5. Connecting flights Journey view with new (5 hours, etc.) time thresholds.			

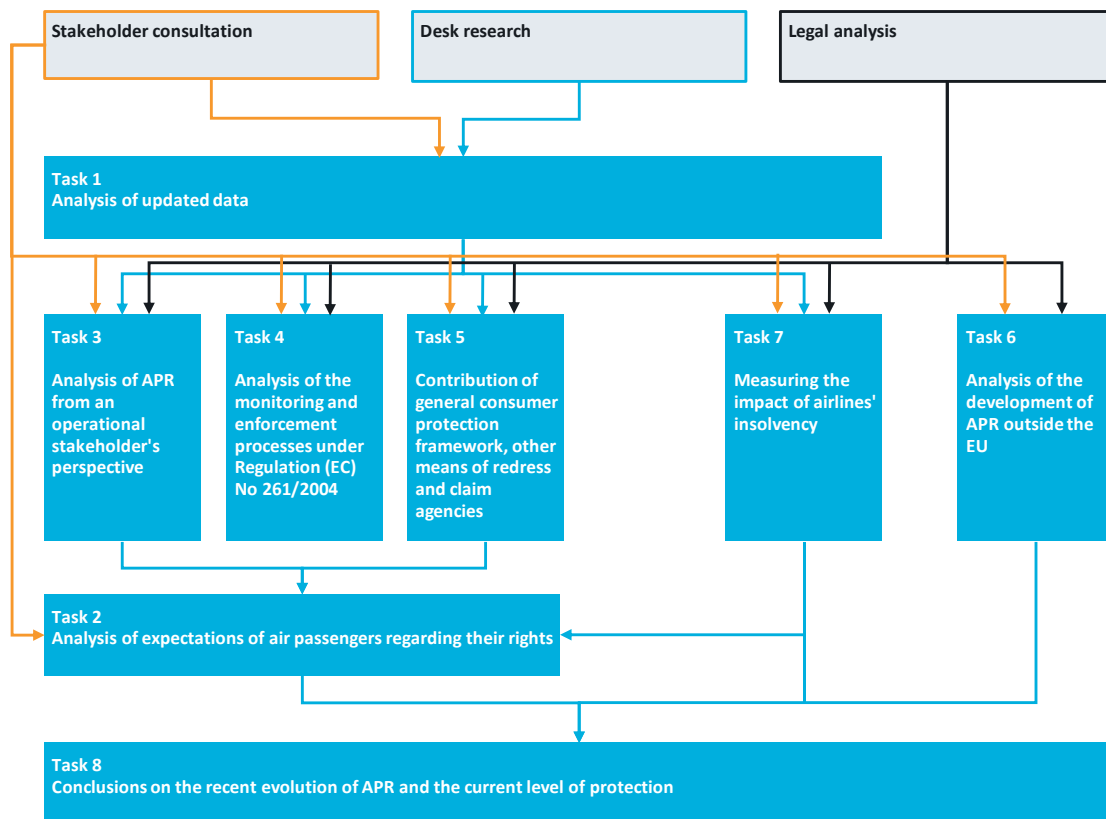
Source: European Commission

- 1.11 While these issues have not been satisfactorily addressed, the air travel market has developed. Low-cost carriers, which originally focused on specific market segments, now compete directly with network airlines, while direct purchase of tickets has become the norm and traditional travel agencies continue to be replaced by online ticketing portals. Against this background, awareness amongst air passengers of their rights has improved, although they continue to not consider that they are as well informed as they should be, while the business of claim agencies is also growing rapidly.
- 1.12 This fact-finding study updates the market analysis, data and information, which underpinned the Commission's 2013 proposal for a revision of Regulation 261/2004. It also considers the implementation of Regulation 261/2004 alongside other air passenger rights legislation, particularly Regulation 1107/2006 on PRM, Regulation 1008/2008 on common rules for the operation of air services, the Montreal Convention, and the protection offered by the horizontal consumer protection framework, in light of recent market developments, including the insolvency of a number of airlines. Additionally, it provides an overview of the development of air passenger rights protections in non-EU countries to identify common issues and/or lessons that may be learnt from their implementation.

Methodology

- 1.13 The methodology for responding to the Terms of Reference includes the following elements:
- Stakeholder consultation using a number of approaches to engage with interested stakeholders and collect information about their specific situation, as well as their views on the implementation of APR; and
 - Desktop research to identify and collect up-to-date information, followed by analysis of this material to understand the issues.
 - Country fiches developed for all EU+3 countries, gathering detailed information and data on the implementation of air passenger rights protections and issues emerging from this.
 - Country fiches were also developed for 19 non-EU countries, providing an overview of different approaches to air passenger rights protections available outside the EU and identifying good practices were relevant.
 - Case studies describing the situation from an air passenger rights perspective developed for four airline insolvencies (Air Berlin, Monarch, Cyprus Airways and Primera Air).
 - Legal analysis, where relevant, supported by Clyde & Co.
 - Two participatory workshops with selected stakeholders, addressing international lessons and possible ways forward, respectively.
- 1.14 The figure below presents at high-level the approach followed.

Figure 1.1: Overview of methodology



Source: Steer

Stakeholder consultation

- 1.15 To develop the understanding of the issues that have arisen since 2011, Steer defined a programme of stakeholder engagement, in agreement with the Commission, with the following objectives:
- Obtain quantitative and qualitative information in order to address the requirements of the Terms of Reference;
 - Collect data from stakeholders to ensure cross-referencing of information and address information gaps (see next section);
 - Discuss issues arising with the application of the current legislation and any possible shortcomings, redundancies, overlaps, inefficiencies, inconsistencies or unintended consequences; and
 - Compare the European situation with non-EU countries and identify best practice (if any) or relevant ideas to support the implementation of APR in the EU.
- 1.16 The approach followed for the stakeholder consultation is detailed in Appendix A and summarised below.

Table 1.2: Stakeholder engagement methods, approach and target stakeholders

Method	Approach	Target stakeholders and purpose
Pilot interviews	Telephone meetings	5 key stakeholders to help shape the methodology of the work programme
Targeted interviews	Face to face and telephone interviews with at least 70 participants	Interviews with 70 identified key stakeholders to obtain detailed information for the study. These interviews built on the replies provided by 70 stakeholders selected among the group of 311 stakeholders referred to below (see Appendix A).
Targeted questionnaires to industry	Issuing of 297 questionnaires for each key stakeholder group. (Some stakeholders declined to participate, so they did not receive a questionnaire)	Adapted to each category of stakeholder, the purpose of these surveys was to collect consistent data and opinions using a standardised approach.
Case studies	Four case studies, drawing on stakeholder engagement and desk research	Establishment of sources of evidence for the analysis of the impact of airline insolvencies (see Chapter 8 and Appendix G).
Workshops	Three workshops	Commission and various stakeholders as relevant for each workshop (see Appendix B).

Source: Steer

1.17 The stakeholder consultation targeted the following nine stakeholder groups:

1. Consumer and passenger organisations;
2. EU air carriers and representative associations;
3. Non-EU air carriers and representative associations;
4. Airports and representative associations;
5. National enforcement bodies;
6. Alternative dispute resolution bodies;
7. Claim agencies;
8. Non-EU authorities and consumer organisations; and
9. Other industry associations (e.g. groundhandlers, travel agents).

1.18 Figure 1.2 provides an overview of the stakeholder engagement status by stakeholder group. NEBs that are also ADRs have been counted twice.

Figure 1.2 Overview of stakeholder engagement status by stakeholder group



Source: Steer - *APRA and its 4 members submitted one coordinated response

Workshops

1.19 Two workshops took place in Spring 2019, with a third closing event planned after the publication of the report in late 2019.

- “Air Passenger Rights: International Lessons”: the objectives of the first workshop on International Lessons were to review APR practices around the world (especially voluntary versus regulatory approaches); identify potential lessons for EU APR from non-EU countries; and offer non-EU country authorities the chance to engage with the EC, EU NEBs and other countries and stakeholders. It took place on 14-15 May 2019.
- “Air Passenger Rights: Ways forward”: the objective of the second, forward-looking workshop was to explore potential areas for solutions between authorities, operational stakeholders and passengers and identify possible areas for convergence between various interests and win-win ways forward with respect to the protection of air passenger rights,

with a focus on improving the rules in place and their enforcement. It took place on 12 June 2019.

- 1.20 Steer worked closely with the EC to define the objectives and format of these workshops and to identify suitable potential speakers and participants. Both workshops were designed to be participatory around a discussion format, involving a limited number of attendees with a balance of representation across stakeholder groups. A summary of the discussions held at the workshops is available in Appendix B.

Desk-based research and analysis

- 1.21 The approach used for the analysis required by the Terms of Reference is described in detail in each of the relevant chapters. Data has been collected from a wide range sources, as displayed in the table below which also shows how the data was used and in which chapters of this report the results are provided.

Table 1.3: Data collected

Item	Details covered in	Required data	Identified sources	Data collected (and source)
Cancelled flights	Chapter 2: Cancelled flights Chapter 8: Disruption due to airline insolvency	Passengers and flights Cancellations disaggregated by: airport, airline, reason for cancellation OD pair, flight distance and cancellation horizon time.	Eurocontrol CODA Flightstats Slot coordinators UK CAA FR AQST Eurostat Stakeholder consultation (of airports and airlines, and their associations)	Passengers (Eurostat), seats and flights (OAG) High-level cancellation data (Eurocontrol CODA digest reports) Cancellation data by flight distance (FR AQST, UK CAA,) Number of cancelled flights (data provided by airport and airline stakeholders)
Denied boarding and downgrading	Chapter 2: Cases of denied boarding and downgrading	Instances of denied boarding disaggregated across flight distances	UK CAA US DOT Stakeholder consultation (of airlines)	Instances of voluntary and involuntary denied boarding, and downgrading (US DOT & data received from stakeholders)
Delayed flights	Chapter 2: Number of delayed flights Chapter 2: Reasons for delays	Passengers and flights delayed disaggregated by: airport, airline, OD pair, flight distance, length of delay and reason for delay.	Eurocontrol CODA Flightstats UK CAA Eurostat Stakeholder consultation (of airports and airlines, and their associations)	Passengers (Eurostat), seats and flights (OAG) Delayed flights disaggregated by: airport, airline, OD pair, flight distance, length of delay and reason for delay (Bespoke CODA data request) Number of delayed flights and length of

Item	Details covered in	Required data	Identified sources	Data collected (and source)
				delays (data provided by stakeholders)
Mishandled baggage	Chapter 2: Incidents of delayed, damaged and lost baggage	Instances of lost, delayed and damaged baggage.	SITA Baggage Report US DOT Stakeholder consultation (of airlines)	Instances of lost, delayed and damaged baggage (data provided by stakeholders) at a Europe-wide level (SITA Baggage Reports)
Passenger compensation entitlement	Chapter 2: Passengers entitled to delay and cancellation compensation	Total passengers on cancelled (including those denied boarding) and delayed flights Downgraded passengers Instances of mishandled baggage	OAG Stakeholder consultation (of airlines)	Instances of disruption and total passenger compensation payments (data received from stakeholders)
Claim rate	Chapter 2: Actual claim rate Chapter 2: Baggage-related complaints	Number of passengers claiming compensation in relation to delays, cancellations, downgrading and mishandled baggage	Airline annual reports and/or financial statements, ECA report, consumer associations	Claim rate (data received from stakeholders)
Length of procedures	Chapter 4: Length of claiming procedures for airlines Chapter 5: Length of redress procedures for NEBs	Average time taken for airlines to respond to claims and NEBs to respond to complaints	Airline annual reports Stakeholder consultation (of airports, airlines, NEBs and passenger groups)	Limited data found or received from airlines on length of claiming and redress procedures
Costs for carriers	Chapter 4: Costs for air carriers of complying	Total costs for airlines in relation to delays, cancellations, downgrading and mishandled baggage	Airline annual reports and/or financial statements Stakeholder consultation (of airlines)	Data from airline and NEB stakeholders on compliance costs
Passenger fares	Chapter 4: Fare developments	Quantification of regulatory compliance cost on fares	Stakeholder consultation (of airlines)	No quantitative data found or received from stakeholders on the relationship between passenger fares and compliance costs

Item	Details covered in	Required data	Identified sources	Data collected (and source)
PRM compliance	Chapter 3: Airport and airline PRM compliance	Level of assistance and information provided to PRMs Instances of denied boarding (for PRM reasons)	Stakeholder consultation (of airports, airlines and passenger groups)	Number of PRM passengers served: airport and airline stakeholders. Number of PRM-related complaints: NEBs and airports stakeholders

Organisation of this report

1.22 This report is organised as follows:

- Chapter 2 – Quantitative update on the air passenger rights situation;
- Chapter 3 – Air passengers’ perspective on their rights;
- Chapter 4 – Airlines’ and airports’ perspective on air passenger rights;
- Chapter 5 – Monitoring and enforcement processes under Regulation (EC) No 261/2004;
- Chapter 6 – Contribution of the general consumer protection framework, other means of redress and claims agencies;
- Chapter 7 – Development of air passenger rights outside the EU;
- Chapter 8 – Impact of airline insolvencies; and
- Chapter 9 – Conclusions

1.23 This report also contains the following appendices:

- Appendix A: Details of the stakeholder consultation;
- Appendix B: Workshop summaries;
- Appendix C: Cost of APR implementation (detailed assumptions and results);
- Appendix D: Right to redress overview;
- Appendix E: EU+3 NEB fiches, summarising the enforcement and monitoring situation in each State;
- Appendix F: Non-EU air passenger rights country fiches, summarising the APR frameworks in non-EU countries;
- Appendix G: Airline insolvency case studies; and
- Appendix H: List of insolvent airlines.

2 Overall quantitative update on the APR situation

Introduction

- 2.1 The focus of this chapter is to provide an update of the level of disruption to flights and passengers, and the level of claims and complaints. Specifically, it covers:
- Number of cancelled flights;
 - Cases of denied boarding;
 - Number of intra-EU delayed flights;
 - Number of extra-EU delayed flights;
 - Reasons for flight delays;
 - The number of passengers affected by flight delays and cancellations;
 - The proportion of passengers that claim compensation;
 - Cases of mishandled baggage; and
 - The number of luggage-related complaints.
- 2.2 Through the stakeholder consultation process, some airline stakeholders provided quantitative data as part of their response. Where data was still missing, the analysis drew upon publicly available information, as well as Steer's previous study on Regulation 261/2004⁵, which contained relevant analysis.
- 2.3 Industry-level data on flight delays was provided by Eurocontrol's Central Office for Delay Analysis (CODA). The CODA database is the main instrument at the disposal of the aviation community for measuring, reporting and analysing delays in Europe. From 2011 onwards, the mandatory data collection as per Annex IV of IR 691 (RP1) from 40 airlines and 78 airports to the Commission was set up. The data collection from airlines and airports under the SES Performance Scheme is managed by CODA. There are currently more than 55 airports and 120 airlines providing data on a voluntary basis to CODA. The causes of delay are recorded using the standard IATA delay codes.
- 2.4 As well as delay information, CODA also collects cancellation data. The scope of this cancellation data is different to the scope of Regulation 261/2004, as the data applies to short-term 'operational cancellations' at 30 European coordinated airports, where an operational cancellation is defined as a flight that received an airport slot and was confirmed by the carrier the day before the operation (by submitting a flight plan to the Network Manager), but which never took place (as opposed to a flight cancelled up to two weeks before its scheduled departure). The annual CODA digest reports⁶ have contained high-level cancellation data since 2014.

⁵ "Exploratory study on the application and possible revision of Regulation 261/2004" (July 2012)

⁶ <https://www.eurocontrol.int/sites/default/files/publication/files/coda-digest-annual-2018.pdf>

2.5 The assumptions described in this chapter therefore represent our best estimates based on the data Steer received or collected. In general, where “delay” is used in this report, it means long delay as mentioned in Regulation 261/2004.

2.6 The remainder of this chapter is structured as follows:

- Firstly, it provides an overview of the level of disruption to flights, in terms of cancellations and delays over the years in scope (2011-2018);
- Secondly, it shows an overview of the level of disruption to passengers, arising from both flight disruption and instances of denied boarding and downgrading;
- Thirdly, it describes the number of passengers entitled to compensation that actually claim it and the proportion of airlines that comply with their obligations to passengers under the Regulation; and
- Lastly, it provides an overview of instances of mishandled baggage and baggage-related complaints.

Number of flights

2.7 The total number of flights arriving at and departing from the EU+3 from 2011 to 2018 has been taken from OAG and is shown in Table 2.1 below. Extra-EU+3 arriving flights operated by non-EU+3 carriers are not within the scope of Regulation 261/2004; the total number of flights under the scope of the Regulation is shown in Table 2.1.

Table 2.1: EU+3 flights (2011-2018)

item	2011	2012	2013	2014	2015	2016	2017	2018
All flights (million)	7.5	7.3	7.1	7.2	7.4	7.8	8.1	8.4
In-scope flights (million)	7.1	6.9	6.7	6.8	6.9	7.3	7.6	7.9

Source: Steer analysis of OAG data

2.8 Over the period shown, the number of flights within the scope of Regulation 261/2004 grew with a CAGR of 1.5%. Only flights within the scope of Regulation 261/2004 have been included in the analysis of delays, cancellations, denied boarding and downgrading. As no flights are excluded from the scope of the Montreal Convention, all flights have been included within the analysis of mishandled baggage.

Cancellations

2.9 Airlines can cancel flights for a variety of different reasons and these reasons can broadly be grouped into:

- Cancellations that are within the control of the airline (i.e. airline-attributable cancellations), such as crew shortages or a technical fault with equipment;
- Commercial cancellations, where an airline decides to cancel a flight as it is not commercially viable to operate it due to, for example, a low number of bookings (these are also airline-attributable cancellations); and
- Cancellations due to extraordinary circumstances that are not within the airline’s control, such as adverse weather conditions or ATC strikes.

2.10 The key distinction for the purposes of Regulation 261/2004 is between airline-attributable and non-airline-attributable cancellations, as this has implications for passengers’ compensation entitlements.

Approach

- 2.11 To estimate the number of cancelled flights, we have used data provided by a range of airline stakeholders, including network, low cost, regional and charter carriers. This data covers all cancellations under the scope of Regulation 261/2004, including both short-term ‘operational cancellations’ (which is the definition of cancellations often used by airports and ANSPs), as well as longer-term cancellations that are also under the scope of the Regulation, including those up to two weeks before the scheduled departure time (for which passengers are entitled to compensation) and those over two weeks before the scheduled departure time (for which passengers are not entitled to compensation, but have other entitlements under the Regulation). For airlines that have provided data, for each airline, we have weighted the proportion of cancelled flights by the number of flights, to generate a weighted average proportion of cancelled flights across all airlines.
- 2.12 As a cross-check, and accounting for this difference in scope, the airline stakeholder flight data and CODA information on flights appear consistent at a high level, which supports the use of these inputs in the analysis.
- 2.13 To calculate the proportion of flights that are cancelled at different distance bands, we have sought more detailed information on the distribution of flight cancellations across the different bands at national level. Specifically, we have looked at the largest EU aviation markets and found that relevant data is published by the UK CAA and French AQST. The AQST data is not as detailed as that published by the UK CAA, which includes disaggregated data on UK operational cancellations in 2018. As a result, we have applied the proportion of UK cancellations at each distance band to the proportion of total flights cancelled at an EU level, to estimate the proportion of EU flights cancelled at each distance band. This does not affect the occurrence of cancellations at an EU- level, only the distribution of cancellations across distance bands. The resulting proportion of flights cancelled at different distance bands is consistent with the AQST information.

Cancelled flights

- 2.14 The number of EU+3 flights within scope of Regulation (EC) 261/2004 and those affected by cancellations are shown in Table 2.2 and Figure 2.1. The total number of flights cancelled has grown with a CAGR of +10.1%, between 2011 and 2018, compared to a CAGR of +1.5% for the number of (in-scope) flights over the same period.

Table 2.2: Number of cancelled flights

Metric	Type	2011	2012	2013	2014	2015	2016	2017	2018
Flights	All flights ('000s)	7,070	6,866	6,686	6,757	6,908	7,280	7,552	7,851
	All cancellations ('000s)	67.2	74.0	90.0	54.3	60.6	80.4	100.5	131.7
	% of flights cancelled	0.9%	1.1%	1.3%	0.8%	0.9%	1.1%	1.3%	1.7%

Source: Steer analysis of airline stakeholder and UK CAA data

- 2.15 Based on the data provided by airline stakeholders, the total number of cancelled flights increased between 2011 and 2013, decreased sharply in 2014, and has increased steadily between 2014 and 2018. The 2013 peak in cancellations is likely to be related to the extended period of adverse weather in the winter of that year.

Reasons for flight cancellations

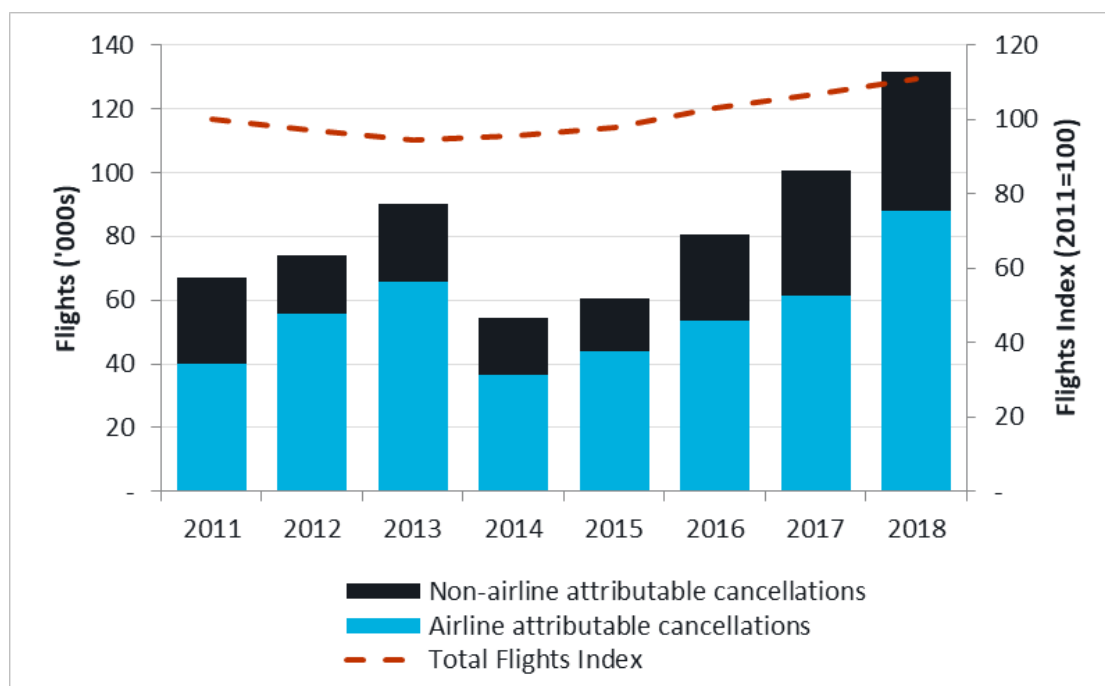
- 2.16 As has been discussed above, airlines cancel flights for a number of different reasons and, for the purposes of Regulation 261/2004, whether or not the cancellations are airline-attributable is important. For operational purposes, flight cancellations are attributed a reason code (from a list of 20 IATA codes); however, all of these codes cannot be easily categorised into airline-attributable and non-airline-attributable for the purposes of Regulation 261/2004.
- 2.17 Some flight cancellations can be for reasons that are within the control of the airline – for example, crew shortages or commercial decisions to not operate a flight – while other flight cancellations are for reasons that are outside of the control of the airline – for example, adverse weather. However, there are also some cancellations that for reasons where it is not immediately clear whether they are attributable to the airline and therefore can require a significant amount of investigation to determine which party the cancellation may be attributed to.
- 2.18 The steady increase in cancellations since 2014 can be to some extent attributed to the increasing amount of ATC-generated disruption, which was then particularly high in 2018; in addition, industrial action by airline staff will have contributed to the increased number of cancellations in 2017 and 2018. Based on data provided by five airlines on the reasons for cancellations and whether or not passengers on these flights were eligible for compensation, we have estimated that the proportion of cancellations that are airline-attributable range approximately from 60% to 75% (of cancellations), between 2011 and 2018.
- 2.19 Across distance bands, we have assumed airline-attributable cancellations follow the same distribution as airline-attributable delays, in order to generate an estimate of the total number flight cancellations that are airline-attributable within each band, and therefore entitled to compensation under Regulation 261/2004. By assuming the same distribution as airline-attributable delays at each distance band, we are able to capture variation in airline-attributable disruption (across time and distances), which would not be captured by only using the global cancellation figures provided by airlines.
- 2.20 We have applied this to the total number of flights flying within each distance band, to estimate the total number flight cancellations that are airline-attributable, and therefore entitled to compensation under Regulation 261/2004. Steer assumptions imply that between 60% and 75% of flight cancellations are airline-attributable – this is consistent with data provided by airline stakeholders, as noted above.

Table 2.3: Number of cancelled flights attributable to airlines

Metric	Type	2011	2012	2013	2014	2015	2016	2017	2018
Flights	All cancellations ('000s)	67.2	74.0	90.0	54.3	60.6	80.4	100.5	131.7
	Airline-attributable cancellations ('000s)	39.8	55.7	65.6	36.6	44.0	53.7	61.5	88.1
	% of cancellations that are airline attributable	59.3%	75.2%	72.9%	67.5%	72.5%	66.8%	61.2%	66.9%

Source: Steer analysis of airline stakeholder and UK CAA data

- 2.21 The figure below shows the number of cancelled flights, shown as bars on the left vertical axis, and an index of flights in scope of the Regulation (shown in Table 2.1) where 2011 is indexed as 100, shown as the dotted line on the right vertical axis.

Figure 2.1: Number of cancelled flights (airline and non-airline attributable cancellations)

Source: Steer analysis of airline stakeholder and UK CAA data

- 2.22 For a significant proportion of cases, flights are cancelled for reasons that are airline-attributable under Regulation 261/2004, but may not be anticipated by the airline (i.e. crew shortages, technical issues, wildcat strikes). Based on the cancellation reasons provided by airlines, over the period shown, between 10% and 25% of cancellations are due to crew shortages, 30% to 50% are due to technical issues. Fewer than 1% of cancellations were stated to be for commercial reasons⁷, although this remains difficult to check.
- 2.23 Although the low proportion of commercial cancellations could suggest the Regulation has been effective in reducing airline-attributable cancellations, the high proportion of unplanned airline-attributable cancellations (i.e. crew shortages and technical faults) suggests the Regulation has not been sufficiently effective in incentivising airlines to completely mitigate the risk of these types of cancellations occurring.

Delays

- 2.24 As with cancellations, flights may be delayed for a number of different reasons, some of which are airline-attributable. The vast majority of flight delays are short delays of under two hours, however, for the purposes of our analysis, we have only considered delays of two hours or more, as the protections specified by Regulation 261/2004 do not apply to passengers on flights delayed less than two hours. As noted in the introduction to this section, where “delay” is used in this report, it is used to mean long delay as mentioned in Regulation 261/2004.
- 2.25 We have also separately considered **arrival delay** and **departure delay**, as passengers’ compensation rights are in relation to arrival delay, whereas care and reimbursement/re-routing rights are in relation to departure delay. The number of minutes by which a given flight

⁷ IATA cancellation code COMM ‘Commercial reasons demand or lack of demand’

is delayed on departure and arrival can differ if, for example, the flight is further delayed en-route or, conversely, if the flight time is faster than scheduled.

Approach

- 2.26 The proportion of delayed flights has been provided by Eurocontrol's Central Office for Delay Analysis (CODA) for all EU+3 flights on a monthly basis from January 2011 to December 2018. Delay statistics have been provided only for delays of longer than two hours and at the level of disaggregation shown in Table 2.4.

Table 2.4: Flight delay data disaggregation

Category	Delay type	Carrier	Flight type	Aircraft type ⁸	Distance	Length of delay
Disaggregation	Arrival delay	EU+3 carrier	Intra-EU	Light (L)	< 1,500km	> 2 hours
	Departure delay	Non-EU+3 carrier	Extra-EU	Medium (M)	1,500-3,500km	> 3 hours
				Heavy (H)	>3,500km	> 4 hours
				Super (J)		> 5 hours

Source: Steer analysis of CODA data

- 2.27 The number of flights delayed (by sub-category) has been calculated by applying the number of in-scope flights (sourced from OAG, totals shown in Table 2.1) to the CODA delay proportions.
- 2.28 For extra-EU+3 delays, we have assumed that there is no difference between departure delay and arrival delay. On intra-EU flights we are able to distinguish between the slightly different levels of departure and arrival delay. Therefore, in the figures and tables below intra-EU delay refers to departure delay and extra-EU delay refers to both departure and arrival delay.

Delayed flights

- 2.29 The number of EU+3 flights within scope of Regulation (EC) 261/2004 affected by delays of over two hours are shown in Table 2.5 and Figure 2.2.

Table 2.5: Number of delayed flights of over 2 hours

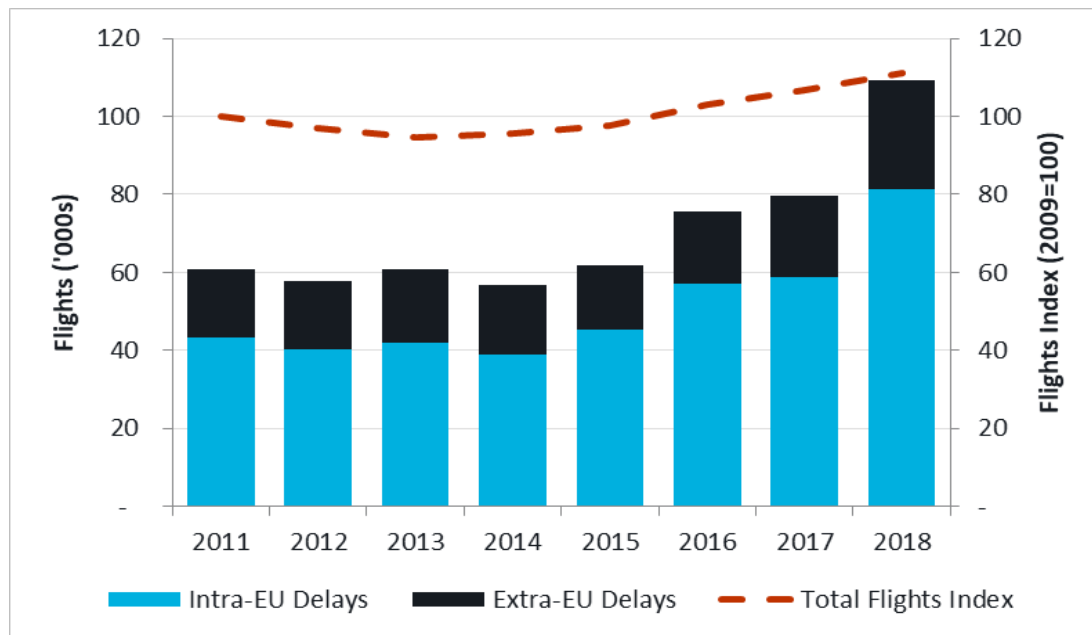
Type	Metric	2011	2012	2013	2014	2015	2016	2017	2018
Intra-EU flights	Intra-EU flights ('000s)	5,922	5,715	5,510	5,543	5,670	6,020	6,216	6,397
	Intra-EU delays ('000s)	43	40	42	39	45	57	59	81
	% of intra-EU flights delayed	0.7%	0.7%	0.8%	0.7%	0.8%	0.9%	0.9%	1.3%
Extra-EU flights	Extra-EU flights ('000s)	1,148	1,151	1,176	1,214	1,239	1,260	1,336	1,454
	Extra-EU delays ('000s)	17	18	19	18	16	18	21	28
	% of extra-EU flights delayed	1.5%	1.5%	1.6%	1.5%	1.3%	1.5%	1.6%	1.9%
Flights	All flights ('000s)	7,070	6,866	6,686	6,757	6,908	7,280	7,552	7,851
	All delays ('000s)	61	58	61	57	62	76	80	109
	% of flights delayed	0.9%	0.8%	0.9%	0.8%	0.9%	1.0%	1.1%	1.4%

Source: Steer analysis of CODA and OAG data

⁸ Based on ICAO wake turbulence categories (WTC)

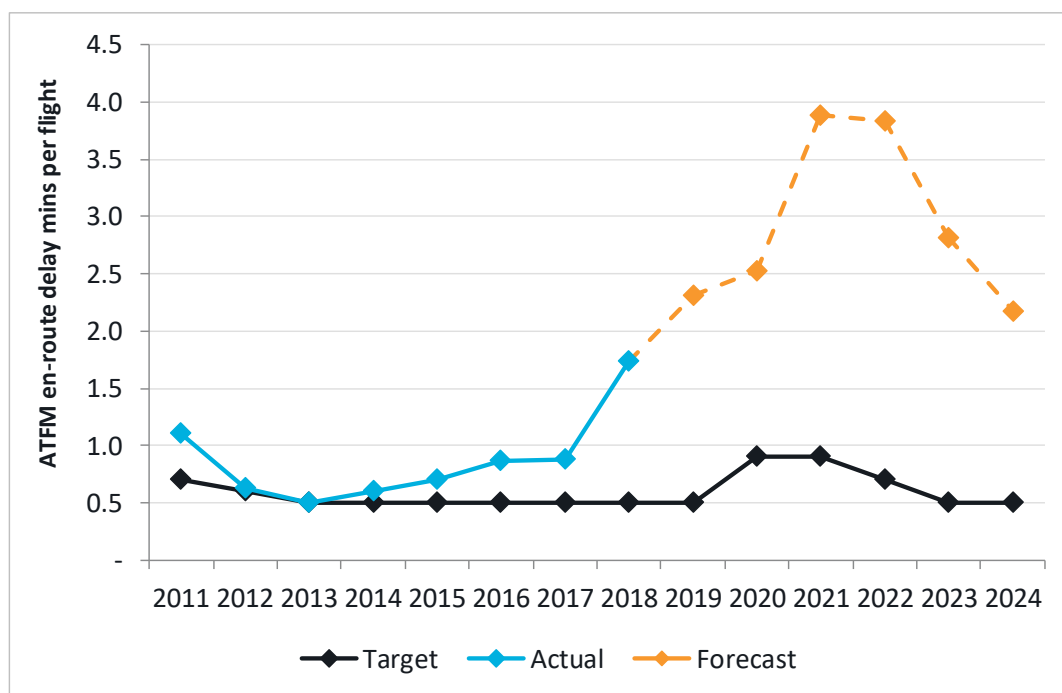
- 2.30 The figure below shows the number of delayed flights, shown as bars on the left vertical axis, and an index of flights in scope of the Regulation (shown in Table 2.1) where 2011 is indexed as 100, shown as the dotted line on the right vertical axis.

Figure 2.2: Number of delayed flights of over 2 hours (Intra-EU and extra-EU delays)



Source: Steer analysis of CODA data

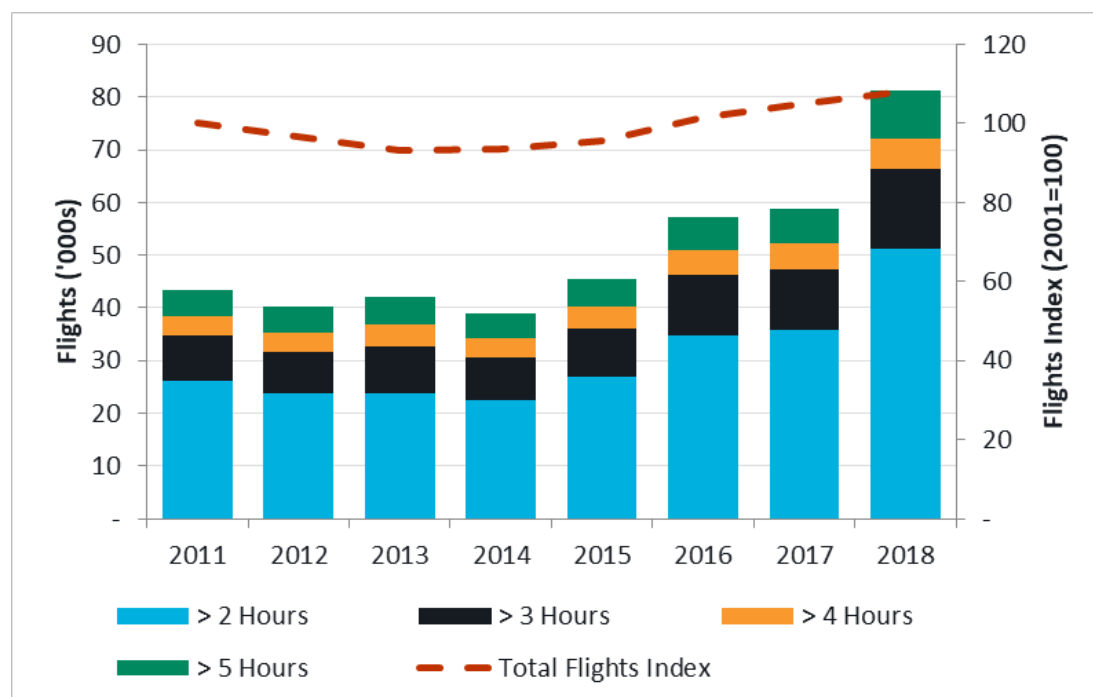
- 2.31 Although there was some variation between years, the number of flights delayed over two hours did not increase or decrease significantly between 2011 and 2015, however, increases in delays in 2016 (+22%) and 2018 (+37%) mean the overall number of delayed flights has increased significantly in recent years and has almost doubled between 2014 and 2018. The number of flights delayed has grown with a CAGR of +8.8%, between 2011 and 2018, compared to the overall growth of all (in-scope) flights at a CAGR of +1.5%. This coincides with the increasing amount of ATC-generated disruption in recent years, particularly over the summer. The average ATFM en-route delay minutes per flight between 2011 and 2024 are shown in Figure 2.3.

Figure 2.3: ATFM en-route delay (2011-2024)

Source: Eurocontrol

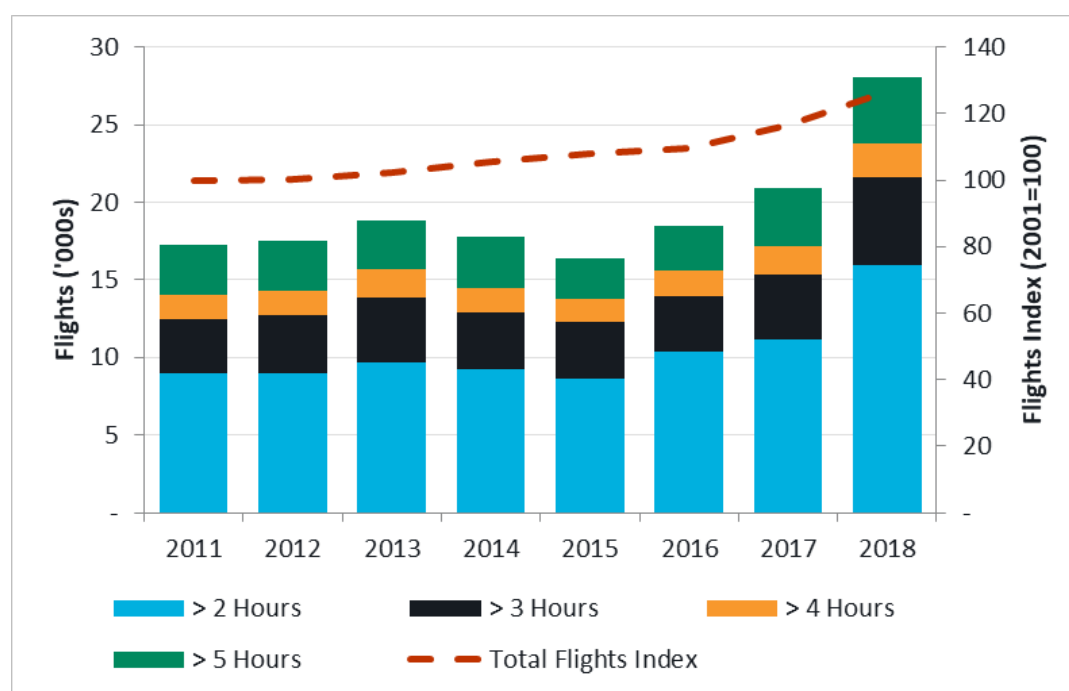
- 2.32 ATFM en-route delay has increased steadily between 2013 and 2017, deviating from the target level, and almost doubled in 2018. Between 2019 and 2021, ATFM delay is forecast to increase significantly further, before starting to fall in 2023. The historic and forecast increase in delay between 2013 and 2023 reflects under-capacity in the ATM system and the lack of sufficient resources and infrastructure to accommodate traffic demand.
- 2.33 Intra-EU and extra-EU flight delays have followed a similar trend over the period and intra-EU flights' share of delays has therefore remained unchanged at between 70% and 75%. The relative length of delays between years has remained constant also, while there does not appear to be a significant difference in the distribution of delay times between intra-EU and extra-EU flights.
- 2.34 The number of intra-EU flights and extra-EU flights delayed, for different lengths of delay, are shown in Figure 2.4 and Figure 2.5 respectively. Note that the delay figures shown are not cumulative, that is, those delayed over two hours do not include those delayed over three hours (and so on).
- 2.35 The figures below shows the number of delayed flights (by length of delay), shown as bars on the left vertical axis, and an index of flights in scope of the Regulation (shown in Table 2.1) where 2011 is indexed as 100, shown as the dotted line on the right vertical axis.

Figure 2.4: Intra-EU delayed flights by length of delay



Source: CODA, Steer analysis

Figure 2.5: Extra-EU delayed flights by length of delay



Source: CODA, Steer analysis

- 2.36 The proportion of extra-EU flights delayed on departure and arrival, disaggregated by EU+3 and non-EU+3 carriers, is shown in Table 2.6.

Table 2.6: Extra-EU flights delayed by over 2 hours by carrier type

Type	Metric	2011	2012	2013	2014	2015	2016	2017	2018	Average
Arrivals	EU+3 carriers	1.4%	1.4%	1.6%	1.4%	1.3%	1.4%	1.3%	1.8%	1.4%
	Non-EU+3 carriers	1.9%	2.5%	1.9%	1.9%	1.9%	2.3%	3.1%	2.4%	2.2%
Departures	EU+3 carriers	1.5%	1.4%	1.5%	1.4%	1.3%	1.4%	1.4%	1.8%	1.5%
	Non-EU+3 carriers	1.8%	2.4%	2.0%	1.8%	1.7%	2.0%	2.8%	2.5%	2.1%

Source: CODA, Steer analysis

- 2.37 The proportion extra-EU flights operated by EU+3 carriers delayed on arrival, which are in scope of the Regulation, is lower in comparison to those operated by non-EU+3 carriers, which are not in scope of the Regulation. This suggests Regulation 261/2004 could have reduced delays on flights within its scope. However, the differential between the proportion of flights delayed on departure, between EU+3 carriers and non-EU+3 carriers (which are both in scope of the Regulation), is similar to that for arrivals. This suggests the higher proportion of delays for non-EU+3 carriers may not be driven by Regulation 261/2004. In addition, across the period shown, although the proportion of flights delayed on departure for non-EU+3 carriers (which are in scope of the Regulation) is slightly lower than the proportion of flights delayed on arrival (which are not in scope of the Regulation), the difference is not significant. While it is possible that Regulation 261/2004 has a marginal impact on the proportion of flights delayed, it does not appear to be significant compared to other factors.

Reasons for flight delays

- 2.38 CODA has provided the proportion of delay minutes attributable to five different causes. These are:
- Reactionary delay;
 - Airline delay;
 - ATFM delay;
 - Weather delay; and
 - Other delay.
- 2.39 An aircraft operating a short-haul set of routes may, on a given day, perform 8 to 10 flights (4 or 5 rotations) with an early morning departure and late-night return to its base. Reactionary delay is a knock-on delay to a later flight resulting from a “primary” event (e.g. adverse weather or a shortage of crew) which delayed an earlier one. Typically, airlines will have scheduled flights in a way that maximises the use of their aircraft. Maintaining a high utilisation of their assets is key to being able to offer lower fares, since fixed costs can be distributed across more passengers. However, knock-on delays may cascade through the day’s schedule if there is not an opportunity to catch the programme back up or the opportunity to deploy spare aircraft to “intercept” the knock-on effect.
- 2.40 Although delay may be coded into the above causes for industry reporting purposes, in practice with respect to air passenger rights, delay related to any of these causes may generate a compensation obligation for airlines under Regulation 261/2004. For each of these five delay causes, we have made an assumption on the proportion of the delay minutes attributable to airlines in each year between 2011 and 2018, in the context of Regulation 261/2004.

2.41 The proportion of delay minutes that we have assumed are attributable to airlines, for each of the five delay causes, is based on information provided by airlines and, between 2011 and 2018, is as follows (where the ranges refer to the variation across the years):

- Reactionary delay: Between 80% and 100% of delays attributable to airlines⁹;
- Airline delay: Between 80% and 100% attributable to airlines;
- ATFM delay: 0% attributable to airlines;
- Weather delay: 0% attributable to airlines; and
- Other delay: Between 0% and 20% attributable to airlines.

2.42 We have assumed the proportion of delayed flights attributable to airlines, for each of the five delay codes above, is equivalent to the proportion of delay minutes attributable to airlines shown above.

2.43 The proportion of delayed flights attributable to airlines is therefore the proportion of delayed flights which are not defined as extraordinary circumstances under the Regulation, and therefore for which airlines are liable for passenger compensation.

2.44 Based on the above, we have estimated the number of delayed flights (at the level of disaggregation shown above), delayed within the control of the airline and therefore eligible for compensation under Regulation 261/2004.

Table 2.7: Number of delayed flights by over 2 hours attributable to airlines

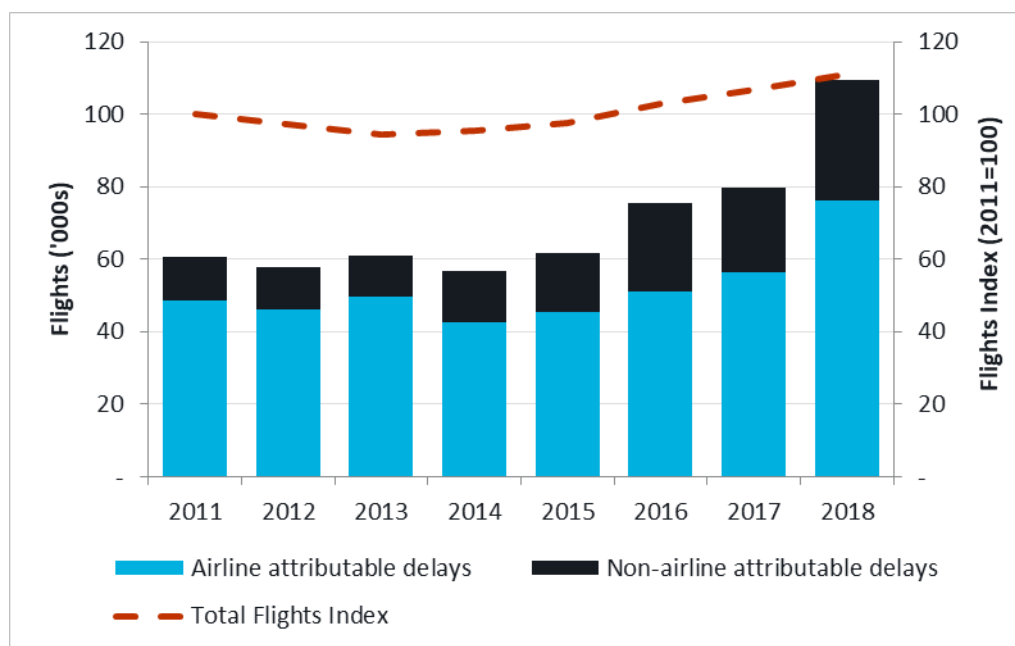
Type	Metric	2011	2012	2013	2014	2015	2016	2017	2018
Flights	All delays ('000s)	60,762	57,704	60,898	56,704	61,852	75,562	79,772	109,396
	Airline-attributable delays ('000s)	48,540	45,976	49,567	42,750	45,429	50,910	56,500	76,196
	% of delays that are airline attributable	79.9%	79.7%	81.4%	75.4%	73.4%	67.4%	70.8%	69.7%

Source: Steer analysis of CODA and OAG data

2.45 Based the delay data provided by CODA, the proportion of delays attributable to airlines, between 2011 and 2018, was between approximately 70% and 80%. Airline-attributable delay has decreased from approximately 80% in 2011 to approximately 70% in 2018, reflecting an increase in delays classed as extraordinary circumstances – such as ATC delays.

2.46 The figure below shows the attribution of delayed flights, shown as bars on the left vertical axis, and an index of flights in scope of the Regulation (shown in Table 2.1) where 2011 is indexed as 100, shown as the dotted line on the right vertical axis.

⁹ From an air passenger rights and NEB perspective, reactionary delay would be attributable to the airline except in the case where the flight immediately preceding the reactionary delay was delayed due to extraordinary circumstances. The third or fourth flights carrying the knock-on reactionary delay would not benefit from an extraordinary circumstance exemption, even if it applied to the first rotation. From an APR perspective then, most reactionary delay can end up attributable to airlines.

Figure 2.6: Number of delayed flights of over 2 hours (airline and non-airline attributable delays)

Source: CODA, Steer analysis

Note on the attribution of disruption

Taken in isolation, the 2015 van der Lans ruling¹⁰ is likely to have increased the proportion of delayed flights attributed to airlines in the years following the ruling, however, the data provided by airlines and the analysis done does not appear to demonstrate this (as displayed below). Although it is likely that airline-attribution increased following the ruling, there are a number of other concurrent factors affecting overall situation, which means that it is not possible to isolate the ruling's impact. For example, if the incidence of disruption attributed to technical reasons that was brought into scope by the ruling happened to be lower in the years following the ruling, then the ruling would appear to not have an effect overall – although technical problems were deemed “inherent in the normal exercise of the activity of the air carrier”, and hence not extraordinary, by the CJEU, this does not mean that the frequency of their occurrence is regular. Conversely, if in the years following the ruling there was a higher occurrence of non-airline attributable incidents, then the effect of the van der Lans ruling would appear diminished.

The IATA delay codes used by airlines to classify disruption do not distinguish between causes in-scope and out-of-scope of the Regulation. For example, code 52 (DG) may relate to damage as a result of a collision with ground equipment (in-scope according to the Siewert¹¹ ruling) and damage as a result of extreme weather conditions (out of scope – i.e. an extraordinary circumstance). However for this study, airlines have provided the classification of delay and the proportion of delays for which passengers have been eligible for compensation (i.e. airline-attributable delays) from which we have been able to infer the range of attribution given above.

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62014CJ0257&from=EN>

¹¹ <http://curia.europa.eu/juris/documents.jsf?num=C-394/14>

As shown in Figure 2.3, a shortage of capacity in the European ATM system and the lack of sufficient resources and infrastructure to accommodate air traffic demand has meant that delays in the system have been increasing and that there is a lack of resilience in the ATM system. The level of delay is forecast to continue to increase and will continue to impact airlines and their passengers in the near future.

Looking at Figure 2.1, Figure 2.2 and Figure 2.3, it is clear that there exists a link between ATFM (i.e. ATC) delay and the level of disruption recorded (both in terms of delays and cancellations). Although ATFM (i.e. ATC) delay is outside the control of airlines and is not attributed to them, the increased level of disruption generates knock-on effects. So although the increase in disruption mirrors to an extent the increase in ATFM delay, the change in attribution of this disruption to airlines (see Table 2.3 and Table 2.7) does not reflect this (i.e. the proportion of airline-attributed disruption does not decrease inversely to increase in ATFM delay).

Overall, this is a complex issue where it is not easy to precisely pinpoint the responsibilities. For example:

- In many cases, there is not a unique source of delay for a flight, but instead delay is the result of many (and sometimes small) factors that add up. For instance, ATFM restrictions may delay a flight by 30 minutes only, but this flight may be impacted by a late arrival of ground handling services at the airport (as they had planned for the flight to arrive 30 minutes earlier) causing the next flight to miss its take-off slot. As a result the next flight would have to wait for a new take-off slot, provided maybe only 15 minutes after the time at which the aircraft would have been ready, but causing on arrival at destination the crew to exceed its maximum hours on duty (as per European rules) meaning that a standby crew would have to be called on. This would be possible but not necessarily immediate – assuming standby crew was available at the airport, it would still have to walk through the airport to get to the aircraft. Overall, the last flight may end up with a delay of above 3 hours as a result of compounding factors some of which may be attributed to the airline even though they were initiated by an ATFM delay which was not attributable to the airline.
- Sometimes disruptions are planned and stakeholders try to manage them. For instance, in the case of ATC strikes impacting the French airspace, airlines may be asked by the air navigation service provider to cancel 30% of their flights to/from/above French airspace. The choice of which precise flights are cancelled is left to the airlines (who will prefer to cancel short-haul flights over long-haul ones, or flights which would impact less on the rest of the operations that day).

What these examples illustrate is the difficulty to attribute delay: should it be the first party to create delay, should it be the party that creates the longest amount of delay time, should it be the party that creates delay over three hours that should be deemed responsible? What the second example shows is that it can be very hard for an airline to prove a direct causality for why a specific flight got cancelled and not another.

To complicate the matters even further, the same issue is sometimes not attributed to airlines in the same way. For example, in 2018 Ryanair cancelled flights ahead of a strike. This was assessed to be extraordinary circumstances by the Spanish NEB but not by the UK one.

Moreover, when NEBs or others examine the question of extraordinary circumstances, they do not just consider the circumstances themselves but also take into consideration, as per Article

5(3) of Regulation 261/2004, whether all reasonable measures were taken by airlines to mitigate the circumstances. It can be difficult for NEBs and airlines to agree on what constitute “reasonable” measures and for airlines to demonstrate evidence in the case of pre-emptive cancellations for instance.

Number of passengers affected by flight cancellations and delays

Approach

- 2.47 The industry-level information on cancellation and delays which is analysed above, is available only for flights and not for passengers. To estimate the number of passengers affected by flight cancellations and delays, we use the number of seats per flight (derived from OAG) and apply a passenger load factor.
- 2.48 As with the number of flights (described in paragraph 2.7), the total number of seats arriving and departing the EU+3 from 2011 to 2018 has been taken from OAG and is shown in Table 2.8 below. We have applied the OAG seat data to each of the sub-categories (listed in Table 2.4) to estimate the number of seats delayed and cancelled within each sub-category.
- 2.49 The total number of passengers arriving and departing the EU+3 from 2011 to 2017 has been taken from Eurostat and has been used to estimate an average load factor across all flights in each year – this is also shown in Table 2.8. Complete passenger numbers are not available for 2018, therefore we have made a load factor assumption based on the trend of the previous years. These load factor assumptions have been applied to the number of seats in each sub-category to generate the number of passengers in each sub-category affected by delays and cancellations.
- 2.50 Extra-EU+3 arriving flights operated by non-EU+3 carriers are not within the scope of Regulation 261/2004; the total number of seats and passengers under the scope of the Regulation is also shown in Table 2.8.

Table 2.8: EU+3 seats and load factor (2011-2018)

Activity	2011	2012	2013	2014	2015	2016	2017	2018
All seats (million)	1,052	1,046	1,059	1,094	1,145	1,222	1,295	1,374
In-scope seats (million)	979	971	980	1,009	1,053	1,125	1,191	1,259
All passengers (million)	896	905	923	965	1,009	1,068	1,144	1,223
In-scope passengers (million)	834	841	854	889	928	983	1,052	1,121
Load factor	85.1%	86.6%	87.2%	88.1%	88.1%	87.4%	88.3%	89.0%

Source: Steer analysis of Eurostat and OAG data

- 2.51 Due to increasing load factors, as well as an increase in the average number of seats per flight, the number of passengers (within the scope of Regulation 261/2004) has grown with a CAGR of +4.3% between 2011 and 2018, which is more than double the CAGR of flights (+1.5%) over the same period.
- 2.52 The load factors shown in table above are slightly higher than reported (for example by IATA) for recent years; this is because OAG does not include all charter services and therefore slightly underreports the total number of seats. However, although the number of seats is

slightly under reported, the higher load factors based on actual passenger numbers will still give the correct number of passengers (based on Eurostat data).

- 2.53 We have also used the average load factor across all flights, to generate separate load factors for intra-EU+3 and extra-EU+3 flights. This has been done in order to more accurately capture the number of passengers entitled to different levels of compensation on routes of different distance bands under Regulation 261/2004. The load factor assumptions used for intra-EU+3 and extra-EU+3 flights are shown in Table 2.9.

Table 2.9: Intra-EU+3 and Extra-EU+3 seats and load factor (2011-2018)

Type	Metric	2011	2012	2013	2014	2015	2016	2017	2018
Intra-EU	In-scope seats (million)	733	723	725	743	777	841	887	926
	In-scope passengers (million)	645	647	654	677	708	759	810	852
	Load factor	88.0%	89.5%	90.1%	91.1%	91.1%	90.3%	91.3%	92.0%
Extra-EU	In-scope seats (million)	240	242	248	259	269	276	295	325
	In-scope passengers (million)	189	193	201	212	220	223	242	269
	Load factor	78.6%	80.0%	80.8%	81.8%	81.8%	80.9%	81.8%	82.8%

Source: Steer analysis of Eurostat and OAG data

- 2.54 As with flights, passengers on extra-EU+3 arriving flights operated by non-EU+3 carriers are not within the scope of Regulation 261/2004; therefore, these have not been included within the analysis of delays, cancellations, denied boarding and downgrading.

Cancelled passengers

- 2.55 The number of EU+3 passengers within scope of Regulation (EC) 261/2004 (1.1 billion passengers in 2018) affected by cancellations is shown in Table 2.10 and Figure 2.7 and for 2018 is estimated to be 17.6 million passengers.

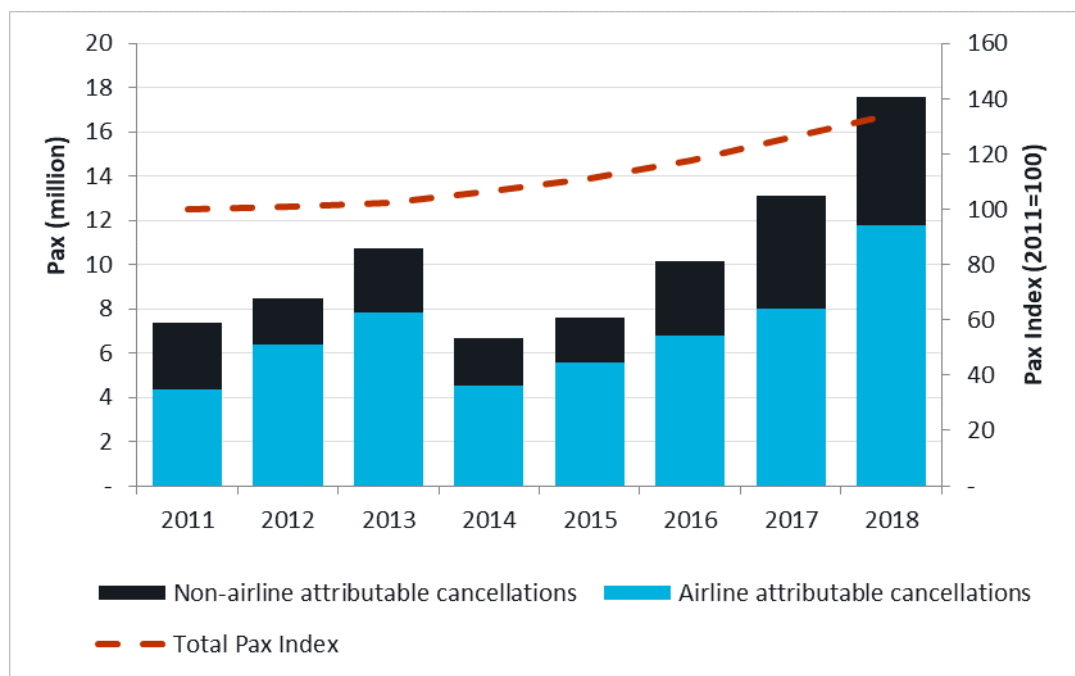
Table 2.10: Number of passengers affected by a cancellation

Metric	2011	2012	2013	2014	2015	2016	2017	2018
All passengers ('000s)	833,539	840,593	854,214	889,498	927,911	982,725	1,051,750	1,120,837
Cancelled passengers ('000s)	7,378	8,451	10,738	6,675	7,612	10,156	13,097	17,571
% of passengers cancelled	0.9%	1.0%	1.3%	0.8%	0.8%	1.0%	1.2%	1.6%
Airline-attributable passengers cancelled ('000s)	4,380	6,380	7,850	4,523	5,548	6,803	8,008	11,768
% of passengers cancelled that are airline attributable	59.4%	75.5%	73.1%	67.8%	72.9%	67.0%	61.1%	67.0%

Source: Steer analysis of airline stakeholder and UK CAA data

- 2.56 The figure below shows the number of passengers on cancelled flights (in scope of the Regulation), shown as bars on the left vertical axis, and an index of passengers in scope of the Regulation (shown in Table 2.10) where 2011 is indexed as 100, shown as the dotted line on the right vertical axis.

Figure 2.7: Number of cancelled passengers (airline and non-airline attributable cancellations)



Source: Steer analysis of airline stakeholder and UK CAA data

- 2.57 The number of passengers affected by cancellations between 2011 and 2018, as well as the proportion of passengers affected by airline-attributable cancellations, follow a very similar trend to the number of cancelled flights (shown in Figure 2.1). However, as passenger numbers have grown at a faster rate than flights between 2011 and 2018, the number of passengers affected by cancellations has grown with a CAGR of +13.2%, compared to a CAGR of +10.1% for the number of flights affected.

Delayed passengers

- 2.58 The number of EU+3 passengers within scope of Regulation (EC) 261/2004 affected by long delays (of two hours or more) is shown in Table 2.11 and Figure 2.8.

Table 2.11: Number of delayed passengers (long delays of two hours or more)

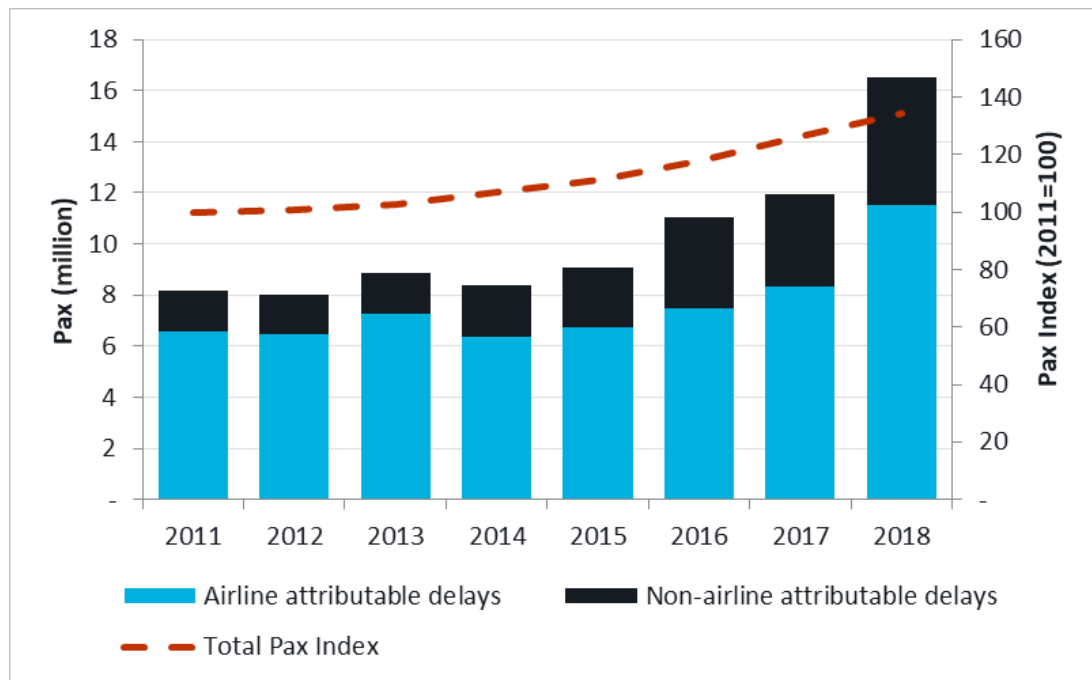
Metric	2011	2012	2013	2014	2015	2016	2017	2018
All passengers ('000s)	833,539	840,593	854,214	889,498	927,911	982,725	1,051,750	1,120,837
Delayed passengers ('000s)	8,186	8,034	8,853	8,372	9,054	11,017	11,961	16,523
% of passengers delayed	1.0%	1.0%	1.0%	0.9%	1.0%	1.1%	1.1%	1.5%
Airline-attributable passengers delayed ('000s)	6,581	6,480	7,281	6,374	6,734	7,463	8,314	11,500

% of passengers delayed that are airline attributable	80.4%	80.7%	82.2%	76.1%	74.4%	67.7%	69.5%	69.6%

Source: Steer analysis of CODA data

- 2.59 The figure below shows the number of passengers on delayed flights (in scope of the Regulation), shown as bars on the left vertical axis, and an index of passengers in scope of the Regulation (shown in Table 2.10) where 2011 is indexed as 100, shown as the dotted line on the right vertical axis.

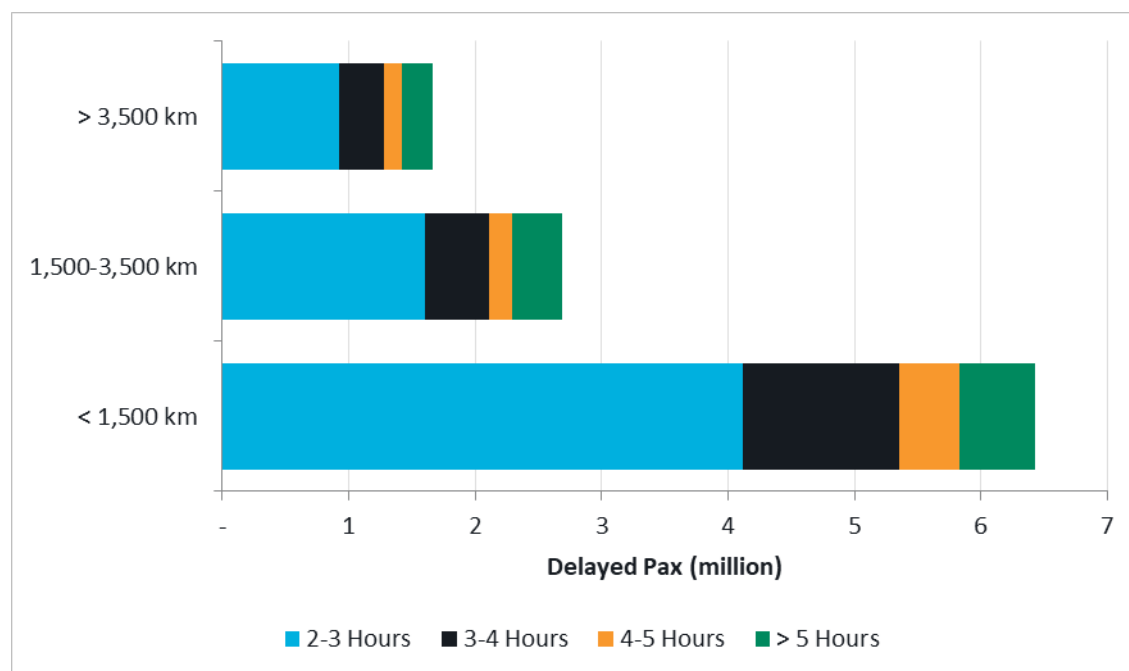
Figure 2.8: Number of delayed passengers (airline and non-airline attributable delays) (long delays of two hours or more)



Source: Steer analysis of CODA data

- 2.60 The number of passengers affected by delays of two or more hours between 2011 and 2018, as well as the proportion of passengers affected by airline-attributable delays, follow a very similar trend to the number of delayed flights (shown in Figure 2.2). However, as passenger numbers have grown at a faster rate than flights between 2011 and 2018, the number of passengers affected by delays have grown with a CAGR of +10.6%, compared to a CAGR of +8.8% for the number of flights affected.
- 2.61 The length of the delays experienced by passengers in 2018, across each of three distance bands stipulated within the Regulation, is shown in Figure 2.9.

Figure 2.9: Length of delay experienced by passengers by distance band (2018)



Source: Steer analysis of CODA data

- 2.62 Although more passengers were delayed overall on routes under 1,500km, slightly fewer (55%) were delayed under two hours compared to passengers on routes between 1,500km and 3,500km (60%) and over 3,500km (65%). In addition, a lower proportion (9%) of passengers on routes under 1,500km were delayed by over five hours compared to routes within the two distance bands over 1,500km (15%). Across the three distance bands, a similar number of passengers were delayed between three and four hours (19% to 21%) and four to five hours (7% to 9%).

Passengers denied boarding and downgraded

Approach

- 2.63 There are no industry-wide sources or public data available on the number of passengers who are denied boarding or who are downgraded within the EU. To estimate the number of passengers denied boarding and downgraded, we have therefore drawn upon information provided by stakeholders as part of the consultation. Only a small number of airlines have provided this information, and none have provided it for years prior to 2014.

Denied boarding

- 2.64 When the number of seats on a flight are oversold (which is sometimes done by airlines for commercial reasons to take advantage of no-shows), passengers can be denied from boarding if the number of passengers who turn up for the flight exceeds the number of seats available. Passengers can be denied boarding either:

- Voluntarily, where the airline asks for volunteers to forgo their seat in return for financial compensation and a re-routing; or
- Involuntarily, where there are not a sufficient number of volunteers and airlines select passengers who must forgo their seat and are re-toured and compensated in accordance with Regulation 261/2004.

- 2.65 Based on the airline data provided, the proportion of passengers who voluntarily forgo their seat when a flight is overbooked (i.e. voluntarily denied boarding) was between 0.02% and 0.03% between 2014 and 2018, and slightly decreased across the period (CAGR -1.2%). The proportion of passengers who are involuntarily denied boarding was between 0.10% and 0.15% between 2014 and 2018 and increased across the period (CAGR +3.5%).

- 2.66 In the years it has been provided, to estimate the proportion of passengers that are voluntarily and involuntarily denied boarding we have used the data provided by airlines. In years prior to 2014, we have assumed a continuation of the trend between 2014 to 2018 proportion. As Ryanair, which in recent years has represented close to 10% of total EU passenger traffic, has a stated policy¹² of not overbooking flights (and there is no evidence to suggest otherwise), we have also reduced each of the denied boarding proportions by 10% to make the values used more representative at EU-wide industry – we are unaware of any other major EU or non-EU carriers that has a similar policy.

Downgrading

- 2.67 Passengers can be downgraded on flight when seats in the class they booked are not available because, for example, they have been oversold or an alternative aircraft with a different configuration to the one scheduled needs to be used. Based on the airline data provided, the proportion of passengers downgraded was 0.05% between 2014 and 2018 with little variation between years. Consistent with the previous study, we have assumed that passengers can only be downgraded on extra-EU flights over 3,500km, as the vast majority of intra-EU flights do not distinguish between flights classes in any meaningful way – this is supported by the data provided by stakeholders, as only airlines operating a large amount of intercontinental traffic have provided any data on downgrading.

¹² <https://www.ryanair.com/content/dam/ryanair/help-centre-pdfs/eu261-.pdf>

- 2.68 As with denied boarding, in the years it has been provided, to estimate the proportion of passengers that are downgraded we have used the data provided by airlines. In years prior to 2014, as the proportion of passengers denied boarding has remained relatively constant, we have assumed an average of the 2014 to 2018 proportion.

Instances

- 2.69 The number of passengers downgraded and denied boarding are shown in Table 2.12 and Figure 2.10.

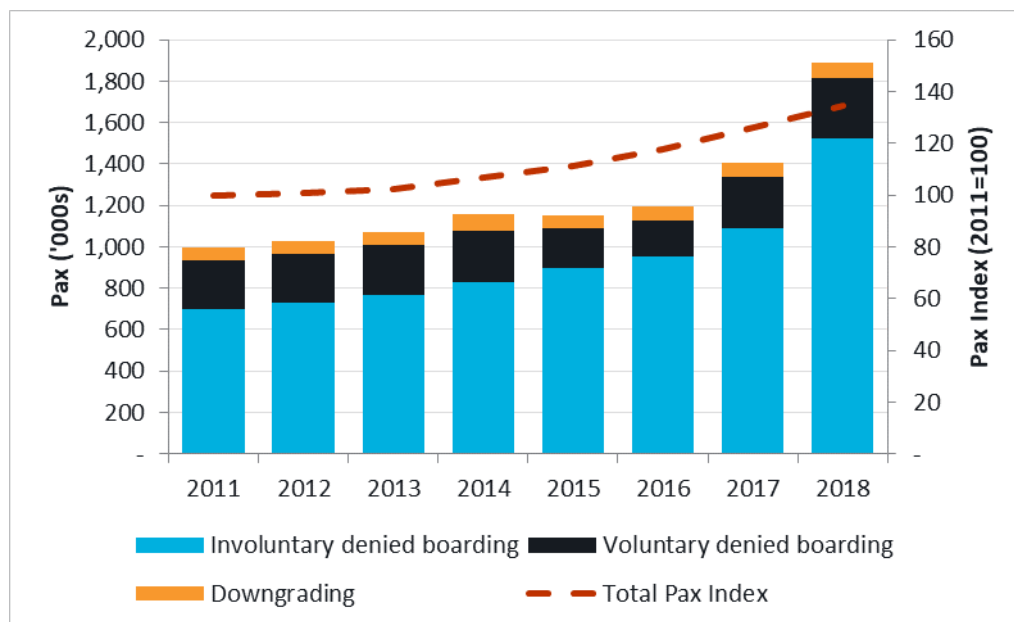
Table 2.12: Number of passengers downgraded and denied boarding

Metric	Type	2011	2012	2013	2014	2015	2016	2017	2018
Total passengers ('000s)		833,539	840,593	854,214	889,498	927,911	982,725	1,051,750	1,120,837
Downgraded passengers ('000s)		59	60	61	81	64	74	69	74
% of passengers downgraded		0.01%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%
Passengers denied boarding ('000s)	Voluntary	266	265	266	273	214	193	277	327
	Involuntary	776	811	854	922	994	1,056	1,209	1,690
% of passengers denied boarding	Voluntary	0.03%	0.03%	0.03%	0.03%	0.02%	0.02%	0.03%	0.03%
	Involuntary	0.09%	0.10%	0.10%	0.10%	0.11%	0.11%	0.11%	0.15%

Source: Steer analysis of airline data

- 2.70 The figure below shows the number of passengers downgraded and denied boarding (in scope of the Regulation), shown as bars on the left vertical axis, and an index of passengers in scope of the Regulation (shown in Table 2.10) where 2011 is indexed as 100, shown as the dotted line on the right vertical axis.

Figure 2.10: Number of passengers downgraded and denied boarding



Source: Airline data, Steer analysis

- 2.71 We observe that the proportion of passengers downgraded or denied boarding is very low and appears relatively constant. Based on the data provided by airlines, the total number of passengers denied boarding (voluntarily and involuntarily) is dominated (90% to 95%) by passengers denied boarding involuntarily.
- 2.72 Although the proportion of passengers denied boarding and downgraded has remained relatively constant throughout the period shown, the number of affected passengers remains low in comparison to the total number of passengers. In 2018, approximately 1 in 660 passengers were involuntarily denied boarding, 1 in 3,400 were voluntarily denied boarding and 1 in 15,000 were downgraded.

Proportion of passengers who claim compensation

- 2.73 It is important to understand that **there is no publicly and reliable information available on the number of passengers who try to claim compensation**. However, in this study we have been able to estimate the “successful claim rate” as detailed below, based on a combination of data received from airline and claim agency stakeholders.
- 2.74 The successful claim rate as used in this study, refers to the following ratio:
- $$\text{successful claim rate} = \frac{\text{eligible passengers claiming AND receiving compensation}}{\text{eligible passengers}}$$
- 2.75 *Eligible* passengers are those who have faced disruption which is *attributed to the airline* (i.e. where extraordinary circumstances did not apply). So, in this study, **the successful claim rate is the proportion of passengers that are entitled to compensation and successfully claim it, i.e. passengers generating a compensation cost for airlines** (irrespective of the redress means used¹³). It should **not be understood** as simply meaning the proportion of passengers who contact airlines to claim compensation.
- 2.76 Airlines of course also receive claims from passengers who are not eligible for compensation under Regulation 261/2004. This may be because extraordinary circumstances applied, or because passengers submit a claim without a full understanding of the rules (e.g. for a delay of 1.5 hours). Ineligible claims such as these may generate a processing and administrative burden, however they do not drive airline costs for providing compensation.
- 2.77 The total cost to airlines of providing compensation can be estimated as follows:

$$\begin{aligned} &(\text{Total cost of compensation}) \\ &= (\text{airline attributable disruption}) \times (\text{successful claim rate}) \\ &\quad \times (\text{compensation value}) \end{aligned}$$

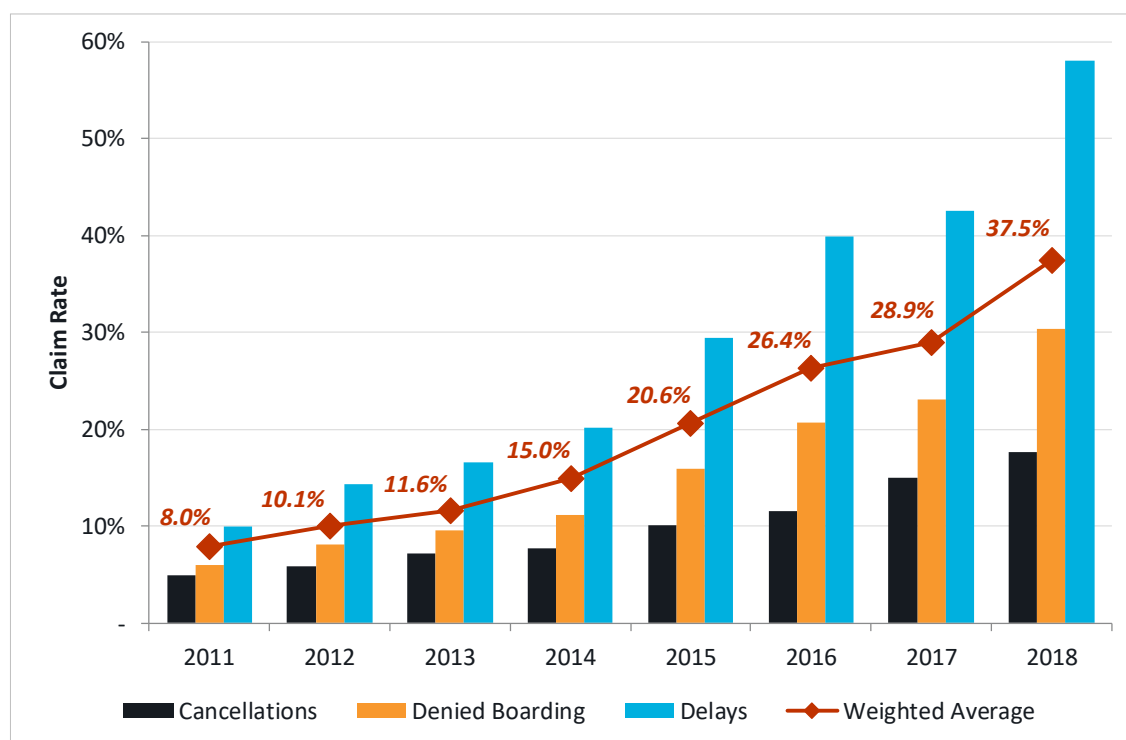
- 2.78 As indicated above, the successful claim rate has been calculated based on self-reported information from airlines and claim agencies. Implicit in this rate then is airlines’ level of compliance, since all claims that are compensated are naturally deemed eligible (i.e. airlines do not somehow record a claim as eligible and then not compensate it). The level of compliance arises from potentially different assessments between airlines and NEBs of

¹³ The successful claim rate does not differentiate between whether an airline provided compensation after a passenger submitted an eligible claim, and if it did so only after reminders, or only after the intervention of a NEB, ECC, ADR/ODR/court or claim agency. The successful claim rate does not then reveal the time and administrative burden for passengers to claim and receive compensation – this is described in Chapter 3.

whether a claim is eligible or not. This is explored in more detail in the next section (see paragraph 2.85), however, the successful claim rate (or “claim rate” hereafter) as specified here is appropriate for calculating the actual total cost to airlines of providing compensation.

- 2.79 The weighted average successful claim rate across airlines for cancellations, delays and denied boarding is shown in Figure 2.11.

Figure 2.11: Passenger successful claim rate for cancellations, delays and denied boarding



Source: Airline and claim agency data, Steer analysis

- 2.80 The figure above shows that for delays in 2018, 58% of passengers who were eligible for compensation successfully claimed and received compensation. The remaining 42% of eligible passengers may comprise eligible passengers who did not try to claim and/or eligible passengers who did not receive their compensation when they claimed. The issue of eligible passengers who claimed but did not receive compensation relates to compliance and is discussed from paragraph 2.85.
- 2.81 Based on airline data, the claim rates have increased significantly from around 5% for cancellations and 10% for delays in 2011 to 18% for cancellations and 58% for delays in 2018, reflecting the increased awareness amongst passengers of their compensation entitlements under Regulation 261/2004. Claim rates for denied boarding have increased from 6% to 30% over the same period.
- 2.82 Across the three types of disruption, the weighted average (weighted by the number of passengers affected by each type of disruption) claim rate has risen from 8.0%, in 2011, to 37.5% in 2018. This corroborates the findings from the 2019 Eurobarometer survey¹⁴ which

¹⁴ Special Eurobarometer 485, Passenger Rights, Field work took place in February/March 2019: <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/special/surveyky/2200>

found that 37% of passengers traveling by air, that had experienced some type of disruption, made an official complaint.

- 2.83 Across the period shown the claim rate for delays is significantly higher than for cancellations. It is unclear why this is the case, but it is likely to be because cancellations within the scope of the Regulation can take place up to two weeks before the scheduled departure date. If, for example, a flight is cancelled a week before departure and passengers are given an alternative flight at a similar time, they personally experience little disruption or delay and therefore are unlikely to feel (or be aware that) they are sometimes entitled to compensation. In addition, instead of a re-routing, passengers on cancelled flights can be offered reimbursements – many passengers are likely to be unaware they are also entitled to compensation. Even passengers who are subjected to last-minute cancellations, if they are re-routed within a reasonable timeframe and have received care and assistance in the meantime, may not feel that they are able to claim compensation.
- 2.84 The claim rate for denied boarding is also lower than for delays in 2018. The Regulation states that, when airlines deny passengers boarding on a flight, they are obliged to provide passengers with compensation proactively. Although some airlines stated that this was their policy, the fact some passengers claim compensation for being denied boarding suggests airlines are not 100% compliant – a number of NEBs also reported complaints in relation to denied boarding. The claim rate for denied boarding therefore represents only a proportion of the passengers claiming compensation who were not offered compensation proactively by airlines.

Proportion of airlines that comply with the Regulation

- 2.85 The proportion of airlines that comply with Regulation 261/2004 has had to be estimated, since airlines self-reported that they are fully compliant with the Regulation, while NEBs were not able to provide comprehensive quantitative rates of airline compliance, but only qualitative views on compliance based on the visibility afforded by the complaints they receive.
- 2.86 To estimate the level airline compliance with Regulation 261/2004, we have sought to quantify:
- The proportion of eligible compensation claims that airlines pay compensation for (separately for delays and cancellations, and denied boarding);
 - The proportion of instances in which airlines provide care and assistance¹⁵ to passengers when they are required to under the Regulation (across all types of disruption); and
 - The proportion of instances in which airlines provide a reimbursement or re-routing when they are required to under the Regulation (across all types of disruption).
- 2.87 A number of stakeholders have noted that in many cases airlines do not pay the compensation claimed by passengers affected by disruption under the Regulation. The only disaggregated data found through our research of the largest EU aviation markets, which allows us to quantify the proportion of eligible passenger delay and cancellation compensation claims that is granted compensation by airlines, according to consumer representative Which?, based on

¹⁵ As the proportion of instances in which airlines provide information to passengers was not easily quantifiable, it has not been included as part of the analysis.

data it obtained from the UK CAA in 2017¹⁶. This provides, for a number of EU and non-EU airlines, the level of disruption, the number of eligible claims and the number of claims that are eventually granted compensation (noting that this may require NEB intervention). Based on the average value calculated by weighting the in-scope passengers carried and disrupted for each of the airlines, we have estimated that at least 17% of **eligible passengers who claimed** compensation did not receive it, and a maximum of 83% did. It does not mean that 83% of passengers eligible for compensation actually receive it, since the system is claim-based i.e. requiring passengers to claim for compensation.

- 2.88 We have therefore assumed that airline delay and cancellation compensation compliance was 83% in 2017 and, in order to estimate a trend in the level of airline compliance across the period, analysed the level airlines' compensation cost per passenger (after normalising for the level of disruption and passenger claim rates) compared to the estimated cost per passenger in a scenario where all eligible passengers affected by disruption are provided with compensation. This analysis implies that, between 2011 and 2018, the level of airline compliance increases by 3.7% per year.
- 2.89 Improved compliance is also confirmed (anecdotally) by NEBs despite them handling increasing volumes of complaints (as a result of growth in passengers, disruption and awareness). Discussions with stakeholders (NEBs in particular) seem to suggest that (from NEB interaction with airlines) it is overall more (cost-)efficient for airlines to put improved processes and systems in place to deal with claims than to rely on more manual arrangements, which also supports the finding that compliance is gradually improving.
- 2.90 These airline delay and cancellation compensation compliance rates apply to passenger claim rates. For example, in 2017, if on average 35% of eligible passengers affected by disruption claimed compensation and 83% of airlines were compliant with their compensation obligations, then only 83% of the eligible passengers who claimed compensation received it. This means, of the passengers affected by disruption in 2017, 29% (83% of 35%) received compensation.
- 2.91 As has been noted above, although under the Regulation airlines are obliged to offer passengers who are denied boarding compensation proactively, this requirement is not always adhered to. Based on the number of claims received by airlines, as well as the number of complaints received by NEBs and claim agencies, in relation to denied boarding, we estimate that, in 2018, airlines are compliant with denied boarding obligations in 84% of cases. We have assumed that, between 2011 and 2018, airlines' compliance with denied boarding compensation increases in line with delay and cancellation compensation.
- 2.92 Based on the information provided by airlines and NEBs, passengers who experience disruption receive the care and assistance they are entitled to in most – but not all – cases. Based on anecdotal evidence, when passengers experience significant disruption, they will tend to receive the care and assistance they are entitled to, but when they are delayed for shorter periods, in many cases they will not receive it. To quantify the proportion of instances in which airlines provide care to passengers when they are required to under the Regulation,

¹⁶ <https://www.which.co.uk/news/2017/07/flight-compensation-and-the-airlines-that-wont-pay/>
Which? numbers have been cross-checked with the UK CAA. Non-compliance is recorded when airlines explicitly disagree (to the NEB) with a NEB decision and do not provide compensation to passengers who the NEB deemed eligible.

we have compared the level airlines' care cost per passenger with the estimated cost per passenger in a scenario where all eligible passengers affected by disruption are provided with care and assistance. This analysis implies that, in 2018, passengers were provided with the care and assistance they were entitled to in 71% of cases and, between 2011 and 2018, compliance increased by an average of +1.8% per year.

- 2.93 The 2018 figure is higher than that reported in the 2019 Eurobarometer survey which reported that 53% of air passengers affected by disruption were "somehow remedied", including 28% who received food and drinks and 10% accommodation¹⁷.
- 2.94 We have received very limited information from airlines in relation to reimbursements and re-routing; within airlines' financial accounts, reimbursements are often recorded as negative revenue which means they do not possess information on reimbursement and re-routing costs. A number of NEBs have stated that airlines often do not fully comply with re-routing obligations, as they are often unwilling to reroute passengers on the next available flight if it is operated by a rival carrier (instead passengers often have to wait for the next available flight of the carrier in question). Although we are aware of airlines' non-compliance in this area, we have not been provided with information that enables us to fully quantify how often it occurs. We have assumed that passengers are not rerouted on a different airline's flight when they should be in 33% of all re-routing cases, therefore, airlines are not compliant with re-routing requirements in a third of cases.
- 2.95 Although airlines are not fully compliant with the strictest interpretation of re-routing "at the earliest opportunity" nor proactively and correctly offer passengers who have been disrupted the choice between reimbursement and re-routing, we do assume that all passengers will eventually either be rerouted to their destination (albeit not at the earliest opportunity nor perhaps at the most convenient time/day for the passenger), or not travel and be reimbursed.

Mishandled baggage and number of luggage-related complaints

Approach

- 2.96 The number of instances of mishandled baggage have been taken from SITA baggage reports, which contain the instances of mishandled baggage per 1,000 passengers at a European level (between 4 and 9 per 1,000 passengers) and the proportion of cases of mishandled that are lost/stolen, damaged and delayed at world level, which we have applied to the European-level total instances of mishandled baggage per 1,000 passengers. The information provided by airlines is consistent with the SITA baggage reports, in terms of both the instances of mishandled baggage and the proportion of instances that are lost/stolen, damaged and delayed.
- 2.97 To estimate the total number of instances of each type of mishandled baggage on EU+3 flights, we have applied the number of instances per 1,000 passengers (of each type of mishandled baggage) to the total number of passengers. To estimate the number of baggage-related complaints, we have used complaint information provided by airlines to generate the number of baggage-related complaints per 1,000 passengers and the number of complaints per instance of mishandled baggage (i.e. the claim rate). In this context, a complaint is when, for example, an outbound passenger whose bag has been delayed follows up with a claim for

¹⁷ 18% were offered an alternative flight at no extra cost and 14% received a financial compensation.

reimbursement/damages for clothes that they might have had to buy to wear until they received their bag.

Instances of mishandled baggage

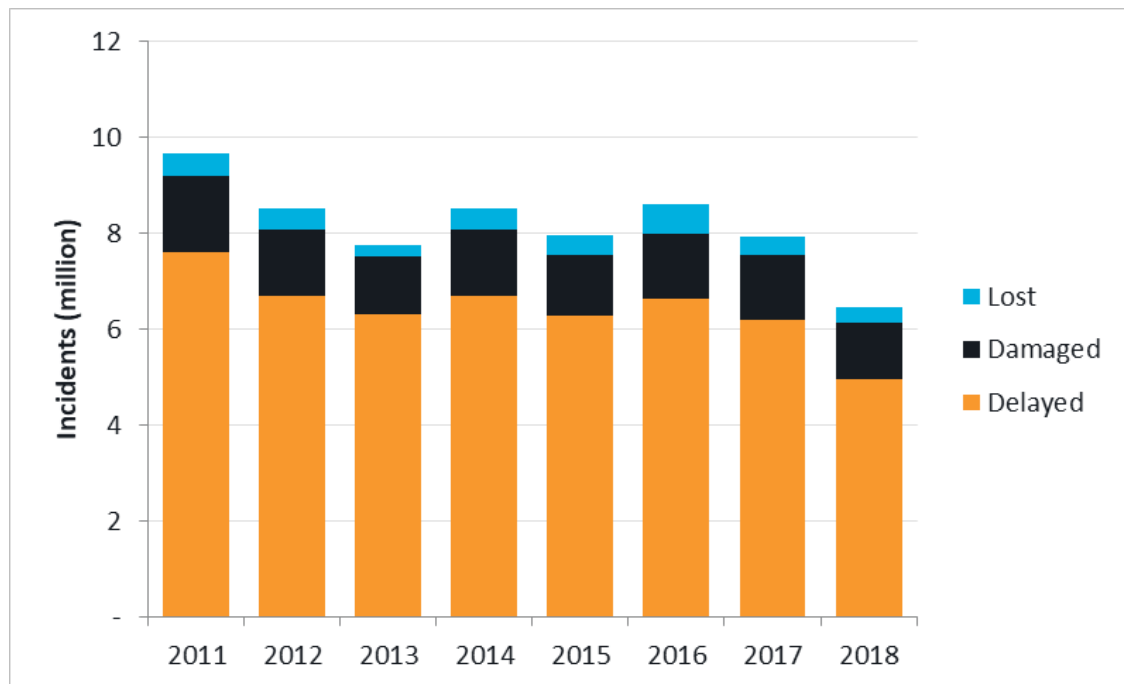
2.98 The number of instances of mishandled baggage in Europe is shown in Table 2.13 and Figure 2.12.

Table 2.13: Instances of mishandled baggage in Europe (millions)

Type	Metric	2011	2012	2013	2014	2015	2016	2017	2018
Instances per 1,000 passengers	Lost/Stolen	0.6	0.5	0.3	0.5	0.4	0.6	0.3	0.3
	Damaged	1.7	1.5	1.3	1.4	1.3	1.3	1.2	0.9
	Delayed	8.5	7.4	6.8	6.9	6.2	6.2	5.4	4.1
	Total	10.8	9.4	8.4	8.8	7.9	8.1	6.9	5.3
Passengers (million)		896	905	923	965	1,009	1,068	1,144	1,223
Total instances (million)	Lost/Stolen	0.5	0.4	0.3	0.4	0.4	0.6	0.4	0.3
	Damaged	1.6	1.4	1.2	1.4	1.3	1.4	1.3	1.2
	Delayed	7.6	6.7	6.3	6.7	6.3	6.6	6.2	5.0
	Total	9.7	8.5	7.8	8.5	8.0	8.6	7.9	6.4

Source: SITA, Steer analysis

Figure 2.12: Instances of mishandled baggage



Source: Steer analysis of SITA data

2.99 Delays accounted for the majority (75% to 80%) of mishandled baggage instances over the period, with damaged baggage and lost baggage accounting for around 16% and 5% respectively. Although volatile between years, the overall number of incidents declined over the period from around ten million instances in 2011 to around six million in 2018.

- 2.100 The decrease in the total number of instances of mishandled baggage per passenger between 2011 and 2018 (shown in Table 2.13) is likely due to a combination of both improving baggage processing systems and a reduction in the number of checked bags per passenger. The increasing share of LCC passengers within the EU (many of whom do not travel with checked baggage) and network carriers' response to the LCC business model (i.e. in some cases charging for checked baggage) mean that the proportion of passengers traveling with checked baggage is likely to have decreased between 2011 and 2018.
- 2.101 Based on the information provided by some airlines during the stakeholder consultation, the number of checked bags per passenger has been decreasing – although at a lower rate than instances of mishandled baggage per passenger shown in Table 2.13. This suggests that the reduction in the total number of instances per passenger is due to a combination of both improving baggage processing systems and a reduction in the number of checked bags per passenger.

Complaints

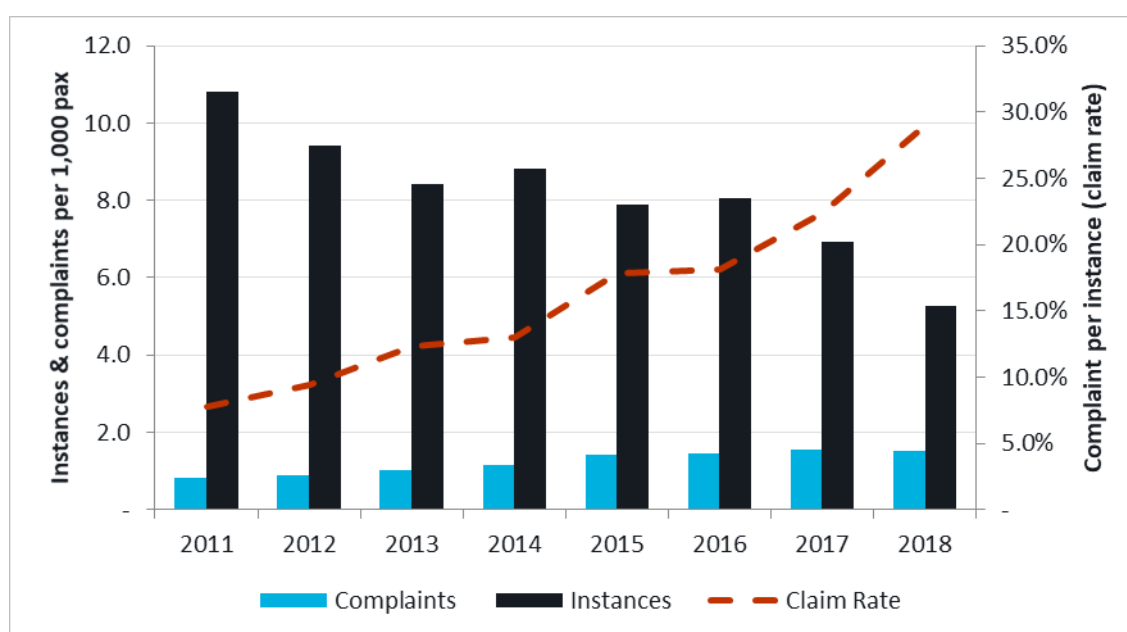
- 2.102 The number of complaints in relation to mishandled baggage, as well as the number of instances, per 1,000 passengers is shown in Table 2.14 and Figure 2.13.

Table 2.14: Instances and complaints of mishandled baggage

Metric	2011	2012	2013	2014	2015	2016	2017	2018
Instances of mishandled baggage (per 1,000 passengers)	10.8	9.4	8.4	8.8	7.9	8.1	6.9	5.3
Complaints of mishandled baggage (per 1,000 passengers)	0.8	0.9	1.0	1.1	1.4	1.5	1.6	1.5
Complaint per instance (i.e. claim rate)	8%	9%	12%	13%	18%	18%	22%	29%

Source: Steer analysis of SITA and airline data

Figure 2.13: Instances and complaints of mishandled baggage



Source: Steer analysis of SITA and airline data

- 2.103 The number of baggage-related complaints has increased over the period shown, from 0.8 complaints per 1,000 passengers in 2011, to 1.5 in 2018. As the instances of mishandled baggage have decreased over the same period, the proportion of passengers complaining to airlines in relation to mishandled baggage incidents has increased significantly.

Summary of findings

- 2.104 The analysis done for this study indicates that the number of flights disrupted, in terms of cancellations and delays over two hours, has increased significantly between 2011 and 2018. The number of flight cancellations has increased from 67,000 in 2011 to 132,000 in 2018 (CAGR +10.1%) and the number of flights delayed has increased from 61,000 to 109,000 (CAGR +8.8%). However, the proportion of all flights disrupted remains relatively low; cancellations grew from 1.0% to 1.7% of flights between 2011 and 2018, and delays grew from 0.9% to 1.4% of flights. The increased number of disruptions have been driven in part by increasing levels of traffic. Between 2011 and 2018, the number of flights in scope of the regulation increased from 7.1 million to 7.9 million (with CAGR of +1.5%). Traffic growth between 2016 and 2018 has been particularly strong (CAGR +4.4%) and the level of disruption has also increased significantly in this period – between 2015 and 2018 the number of delayed flights has increased by over +75% and the number of cancellations has more than doubled.
- 2.105 Cancellations and delays have increased at a faster rate than traffic, driving the increase in the proportion of flights that have been disrupted. Much of the increased level of disruption can be explained by increasing levels of ATFM delay generated in the single European sky, which can cause further knock-on effects throughout the system. Throughout the period, the majority of flight disruption has been attributed to airlines (i.e. to factors within the control of airlines), although this has reduced in recent years. The causes of delay across airlines and across the system vary, however, the overall reduction in airline-attributable delay could be a reflection of the increased ATC disruption in the system that is mostly classed as an extraordinary circumstance. The proportion of airline-attributable delays has fallen from around 80% of all delays in 2011 to around 70% at in 2018, while the proportion of airline-attributable flight cancellations has fallen from around 75% of all delays at the start of the period around 65% at the end of the period.
- 2.106 The number of passengers affected by flight disruptions follows much the same trend as flight disruptions, but due to increasing load factors between 2011 (85%) and 2018 (89%), the number of passengers affected has increased at a greater rate over the period. The number of passengers affected by cancellations has increased from 7.4 million in 2011 to 17.6 million 2018 (CAGR +13.2%) and the number of passengers affected by delays has increased from 8.2 million to 16.5 million (CAGR +10.6%). However, as with flights, the proportion of passengers affected remains relatively small, with passengers affected by cancellations growing from 0.9% to 1.6% and the proportion affected by delays growing from 1.0% to 1.5%.
- 2.107 In comparison to delays and cancellations, the number of passengers affected by denied boarding and downgrading was low. The number of passengers denied boarding increased from 0.9 million in 2011 to 1.8 million in 2018 (representing an increase from 0.08% to 0.14% of passengers) reflecting increasing numbers of total passengers and a small increase in the proportion of passengers denied boarding. The proportion of passengers affected by downgrading remained relatively constant and represented 0.01% of passengers throughout the period; the number of passengers affected grew from 59,000 to 74,000 passengers.

- 2.108 Based on analysis of data provided by airlines and claim agencies, passenger claim rates have increased very significantly between 2011 and 2018, reflecting increasing awareness amongst passengers of their rights to claim compensation either directly or via the claim agencies. In 2018, 38% of eligible passengers claimed compensation – up from 8% in 2011. There is a large disparity between claim rates from cancellations and delays; in 2018, close to 60% of eligible passengers affected by delays claimed and received compensation, as opposed to under 20% affected by cancellations. The proportion of passengers claiming compensation in relation to denied boarding (when they are not offered it proactively) was around 30% in 2018. The claim rate measure used here does not differentiate between whether an airline provided compensation after a passenger submitted an eligible claim, and if it did so only after reminders, or only after the intervention of a NEB, ECC, ADR/ODR/court or claim agency. The claim rate does not then reveal the time and administrative burden for passengers to claim and receive compensation – this is described in Chapter 3
- 2.109 Airline compliance with paying eligible passenger compensation claims has increased throughout the period, reflecting improved implementation by airlines, driven by a number of factors, including complaint enforcement by NEBs (see Chapter 5) and the activity of claim agencies (see Chapter 6), but is still below full compliance in 2018 at around 85%. Similarly, airline compliance with passenger care obligations in the event of disruption has increased throughout the period reaching 71% in 2018. There has been little evidence of airline non-compliance with reimbursement and re-routing obligations.
- 2.110 Instances of mishandled baggage, on a per passenger basis, have decreased. This has been driven by a combination of an improvement in baggage processing systems and a reduction in the proportion of passengers traveling with checked baggage due to the charges now imposed by airlines. In spite of passenger growth, the total number of instances of mishandled baggage has also decreased. Increasing passenger awareness has driven an increase in the proportion of passengers making baggage-related complaints over the period, however, the overall proportion in 2018 was still low at around 30%.

3 Air passengers' perspective on their rights

Introduction

- 3.1 This chapter focuses on the expectations that air passengers have of their rights when they travel (defined as not the journey itself but the phases of pre and post-travel) and analyses the extent to which the 10 passenger rights presented by the Commission in its 2011 communication¹⁸ have been applied in the aviation area. The level of awareness of air passengers of their rights and their satisfaction with the current rules and the opportunity for redress are presented.

Application of the 10 core EU passenger rights

The 10 core EU passenger rights

- 3.2 In 2011, the Commission specified ten core EU passenger rights that are common to all modes of transport¹⁹. Passenger rights are guaranteed in separate legislation for each of the four modes of public transport, whilst the extent of coverage and specific rules differ from one transport mode to another. The ten core EU passenger rights are presented below.

Table 3.1: Ten core EU passenger rights

	EU right	What is covered
1	Right to non-discrimination in access to transport	Protection against direct or indirect discrimination based on nationality, residence, disability or reduced mobility
2	Right to mobility: accessibility and assistance at no additional cost for disabled passengers and passengers with reduced mobility (PRM)	Accessibility and assistance at no additional cost for passengers with a disability and/or reduced mobility
3	Right to information before purchase and at the various stages of travel, notably in case of disruption	Information provision before the purchase of tickets, at various stages of travel, and importantly, in case of disruption
4	Right to renounce travelling (reimbursement of the full cost of the ticket) when the trip is not carried out as planned	Right to withdraw from the contract and have the ticket price reimbursed for long delays, cancelled travel or denied boarding
5	Right to the fulfilment of the transport contract in case of disruption (re-routing and rebooking)	Right to receive an alternative transport service as soon as possible or to rebook for long delays, cancelled travel or denied boarding

¹⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2011:0898:FIN>

¹⁹ COM(2011) 898 final of 19.12.2011– “A European vision for Passengers: Communication on Passenger Rights in all transport modes”.

6	Right to get assistance in case of long delay at departure or at connecting points	Minimum level of care in case of long delays
7	Right to compensation under certain circumstances	Financial compensation in case of long delays, cancelled travel and in case of involuntarily denied boarding in air travel
8	Right to carrier liability towards passengers and their baggage	Liability and compensation for e.g. death or injury of passengers and damage to luggage
9	Right to a quick and accessible system of complaint handling	Right to lodge a complaint with carriers if dissatisfied with the service. May subsequently lodge a complaint with the competent National Enforcement Body (NEB)
10	Right to full application and effective enforcement of EU law	Right to count on the proper application of EU passenger rights by carriers. Enforcement of EU rules by NEBs should happen through effective, proportionate and dissuasive sanctions for infringements

Source: COM(2011) 898 final

The legal framework in the EU

- 3.3 The liberalisation of the European air transport market has generated significant benefits for consumers, including a wider choice of air services, and intense price competition between air carriers has resulted in significantly lower fares. To limit any potential negative impacts that this might have on service quality, several measures have been taken at EU-level to protect air passengers, the most significant of these, Regulation 261/2004. In addition, other relevant pieces of legislation must be considered.

Regulation 889/2002

- 3.4 Regulation 889/2002²⁰ on air carrier liability in the event of accidents also included significant measures to protect passengers, transposing the Montreal Convention into EU law, while extending its scope to cover to flights within individual Member States and introducing new obligations to inform passengers of liability levels. The Montreal Convention replaced and updated the obligations contained in the Warsaw Convention (previously incorporated into EU law through Regulation 2027/1997). Among other things, the Montreal Convention limits air carriers' liability for loss, damage or delay to baggage to 1,131 Special Drawing Rights²¹ (currently €1,400), except where a declaration of higher value is made. It also defines time limits within which passengers must make claims against carriers.
- 3.5 Although the Montreal Convention is a relatively well-established piece of international law relating to APR, research undertaken by Steer for the Commission in 2008 demonstrated that 40% of carriers' conditions of carriage contained terms which were materially non-compliant with the Convention and 7% contained terms which were likely to mislead passengers about carriers' obligations. In addition, the Convention places significant limitations on passenger rights, as discussed in more detail below.

²⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002R0889>

²¹ Limit increased from 1,000 SDR by ICAO in June 2009 (see Report on the outcome of the review by ICAO regarding the limits of liability under the Montreal Convention of 1999)

Regulation 1008/2008

- 3.6 Regulation 1008/2008²² on common rules for the operation of air services, among other issues, governs the licensing of European air carriers. The operating licence provisions require competent licensing authorities to monitor compliance with the applicable requirements, including air carriers' financial situation. Authorities may revoke or suspend the licence, or grant a temporary operating licence if a carrier is not able to fulfil certain financial obligations. The Regulation also includes provisions on pricing, requiring that the final price must be indicated at all times and include all unavoidable and foreseeable price elements, the price must be broken down into air fares/rates, taxes and airport charges and other charges/surcharges/fees, and any optional price elements must be indicated in a clear, transparent and unambiguous way at the start of any booking process and offered on an 'opt-in' basis. Price discrimination based on place of residence within the EU prohibited is also prohibited.

Regulation 1107/2006

- 3.7 Regulation 1107/2006²³ (the PRM Regulation) concerning the rights of disabled persons and persons with reduced mobility when travelling by air prescribes rules for the provision of assistance to disabled passengers and passengers with reduced mobility travelling by air, to protect them from discrimination and ensure they receive suitable assistance at airports and on-board. The Regulation specifies what assistance should be provided by each of the airline and the airport operators and at whose cost. More analysis on the PRM Regulation is included below in this chapter.

Directive 2015/2302

- 3.8 Directive 2015/2302²⁴ (the Package Travel Directive (PTD)) on package travel and linked travel arrangements, which replaces the previous Directive 90/314²⁵ from 1990, provides traveller protection for those booking at least two different types of travel services for the same trip or holiday. The Directive specifies the package organiser's levels of liability for compensation. It covers pre-arranged package holidays, but also self-customised packages, where the traveller chooses different elements from a single point of sale online or offline. Furthermore, these rules provide certain protection for linked travel arrangements, which is when, for example, the traveller books a flight on a website and is then invited to book a hotel on a different website (provided that the second booking is made within 24 hours).
- 3.9 The Package Travel Directive ensures that travellers purchasing packages and linked travel arrangements are protected against the insolvency of airlines and other service providers. This is discussed in much greater details in Chapter 8.

Regulation 2111/2005

- 3.10 Regulation 2111/2005²⁶, 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 provides for the Commission to draw a list of banned airlines: the "EU Air Safety List". Annex B of this list includes airlines that are restricted from operating under certain conditions in Europe. Both lists are updated regularly and published in the

²² <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008R1008>

²³ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006R1107>

²⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L2302>

²⁵ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31990L0314>

²⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32005R2111>

Official Journal of the European Union. The Regulation also specifies a legal right for passengers to be informed of the identity of the air carrier actually performing the service.

Relevant legislation of horizontal consumer protection

3.11 Other elements of the EU legislative framework protect consumers when travelling by air and can be relevant. In particular:

- Directive 93/13 on Unfair Contract Terms²⁷ prohibits a number of specific terms from consumer contracts and has been used by enforcement authorities in the past to require IATA to change its guidance on Conditions of Carriage and some individual airlines to change their Terms and Conditions.
- Directive 2005/29 on Unfair Commercial Practices²⁸ prohibits various practices such as ‘bait advertising’ (advertising an air ticket or other product when in practice it is not available in sufficient quantities at the advertised price to meet demand). It also includes a general prohibition on commercial practices that are misleading or aggressive.
- Regulation 2006/2004 on consumer protection cooperation²⁹; and
- Directive 2011/83 on consumer rights³⁰.

3.12 The EU has, over the last 20 years, adopted a set of rules designed to protect passengers, irrespective of the mode of transport they use. These rules build on previous legislation on the protection of consumers (see paragraph 3.11) and package holidays (see paragraph 3.8), as well as applicable international conventions (the Montreal Convention for air transport, see paragraph 3.4), the EU Charter of Fundamental Rights and national provisions. The Court of Justice of the European Union also plays a leading role in interpreting these rules.

Extent to which the 10 core EU passenger rights are addressed by EU APR legislation

3.13 As explained above, EU legislation on air passenger rights has been created through a succession of legislative texts, and not through a unique strategic vision. It is therefore important to check the extent to which the ten core EU rights are addressed in EU law, and in which manner, as the “layers” and varied scope of the EU legislation make it more complex. We present below (see Table 3.2) an assessment on the implementation for the ten core passenger rights for air passengers. It is followed by an analysis of their actual enforcement under currently established EU rules, both APR specific and horizontal ones (see Table 3.3).

²⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31993L0013>

²⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029>

²⁹ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004R2006>

³⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0083>

Table 3.2: Extent to which the ten core passenger rights are implemented in air transport by European legislation

EU right		261/ 2004	889/ 2002	1008/ 2008	1107/ 2006	PTD	Other	Comments on application of rights
1	Protection against direct or indirect discrimination based on nationality or residence			✓				Puts an end to a practice where residents of one Member State are unable to book on the website of the same carrier in another country. It also means that travel agents have access to the same fares irrespective of their geographical situation.
	Protection against direct or indirect discrimination based on disability or reduced mobility				✓			This is discussed in paragraph 3.78 below.
2	Accessibility and assistance at no additional cost for passengers with disability and reduced mobility				✓	✓		This is discussed in paragraph 3.78 below. PTD: The defined cost limits for the provision of accommodation (if possible, of equivalent category, for a period not exceeding three nights per traveller) in cases where it is impossible to ensure the passenger's return as agreed in the contract, do not apply to persons with reduced mobility.
3	Information provision before the purchase of tickets			✓		✓	✓	When purchasing tickets online, pre-ticked boxes, internet cost traps and any additional charges which passengers were not duly informed about in advance are prohibited, as well as additional charges for certain means of payment (such as credit cards). In its recent analysis ³¹ of Regulation 1008/2008, the Commission found that there was a fairly high-rate of compliance by air carriers and that the Payment Services Directive which applied from 2018 solved credit cards surcharges. However, transparent information on the full price of the ticket and on what is included in the service is not standardised –

³¹ SWD(2019)295 final

EU right		261/ 2004	889/ 2002	1008/ 2008	1107/ 2006	PTD	Other	Comments on application of rights
								there are also possible competitive distortions as national legislators or courts may take different positions as whether such practices are to be considered as abusive. PTD: The organiser and/or the retailer is required to provide the traveller with the standard information as well as information on the main characteristics of the travel services before the traveller is bound by any contract. Any changes to the pre-contractual information need to be communicated clearly and comprehensively before the conclusion of the package travel contract. The trader facilitating linked travel arrangement is required to inform the traveller that he will not benefit from any of the rights applying exclusively to packages and linked travel arrangements and that each service provider will be solely responsible for the proper contractual performance. The organiser and/or the retailer, the trader facilitating linked travel arrangement is required to inform the traveller that he will benefit from insolvency protection.
	Information provision at various stages of travel and in case of disruption							There is no provision that passengers be kept informed of the status of their flight before or during travel. In practice many air carriers inform passengers when their flight is disrupted both before and during; however, as this is not mandated, this practice is not universal or standardised.
4	Right to withdraw and have the ticket price reimbursed for long delays	✓				✓		261/2004: When passengers have a reservation for flight delayed by more than five hours, they are entitled to a reimbursement of their original fare regardless of whether the delay is classified as airline-attributable (see Chapter4). PTD: If any travel services are not performed as set out in the package travel contract, the organiser is required to arrange alternative arrangements or, where not that is not possible, provide a price reduction and/or compensation for damages. Where the organiser does not provide the passenger with suitable alternative arrangements within a reasonable time period, the passenger can arrange a suitable alternative and request reimbursement or terminate the package travel contract without paying a fee and can request a price reduction and/or compensation.

EU right		261/ 2004	889/ 2002	1008/ 2008	1107/ 2006	PTD	Other	Comments on application of rights
	Right to withdraw and have ticket price reimbursed for cancelled travel	✓				✓		261/2004: When passengers have a reservation for flight that is cancelled a maximum of two weeks before the scheduled departure time, they are entitled to the choice of a reimbursement of their original fare regardless of whether the cancellation is classified as airline-attributable (see Chapter 4). PTD: If any travel services are not performed as set out in the package travel contract, the organiser is required to arrange alternative arrangements or, where not that is not possible, provide a price reduction and/or compensation for damages. Where the organiser does not provide the passenger with suitable alternative arrangements within a reasonable time period, the passenger can arrange a suitable alternative and request reimbursement or terminate the package travel contract without paying a fee and can request a price reduction and/or compensation.
	Right to withdraw and have ticket price reimbursed for denied boarding	✓				✓		261/2004: When passengers are denied boarding involuntarily on a flight on which they have a reservation, they are entitled to the choice of a reimbursement of their original fare (see Chapter 4). PTD: If any travel services are not performed as set out in the package travel contract, the organiser is required to arrange alternative arrangements or, where not that is not possible, provide a price reduction or compensation for damages. Where the organiser does not provide the passenger with suitable alternative arrangements within a reasonable time period, the passenger can arrange a suitable alternative and request reimbursement or terminate the package travel contract without paying a fee and can request a price reduction and/or compensation.
5	Right to receive alternative transport service/transport as soon as possible, or to rebook for long delays	✓				✓		261/2004: When passengers have a reservation for flight delayed by more than five hours, they are entitled to the choice of either a rebooking with the same airlines or a re-routing on either an alternative transport or on an alternative airline regardless of whether the cancellation is airline-attributable. In practice, there is disagreement amongst NEBs as to what constitutes the next available flight, with many airlines avoiding re-routing passengers on other carriers wherever possible and re-routing entitlements not being enforced in a uniform manner (see Chapter 4).

EU right		261/ 2004	889/ 2002	1008/ 2008	1107/ 2006	PTD	Other	Comments on application of rights
								PTD: The Directive requires that the package organiser finds a way to ensure the provision of the package continues.
	Right to receive alternative transport service/transport as soon as possible, or to rebook for cancelled travel	✓				✓		261/2004: When passengers have a reservation for flight that is cancelled a maximum of two weeks before the scheduled departure time, they are entitled to the choice of either a rebooking with the same airlines or a re-routing on either an alternative transport or on an alternative airline regardless of whether the cancellation is airline-attributable. In practice, there is disagreement amongst NEBs as to what constitutes the next available flight, with many airlines avoiding re-routing passengers on other carriers wherever possible and re-routing entitlements not being enforced in a uniform manner (see Chapter 4). PTD: The Directive requires that the package organiser finds a way to ensure the provision of the package continues.
	Right to receive alternative transport service/transport as soon as possible, or to rebook for denied boarding	✓				✓		261/2004: When passengers are denied boarding involuntarily on a flight on which they have a reservation, they are entitled to the choice of either a rebooking with the same airlines or a re-routing on either an alternative transport or on an alternative airline regardless of whether the cancellation is airline-attributable. In practice, there is disagreement amongst NEBs as to what constitutes the next available flight, with many airlines avoiding re-routing passengers on other carriers wherever possible and re-routing entitlements not being enforced in a uniform manner (see Chapter 4). PTD: The Directive requires that the package organiser finds a way to ensure the provision of the package continues.
6	Minimum level of care in case of long delays	✓						When passengers have a booking for delayed flight, they are entitled to 'reasonable' care and assistance after between two and four hours delay depending on the distance of their scheduled flight. For shorter delays passengers are provided with (or reimbursed for) refreshments and meals, and for longer delays are provided with (or reimbursed for) accommodation and associated costs. Given the mandated level of care and assistance is that in 'reasonable' proportion to the length of the delay, the level care and assistance provided is not standardised across airlines and can vary in terms of

EU right		261/ 2004	889/ 2002	1008/ 2008	1107/ 2006	PTD	Other	Comments on application of rights
								adequacy and quality – the subjective nature of passengers’ entitlements also mean that they are not enforced in a uniform manner (see Chapter 4).
7	Financial compensation in case of long delays	✓				✓		261/2004: When passengers have a reservation for flight delayed by more than three hours, they are entitled to between €250 and €600 compensation, depending on the length of the delay and the distance of their scheduled flight, when the reason for the delay is classified as being not due to ‘extraordinary circumstances’ (i.e. not airline-attributable). However, there is disagreement amongst NEBs and airlines precisely what is the definition of ‘extraordinary circumstances’ and under which circumstances airlines are liable for compensation – the CJEU rulings have sought to clarify this, but there are still issues and compensation entitlement is not enforced in uniform manner. Some airlines are also non-compliant with paying compensation, even after enforcement action by NEBs (see Chapter 4). PTD: If any travel services are not performed as set out in the package travel contract, the organiser is required to arrange alternative arrangements or, where not that is not possible, provide a price reduction and/or compensation for damages. Where the organiser does not provide the passenger with suitable alternative arrangements within a reasonable time period, the passenger can arrange a suitable alternative and request reimbursement or terminate the package travel contract without paying a fee and can request a price reduction and/or compensation.
	Financial compensation in case of cancelled travel	✓				✓		261/2004: When passengers have a reservation for flight that is cancelled a maximum of two weeks before the scheduled departure time, they are entitled to between €250 and €600 compensation, depending on the distance of their scheduled flight, when the reason for the cancellation is classified as being not due to ‘extraordinary circumstances’ (i.e. not airline-attributable). However, there is disagreement amongst NEBs and airlines precisely what is the definition of ‘extraordinary circumstances’ and under which circumstances airlines are liable for compensation – the CJEU rulings have sought to clarify this, but there are still issues and compensation entitlement is not enforced in uniform manner. Some airlines are also non-compliant with paying compensation, even after enforcement action by NEBs (see Chapter 4).

EU right		261/ 2004	889/ 2002	1008/ 2008	1107/ 2006	PTD	Other	Comments on application of rights
								PTD: The Directive requires that the package organiser finds a way to ensure the provision of the package continues. Compensation may be provided.
	Financial compensation in case of involuntarily denied boarding in air travel	✓				✓		261/2004: When passengers are denied boarding involuntarily on a flight on which they have a reservation, they are entitled to between €250 and €600 compensation, depending on the distance of their scheduled flight. Some airlines are non-compliant with paying compensation, even after enforcement action by NEBs (see Chapter 4). PTD: The Directive requires that the package organiser finds a way to ensure the provision of the package continues. Compensation may be provided, but there cannot be double compensation (under PTD and under Regulation 261/2004) as per PTD Art. 14.5 stating that compensation can be deducted from each other
8	Liability and compensation for e.g. death or injury of passengers		✓					Protection for financial compensation in case of death or injury to passengers that takes place on board the aircraft or upon embarking or disembarking – the financial compensation is not automatic and must be claimed in a court procedure.
	Liability and compensation for damage to luggage		✓					Protection if carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage – passengers can only be reimbursed up to the value of 1,131 SDRs (approximately €1,400) (see Chapter 4).
9	Right to lodge a complaint with carrier. May subsequently lodge a complaint with the NEB	✓			✓	✓		261/2004 and 1107/2006: Passengers are entitled to make a complaint to airlines and, if necessary, a complaint to an NEB. However, amongst both airlines and NEBs there are different interpretations of provisions within passenger rights legislations as well as varying levels of compliance with these provisions (see Chapter 5). PTD: The right to compensation or price reduction defined in the directive does not affect the rights of passengers under other regulations. Passengers are entitled to present claims under the PTD and other EU Regulations, including Regulation 261/2004. As explained above, there cannot be double compensation as per PTD Art. 14.5
10	Right to count on the proper	✓	✓	✓	✓	✓	✓	261/2004: The precise entitlements provided to passengers by carriers varies in terms of adequacy and quality and is not uniform across carriers or Member States. In some

EU right		261/ 2004	889/ 2002	1008/ 2008	1107/ 2006	PTD	Other	Comments on application of rights
	application of EU passenger rights by carriers. Enforcement of EU rules by NEBs should happen through effective, proportionate and dissuasive sanctions for infringements							cases, this is due to differences in interpretation (for example in relation to care and assistance or re-routing obligations), but in other cases, it is due to wilful non-compliance by carriers, who do not provide passengers with their entitlements and only do so after enforcement action by NEBs or legal action by national to European courts (see Chapter 5). 889/2002: passenger rights are implemented but passenger claiming for their rights remains difficult without proper legal support. 1107/2006: as for Regulation 261/2004, there are some issues with interpretation and some grey areas for both airlines and airports. PTD: The right to compensation or price reduction defined in the directive does not affect the rights of passengers under other regulations. Passengers are entitled to present claims under the PTD and other EU Regulations, including Regulation 261/2004. As explained above, there cannot be double compensation as per PTD Art. 14.5 Enforcement is discussed in more details in Table 3.3 below.

Source: Steer analysis

Note that the geographic scope of these legislative texts varies for non-EU Member States. For instance, whilst Regulation 261/2004 and 1107/2006 apply to Switzerland, Norway and Iceland, the full scope of the CJEU rulings does not apply to EEA countries. The scope of Regulation 1008/2008 encompasses EEA Members (therefore including Norway and Iceland), as does Regulation 889/2002, but not the Package Travel Directive. The national consumer protection frameworks in the Norway, Iceland and Switzerland have not been reviewed.

Extent to which the 10 core EU passenger rights are enforced under the APR legislation of the EU

- 3.14 Enforcement of the ten core passenger rights comprises, as with their implementation, a number of different practices, as a result of the different legislative texts. Consequently, there is not one instrument for enforcement, but a variety of instruments, drawing from all or most of the texts that form the framework of air passenger rights.
- 3.15 At EU+3 level, some texts provide for a clear enforcement mechanism, usually through national enforcement bodies (as is the case under Regulations 261/2004 and 1107/2006), but that the mechanisms are less obvious in some other cases:
- Regulation 1008/2008 (for its provisions on pricing and ticketing) requires Member States to ensure compliance with the rules.
 - The Package Travel Directive leaves to each Member State the adequate and effective means to ensure compliance with the Directive. Note that the PTD is listed under the CPC Regulation, therefore enforcement of the PTD must be done by CPC authorities, ADRs/ODRs and courts.
 - Regulation 889/2002 which is an EU transposition of the Montreal Convention is not explicit at all as to who is the enforcement instrument of the Regulation. Since most baggage related issues fall under this regulation, it is not obvious at all where passengers should turn to, in the case that the carrier did not fulfil its obligations.
 - Where consumer law applies, it is generally enforced at national level.
- 3.16 At national level, the tools for enforcement that are chosen by each authority (where there is one) differ significantly.
- 3.17 In practical terms, Table 5.2 of the analysis of NEB competencies in Chapter 5 highlights this problem as, in a number of Member States (including France, Germany, the Netherlands, Spain, Italy), the NEB is not competent for Regulation 889/2002-related matters for instance, leaving passengers unable to obtain redress without turning to a legal professional, as well as leaving the airlines without oversight on these issues (beyond the voluntary codes that some may have entered into). An assessment of the enforcement of for the ten core passenger rights in air transport is presented below.

Table 3.3: Extent to which the ten core passenger rights are enforced in air transport

EU right		261/ 2004	889/ 2002	1008/ 2008	1107/ 2006	PTD	Other	Comments on enforcement of rights
1	Protection against direct or indirect discrimination based on nationality or residence			MS				MS oversee this right under Regulation 1008/2008. According to the recent analysis by the European Commission on Regulation 1008/2008, “the Air Services Regulation has contributed to the equal treatment of passengers compared to the 2008 revision baseline. The 2013 Fitness Check found that 74% of websites tested did not discriminate by place of residence”.
	Protection against direct or indirect discrimination based on disability or reduced mobility				NEB		ADR/ ODR/ Courts	PRM NEBs are in charge of enforcement of this right. It is discussed in much greater detail in paragraph 3.78 below, but it remains unclear as to how PRM NEBs enforce this right in practice as the level of sanctions is low and few NEBs report on PRM statistics.
2	Accessibility and assistance at no additional cost for passengers with disability and reduced mobility				NEB	MS	ADR/ ODR/ Courts	1107/2006: PRM NEBs are in charge of enforcement of this right. It is discussed in much greater detail in paragraph 3.78 below, but it remains unclear as to how PRM NEBs enforce this right in practice as the level of sanctions is low and few NEBs report on PRM statistics. Costs of the PRM charge are supervised by the Independent Supervisory Authorities (ISAs) in charge of airport charges (under Directive 12/2009). PTD: Unclear enforcement by Member States under the PTD
3	Information provision before the purchase of tickets			MS		MS	ADR/ ODR/ Courts	MS oversee this right under Regulation 1008/2008. There remain some areas of ambiguity between essential and optional elements to be offered on an opt-in basis. The current wording requiring Member States to “lay down sanctions that are effective, proportionate and dissuasive” allows much freedom for the Member States and leads to a fragmented situation across the EU. As a result, there have been national and EU court cases, and investigations testing the effectiveness of the provisions and ensuring adequate price transparency and comparability. PTD: we assume that this is addressed through the role of MS under Regulation 1008/2008

EU right		261/ 2004	889/ 2002	1008/ 2008	1107/ 2006	PTD	Other	Comments on enforcement of rights
	Information provision at various stages of travel and in case of disruption						ADR/ ODR/ Courts	As this right is not implemented in EU legislation, no specific authority is in charge in EU Member States, and this issue will be left to ADRs or courts.
4	Right to withdraw and have ticket price reimbursed for long delays	NEB				MS	ADR/ ODR/ Courts	261/2004: The enforcement procedures of NEBs are not uniform across Member States; as well as differences in interpretation in a number of key areas, there are also differences in the number of bodies within a Member State, the structure of these bodies, their complaint handling processes, the enforcement powers they possess and the level of sanctions they impose on carriers for non-compliance (see Chapter 5).
	Right to withdraw and have ticket price reimbursed for cancelled travel	NEB				MS	ADR/ ODR/ Courts	261/2004: The enforcement procedures of NEBs are not uniform across Member States; as well as differences in interpretation in a number of key areas, there are also differences in the number of bodies within a Member State, the structure of these bodies, their complaint handling processes, the enforcement powers they possess and the level of sanctions they impose on carriers for non-compliance (see Chapter 5).
	Right to withdraw and have ticket price reimbursed for denied boarding	NEB				MS	ADR/ ODR/ Courts	261/2004: The enforcement procedures of NEBs are not uniform across Member States; as well as differences in interpretation in a number of key areas, there are also differences in the number of bodies within a Member State, the structure of these bodies, their complaint handling processes, the enforcement powers they possess and the level of sanctions they impose on carriers for non-compliance (see Chapter 5). PTD: The new PTD is came into force in July 2018 and is in the early stages of its implementation, adequate information on the effectiveness of its enforcement is not available. We nonetheless note that this will be done at Member State level, so likely to not be very standardised.

EU right		261/ 2004	889/ 2002	1008/ 2008	1107/ 2006	PTD	Other	Comments on enforcement of rights
5	Right to receive alternative transport service/transport as soon as possible, or to rebook for long delays	NEB				MS	ADR/ ODR/ Courts	261/2004: The enforcement procedures of NEBs are not uniform across Member States; as well as differences in interpretation in a number of key areas, there are also differences in the number of bodies within a Member State, the structure of these bodies, their complaint handling processes, the enforcement powers they possess and the level of sanctions they impose on carriers for non-compliance (see Chapter 5). PTD: The new PTD is came into force in July 2018 and is in the early stages of its implementation, adequate information on the effectiveness of its enforcement is not available. We nonetheless note that this will be done at Member State level, so likely to not be very standardised.
	Right to receive alternative transport service/transport as soon as possible, or to rebook for cancelled travel	NEB				MS	ADR/ ODR/ Courts	261/2004: The enforcement procedures of NEBs are not uniform across Member States; as well as differences in interpretation in a number of key areas, there are also differences in the number of bodies within a Member State, the structure of these bodies, their complaint handling processes, the enforcement powers they possess and the level of sanctions they impose on carriers for non-compliance (see Chapter 5). PTD: The new PTD is came into force in July 2018 and is in the early stages of its implementation, adequate information on the effectiveness of its enforcement is not available. We nonetheless note that this will be done at Member State level, so likely to not be very standardised.
	Right to receive alternative transport service/transport as soon as possible, or to rebook for denied boarding	NEB				MS	ADR/ ODR/ Courts	261/2004: The enforcement procedures of NEBs are not uniform across Member States; as well as differences in interpretation in a number of key areas, there are also differences in the number of bodies within a Member State, the structure of these bodies, their complaint handling processes, the enforcement powers they possess and the level of sanctions they impose on carriers for non-compliance (see Chapter 5). PTD: The new PTD is came into force in July 2018 and is in the early stages of its implementation, adequate information on the effectiveness of its enforcement is

EU right		261/ 2004	889/ 2002	1008/ 2008	1107/ 2006	PTD	Other	Comments on enforcement of rights
								not available. We nonetheless note that this will be done at Member State level, so likely to not be very standardised.
6	Minimum level of care in case of long delays	NEB					ADR/ ODR/ Courts	261/2004: The enforcement procedures of NEBs are not uniform across Member States; as well as differences in interpretation in a number of key areas, there are also differences in the number of bodies within a Member State, the structure of these bodies, their complaint handling processes, the enforcement powers they possess and the level of sanctions they impose on carriers for non-compliance (see Chapter 5). PTD: The new PTD is came into force in July 2018 and is in the early stages of its implementation, adequate information on the effectiveness of its enforcement is not available. We nonetheless note that this will be done at Member State level, so likely to not be very standardised.
7	Financial compensation in case of long delays	NEB				MS	ADR/ ODR/ Courts	261/2004: The enforcement procedures of NEBs are not uniform across Member States; as well as differences in interpretation in a number of key areas, there are also differences in the number of bodies within a Member State, the structure of these bodies, their complaint handling processes, the enforcement powers they possess and the level of sanctions they impose on carriers for non-compliance (see Chapter 5). PTD: The new PTD is came into force in July 2018 and is in the early stages of its implementation, adequate information on the effectiveness of its enforcement is not available. We nonetheless note that this will be done at Member State level, so likely to not be very standardised.
	Financial compensation in case of cancelled travel	NEB				MS	ADR/ ODR/ Courts	261/2004: The enforcement procedures of NEBs are not uniform across Member States; as well as differences in interpretation in a number of key areas, there are also differences in the number of bodies within a Member State, the structure of these bodies, their complaint handling processes, the enforcement powers they possess and the level of sanctions they impose on carriers for non-compliance (see Chapter 5).

EU right		261/ 2004	889/ 2002	1008/ 2008	1107/ 2006	PTD	Other	Comments on enforcement of rights
								PTD: The new PTD is came into force in July 2018 and is in the early stages of its implementation, adequate information on the effectiveness of its enforcement is not available. We nonetheless note that this will be done at Member State level, so likely to not be very standardised.
	Financial compensation in case of involuntarily denied boarding in air travel	NEB				MS	ADR/ ODR/ Courts	261/2004: The enforcement procedures of NEBs are not uniform across Member States; as well as differences in interpretation in a number of key areas, there are also differences in the number of bodies within a Member State, the structure of these bodies, their complaint handling processes, the enforcement powers they possess and the level of sanctions they impose on carriers for non-compliance (see Chapter 5). PTD: The new PTD is came into force in July 2018 and is in the early stages of its implementation, adequate information on the effectiveness of its enforcement is not available. We nonetheless note that this will be done at Member State level, so likely to not be very standardised.
8	Liability and compensation for e.g. death or injury of passengers		Courts				Courts	889/2002: Enforcement is only possible through a court.
	Liability and compensation for damage to luggage	NEBs	Courts				ADR/ ODR/ Courts	889/2002: Some NEBs are able to enforce this, but it would in most cases require an ADR or a court
9	Right to lodge a complaint with carrier. May subsequently lodge a complaint with the NEB	NEB			NEB	MS	ADR/ ODR/ Courts	No significant issues on the enforcement of this right.

EU right		261/ 2004	889/ 2002	1008/ 2008	1107/ 2006	PTD	Other	Comments on enforcement of rights
10	Enforcement of EU rules by NEBs should happen through effective, proportionate and dissuasive sanctions for infringements	NEB			NEB	MS	ADR/ ODR/ Courts	Overall, as presented in this table, there are some issues on enforcement in most of the ten core passenger rights in air transport.

Source: Steer analysis

Expectations of air passengers regarding their rights

- 3.18 A comprehensive survey of passengers was not required as part of the Terms of Reference. The research and analysis undertaken in this chapter related to the expectations and views of passengers mainly draw from interaction with the consumer and passenger representative organisations, as well as desk-research including the latest 2019 Eurobarometer survey.

Awareness of rights

- 3.19 Comprehensive sources of information on passengers' awareness of their rights remain limited. We draw here on the results of the latest Eurobarometer survey (2019)³² and information from the stakeholder consultation undertaken for this study.

Stakeholder consultation

- 3.20 All stakeholders interviewed as part of the study reported that consumers or passengers were increasingly aware that they had passenger rights (ECCs, BEUC, NEBs and airlines). In addition to the display of information on air passenger rights at airports required by Regulation 261/2004, stakeholders noted that EC information campaigns and media reports also helped to raise awareness³³. The improvement in information available online and immediate access to airline and other websites (supported by free airport Wi-Fi and free data roaming in the EU) has supported passengers in their ability to access, understand and act on information.
- 3.21 However, passenger representatives and other stakeholders mentioned that awareness (knowing that you have certain rights as a passenger) is not the same as knowledge (knowing exactly which rights). Issues in this area highlighted by stakeholders include:
- Most passengers are not fully aware of their rights and the fact that they can seek compensation in certain circumstances;
 - Passengers not being aware that they are not entitled to compensation in all cases;
 - The gaps in passenger understanding are not helped by a lack of clarity on the process that needs to be undertaken to assert those rights and due to the differing approaches taken by individual airlines in meeting their obligations under Regulation 261/2004;
 - Given a significant majority of passengers are not regular travellers, they are likely only to focus on their rights at the time they are being negatively affected, rather than being aware in advance of travel.
- 3.22 Whilst at Regulation 261/2004 may appear reasonably understandable for an air passenger, it is supplemented by extensive and technical CJEU case law. In addition, as illustrated above in paragraph 3.3, at least five other pieces of EU legislation (including Regulations and Directives) need to be understood and considered by passengers so that they can have a full understanding of their rights and available protections. In addition, the lack of consistency at national level for protection and enforcement of consumer rights across the EU does not allow consumers to know their rights "once and for all".

³² Special Eurobarometer 485, Passenger Rights, Field work took place in February/March 2019: <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/special/surveyky/2200>

³³ https://ec.europa.eu/transport/themes/passengers/campaign_en

Eurobarometer

- 3.23 Eurobarometer findings show that awareness of EU passenger rights is still low: almost half of the respondents who had travelled by air (49%) are aware of EU-established passenger rights.
- 3.24 Amongst respondents who travelled by air in the last 12 months, 40% agree they were well informed by the airline about their passenger rights before travelling, with 14% saying they totally agree. Almost three in ten (29%) agree they were well informed during travel, with 9% who totally agree. Almost one quarter (23%) agree they were well informed by the airline about their passenger rights after travel, with 7% saying they totally agree.
- 3.25 The awareness level of passengers facing disruptions regarding the complaints process is discussed further below (see paragraph 3.58).

Provision of information to passengers

- 3.26 As explained above in Table 3.2, there is no requirement in Regulation 261/2004 for the provision of information to passengers about their journey. This creates a gap for passengers. Most airlines stated that they proactively contact passengers (when they have their contact details, which is not always the case for passengers who booked through a travel agent for instance), but there can nonetheless be an inconsistency in approach and whilst this may be a “push” approach (airline sends the information to passengers’ email or telephone), other airlines may instead only publish information on their website with passengers being required to think to check the website for updates.

Passenger expectations of level of service by air carriers

No-shows

- 3.27 Under no-show clauses, airlines are able to cancel reservations of passengers who have missed (for whatever reason) part of their journey on a multi-part itinerary. This can be a return flight, an onward connection or a multi-part itinerary including a train journey. The clause indicates that if one of the parts of the itinerary is missed then the remaining parts are deemed invalid, even though they have been paid for and have not been cancelled. Passengers are then required to purchase another ticket, pay a supplement or take another flight.
- 3.28 There are currently no EU laws forbidding the clause, however the European Commission put forward a (partial) ban of no-show clauses in its 2013 proposal for the revision of Regulation 261/2004, which was supported and reinforced by the European Parliament. However, the Council has removed the relevant provision from the legislative proposal³⁴.
- 3.29 Airlines argue that such clauses are an important part of airline pricing freedoms and support competition within the air travel market. They price according to demand from the origin to the destination market and may price return tickets at a lower fare than two singles. Their state that a ban of no-show clauses would undermine their pricing strategies. In addition, airlines argue that provisions under the EU-US Open Skies agreement prevent the EU from banning the use of no-show clauses.
- 3.30 BEUC made two central arguments in favour of banning the no-show clause:

³⁴ EU Public Interest Clinic and European consumers organisation BEUC

- No-show clauses are unfair under Council Directive 93/13 on Unfair Terms in Consumer Contracts. Counter to the requirements of that Directive, no-show clauses create a “significant imbalance” between the consumer and the airline.
- A number of EU Member State courts, including Germany, Spain and Austria, have already ruled that the no-show clauses are unfair contract terms which breach national legislation that emerges from EU Directives.

Price transparency

- 3.31 Regulation 1008/2008 sets requirements for price transparency that the final price including all foreseeable and unavoidable elements ought to be shown throughout the booking process. What are considered “foreseeable and unavoidable” elements can vary between passengers and airlines though. Passengers would expect that a hand-luggage allowance should always be included as part of the ticket and that travel companions would automatically be seated together. Airline practices and the degree to which they unbundle their services do not always align with passenger expectations, and additionally they vary between airlines, generating complexity for passengers.
- 3.32 Airlines unbundle more and more, splitting their offer between basic and ancillary services. In 2018, around a third of Ryanair’s revenues came from ancillary services. This unbundling can create problems for passengers in terms of price transparency, but also, as many passengers may expect some of these services to be part of the basic offer (e.g. hand luggage or guaranteed seating with travel companions), can lead passengers to perceive unbundling of ancillary services by airlines as misleading. Recently, the Italian competition authority imposed a high fine on Ryanair and Wizzair because these airlines charged a fee for hand luggage, though it was considered by the court as an unavoidable cost and should therefore have been included in the price initially displayed.
- 3.33 Whilst seating issues have not been particularly highlighted by stakeholders in this study (maybe as there are more pressing issues), there is a concern for passengers that when booking tickets online, many airlines charge extra to allow passengers to choose a specific seat, meaning that people have to pay more to guarantee sitting with their companion or group. If passengers choose not to buy specific seats, they may still be able to sit together but it is not guaranteed even when all the tickets were purchased during the same transaction.
- 3.34 If passengers do not pay, this may result in them being allocated all along the cabin, including children potentially separated from their guardians which might raise child safety issues as well as potentially have an impact on the travelling experience of other passengers. Research by a European NEB shows that “the chances of sitting together if passengers do not pay for specific seats can vary widely depending on the airline used³⁵”. The Canadian air passenger rights regime introduced in 2019 also includes protections for children to be seated close to their guardians.
- 3.35 Unbundling also renders comparison tools (such as online travel agencies or meta-search engines much more difficult to interpret, with no “like for like” comparison available. Passengers need to consult multiple sources to get a good overview, which is complex and time-consuming, and the opposite of what passengers would like: simplicity in booking. For travel agents, this means also more workload and ultimately, a higher cost.

³⁵ <https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=8857>

- 3.36 In According to ACI-Europe, unreasonable restrictions on cabin baggage allowances by some airlines undermine the passenger experience. The lack of recognised passenger rights in relation to this issue has led to very restrictive and changing practices by some carriers, who limit passengers to carrying a single piece of hand baggage on-board and charging for any additional items, such as airport shopping. Additionally, the inconsistency of such airline practices discourages passengers (including those not travelling with an airline with restrictive rules) from shopping at airports, which impacts airports' commercial revenues. In 2017, commercial revenues accounted for 41% of total airport revenues on average.

Advance rescheduling of flights

- 3.37 There are no provisions in EU legislation regarding advance rescheduling of flights (more than 14 days before departure). A stakeholder commented that airlines may sometimes sell convenient flight times but then change the schedule significantly more than 14 days prior to departure, in which case passengers are not entitled to compensation. Refund of the ticket price may not be a good option for many passengers as new tickets at comparatively short notice before departure would likely be much more expensive.

Partial reimbursement

- 3.38 Most passengers do not know that they can get a partial reimbursement of their ticket for their airport charges and government taxes if they do not take a flight. Airlines as a result retain this revenue when a passenger cancels or misses a flight.

Contacting the airlines

- 3.39 Passenger representatives expressed the view that there are multiple barriers for passengers when trying to contact an airline to submit a claim, including malfunctioning webforms, unavailable email addresses, broken links to the claim forms, webforms not available in the language of the consumer etc.
- 3.40 Helplines are also in most cases overpriced causing a high detriment to consumers. The pending proposal for a Directive on better enforcement and modernisation of EU consumer protection rules - a new deal for consumers ('Omnibus proposal'³⁶) might include an amendment preventing airlines to charge more than the basic rate for the phone calls.
- 3.41 For PRM specifically, not all travel agent websites allow PRM to indicate a disability at the time of booking, rendering the pre-notification of the airline cumbersome.

During travel

- 3.42 Eurobarometer findings show that more than one quarter of air travellers (28%) experienced at least one disruption to their air travel in the past year: the most common was a departure delay of two hours or more (15%), while 7% experienced delayed, lost or damaged luggage. Just over one in twenty (6%) reported an arrival delay of three hours or more, and the same proportion (6%) reported a flight cancellation. Just 1% say they were denied boarding due to overbooking.

³⁶ <http://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-modernisation-of-consumer-protection-rules>

- 3.43 Eurobarometer also highlighted that, respondents who have read, seen or heard information about passenger rights are more likely to report at least one disruption, compared to those who have not been exposed to this information (33% vs 24%).
- 3.44 Amongst respondents who had encountered disruption to their air travel in the last 12 months 53% say some form of remedial action was taken for the most significant disruption (covered by EU legislation) they experienced. Food and drinks are the most common form of redress (28%), followed by an alternative flight or other arrangements at no extra cost (18%), or financial compensation for the disruption (14%). One in ten (10%) say they received accommodation, while 8% were reimbursed for the cost of the ticket. Almost half (47%), however, stated that they received nothing for the most significant disruption.
- 3.45 Eurobarometer adds that “when interpreting these results, it is important to note that it is not possible to know the circumstances under which remedial action was or was not taken, nor is it possible to say whether the respondent specifically requested something or whether it was given voluntarily by the transport company”.
- 3.46 We note that, as enough airline staff (or groundhandling staff representing the airline) may not be visible/available in the airport to assist passengers, airports can occasionally take on the responsibility of taking care of passengers who have experienced disruption.
- 3.47 Results of a survey conducted by the European Court of Auditors³⁷ in 2017 shows that of the 10 core passenger rights, the most important one was the “right to receive alternative transport in the event of long delays, cancellations or denied boarding” with 42 % of people putting it as their first choice. This was closely followed by “right to compensation in the event of long delays, cancellations or denied boarding,” with 40 %. Almost equally important was the right to assistance.
- 3.48 According to the new Eurobarometer survey 2019, a majority (53%) of air transport users having experienced at least one disruption to their travel in the last 12 months (see above) say that some form of remedial action was taken, most commonly food and drinks (28%), followed by an alternative flight at no extra cost (18%) and financial compensation (14%). In other modes, by comparison, less than half of travellers affected by disruption reported remedial action was granted by the operators concerned (43% in rail and 38% in both coach and ship or ferry services).
- 3.49 Thinking about the most significant of the air travel disruptions faced in the last 12 months, the majority (54%) of air travellers say they were satisfied with the way it was handled, with 14% ‘very satisfied’. Just over four in ten (42%) were dissatisfied. While the percentage of satisfied passengers is similar for ship or ferry (56%) services, it is lower for rail and coach services (44 and 42%, respectively).

Sometimes high expectations

- 3.50 Some stakeholders highlighted that in some cases passengers could also have unrealistically high expectations:
- In the case of extreme weather events, the forecast end of the disruptive event can remain unclear for all involved for some time. Passengers’ expectations that airlines can provide information on when the situation will change and they will be able to travel are not realistic. The obligation to minimise disruption was sometimes felt as generating a

³⁷ <http://publications.europa.eu/webpub/eca/special-reports/passenger-rights-30-2018/en/>

conflict with the requirement that airlines carry passengers safely by some NEBs and airlines.

- In cases of mass disruption, where thousands of passengers can be affected, providing care and assistance can also be a significant challenge even with contingency plans and preparation. For instance, once hotel capacity is reached in an area, there is little that airlines (or passengers directly for that matter) can do to mitigate the problem.
- It can also be challenging to provide hotel accommodation for an entire aircraft full of passengers without long waiting times in queues. This is neither desirable for the passenger nor for the airline. Use of technology is seen as a way to help. However, in the event of disruption, airline websites can occasionally be unable to cope with the spike in activity as stranded passengers attempt to re-book, leading to passengers queuing for hours in the airport to speak to an airline representative.

Level of airline compliance

- 3.51 As described earlier in this report, particularly in Chapter 2, airline compliance with APR requirements is not full. Most passenger representatives believe that there is compliance, in particular with regard to compensation, is limited with the application of extraordinary circumstances being one of the main points of disagreement.
- 3.52 A northern Europe ECC indicated that, for Spanish airlines especially, it is difficult to get a response actually dealing with the incident being reported. These airlines often do not respond, or respond with a standard reply. The possibilities to contact these airlines are poor, e.g. lack of email address or poor customer service. Airlines may also ask for additional documents from consumers to in order to deal with the complaint (such as ID, bank statement, etc.) which are not necessary to solve the complaint and were not needed to book the service.
- 3.53 Airline compliance depends to an extent on the level of enforcement to encourage airline to comply. Enforcement and therefore compliance differs among EU Member States. NEBs do not always have enough resources and different rules apply in different Member States, which undermines transparency and simplicity for passengers suffering from a disruption. Passenger representatives also stated that the lack of enforcement powers or action by NEBs, allowed airlines to take advantage and not be afraid to publicly state, for instance in several examples of the mass-disruption situations (e.g. large programme of flight cancellations by Ryanair in 2017 and then again in 2018), that they would not compensate their consumers, even if such a compensation was due based on APR rules.

After travel

- 3.54 An analysis of the Eurobarometer survey indicates that after a significant travel disruption, across all modes of transport, more than eight in ten respondents (85%) report that they would complain to someone. Two thirds (66%) say they would contact the transport company, and this is by far the most mentioned option. Less than one in five (17%) would contact a consumer association, while 9% would contact a national authority responsible for passenger rights, 8% would contact a claims agency and 7% would contact a lawyer. A stakeholder commented that high-profile disruption, such as the disruption caused by the Icelandic volcano in 2010, helped focus some attention on the rights of passengers as there were a number of high-profile cases.
- 3.55 Across all modes, respondents in Greece (19%), Cyprus (18%) and Portugal (17%) are the most likely to say they would contact a national authority responsible for passenger rights. At the

other end of the scale 5% in Germany, Sweden and Luxembourg say they would do this. Malta (22%) is the only country where at least one in five say they would contact a claims agency, followed by 18% in Denmark and 17% in Austria. This compares to 4% in Czechia and 3% in Germany and Slovakia. Respondents in Austria, Belgium and Netherlands (all 7%) are the most likely to say they would contact an out-of-court dispute resolution body if they experienced a serious travel disruption.

- 3.56 The analysis of the latest Eurobarometer survey also indicates an issue with the way that travel companies inform passengers of the possibility to complain (on all modes): respondents who had experienced a travel disruption on at least one mode of transport were asked about their level of satisfaction with the way the transport company informed them about complaints procedures. Just over one third (37%) say they were satisfied, with 8% being 'very satisfied' with the way they were informed. The majority of respondents (55%), however, were dissatisfied, with 26% 'very dissatisfied'.

Administrative burden and costs for passengers

Outcome of passenger complaints to airlines

- 3.57 In practice, it appears that although people stated in the Eurobarometer survey that they would make a complaint, few had really done so, since the large majority of those who experienced at least one travel disruption did not make an official complaint. More than one quarter (26%) of the respondents who experienced at least one travel disruption say they made an official complaint, with 23% complaining to the transport company, and 4% to the national authority. The large majority (72%) did not make an official complaint, but respondents who have read, heard or seen information on passenger rights are more likely to have made a complaint than those who have not been exposed to this information (33% vs 22%). EPF stated that only 1/3 of passengers who are entitled to compensation actually file a complaint which it considered to be still quite low.
- 3.58 The analysis of the latest Eurobarometer survey shows that there are still some significant barriers to overcome for passengers to complain. As stated above, the vast majority of travellers –across all modes- who experience a disruption do not complain, and state their reasons as:
- Useless to complain (45%);
 - The amount involved was too small (25%);
 - The complaint process was too cumbersome (16%);
 - Did not know how or where to complain (9%).
- 3.59 These numbers indicate that passengers do not believe that they will get a positive outcome from complaining with their efforts too high compared to their (un)likely rewards. Nearly one passenger in five expect the process to be cumbersome, something that passenger representatives repeatedly highlighted, with airlines taking a long time to respond to passengers (sometimes not providing an indication of the timeframe), or not providing a clear explanation for claiming extraordinary circumstances.
- 3.60 EPF thought that this situation could be improved through extra awareness-raising campaigns, through simplifying the procedures to file a complaint and through imposing stricter deadlines on airlines to respond to passengers, in addition, to better enforcement.
- 3.61 About half of passengers are also rather pessimistic about the outcome of their claims, although the results of the Eurobarometer survey displayed below would be seen as rather

positive. They show that for those passengers who persevered and lodged a complaint to a transport company (across all modes), more than half (55%) of all respondents say they were satisfied by the way their complaint was dealt with – in fact one in five (20%) say they were ‘very satisfied. More than four in ten (44%) were dissatisfied, with 23% ‘very dissatisfied’ about the way their complaint was dealt with.

- 3.62 Interestingly, opinions have become more polarised since 2014, with decreases in the proportions who are rather satisfied (-6 pp) or rather dissatisfied (-11 pp) and increases in the proportions who are very satisfied (+10 pp) or very dissatisfied (+8 pp). Overall, respondents are now more likely to be satisfied (+4 pp) and less likely to be dissatisfied (-3 pp) than they were in 2014³⁸. In addition, those who have read, heard or seen information about passenger rights are more likely to be satisfied than those who have not (57% vs 52%).
- 3.63 It is not straightforward to find the exact amount of flight delay for a particular flight from public sources if passengers want to check. In addition, airlines do not generally publish performance indicators meaning that passengers are not able at the time of booking to make an informed decision based on actual performance with respect to passenger rights, rather than promises of level of service. In comparison, rail carriers are obliged to annually publish the number and categories of received complaints, processed complaints, response time and possible improvement actions undertaken.
- 3.64 As discussed in Chapter 5, NEBs rarely communicate between each other on the application of extraordinary circumstances. It is also not possible for passengers to confirm if extraordinary circumstances applied for a particular flight (and even if such a public database existed, differing interpretations by NEBs would present a complication). As highlighted by the Court of Auditors, there is no registry managed by the NEBs that would record delays or cancellations of individual departures or numbers of cases received per carrier or per departure.
- 3.65 What remains an issue is that passengers have no possibility to know how their claims will be handled by airlines: in most cases, they do not know how long the process is going to take, or what the steps are. They also do not know if the airline is seen by the authorities as handling complaints well or complying with the law sufficiently well. Claim agencies publish airline rankings based on their understanding of airlines behaviour in this area, but it should not be left to them to do so, on a fairly un-transparent basis, but rather to authorities to inform consumers of the quality of service delivered by the airlines over which they maintain oversight.

Administrative burden for passengers and costs incurred

- 3.66 What is not displayed in the results above is the length of the process and knowledge that passengers need to acquire in order to claim against the airlines. The process is lengthy, particularly for “first-time claimants” and can discourage many customers before or during the process. We present below various steps required by the process. These can be additive or not, depending on the choices of claim channel made by the passenger.
- 3.67 We have estimated the amount of elapsed time needed by passengers to interact with the various entities, but have not been able to make financial estimates of the administrative burden incurred by passengers.

³⁸ Although please note that the wording of the question between the 2014 and 2019 survey has changed which may explain the variation in results to an extent.

Table 3.4: Process, time and costs involved for passengers claiming

Process	Difficulty	Time	Costs
Passenger to research their rights	Easy (at face value) to difficult (in reality), especially related to issues open to interpretation	From a few hours to a few weeks	None, but complexity for passenger to do this so by themselves, conflicting information
Passenger to contact the airline	Easy to moderate, as most airlines have a web form. If passenger does not or cannot use this or does not fit the pre-established categories, then it can be more difficult	From a few hours to a few days	None if passenger does it themselves. Requires passenger to draft email/letter to airline stating all the facts clearly
Passenger to provide supporting evidence to airline	Easy to difficult, as some passengers may not have kept all relevant information	From a few hours to a few weeks	None if passenger does it themselves
Passenger to wait for airline's initial response	Easy	Could be up to 6 weeks, although this is not binding	None if passenger contacted the airline themselves
Passenger to assess the airline's initial response	Moderate to difficult	From a few hours to a few days	None, but complexity for passenger to do this so by themselves, as they have no access to airline supporting evidence
Passenger to contact the airline again	Moderate	From a few hours to a few days	None, but complexity for passenger to do this so by themselves, as they have to justify their position better/differently
Passenger to identify the relevant NEB	Moderate (info available online but not always up to date, and cross-border issues)	From a few hours to a few days	None if passenger does it themselves
Passenger to contact the NEB	Easy to moderate, as most NEBs have a web form, or passenger can use the European form. If passenger does not want to use this or does not fit the pre-established categories, then it can be more difficult	From a few hours to a few days	None if passenger does it themselves. Requires passenger to draft email/letter to NEB stating all the facts clearly

Process	Difficulty	Time	Costs
Passenger to provide supporting evidence to NEB	Easy to difficult, as some passengers may not have kept all relevant information. Easy if passenger has already gathered this for the airline	From a few hours to a few weeks	None if passenger does it themselves
Passenger to wait for NEB response	Easy	Between 3-6 months on average	None
Passenger to understand that NEB decision is non-binding or may not be for individual passengers	Moderate	From a few hours to a few days	None if passenger contacted the NEB themselves
Passenger to identify the relevant ECC	Moderate	From a few days to a few weeks	None
Passenger to contact the relevant ECC	Easy	From a few hours to a few days	None
Passenger to wait for ECC response	Easy	Unclear, less than 1 month	None
Passenger to identify the relevant ADR	Moderate	From a few hours to a few days	None if passenger does it themselves
Passenger to contact an ADR	Easy to moderate, assuming that there is an ADR, which is far from being certain	From a few hours to a few days	Some ADRs are not free and will require payment of a fee
Passenger to wait for ADR response	Easy	Between 1-3 months on average	None
Passenger to understand that ADR decision is non-binding	Moderate	From a few hours to a few days	None if passenger contacted the ADR themselves
Passenger to identify a claim agency	Easy	A few hours	None if passenger does it themselves
Passenger to contact the claim agency	Easy	From a few hours to a few days	None for contacting but costs will be incurred usually on a “no win, no fee” basis as soon as T&Cs are agreed
Passenger to provide supporting evidence to claim agency	Easy to moderate, as claim agency will guide passengers through the process where possible	From a few hours to a few days	None if passenger does it themselves
Passenger to wait for claim agency outcome	Easy	Unclear, could be around 1-3	None

Process	Difficulty	Time	Costs
		months on average	
Passenger to go to court (via claim agency)	Easy	Unclear, could be around 1-3 months on average	Additional costs will be incurred usually on a “no win, no fee” basis
Passenger to identify relevant court (NOT via claim agency)	Difficult	From a few days to a few weeks	None if passenger does it themselves
Passenger to go to court	Difficult and risky (In practice, passengers will never decide to go to court if the costs of the procedure might exceed the cost of the claim)	From a few weeks to a few months	Legal costs to be incurred: court fee, mandatory appointment of lawyer in some cases, etc.

Source: Steer analysis

- 3.68 The entire claim/complaint procedure should in principle be a written procedure not requiring legal representation, including in court unless the airline disagrees with the claim. In this case, there is always the possibility that the court will call for a hearing, resulting in most passengers needing legal assistance which would significantly raise the costs of the court procedures. Moreover, even if the case is won by the passenger in court, if the airline still does not pay what the court has ruled on (such as compensation/reimbursement, etc.), the passenger will need to follow an additional enforcement procedure which can also be costly, lengthy and complicated especially if in another country than that of residence of the passenger. Another barrier is language, as not all passengers are able to speak the language in which proceedings may be undertaken, if not in their country of residence.
- 3.69 The table above shows the complexity of the process and the number of steps that a passenger may have to go through. Also note that, whilst for passengers repeating the process it will be faster and easier to navigate, the process will change depending on the countries³⁹ involved, meaning that the advantages faced by a well-seasoned claimant will not be as strong if they claim in another country.
- 3.70 In addition to being cumbersome, the process is not fast, particularly where passengers contact the NEBs (because of the volumes of complaints received). An issue for passengers with this long process, is that in the meantime, they might lose their right to launch a court case, since in some countries, the statute of limitations can be quite short (e.g. one year), whereas in others they can be really long. Due to different time limitations to bring a claim, customers might also be left with no choice than to escalate a claim abroad or lose the opportunity to bring the claim to court completely.
- 3.71 Because of the multiple obstacles presented above, many passengers have now started to use claim agencies more and more often. They are prepared to pay high fees (even 25-50% of their

³⁹ According to Rehder case (C-204/08), the courts which may be seized are the courts of the country of departure or of the country of arrival so not necessarily the place where disruption occurred.

compensation) not to go through all the difficulties (actual or perceived) related to enforcing their rights themselves. These companies attract passengers (who often do not even know that free alternatives exist) through very active and prominent marketing. In a well-functioning passenger rights enforcement system, this service would not be needed – apart for time-poor customers.

Automated and automatic compensation

3.72 Automatic compensation is payment of compensation to passengers who experienced a travel disruption without any intervention (i.e. claim) by the passenger. In the rail industry, some operators offer automatic compensation to their customers in the case of delays (although note that there are some exceptions, and compensation rules are different when there is engineering work or strikes happening). This can take various forms:

- On a train network, smart card holders receive automatic compensation if they experience a qualifying delay;
- On a second train network, passengers who have booked an advance ticket through the train operator website receive automatic compensation to the card that was used to purchase the ticket if the relevant journey is subject to a qualifying delay;
- On another train network, passengers who have booked an advance ticket and registered their details.

3.73 Passenger representatives are calling for automatic compensation, whilst airlines commented that there exist several complications with automatic compensation, including not being allowed under credit card rules, airlines not having passengers contact details, and compensation entitlements being limited to individual eligible passengers. Experience from other rail suggests that it may be possible to overcome some of these complications but this is not something that we have checked.

3.74 Automated compensation is smooth process and payment of compensation by the airlines to the passengers who experienced a travel disruption after passengers have contacted the airline to submit a claim.

3.75 The Table below provides a high-level overview of the differences between the two systems.

Table 3.5: High-level comparison of automatic and automated compensation

	Automatic	Automated
Basis	Occurrence-based	Claim-based
Passengers covered	100% of passengers affected by disruption	As of now
Possibility of inclusion of extraordinary circumstances	Yes	Yes
Impacts for passengers and industry	High benefits for passengers affected by disruption: passengers getting due compensation. Overall possible increase in ticket prices as heavy cost for industry.	Easier system than currently. With the right awareness campaign run alongside its introduction, could result in high benefits for passengers
Impacts for airlines	Very significant costs	Significant costs Possibly less staff required to handle individual claims

	Automatic	Automated
Impacts for NEBs	In most cases, not needed anymore for individual passenger redress (although if extraordinary circumstances exemptions remain, could require case-by-case assessment)	Reduction in the need for NEBs for individual passenger redress (although if extraordinary circumstances exemptions remain, could require case-by-case assessment)
Impacts for ADR/ECCs/Courts	In most cases, not needed anymore for individual passenger redress (although if extraordinary circumstances exemptions remain, could require case-by-case assessment)	Reduction in the need for ADRs/ECCs/Courts for individual passenger redress (although if extraordinary circumstances exemptions remain, could require case-by-case assessment)
Impacts for claim agencies	In most cases, not needed anymore (although if extraordinary circumstances exemptions remain, could require case-by-case assessment)	Reduction in the need for claim agencies for individual passenger redress (although if extraordinary circumstances exemptions remain, could require case-by-case assessment)

Source: Steer analysis

Passengers with disabilities or reduced mobility

Overview

- 3.76 Access to air transport for persons with disabilities or reduced mobility (PRM) is a legitimate right that must be applicable without discrimination. The European Union legislated in 2006 to enshrine this right in EU law.
- 3.77 The scope of the PRM Regulation extends not only to disabled air passengers but also air passengers with reduced mobility⁴⁰. The definition given in the Regulation is wide as it includes people with temporary or age-related reduced mobility. Regulation 965/2012⁴¹ makes a distinction between PRMs and unaccompanied minors (UM), who are therefore not in scope for PRM assistance.
- 3.78 Regulation 1107/2006 (the PRM Regulation) divides responsibilities and duties between airports and airlines, whereas by comparison in the United States, US DoT 14 CFR Part 382⁴² identifies the air carrier as sole responsible for providing accessibility services to people with reduced mobility. In Europe, airline assistance requirements are limited to assistance on board the aircraft. Responsibility for assistance on the ground, on departure, arrival or transit is placed upon the airport managing body.
- 3.79 From an operational point of view, this division in responsibilities makes sense, less so though from a passenger point of view, as an air passenger generally does not interact directly with an airport but with the airline with which they have made their booking. Therefore, in order to ensure that the assistance of the PRM can be carried out adequately, pre-notification of the airline by the PRM is required at the time of booking as well as the adequate sharing of information by the airline with the airports concerned.
- 3.80 Assistance costs related to services provided on board by airlines are integrated into their operating costs. Assistance costs related to services provided on the ground are paid by all air passengers through a PRM service charge (which is levied as part of their airport charges and passed-through to the price of their ticket) which must cover the costs of the service and be accounted separately from other airport charges.
- 3.81 The PRM Regulation applies to all EU carriers whose flights depart from and arrive at a European airport. The law also applies to EU carriers departing to or arriving from airports located outside the EU. Non-EU carriers must also comply with Regulation 1107/2006 for all flights from a European airport (the Regulation does not apply for non-EU carrier's flight from non-EU airport to EU airport). Note from the table below that the Regulation covers flights, and not journey, so a passenger who would fly London-Hong Kong-Sydney on an EU carrier would be covered by the scope of the Regulation from London to Sydney, whilst the same passenger would only be covered until Hong Kong if flying on a non-EU airline.

⁴⁰ A PRM passenger is defined in Article 2 as meaning any person whose mobility when using transport is reduced due to any physical disability (sensory or locomotive, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or age, and whose situation needs appropriate attention and adaptation to his or her particular needs of the service made available to all passengers.

⁴¹ Regulation (965/2012) on defining technical requirements and administrative procedures concerning air traffic operations

⁴² https://www.transportation.gov/sites/dot.dev/files/docs/Part%20382-2008_0.pdf

Table 3.6: Applicability of Regulation 1107/2006

	EU carrier	Non-EU carrier
Flights within the EU	Regulation 1107/2006 applies	Regulation 1107/2006 applies
Flights from an EU airport	Regulation 1107/2006 applies	Regulation 1107/2006 applies
Flights to an EU airport	Regulation 1107/2006 applies	Regulation 1107/2006 does NOT apply
Other flights	Regulation 1107/2006 applies	Regulation 1107/2006 does NOT apply

Source: Steer analysis

- 3.82 Airlines are prohibited from denying carriage to PRMs on the basis of their disability, except in cases where:
- The size of the aircraft or its door makes embarking or air transport of a PRM passenger physically impossible; and
 - In case of the PRM in question not being able to meet relevant safety requirements.
- 3.83 Whilst this rule may appear clear on paper, in practice, it continues to generate many issues which have been highlighted by PRM representatives and some NEBs. Denied-boarding appears to be one of the most crucial issues for the PRMs involved because denied-boarding happens in many instance at the gate, when it is usually too late to sort the problem before the departure of the plane, whilst some travel (to the airport for instance) has already taken place and many costs have been incurred (accessible travel to the airport, accessible accommodation booked, accessible car rental for instance, etc.).
- 3.84 PRMs representatives also highlighted that denied boarding justified for “safety reasons” could be interpreted as sometimes arbitrary by PRMs. The issue of safety related to the carriage of Special Categories of Passengers (SCP) has been examined by EASA⁴³ but amendments made remain relatively open for interpretation. In comparison, the UK Department for Transport publishes specific rules including when a PRM can be considered for aviation purposes to look after themselves (or may need to travel with a safety assistant) that, according to the UK NEB, removes much ambiguity and bring certainty to all parties involved (PRMs, passengers, etc.). In the US and Canada, where a travel assistant is required by the airline, their cost of travel is borne by the airline, whilst this is not the case in Europe.
- 3.85 The situation in Europe on the definition of safety of carriage of PRMs remains an airline choice, and EASA indicated that “previous studies have shown that airline policies whether an SCP should travel accompanied or not differ across operators and Member States”. In practice, whilst some airlines’ PRM policies are clear, detailed and easy to find, others lack information which leaves PRMs to feel that travel may be an (expensive) gamble rather than a guaranteed right.

Overview of the state of PRM assistance

- 3.86 Approximately 10 % of the EU population lives with some type of disability⁴⁴. Stakeholders have provided limited quantitative data into the level of compliance of airlines and airports with Regulation 1107/2006. All relevant stakeholders agreed, however, that the number of

⁴³ Decision 2016/004/R

⁴⁴ https://europa.eu/rapid/press-release_IP-07-1173_en.htm

PRMs is increasing strongly, representing an increasingly large proportion of total passengers. Reasons stated include:

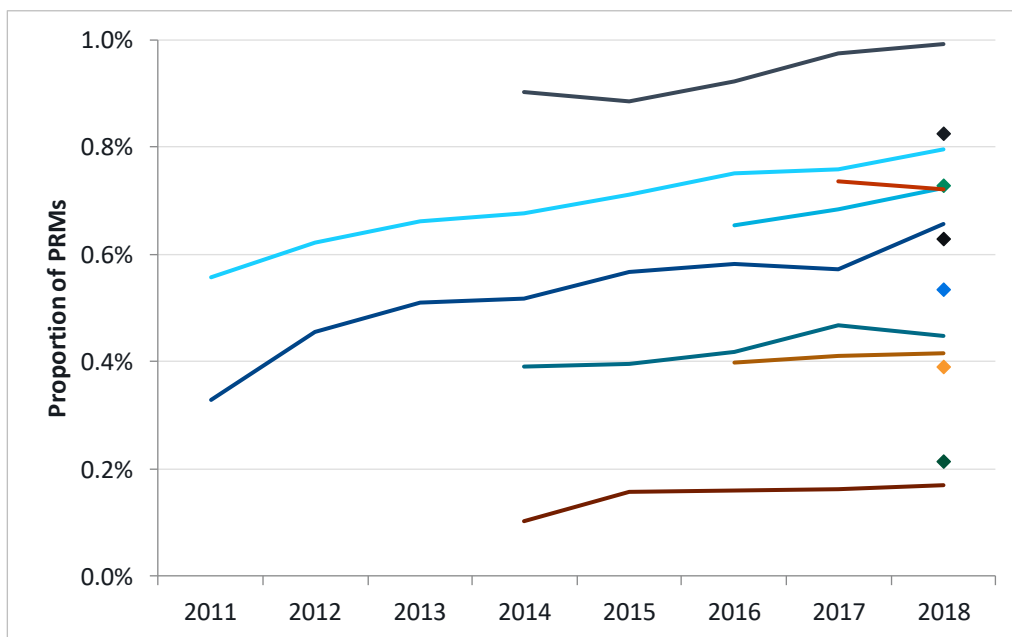
- A wide scope of application, from people with disabilities (including temporary) to less mobile people;
- An increasingly ageing European population with disposable income and a higher propensity to fly that is more likely to require assistance;
- An increasing number of people knowing that PRM assistance is available, feeling confident enough to use it and, as a result, more disabled and less mobile people than ever are travelling by air;
- Some specific routes were also highlighted as having higher share of requests for PRM assistance than others⁴⁵.

3.87 Figure 3.1 shows the proportion of PRMs at 14 airports (airport names redacted for confidentiality purposes) that provided relevant data, 8 of which included a time series of its evolution. At all, except one, of the airports that provided more than one datapoint, the proportion of PRM passengers has increased over the period, bearing in mind that passenger traffic has also increased at a rate of 4% annually from 2011 to 2017.

3.88 Additionally, the figure indicates that the proportion of PRM passengers at airports ranged from below 0.2% to 1.0% of overall passenger traffic in 2018. Factors influencing this proportion may include the mix of airlines serving the airport (some LCCs report a lower proportion of PRM passengers than other carriers), as well as wider cultural factors:

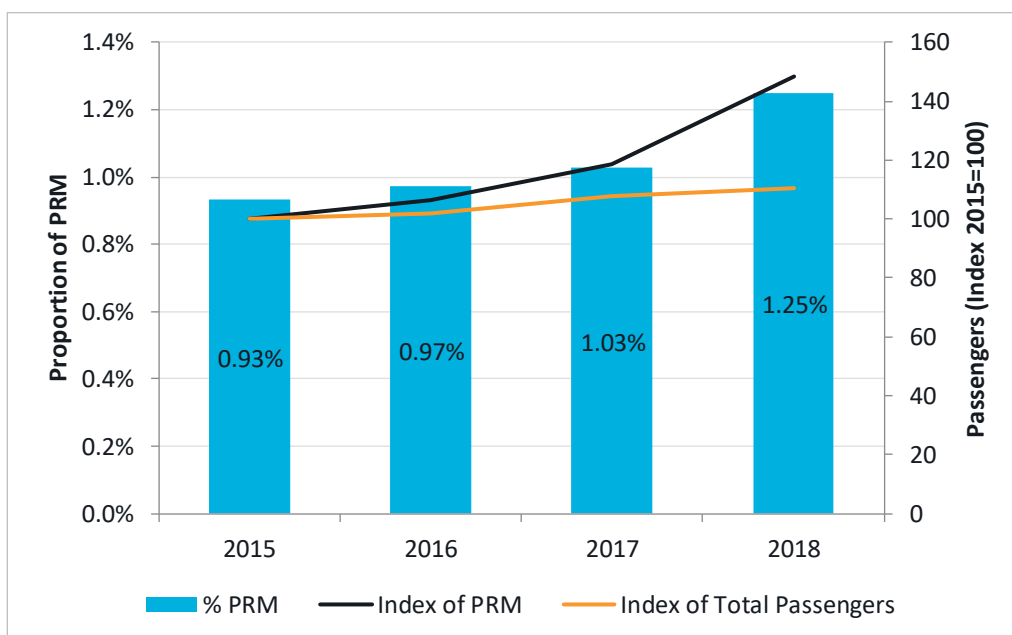
- In France, the proportion of PRMs travelling by air was estimated to be 0.63% of the total air passenger population travelling in 2016;
- In the UK, we estimated the proportion of PRMs travelling by air was to 1.27% in 2018, based on UK CAA statistics showing that 3.7 million requests for assistance were made at UK airports in 2018.

⁴⁵ According to a CGEDD report (Prise en compte par le transport aérien du règlement européen n°1107/2006 concernant les droits des personnes handicapées et à mobilité réduite) from Paris CDG airport routes to India or North Africa.

Figure 3.1: Proportion of PRM passengers at reporting airports (2011-2018)

Source: Stakeholder consultation. Note: airport names are confidential. Some airports only reported data for 2018 (as represented by a diamond), others were able to provide time-series (as represented by a line)

3.89 Figure 3.2 shows the weighted average proportion of PRMs reported by airlines. In line with the trend reported by airports, the proportion of PRMs increased from under 1% in 2015 to 1.25% in 2018, which is still low compared to the 10% of PRMs among the EU population. The reporting airlines and reporting airports in the two figures do not correspond directly, so the resulting PRM proportions are different, however the trends are common to both and highlight the increasing demand for PRM services and pressure on airports and airlines to provide these.

Figure 3.2: Proportion of PRM passengers reported by airlines (2015-2018)

Source: Stakeholder consultation. Note: no data was available pre-2015

- 3.90 The increase in PRM demand is not homogenously generated by all types of PRMs. The industry uses a system of classification to reflect PRM needs which is briefly described below:
- WCHR (“wheelchair ramp”): A passenger with a walking disability who requires assistance to the aircraft only. The passenger requires a wheelchair or similar aid before embarkation or after disembarkation, requires assistance in the airport terminal to/from the gate or exit, can manage steps and use an apron passenger bus unaided and does not need assistance in the cabin;
 - WCHS (“wheelchair step”): A passenger with very restricted mobility who requires assistance to the aircraft door. The passenger requires cannot manage steps unaided and is unable to use an apron passenger vehicle, but does not, need assistance in the aircraft cabin;
 - WCHC (“wheelchair cabin seat”): A passenger with very restricted mobility who requires assistance to the aircraft seat. The passenger is unable to walk but can use a passenger seat with the backrest in the upright position. The passenger cannot move unaided (e.g. on account of paraplegia or advanced multiple sclerosis for instance);
 - BLND: A blind passenger
 - DEAF/BLND: blind and deaf passenger who can only travel with an assistant.
 - DPNA (“disabled person needing assistance”): All other passengers requiring special assistance, including passengers with an intellectual or developmental disability

3.91 As a rule, the international air transport of PRM passengers must not be conditional to presenting a medical certificate. Neither carrier nor airport operator is authorised to require a PRM passenger to have a medical certificate.

3.92 PRM representatives commented that IATA codes were very limited and that the value was for the airline to properly record and communicate to the relevant parties (such as other airlines, airports, etc.) the additional information that had been communicated by the PRM at the time of booking. Another issue highlighted was the fact that airlines use different systems for notifying assistance at airports.

3.93 Stakeholders suggested that the increase in the proportion of PRM passengers has been driven mainly by increases in codes not related to wheelchair users.

Damage to mobility devices

3.94 Article 12 of the PRM regulation requires that where 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 shall be compensated, in accordance with rules of international, Community and national law. The rules that apply in that case are those of the Montreal convention and which calculates compensation for damaged equipment by weight rather than value.

3.95 This creates a significant issue for PRM rights, as compensation for damaged equipment may be limited to around €1,400, when the price of some mobility equipment may be 10 or more times more expensive and/or requiring specific customisation (in some cases, mobility equipment is made to measure).

3.96 A question has been raised on whether carriers should provide compensation close to the actual value of the damaged good. For comparison, the US Air Carrier Access Act (ACAA)⁴⁶

⁴⁶ <https://www.transportation.gov/airconsumer/passengers-disabilities>

states that for domestic flights, compensation for damaged equipment “shall be the original purchase price of the device.” Although many EU carriers claim to go above the liability limits, there are no rules in Europe for them to strictly do so. It is also important to note that whilst some PRMs may be able to obtain travel insurance towards their mobility equipment, this may not necessarily be obtainable for all equipment or at affordable premiums. The question of what happens to PRM when literally stranded at the airport if their mobility equipment has been damaged, is also an acute one for the passenger in question. No specific information on this issue could be gathered for the study, nor could we understand the scale of the issue related to damage to mobility equipment, as very few stakeholders (NEB, airport, PRM representative) appear to have reliable or publicly available statistics on the issue.

- The PRM NEB for the UK stated during an interview that “it could not remember the last time that damage to mobility equipment happened in the UK”. However, this could also be because of no reporting by an impacted PRM.

3.97 PRM representatives mentioned that reduction in the damage to mobility equipment would require better awareness and training of staff involved (airport, airline, PRM service providers, as well as groundhandlers).

Provision of PRM services and quality of service

3.98 Whilst some airports provide PRM assistance themselves, some have chosen to outsource this service, thereby making the number of parties, and the chain of responsibility and liability particularly complex. PRM associations state that “it is far from uncommon for PRM to experience disservice while boarding or deplaning the aircraft due to communication issues between air carriers and airport managing bodies”.

3.99 All airports responding to the questionnaire have set up quality standards for the provision of PRM assistance. These standards are usually based on the ECAC Doc. 30 guidance⁴⁷, or specific guidance from the relevant NEB (NEBs indicated that they usually rely on ECAC Doc 30 recommendations – see Chapter 5). Airports in Spain and Italy indicated that the NEB takes the lead in setting the standards (which may include consultation with disability associations), while other airports explained that they set standards with the involvement of the NEB and other stakeholders, including airport users and disability associations. Most airports publish these standards or performance targets on their websites, but not all (e.g. in Spain, where they are published by the NEB).

3.100 The approach to monitoring of the service standards varies, with some airports doing so more proactively than others. Most responding airports indicated there is ongoing monitoring and regular reviews of performance with airlines, groundhandlers and service providers take place. At others monitoring can be a bit more reactive, relying on passenger surveys, complaints received and NEB audits.

3.101 For airports, the key to the quality of the PRM service provided is timely pre-notification. Airports stated that the system in place works well, however its use needs to be improved. Passengers ought to notify airlines in advance of their assistance needs (and airlines should provide them with the means for doing so), while airlines should ensure that they transmit this information to the airport in a timely manner, particularly for arriving flights, and using the

⁴⁷ https://www.ecac-ecac.org/about?p_p_id=101&p_p_lifecycle=0&p_p_state=maximized&p_p_mode=view&101_struts_action=%2Fasset_publisher%2Fview_content&101_assetEntryId=526990&101_type=document

dedicated systems rather than by email. Two of the responding airports indicated that they have tied PRM charges for airlines to the pre-notification period, which has helped improve performance from the airlines and assists with efficient and effective deployment of services. ACI-Europe stated that NEBs' role in guaranteeing an effective transmission of information (e.g. a correct, timely pre-notification) should be strengthened.

- 3.102 ACI-Europe also highlighted that the needs for assistance on the ground is often linked to the layout of airport terminals and the walking distances involved. As a result of this, passengers may need assistance at departure and not on arrival or during connections. For this reason, it considers that passengers should be able to request the assistance needed by flight segment and airlines ought to pre-notify airports on this basis. While this may help with the allocation of airport resources and contribute towards a better quality of service, we note that passengers should not be expected *by default* to know the layout of the departing, arriving or connecting airports.
- 3.103 Obtaining quality of service statistics on PRM service provision has been particularly difficult in this study, as few airports, airlines or NEBs publish statistics on quality of service. Only the UK NEB requires airports and airlines to publish⁴⁸ statistics and information on PRM quality of service. The 2019 report shows some interesting results for UK airports – however, whilst these are encouraging, they cannot be extrapolated to represent the entire European situation because:
- There is a long-established culture and national legislative framework in the UK: this may not be the case in the rest of Europe;
 - Awareness of PRM rights and services may be higher in the UK; and
 - The UK NEB may more proactively supervise PRM services.
- 3.104 The 2019 UK report on PRM provision shows that:
- The number of requests for assistance has been increasing sharply: there were a record number of 3.7 million requests for assistance at UK airports in the latest year – since 2014 the number of passengers assisted increased by 49% while overall passenger numbers increased by 25%;
 - 14 airports have been rated 'very good'. A further 16 airports were rated 'good'. Four airports that were classified as 'very good'⁴⁹ last year received 'good' ratings this year, while an airport was classified as 'needing improvement' (although this was an improved rating from 'poor' in the previous two years). For the first time since 2016, no airports were classified as 'poor';
- 3.105 Other NEBs commented on an improvement of the quality of service but only in qualitative terms – when they knew or expressed an opinion:
- Improvements: 50%
 - No response: 50%
- 3.106 NEBs highlighted the following issues related to quality of service of PRM services:
- Challenging situation due to a growing number of PRM passengers;
 - Issues with pre-notification and transmission of information;

⁴⁸ <http://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=9155>

⁴⁹ To achieve a 'very good' classification, airports must provide high quality support on the day of travel as well as keeping in regular contact and consultation with its users

- Low rates of pre-notification in some countries;
- Airports and airlines struggling to deal with DPNA codes (for example dementia or autism); and
- Abuse of PRM services (i.e. passengers who require the system for convenience rather than proper need).

3.107 An analysis of the quality of services through a review of media reports highlighted some key themes and issues but cannot be used as a good proxy for overall quality of service analysis as the media tends to report disproportionately on what goes badly rather than the “average” situation or actual examples of good practice. However, media reports remain useful to allow all stakeholders and the general public to understand the practical impacts that failures in the chain of customer care may have on PRMs or other passengers.

3.108 In addition to the analysis above, we have consulted in this study with PRM representatives and ensured that the questionnaire for PRM representatives was accessible. Through EDF it has been sent to multiple PRM associations across Europe. The three responses obtained highlighted that:

- In general, European airports comply “quite well” with the European legislation on PRM, but the issues remain with the details and the exact provision of service, at the right time, without gaps in the chain of services or service providers;
- Service quality is not harmonised across airports and can “vary a lot”;
- Where airports outsource the provision of PRM services, this is usually done through a competitive call for tender. PRM representatives thought that the choice of the cheapest tender was not helpful as service quality may suffer as a result;
- Wheelchair provisions at airports remain an issue as there is no rule on the type of wheelchair to be used. PRM representatives explained that leaving the choice of wheelchair to airports was not adequate.
- Specific concerns on damage to mobility equipment as explained above;
- There are concerns specifically regarding assistance dogs (such as discriminatory practices such as requiring 7 days’ notice before a dog can fly, restricting the number of dogs allowed on board, not allowing dogs to travel if there is an intermediary stop en route);
- When embarkation is refused, most airlines will provide refunds or re-routing in line with the requirements of Article 8 of Regulation 261/2004; and
- Compared to railway stations, PRM representatives stated that quality of service was highest at airports, because of the presence of airport staff at all times.

3.109 The outcomes of Eurobarometer 2019 were also taken into consideration as they provided some high-level findings on PRM satisfaction, although just over 8% of Eurobarometer respondents have ever requested assistance for themselves or another person with a disability or reduced mobility when travelling, with no notable change since 2014.

- On requesting assistance:
 - Respondents in Denmark and the UK are the most likely to say they requested this kind of assistance for a journey by air;
 - Amongst those who requested assistance, 48% gave notice at the time of booking, 19% gave notice after booking but well in advance of the departure, while 31% only requested assistance at the time of departure (this is for all modes, not just air, breakdown for air not available).
- On overall satisfaction:

- A large majority (81%) of those who requested assistance say they were satisfied with the way their request(s) for assistance was or were dealt with by the transport company⁵⁰. In fact, almost half (47%) say they were ‘very satisfied’. Almost one in five (18%) were dissatisfied, with 7% ‘very dissatisfied’ (this is for all modes, not just air, break-down for air not available).

3.110 We suggest that the sample size of the Eurobarometer does not allow to draw strong findings on the quality of service provided to PRMs travelling by air. Examining the PRM complaints received is another source of understanding of the state of PRM passenger rights.

PRM complaints

3.111 Article 15 of the PRM Regulation states that “a disabled person or person with reduced mobility who considers that Regulation 1107/2006 was infringed may bring the matter to the attention of the managing body of the airport or to the attention of the air carrier concerned, as the case may be”. Because the Regulation divides roles between airport managing bodies and air carriers, the PRM needs to determine first hand who is responsible for the alleged infringement and then contact the appropriate entity.

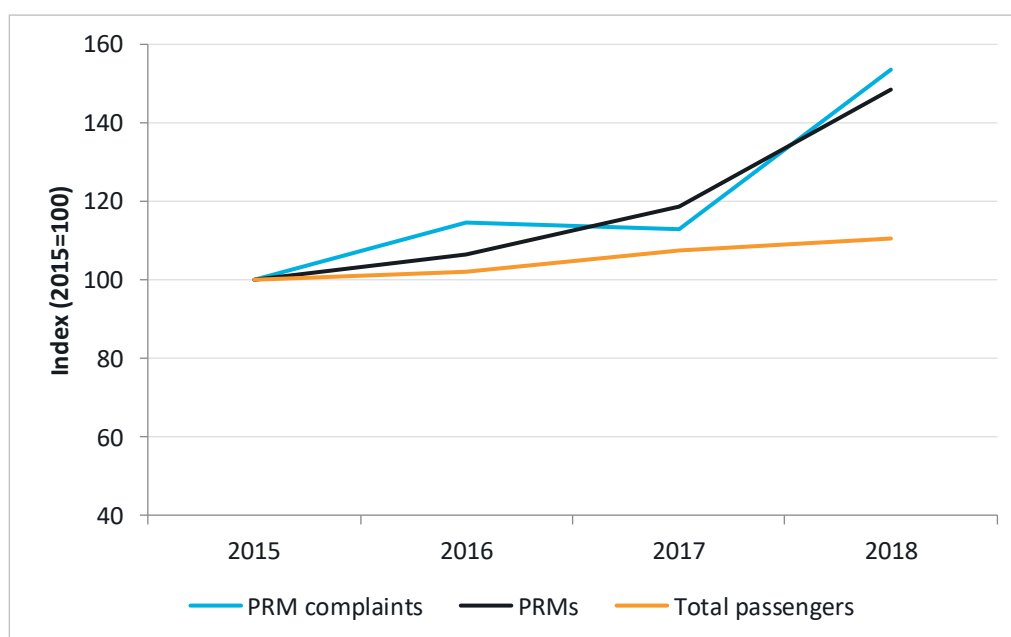
3.112 This incredibly complicated situation creates a legal loophole, which may result in additional difficulties at the expense of PRMs. If the disabled person or person with reduced mobility cannot obtain a satisfactory resolution of their complaint in such a way, complaints may be made to National Enforcement Bodies, or to any other competent body designated by a Member State, about an alleged infringement of Regulation 1007/2006.

3.113 PRM representatives also explained that they tend to receive complaints from PRM passengers regarding the airlines, rather than the airports. They suggested two possible explanations about this – which we have not been able to further evidence through the study due to a lack of data:

- That airlines or some airlines (such as some non-EU carriers and some EU low-cost airlines) comply less than airports; or
- That passengers, who largely request PRM assistance through the airline at the time of booking, think that all complaints are under the airline’s responsibility.

3.114 Figure 3.3 below presents the relationship between the growth in total passengers and PRMs (as above, indicating that the proportion of PRMs is increasing), alongside the relationship between the growth in PRM complaints received by NEBs and the growth of PRMs. At a high level, the figure shows that PRM complaints have increased in line with PRMs i.e. the complaint rate has remained stable.

⁵⁰ No distinction of airport or airline was provided to respondents.

Figure 3.3: Index of PRM complaints received by NEBs, PRMs reported by airlines and total passengers (2015-2018)

Source: Stakeholder consultation. Note that no data pre-2015 was available

- 3.115 The fact that the PRM complaint rate has remained stable may indicate that the level of airport and airline compliance was unchanged across the period, and that operational stakeholders were able to cope with the increase in demand for PRM services, without a significant deterioration (nor improvement) in the service provided.
- 3.116 At the same time, Regulation 1007/2006 does not provide for standard compensation in the same way that Regulation 261/2004 does, and as a result passengers may not be motivated to submit a complaint (while those who may find it difficult to do so in some Member States, as it is not straightforward to find the competent NEB's contact details - see Chapter 5). It is not clear then to what extent the constant complaint rate indicates an unchanged level of compliance by airports and airlines or is the result of underreporting stemming from insufficient ways to record PRMs' experience and the structure of Regulation 1107/2006.
- 3.117 In any case, as highlighted by EDF and the UK CAA's airport accessibility report⁵¹, although the issues may not be significant in volume, the impact on individuals when things do go wrong can be extremely significant.
- 3.118 Unlike with Regulation 261/2004 which relies on ex-post complaints being lodged, most 1107/2006 NEBs have stated that they proactively oversee the provision of PRM services by undertaking audits of airports (see Chapter 5). However, and as highlighted in the mid-term evaluation of the PRM Regulation⁵², there do not existing effective ways for capturing (the subjective) experience of PRMs as to whether the services received were satisfactory, with

⁵¹ <http://publicapps.caa.co.uk/docs/33/20180711%20CAP1679%20FINAL.pdf>

⁵²

https://ec.europa.eu/transport/sites/transport/files/themes/passengers/studies/doc/2010_06_evaluation_regulation_1107-2006.pdf

most inspections of airports and airlines on PRM focused on checks of systems and procedures.

Enforcement and sanctions

- 3.119 The table below displays the state of PRM Regulation enforcement and sanctions across the EU.

Table 3.7: PRM Regulation enforcement and sanctions

State		Enforcement	Sanctions
BE	Belgium	The NEB undertakes annual airport inspections to monitor compliance with Regulation 1107/2006.	The NEB can write a report to the prosecutor who may issue a criminal or administrative fine.
BG	Bulgaria	In cases of non-compliance, the NEB will issue letters, organise meetings and issue prescriptions, which define improvement measures.	The maximum legal limit for sanctions is 10,000 BGN (5,000 EUR). No sanctions have been issued yet.
CZ	Czech Republic	The NEB can initiate penal proceedings.	The maximum legal limit for sanctions is 1,000,000 CZK (35,400 EUR). No sanctions have been issued yet.
DK	Denmark	Compliance with Regulation 1107/2006 is monitored through audits and inspections. Due to low number of complaints, the NEB does not make administrative decisions.	Sanctions can be imposed under the Danish Civil Act on Aviation and the Executive Order. No sanctions have been issued yet.
DE	Germany	The NEB issues warnings to inform airlines in the first instance of infringements.	Sanctions can be imposed under the national law of administrative offences. The maximum legal limit is 30,000 EUR.
EE	Estonia	N/a	N/a
IE	Ireland	The NEB can issue a direction against the airline/airport. Failure to comply with the direction, is an offence under the Aviation Act 2001.	The maximum legal limit is as per Aviation Act 2001.
EL	Greece	The NEB will impose a fine if two reminders are ignored by the airline/airport.	As per Aviation Act 1815/1998, sanctions can vary between 500 to 250,000 EUR. No sanctions have been issued yet.
ES	Spain	The NEB undertakes system-level enforcement of Regulation 1107/2006 and can impose fines.	The legal limits for sanctions can vary between 4,500 to 70,000 EUR per infringement.
FR	France	In the case of infringement, the NEB gives the airline 2 months to provide necessary information and then makes a non-binding decision.	As per the Civil Aviation Code. One sanction has been issued, with the amount of 22,500 EUR.
HR	Croatia	The NEB undertakes airport audits for Regulation 1107/2006 to monitor PRM standards.	Sanctions vary between 20,000 to 50,00 HRK (2,700 to 6,700 EUR). No sanctions have been issued yet.

State		Enforcement	Sanctions
IT	Italy	The NEB has airport quality investigators to monitor PRM standards.	The maximum limit for sanctions is 120,000 EUR.
CY	Cyprus	The NEB conducts investigations to monitor PRM standards.	The Minister of Communications and Works can impose a fine of up to 8,000 EUR or a sum equal to 10% of the company's annual turnover. No sanctions have been issued yet.
LV	Latvia	N/a	N/a
LT	Lithuania	The NEB uses an administrative handling of complaints.	Sanctioning process is complex due to legal context; the maximum value is 8,300 EUR (in the case of repeated infringement).
LU	Luxembourg	N/a	N/a
HU	Hungary	Under anti-discrimination law, the NEB is required to investigate all complaints where the passenger suffered a disadvantage due to one or more of the protected characteristics.	Sanctions vary between 50,000 to 6,000,000 HUF (160 to 20,000 EUR).
MT	Malta	The NEB issues warnings in cases of non-compliance.	Under the Civil Aviation Act, sanctions vary between 232 to 2,329 EUR. No sanctions have been issued yet.
NL	Netherlands	The NEB instructs airports and airlines on how to improve their compliance.	Under the Act on Aviation, sanctions vary between 74,000 to 83,000 EUR. One fine of 9,000 EUR was issued in 2018 for non-compliance of Regulation 1107/2006.
AT	Austria	N/a	N/a
PL	Poland	N/a	N/a
PT	Portugal	N/a	N/a
RO	Romania	N/a	N/a
SI	Slovenia	N/a	The maximum legal limit of sanctions is 60,000 EUR. No sanctions have been issued yet.
SK	Slovakia	N/a	N/a
FI	Finland	The NEB investigates all complaints and requests necessary information from the airline/airport. Recommendations made are non-binding and cannot be appealed.	Under the Act on Transport Services, sanctions can be imposed. No sanctions have been issued yet.
SE	Sweden	The Swedish Transport Agency is responsible for training and inspections at airports. The NEB undertakes system-level enforcement of Regulation 1107/2006 and can issue warnings.	The NEB can impose sanctions.

State		Enforcement	Sanctions
UK	United Kingdom	Under the UK Access to Air Travel Regulations 2014, the NEB can take enforcement actions to ensure compliance.	The CAA can seek criminal proceedings from the Court under part 8 of the Enterprise Act 2002. The CAA has previously asked airports to sign 'legal undertakings' under Regulation 1107/2006 but has not imposed sanctions.
IS	Iceland	The NEB provides airlines/airports with advice on how to improve compliance with Regulation 1107/2006.	Sanctions could in theory be imposed, however the policy of the NEB is to not issue any fines.
NO	Norway	The NEB hosts a meeting with PRM representatives 4 times a year to ensure pro-active enforcement of Regulation 1107/2006.	If the NEB observes non-compliance on a systematic level, they could issue a sanction. No sanctions have been issued yet.
CH	Switzerland	Enforcement is based on the Administrative Penal Law Act. The NEB investigates PRM compliance on an individual basis.	The maximum legal limit for sanctions is 20,000 CHF (18,155 EUR) per individual case.

Source: Steer analysis

- 3.120 There is significant variation in the level of the maximum sanctions which can be imposed for infringements, and in some States the fines may not be at a high enough level to be dissuasive. While some States can seek criminal proceedings (that is impose a prison sentence, such as in Belgium or the UK), maximum sanctions in Malta, Croatia, Bulgaria are small (~ €5,000). In addition, very few NEBs have issued fines. In several States, there are likely to be significant practical difficulties in imposing and collecting sanctions, in particular in relation to airlines registered in different Member States.

Summary of findings

- 3.121 Air passengers are now much more aware of their rights. This has been reported by all stakeholders involved in the study, but what remains unclear is the extent to which passengers have the detailed knowledge required by for them to claim their rights adequately. As passengers cannot be expected to master CJEU rulings, it is important that a single, simple and unambiguous text covers their rights (or at least most of them) rather than the legislative *millefeuille* that they face, even at EU level.
- 3.122 For passengers the situation is not much easier at home or in the countries between where they fly: organisations to be contacted, processes, timelines, interpretation of the law, outcomes all seem to vary from one Member State to another.
- 3.123 As the number of flights delayed or cancelled keeps increasing, so does the number of affected passengers, meaning that in all likelihood, passengers are going to call more and more on the tools available to them: airlines, NEBs, ADRs, ECCs, claim agencies, courts, etc. However, a significant issue is that the outcomes for passengers appear to depend on the passenger's own action and choice of claim channel (airline/NEB/ADR/Claim agency/Court). As a result, passengers on same flight may not obtain the same redress, whereas they experienced the same disruption and have the same rights.

- 3.124 The process for passengers to obtain redress is lengthy, particularly so for “first-time claimants” and can discourage many of them before or during the process. It can involve dozens of steps, waiting times from a few days to a few months (and not always with the certainty of a response) and complex and can sometimes require costs to be incurred.
- 3.125 Surveys indicate that passengers’ priority is to receive the care and assistance that airlines must provide in cases of disruption, followed by the opportunity to arrive at their destination as soon as possible by being rebooked. There are some issues in both areas, but particularly in the case of rebooking where “at the earliest opportunity” is not understood in the same way by passengers and airlines.
- 3.126 Further, as there is no transparency and no possibility for passengers to know if an airline performs well with respect to their air passenger rights obligations and claim handling (for example, by publishing the number of claims denied by airlines that are then also confirmed by NEBs), there is distrust towards the overall system too.
- 3.127 There are hardly any simple tools aimed at helping passengers by providing comprehensive and reliable information:
- it is not straightforward for passengers to know which airlines deliver good quality of service with respect to air passenger rights and those that do not;
 - it is not straightforward for passengers to confirm the length of delay they experienced after the event (i.e. some days or weeks later);
 - it is not possible for passengers to confirm if extraordinary circumstances applied for particular flight or not;
 - it is sometimes not easy to contact airlines (e.g. webforms not working, not able to find relevant email addresses, cost of telephone calls may be high); and
 - it is also sometimes also not easy for passengers to contact NEBs.
- 3.128 On the other hand, a positive aspect is that there are several different approaches available to passengers seeking redress, but each comes with its specificities, processes, and costs and it can quickly become quite complex and time-consuming for passengers to navigate the system. Therefore, it is not surprising that passengers turn to claim agencies that are better equipped than them to navigate the system on their behalf. However, the fees of claim agencies indicate that passengers may need to pay a high cost to get their rights enforced.

4 Airlines' and airports' perspective on air passenger rights

Introduction

- 4.1 As introduced at the start of this report, the liberalisation of the European air transport market has generated significant benefits for consumers: a wider choice of air services and intense price competition between air carriers which has resulted in significantly lower fares and strong market growth. To limit any potential negative impacts that this might have on the quality of service delivered to air passengers and consumers, a number of measures have been taken at European Union-level to protect them.
- 4.2 As well as protecting passengers, these measures were expected to contribute to an improvement in the quality of service that European airlines provide to their customers and make the airlines more competitive⁵³. The clear definition of responsibilities between airlines (e.g. for care and assistance due to passengers affected by disruption) and airports (e.g. for the provision of PRM services) was also meant to contribute to a level playing field across the EU and more uniform minimum quality standards, while supporting passenger confidence across the EU aviation market.
- 4.3 This section focuses on the perspective of operational stakeholders (i.e. airlines and airports) on the implementation of air passenger rights. Key to this section are the contributions of airlines, airports and their representative associations through the stakeholder consultation. The responsiveness of airlines has been relatively good on the policy issues, however, while some airlines provided detailed insights and data to support the analysis, others provided very little or no detailed information. The responsiveness of airports was relatively low, which reflects the fact that they have limited exposure to Regulation 261/2004 and that issues emerging from Regulation 1107/2006 are not as prevalent.
- 4.4 This section covers the following:
- The cost of APR implementation for airlines;
 - The drivers of airline cost growth and the right to redress;
 - The impact of the cost of APR on different airline business models;
 - The cost of APR implementation for airports; and
 - An overview of the positions of operational stakeholders.

⁵³ https://europa.eu/rapid/press-release_IP-05-181_en.htm

Cost of air passenger rights implementation for airlines

- 4.5 The costs borne by airlines in instances of disruption, as stipulated within Regulation 261/2004, that we have included in our estimation of the total costs currently borne by airlines are as follows:
- Compensation, which is paid to passengers on airline-attributable cancelled flights, airline-attributable flights delayed on arrival by three hours or more and to passengers denied boarding;
 - Care and assistance, which is paid to passengers on cancelled flights, flights delayed on departure by two hours or more and to passengers denied boarding involuntarily;
 - Reimbursement, which is offered to passengers on cancelled flights and to passengers denied boarding involuntarily, on flights delayed on departure by over five hours and to passengers who are downgraded; and
 - Re-routing, which is offered to passengers on cancelled flights and to passengers denied boarding.
- 4.6 The entitlements of passengers affected by disruption depend on the distance of their original scheduled flight and, in the case of delays, the length of the delay. When Regulation 261/2004 originally came into force, passengers were not entitled to compensation in the case of delays; however, since the CJEU's Sturgeon ruling⁵⁴, passengers on (airline-attributable) delayed flights of three hours or more are entitled to compensation, although it should be noted that the CJEU ruling in relation to delays is not enforced consistently across all countries (e.g. in Switzerland). Passengers' entitlements in relation to the distance of their flight and, if relevant, the length of delay are discussed in more detail below and summarised in Table 4.4.
- 4.7 Although not stipulated within Regulation 261/2004, we have also included costs associated with reimbursing passengers for instances of mishandled baggage, the terms of which are stipulated in the Montreal Convention.
- 4.8 The analysis of airline costs at industry-level has been developed top down, as we anticipated that we would not be able to obtain comprehensive airline cost data for all years. We have therefore used estimates and made assumptions. However, the analysis has been cross-checked with cost data received from eight EU airlines, covering a range of large, medium and small network airlines, as well as low-cost and charter airlines, accounting for 25% of passengers in-scope of Regulation 261/2004 in 2018. All costs presented in this chapter are shown as nominal prices.

Scenarios

- 4.9 To estimate the actual costs borne by airlines arising from Regulation 261/2004, we have estimated the costs borne by airlines under different scenarios. We have done this, firstly, to illustrate the importance of the passenger claim rate and airline compliance rate in relation to airlines' theoretical maximum costs and, secondly, to ascertain the cost of the Regulation relative to a scenario with no EU-wide air passenger rights legislation
- 4.10 The scenarios for which we have estimated airlines' costs in relation to Regulation 261/2004 are as follows:
- Scenario 1: a theoretical scenario in which all passengers who are entitled to compensation claim it (i.e. 100% passenger claim rate) and airlines are 100% compliant

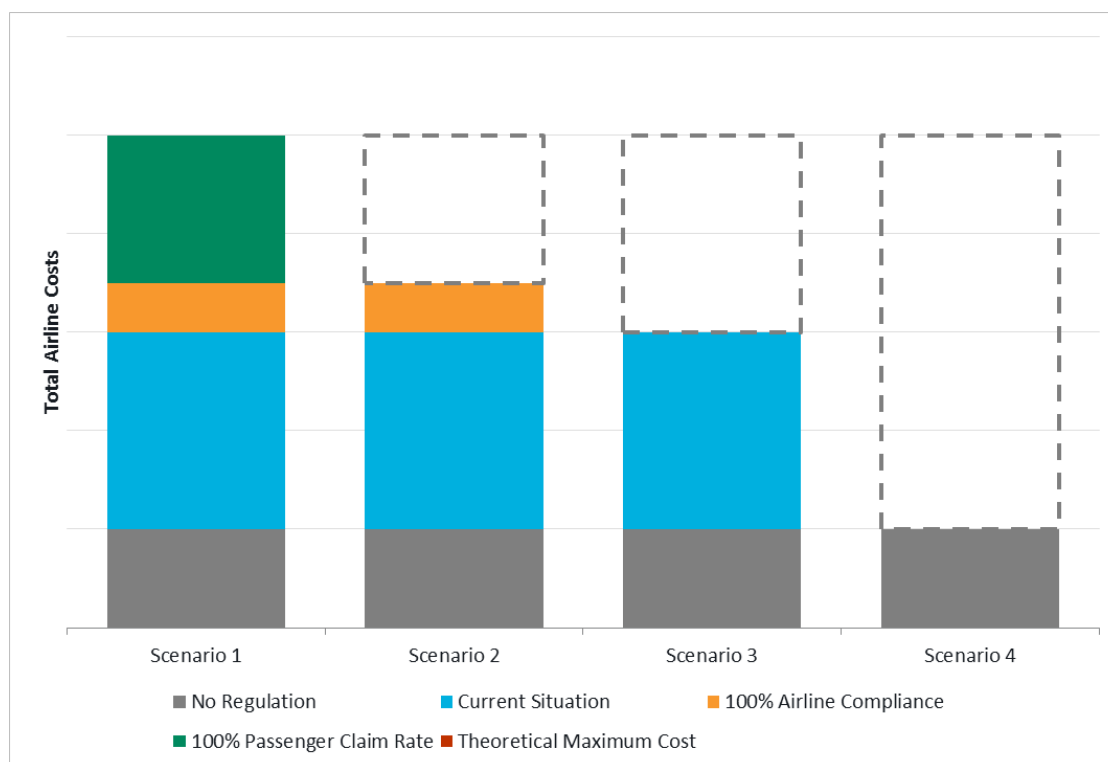
⁵⁴ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007CJ0402:EN:HTML>

with all aspects of the Regulation – this therefore represents the theoretical maximum cost for airlines;

- Scenario 2: a theoretical scenario in which airlines are 100% compliant with all aspects of the Regulation, but passenger claim rates are at their current (below 100%) levels;
- Scenario 3: the scenario that represents the current situation in which passenger claim rates are at their current (below 100%) levels and airlines comply with the Regulation at their current (below 100%) levels – this therefore represents the current situation; and
- Scenario 4: a theoretical scenario in which Regulation 261/2004 does not apply and passengers' entitlements are determined by airlines' policies as opposed to EU-wide legislation – airline compliance is assumed to be lower than under scenarios with EU-wide legislation.

4.11 An indicative depiction of the relative airline costs levels on each of the scenarios is shown in Figure 4.1; airline costs are lowest under Scenario 4 and increase incrementally up to the theoretical maximum level under Scenario 1.

Figure 4.1: Scenarios used to estimate airline APR costs

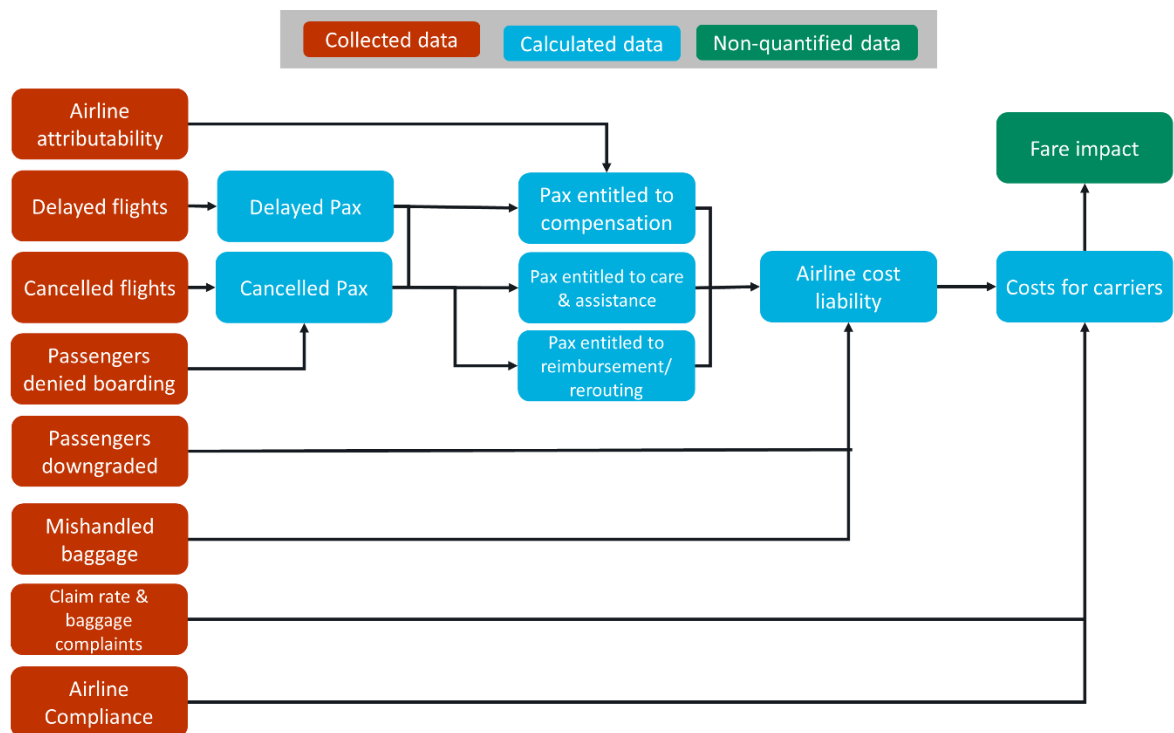


Source: Steer

4.12 In this chapter, we present a summary of actual airline costs for the implementation of APR in the current situation (Scenario 3). A detailed description of the airline costs under all scenarios is provided in Appendix C, alongside a description of the incremental costs between the no regulation scenario (Scenario 4) and the current situation (Scenario 3).

Analytical framework

4.13 A simplified depiction of our core analytical framework is shown in Figure 4.2. Some of the steps shown in the figure (for example, the step from the number of delayed passengers to the number of passengers entitled to compensation) have required a number of assumptions and calculation steps, which are described in more detail below.

Figure 4.2: Analytical framework for estimates of airline APR costs

Source: Steer

- 4.14 All quantitative data used here has been collected at as disaggregated level as possible to calculate each of the data points shown above in detail. However, in many cases, due to the lack of data, more aggregated data has been used and assumptions have been required.

Cost assumptions

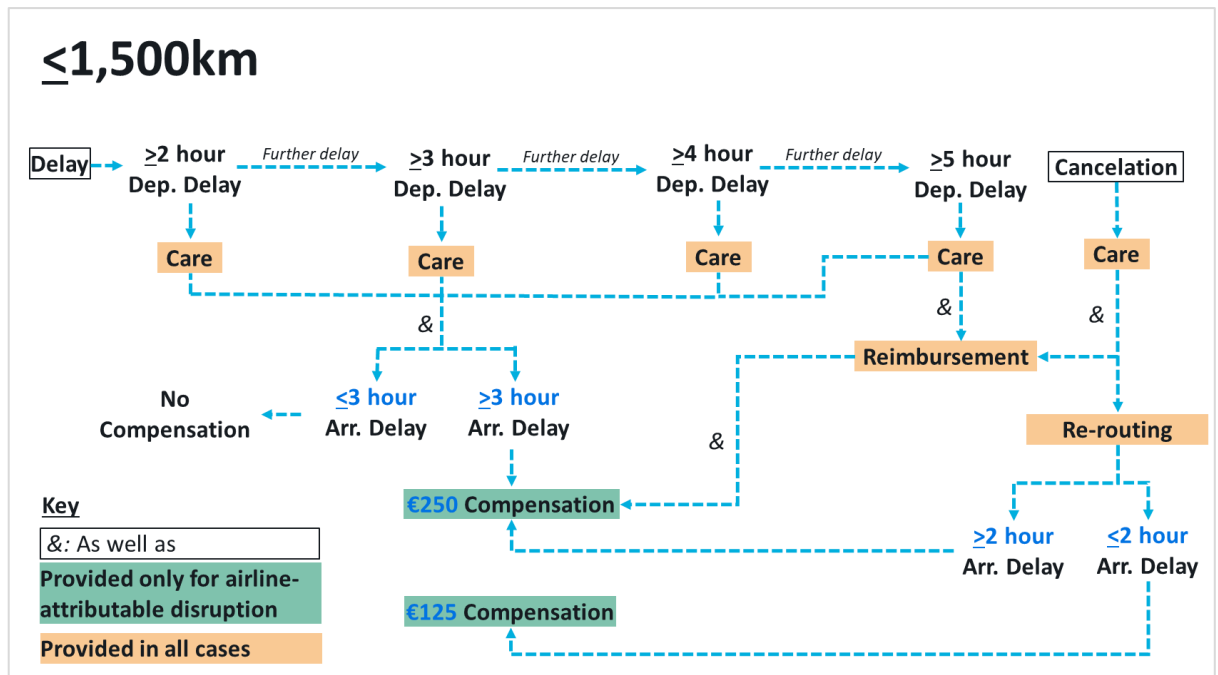
- 4.15 The costs borne by airlines in instances of disruption as stipulated within passenger rights legislation are set out in paragraph 4.5 above. To estimate the total costs borne by airlines under each scenario, we have:
- Based on the number of passengers affected by disruption, the claim rate and airline compliance (described in the previous chapter), estimated the number of passengers that are entitled to (each level of) compensation, care and assistance, reimbursement and re-routing; and
 - Estimated the monetary value of the compensation, care and assistance, and reimbursement passengers receive for each type of disruption.

- 4.16 The remainder of this section sets out passengers' entitlements in relation to each level of disruption and our assumptions in relation the monetary value the entitlements (which is are set out in more detail in Appendix C).

Passenger entitlements

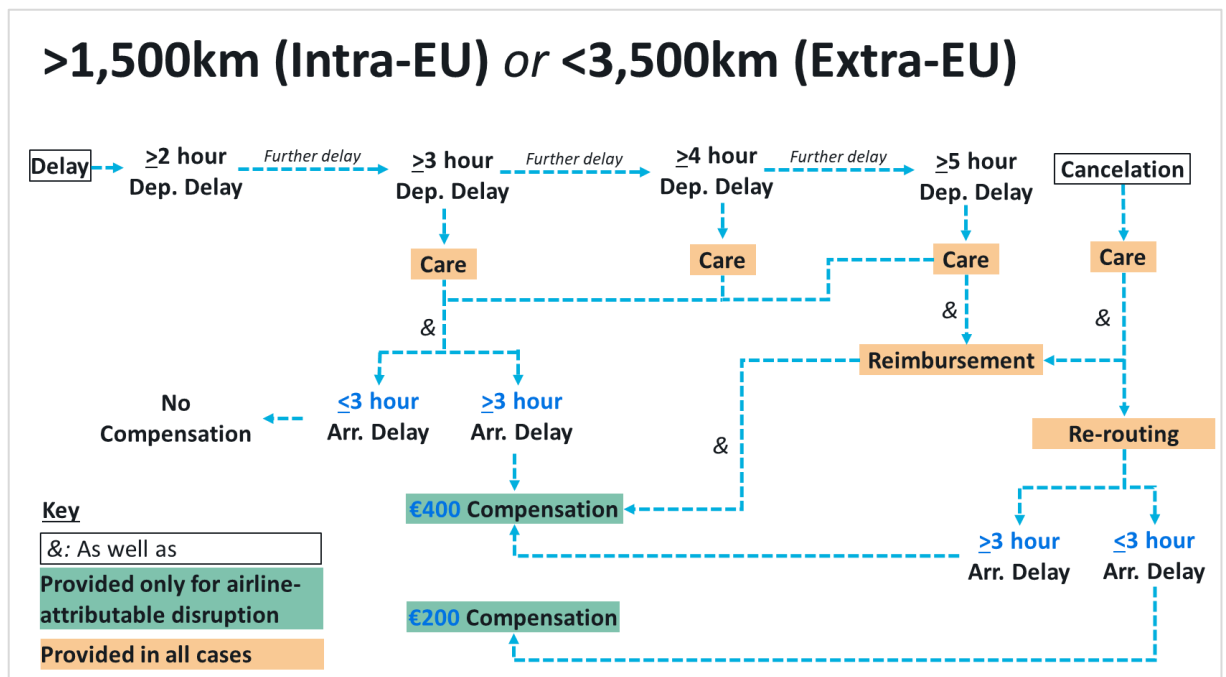
- 4.17 The methodology used to quantify the number of passengers, on delayed and cancelled flights, entitled to care and assistance, reimbursement/re-routing and each level of compensation, based on the Regulation 261/2004 legal text and subsequent CJEU rulings, is shown in the three figures below. Each figure shows passenger entitlements in the event of flight delays and cancellations at the three distance bands used in the Regulation.

Figure 4.3: Regulation 261/2004, passenger entitlements (<1,500 km)



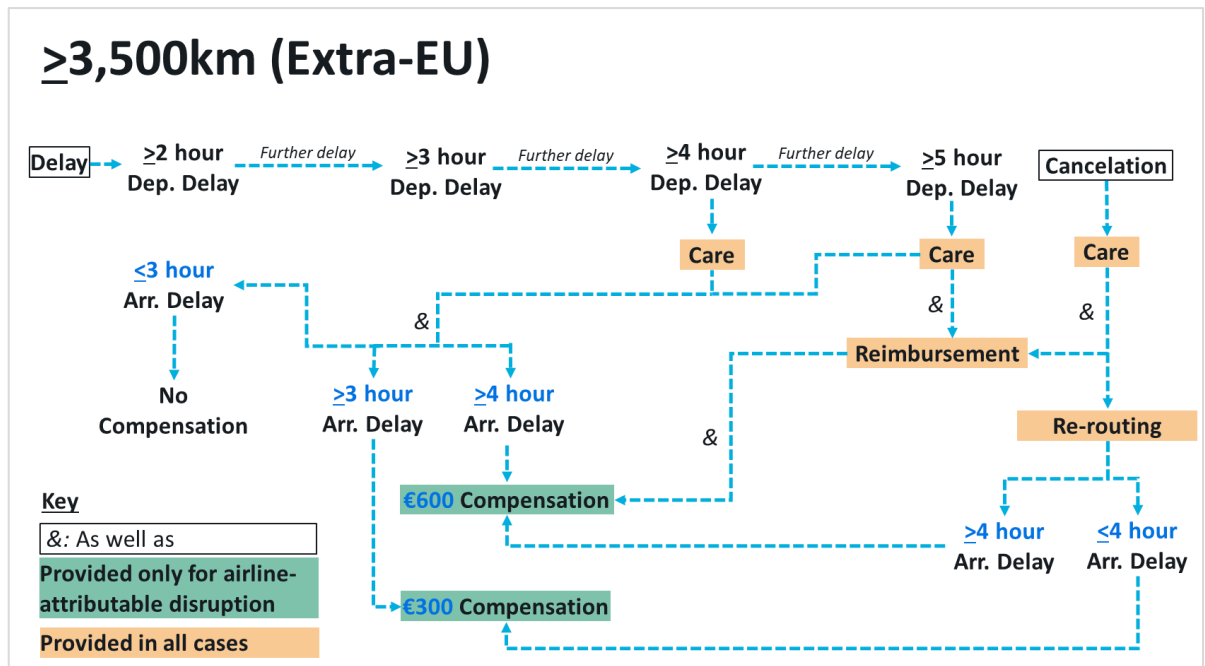
Source: Steer analysis of Regulation 261/2004 and interpretive guidelines

Figure 4.4: Regulation 261/2004, passenger entitlements (>1,500 km (Intra-EU) or <3,500 km (Extra-EU))



Source: Steer analysis of Regulation 261/2004 and interpretive guidelines

Figure 4.5: Regulation 261/2004, passenger entitlements (>3,500 km (extra-EU))



Source: Steer analysis of Regulation 261/2004 and interpretive guidelines

4.18 In summary:

- Passengers who are involuntarily denied boarding have the same entitlements as passengers on cancelled flights shown in the three figures above;
- Passengers who are voluntarily denied boarding are entitled to certain rights based on 'conditions to be agreed between the passenger concerned and the operating air carrier' (we have assumed these passengers are compensated half the monetary amount of passengers denied boarding involuntarily);
- Passengers who are downgraded are entitled to a reimbursement of either 30%, 50% or 75% of their fare at the distances shown in Figure 4.3, Figure 4.4 and Figure 4.5 respectively; and
- Based on the Montreal Convention, passengers who have their baggage mishandled are entitled to compensation to a maximum value of approximately €1,000.

4.19 The following section sets out the assumed monetary value of the compensation, care, reimbursements passengers receive based their entitlements.

Unit cost assumptions

4.20 A summary of the unit cost assumptions used for each type of disruption discussed above are shown in Table 4.1. A detailed description of the methodology used to derive these assumptions is set out in Appendix C.

4.21 There is a large variation in price levels across the EU+3, for example a hotel night in Amsterdam does not cost the same as a hotel night in Sofia – which means care and assistance and reimbursement/re-routing costs vary between Member States. The cost assumptions reported in the table below therefore represent EU (+3)-wide weighted averages that are weighted more towards Member States with a higher price base, as these Member States account for a much larger proportion of total passenger traffic.

- 4.22 These cost assumptions take account of the proportion of passengers requiring each type of care and assistance, the proportion choosing reimbursement or re-routing, and the proportion of passengers with cancelled flights that get reduced compensation (described in detail in Appendix C). The monetary figures shown are therefore a weighted average for each type of passenger based the assumptions above and are for the year 2018 (with cost assumptions for preceding years deflated as described in Appendix C).

Table 4.1: Assumptions made for airline costs (2018)

Distance (km)	Departure delay				Arrival delay				Cancellation entitlement (incl. denied boarding)	Downgrading discount	Denied boarding (voluntary)	Mishandled baggage
	> 2 Hours	> 3 Hours	> 4 Hours	> 5 Hours	> 2 Hours	> 3 Hours	> 4 Hours	> 5 Hours				
< 1,500	€7.20	€10.20	€13.20	€65.60 €113	-	€250	€250	€250	€53 €188 €50	-	€56	Lost/Stolen: €845 Damaged: €210 Delayed: €105
> 1,500 (Intra-EU)	-	€10.20	€13.20	€65.60 €126	-	€400	€400	€400	€53 €300 €57	-	€63	
1,500 to 3,500 (Extra-EU)												
> 3,500 (Extra-EU)	-		€13.20	€65.60 €447	-	€300	€600	€600	€53 €450 €200	€1,656	€224	

Key:

Care

Reimbursement, re-routing or return flight

Compensation

Benefits agreed with the passenger

Results

- 4.23 Below the results for the total costs in the current situation (Scenario 3) are summarised. These costs are then contextualised with respect to other airline costs, average airline yields (i.e. fares) and airline profits in the next section.
- 4.24 Results for the theoretical scenarios (1, 2 and 4) are provided in Appendix C, alongside an estimate of the incremental cost of Regulation 261/2004 for airlines relative to the costs that would be borne by airlines in a counterfactual situation with no EU-wide air passenger rights legislation (which means passengers' entitlements when disrupted would be determined by airlines' policies) (i.e. Scenario 3 less Scenario 4).

Airline costs based on current actual claim rates and actual compliance (Scenario 3)

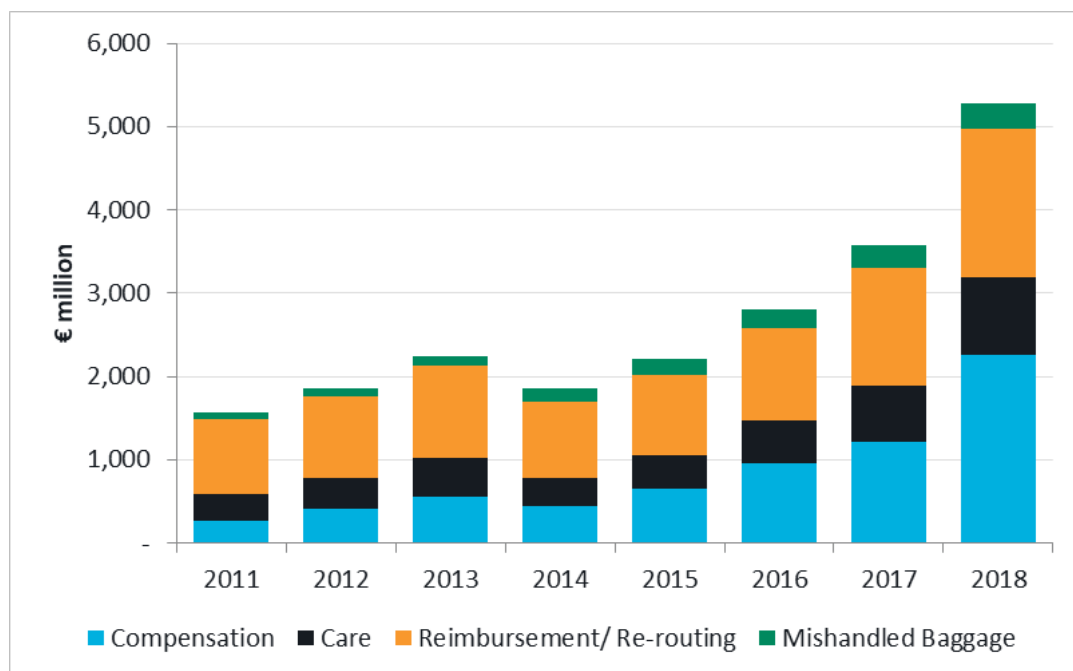
- 4.25 Scenario 3 represents the total costs for airlines in the current situation with actual passenger claim rates and actual airline compliance rates – with respect to granting compensation to eligible passengers and care provided, reimbursement and re-routing to all passengers entitled to them. Scenario 3, therefore, represents the current situation in terms passenger claims and airline compliance in relation to Regulation 261/2004.

Table 4.2: Scenario 3 total costs

€ million	2011	2012	2013	2014	2015	2016	2017	2018
Compensation	267	412	547	437	657	954	1,217	2,258
Care	324	369	473	351	400	519	677	932
Reimbursement/ Re-routing	889	978	1,116	914	956	1,103	1,404	1,787
Mishandled baggage	81	92	111	148	197	230	274	302
Total	1,560	1,851	2,247	1,849	2,209	2,805	3,572	5,279

Source: Steer analysis of CODA and airline data

Figure 4.6: Scenario 3 total costs



Source: Steer analysis of CODA and airline data

- 4.26 Under Scenario 3, total costs have increased from €1.6 billion in 2011 to €5.3 billion in 2018. Total costs increase over the period shown due to increasing levels of passenger traffic and disruption, as well as increasing levels of passenger claims and airline compliance.

Relative cost of air passenger rights implementation

- 4.27 To analyse the magnitude of the costs incurred by airlines in relation to Regulation 261/2004 (261 costs), we have:
- Assessed the size of Regulation 261/2004 costs relative to airlines' other operating costs, separately for low-cost carrier (LCC) and network carrier business models;
 - Compared the Regulation 261/2004 cost per passenger (and per passenger affected by disruption) to European-industry-wide average yield and profitability levels; and
 - Compared airline average yield and profitability levels under three typical flight scenarios with and without a four-hour delay.
- 4.28 We have drawn on airlines' financial data from 2018, as the most recent full year, and 2014, as a recent year when fuel prices were higher and European airlines' profitability was significantly lower than current levels, in order to capture the impact of Regulation 261/2004 costs at different parts of the economic cycle. However, in most cases, airlines do not separately report their Regulation 261/2004 costs, so these are derived from our estimates and are then compared with the revenue and cost items that are provided by airlines in their financial statements.
- 4.29 For the analysis below:
- Regulation 261/2004 costs used represent the costs under the current situation (Scenario 3 above), for compensation, care, reimbursement and re-routing.
 - Passengers represent all those on flights within the scope of the Regulation.
 - Passengers affected by disruption represent all those on flights within the scope of the Regulation, that are delayed (over two hours), cancelled, denied boarding or downgraded (i.e. not only the passengers who submit a compensation claim).
- 4.30 The Regulation 261/2004 cost per passenger and per passenger affected by disruption between 2011 and 2018 is shown in Table 4.3.

Table 4.3: 261-related cost per passengers and per passenger affected by disruption

€	2011	2012	2013	2014	2015	2016	2017	2018
261 compensation, care, reimbursement and re-routing costs under Scenario 3 (€ billion)	1.5	1.8	2.1	1.7	2.0	2.6	3.3	5.0
Total passengers (million)	834	841	854	889	928	983	1,052	1,121
Passengers affected by disruption (million)	17	18	21	16	18	22	26	36
<i>Passengers affected by disruption (%)</i>	2.0%	2.1%	2.5%	1.8%	1.9%	2.2%	2.5%	3.2%
Cost per passenger (€)	1.8	2.1	2.5	1.9	2.2	2.6	3.1	4.4
Cost per passenger affected by disruption (€)	89.3	100.4	103.4	105.0	112.9	115.1	124.6	138.3

Source: Steer analysis of CODA and airline data

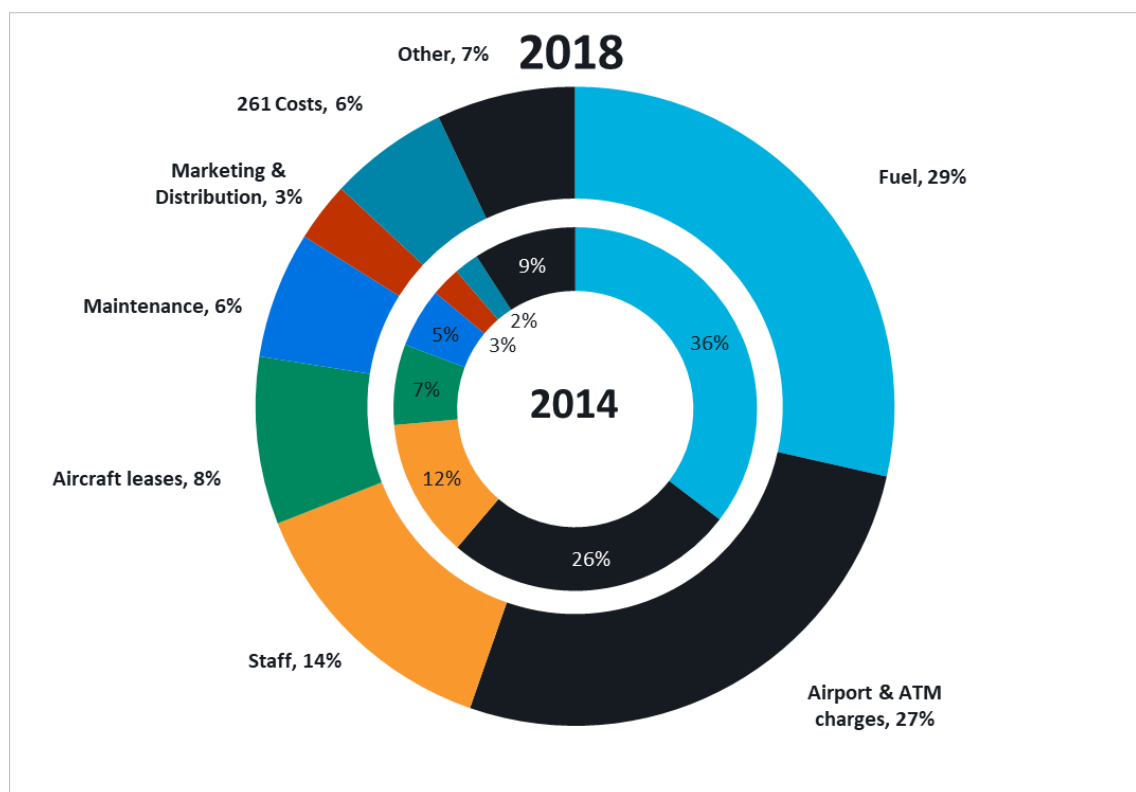
4.31 The increasing cost per passenger, between 2011 and 2018, is driven by an increasing level of disruption, increasing proportion of eligible passengers claiming and increasing levels of airline compliance. The cost per passenger affected by disruption is increasing for the same reasons. The cost per passenger affected by disruption is less than the €250 (the minimum standard compensation level) for the following reasons:

- Passengers affected by disruption include passengers who are delayed by more than two hours, but less than three, and are entitled to care but not compensation;
- Not all passengers affected by disruption that are entitled to compensation actually claim it;
- Passengers affected by disruption include those voluntarily denied boarding who receive other benefits; and
- A proportion of Passengers affected by disruption are re-routed within the arrival thresholds that reduce compensation by 50%.

Airline costs

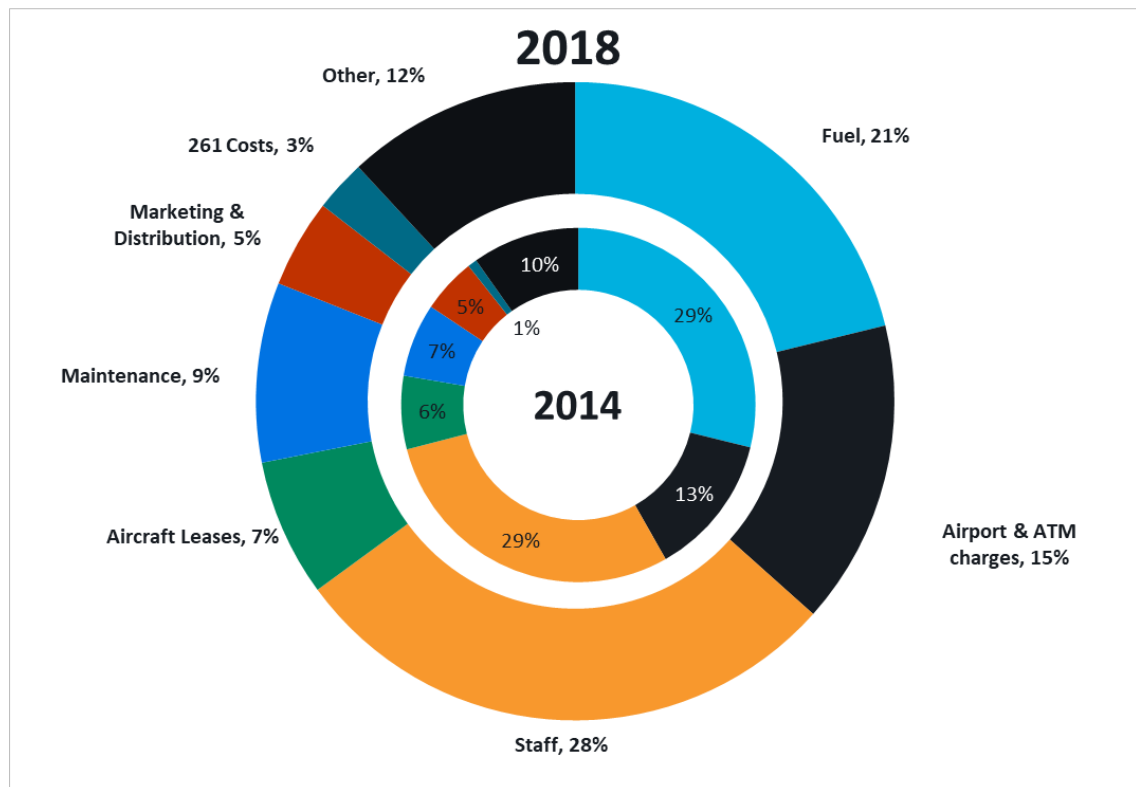
4.32 The share of airlines' Regulation 261/2004 costs, as well as other major operating cost items, as a proportion of total operating costs are shown in Figure 4.7 and Figure 4.8 for LCCs and network carriers respectively. The figures show the relative share of airlines' cost items in 2018 (outer ring) and 2014 (inner ring).

Figure 4.7: Airline operating cost items share – Low-cost carriers (2014 and 2018)



Source: Steer analysis of airline annual reports and data provided by airlines

Figure 4.8: Airline operating cost items share – Network carriers (2014 and 2018)



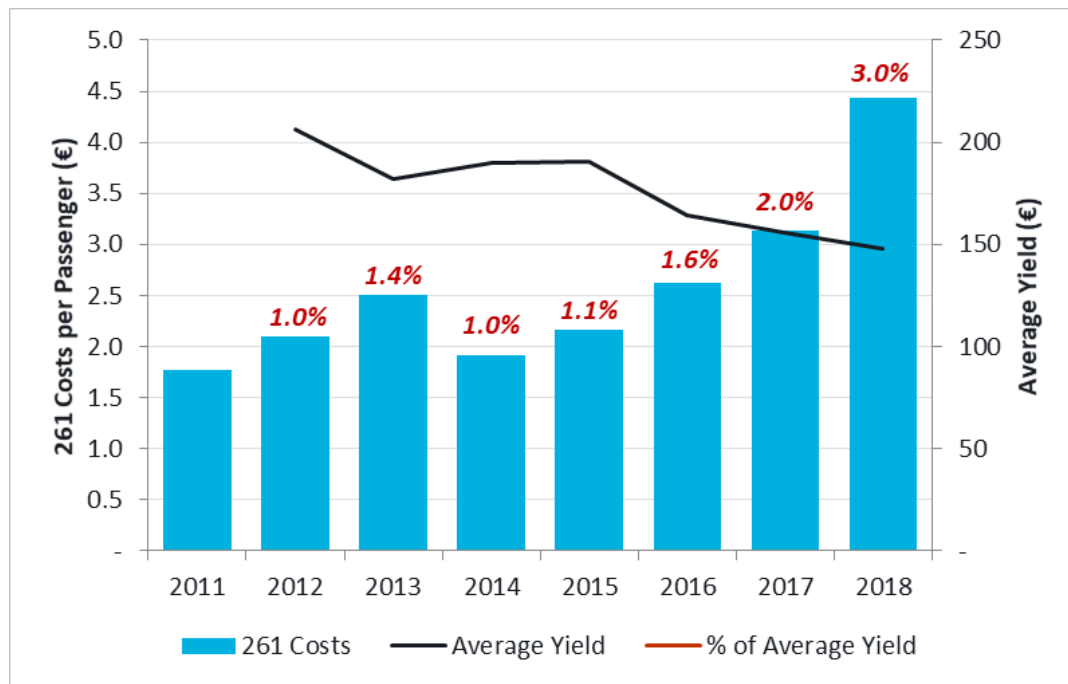
Source: Steer analysis of airline annual reports and data provided by airlines

- 4.33 In 2014, on average, Regulation 261/2004 costs accounted for 2% and 1% of LCC and network operating costs respectively; the lower share of costs for network carriers is due to a higher total cost base for these airlines. In 2018, the share of Regulation 261/2004 costs increased to 6% for LCCs and 3% for network carriers – this increased share is due to a combination of increased Regulation 261/2004 costs and reduced fuel costs between 2014 and 2018. None of the other cost items' share of total costs changed significantly between 2014 and 2018, with no item changing by more than two percentage points between the two years.
- 4.34 Although Regulation 261/2004 costs accounted for a very small part of network carriers' total cost base in 2014, the increase in the share of Regulation 261/2004 costs between 2014 and 2018 appears large compared to other cost items. For LCCs, the increase in share of Regulation 261/2004 costs is larger, where Regulation 261/2004 costs have overtaken in share the costs for marketing and distribution.

Airline average yield and profitability

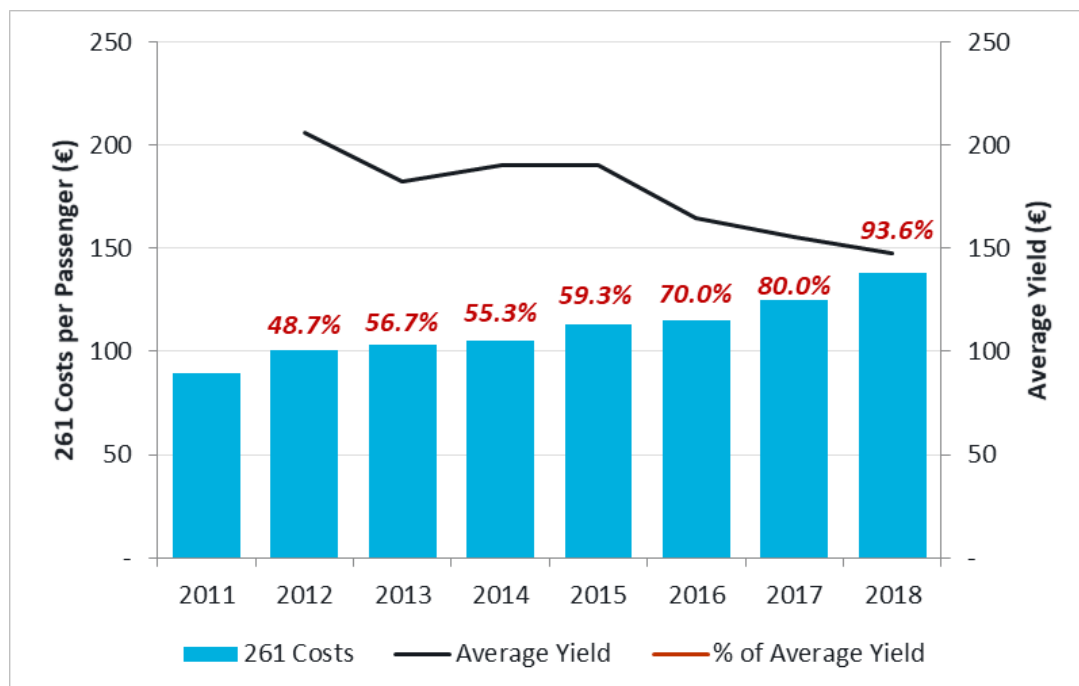
- 4.35 The average revenue per passenger (average yield) of European airlines together with the average 261 cost per passenger and the average Regulation 261/2004 cost per passenger affected by disruption are shown in Figure 4.9 and Figure 4.10 respectively.

Figure 4.9: Airline average yield and 261-related cost per passenger



Source: Steer analysis of airline data and IATA Industry Economic Performance reports

Figure 4.10: Airline average yield and 261-related cost per passenger affected by disruption

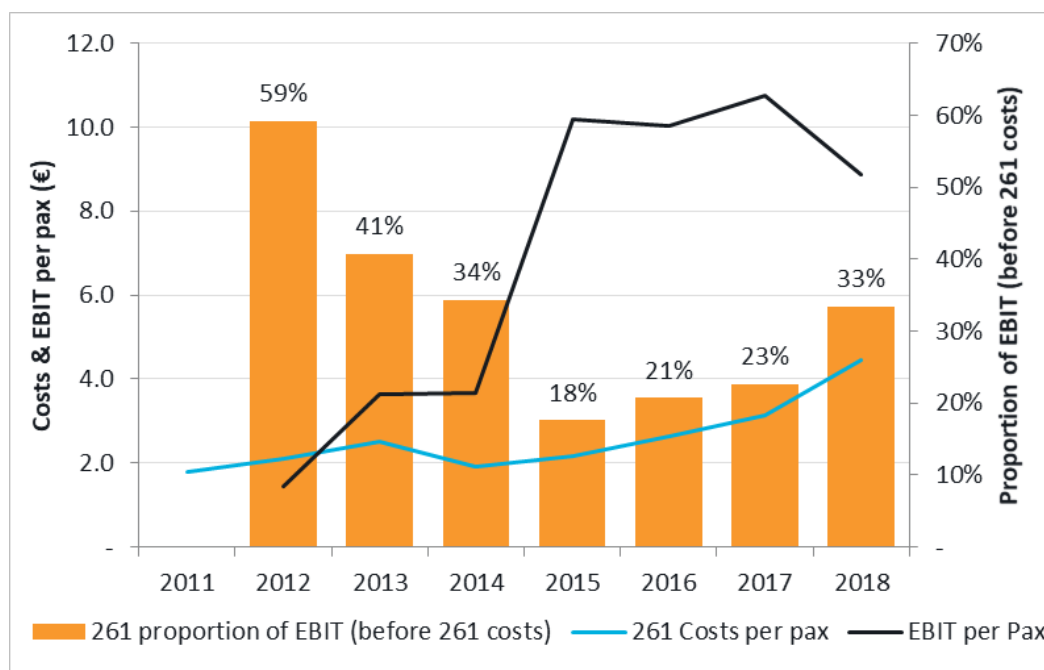


Source: Steer analysis of airline data and IATA Industry Economic Performance reports

- 4.36 Based on IATA airline economics data, the average yield for European airlines has fallen from €206 in 2012 to €148 in 2017, with a CAGR of -5.4%, reflecting increasing airline competition and capacity provision, as well as an increased market share for LCCs, which are able to offer lower fares than network carriers on many routes (therefore further reducing the industry-wide average yield).

- 4.37 Over the same period, the 261 cost per passenger increased significantly, from €2.1 in 2012 to €4.4 in 2018, with a CAGR of +13.4%, driven by increasing levels of disruption, increasing passenger claims and increasing airline compliance. In 2018, the average 261 cost per passenger represented under 3% of European airlines' average yield.
- 4.38 The average 261 cost per passenger affected by disruption has increased from €89 in 2011 to €138 in 2018, with a CAGR of +5.5%, (driven by increasing passenger claims and airline compliance). In combination with falling yields, this means that in 2018 the average 261 cost for every passenger affected by disruption was 90% of the yield that each passenger affected by disruption generated. This is on the basis that not all passengers affected by disruption submit a claim, and before any other operating costs are accounted for. Based on this, passengers affected by disruption are on average loss-making for airlines on a per passenger basis, but passengers affected by disruption represented only a little over 3% of total passengers in 2018.
- 4.39 Average 261 costs per passenger and European airlines' average earnings before interest and taxes (EBIT) per passenger are shown in Figure 4.11.

Figure 4.11: Airline average EBIT and 261-related cost per passenger



Source: Steer analysis of airline data and IATA Industry Economic Performance reports

- 4.40 European airlines' EBIT per passenger remained below €4 between 2012 and 2014, increased significantly in 2015 due in part to a large reduction in fuel costs and has remained at between €9 and €10 since 2015. Over the same period, airlines' average 261 cost per passenger increased, although for most of the period it remained significantly below the level of EBIT per passenger. Adjusting the EBIT for the 261 costs (i.e. removing 261 costs to give the earnings without them), in 2012, the 261 cost per passenger was above 50% of the EBIT per passenger (before 261 costs). In subsequent years, 261 costs have represented smaller, but growing proportion of the EBIT, as airlines' profitability has improved in the context of lower fuel costs, but 261 costs have increased driven by increased disruption and increased claim rates.

Airline route profitability

- 4.41 To assess the impact of 261 costs on airline route profitability, based on available seat kilometre (ASK) and financial data collected from airlines' annual reports, we have quantified the average cost, revenue and profit per flight for three separate route scenarios, with and without a four-hour⁵⁵ delay on arrival. The three scenarios are shown in Table 4.4.
- 4.42 Passengers receive compensation as stipulated within the Regulation based on the distance of the flight and the length of delay and passengers are assumed to receive care and assistance equivalent to the value of €13, consistent with the total cost quantification methodology described above.

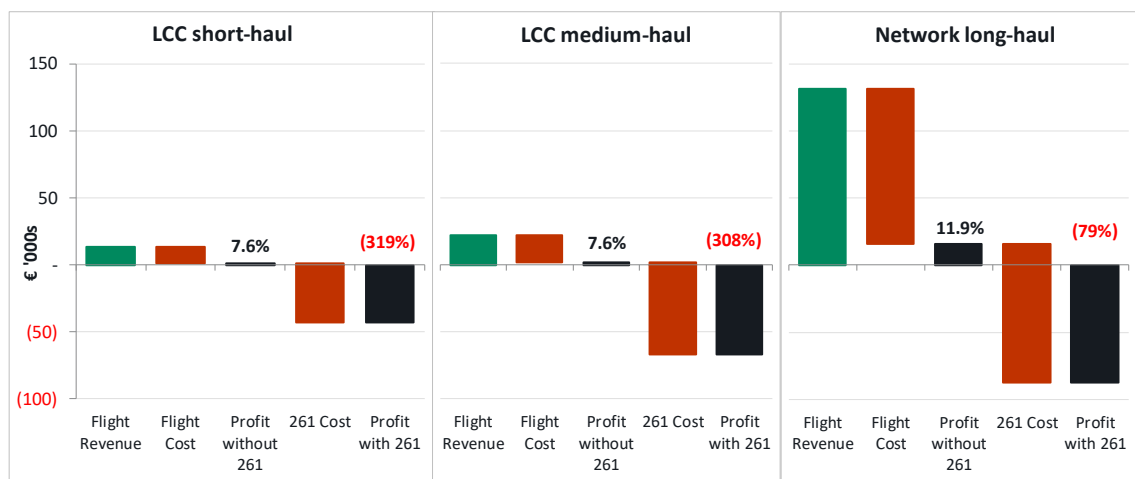
Table 4.4: Airline route profitability on 4-hour delay scenarios

Scenario	Route	Distance	Seats	Load Factor	261 Costs per Passenger		
					Compensation	Care	Total
LCC Short-haul	Düsseldorf-Palma de Mallorca	1,342km	189	90%	€250	€13	€263
LCC Medium-haul	Amsterdam-Athens	2,184km	189	90%	€400	€13	€413
Network carrier Long-haul	London Heathrow-New York JFK	5,554km	275	80%	€600	€13	€613

Source: Steer analysis of airline annual reports and data provided by airlines

- 4.43 Based on the assumptions in the table above for each route, the revenue, cost and profit per flight, with and without 261 care and compensation costs, are shown in Figure 4.12 for 2018.

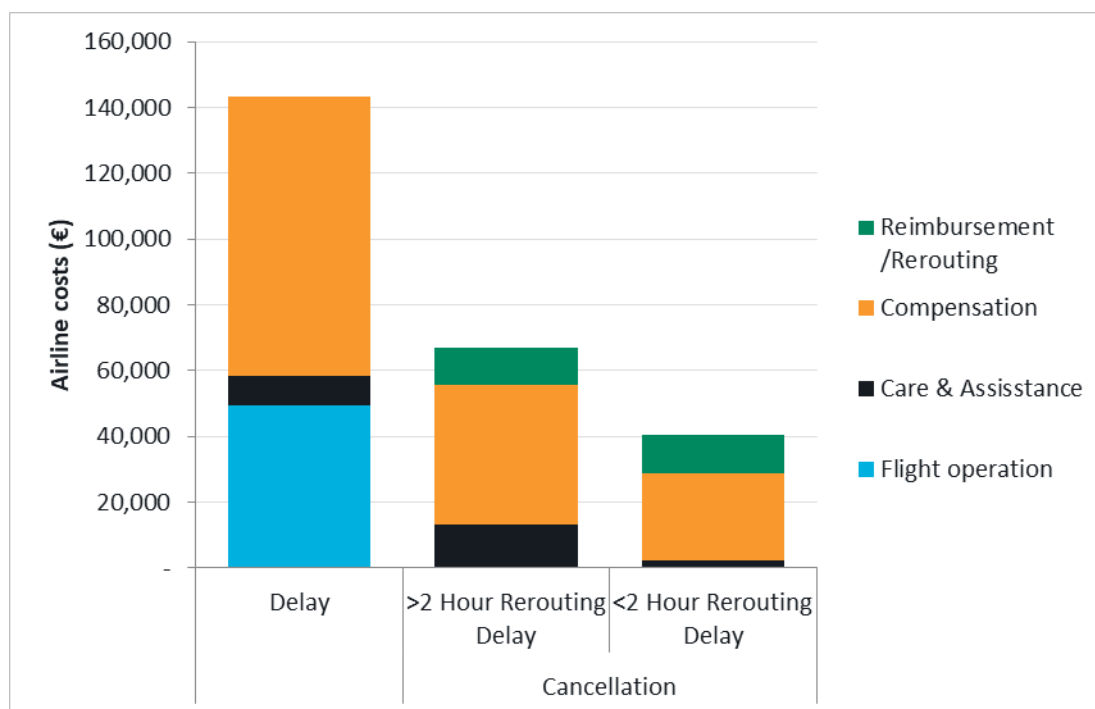
Figure 4.12: Airline route profitability delay scenarios



Source: Steer analysis of airline annual reports and data provided by airlines

⁵⁵ Four hours is assumed as, on Extra-EU flight of over 3,500km, passengers of flights with delays of between three and four hours are only entitled to 50% of the normal compensation entitlement.

- 4.44 Without Regulation 261/2004 costs, the profit per flight on the LCC short-haul and LCC medium-haul routes is €1,018 and €1,657 respectively – equivalent to a revenue margin of 7.6%. However, if compensation and care costs are paid to all passengers on the flight, the short-haul and medium haul routes make a loss of €42,700 and €66,938 respectively, equivalent to revenue margin of over -300%. This implies an additional 41-42 flights on the two routes (paying no Regulation 261/2004 costs) would need to be operated at a similar load factor in order to recoup the costs incurred.
- 4.45 Without 261 costs, the profit on the network carrier long-haul route is higher (€15,664) and is equivalent to a revenue margin of 11.9%. The higher margin means that, if Regulation 261/2004 costs are paid to all passengers, although the loss per flight is higher compared to the other routes (€103,531), the loss in terms of revenue margin is equivalent to -79%. This implies an additional 7 flights on this route (paying no Regulation 261/2004 costs) would need to be operated at a similar load factor in order to recoup the costs incurred.
- 4.46 Since the 2009 Sturgeon ruling, the compensation airlines are required to pay to passengers on delayed flights has been equivalent to the compensation paid for cancellations. This means, from a purely cost perspective, airlines could be incentivised to cancel flights in order to avoid knock-on delays. For example, if one flight was delayed by more than three hours, all subsequent flights in the same day planned to be operated with the same aircraft would also be delayed, whereas cancelling one rotation could avoid any knock-on delays.
- 4.47 To illustrate this, we have compared the costs incurred by airlines on the LCC short-haul route shown in Table 4.4, where four flights are planned to be operated in a day, and either:
- Two flights (one round trip) are cancelled but the two remaining flights are operated on time; or
 - All four flights are operated but with a delay of at least three hours.
- 4.48 The assumptions used to estimate the costs borne by airlines in each of these two scenarios is as follows:
- Flight operation costs are based on the financial data collected from airlines' annual reports described in paragraph 4.41;
 - Compensation costs are based on those stipulated with the Regulation – it is assumed that 50% of passengers affected by disruption claim compensation and the airline is fully compliant;
 - Reimbursement and re-routing costs (consistent with our estimation of airlines' total cost burden) are based the assumption that 25% of passengers choose a reimbursement when a flight is cancelled and 75% choose a re-routing (of which only 10% are rerouted with a different airline); and
 - Care and assistance costs are incurred in relation to the amount of time passengers are delayed.
- 4.49 The costs incurred by an LCC on a route under 1,500 km, based on the scenarios described above, are shown in Figure 4.13. The costs incurred for cancellations are shown separately for two scenarios where, firstly, all rerouted passengers are rerouted within two hours of the scheduled departure time (and therefore receive 50% of their compensation entitlement) and, secondly, all rerouted passengers are not rerouted within two hours of the scheduled departure time (and therefore receive their full compensation entitlement). In the latter case, 20% of passengers are also assumed to require overnight care and assistance.

Figure 4.13: Costs incurred by LCC carrier on short-haul route arising from cancellations and delays

Source: Steer analysis of airline annual reports and data provided by airlines

- 4.50 The costs incurred by an airline operating four flights delayed by three or more hours are over €140,000, compared to between approximately €40,000 and €65,000 for two cancelled flights. This implies that, from a purely cost perspective, airlines could be incentivised to cancel flights when faced with the possibility of delays of three hours or more.
- 4.51 However, it should be noted that such an incentive is greater for airlines operating short-haul routes with multiple turnarounds in a single day, which means the scope for knock-on delays are greater. On longer haul routes with lower frequencies, where in addition to the compensation, costs for either care & assistance to cover several nights' accommodation, or costs for expensive re-routings (due to limited capacity) may have to be incurred, which means there is less of an incentive to cancel flights.
- 4.52 It is also likely that the costs they incur will not be airlines' only consideration when deciding whether or not to cancel a flight; for example, an airline may choose not to cancel a flight for reputational reasons, even if it makes sense from a purely cost perspective. In addition, it is also likely that airlines will incur some costs associated with flight operation, such as staff, even if a flight is cancelled.

Administrative and legal costs

- 4.53 In addition to the direct costs for compensation, care and assistance, and reimbursement and re-routing that airlines incur as a result of implementing Regulation 261/2004, airlines also incur administrative costs for handling passenger claims (directly with passengers, with NEBs, with travel agents in some cases, or bilaterally with claim agencies), including costs for customer service staff and systems. They incur legal costs too when they defend cases in court. As described below, the activity of claim agencies has driven an increase in the number of cases that are taken to court. Additional costs are also generated for airlines by the

complexity of having to be represented in many different jurisdictions/legal systems and languages.

- 4.54 Of course, not all of the administrative and legal costs are incremental and it is not straightforward for airlines to isolate customer service costs that relate to claim handling in relation to Regulation 261/2004 alone, as opposed to handling other passenger issues. However, where airlines have provided relevant information, the administrative and legal costs range from 2% to 10% of the airlines' compensation and care costs in 2018. These costs then also contribute to the overall cost of APR implementation, and generally have increased in line with growth in the number of passengers affected by disruption, but since the marginal cost of handling additional claims is much smaller than the cost of compensation, the proportion that administrative costs represent of total costs has been decreasing.

Cost of mitigation measures

- 4.55 As the risk of disruption creates a financial risk for airlines under Regulation 261/2004 some have adopted mitigation measures to limit their potential exposure by building additional resilience into their route networks and schedules. This is done in at least two ways:
- Building some additional time into schedules and turnarounds to improve operational resilience, but reducing the utilisation of existing aircraft; and/or
 - Buying or leasing spare aircraft that can be deployed to avoid knock-on delays in cases of disruption.
- 4.56 In many ways, this is the outcome that Regulation 261/2004 is targeting, however, the degree to which this is done has to be balanced with a sufficiently efficient use of airlines' aircraft. Airlines have stated that they are generally not in position to keep spare aircraft beyond the requirements of their network/schedule as the cost would be financially prohibitive. However, one airline group indicated that up to 3% of its fleet is dedicated to mitigating potential Regulation 261/2004 costs, while another medium-sized network carrier stated that up to 6.7% of its short-haul fleet is kept for minimising extensive disruptions and the associated costs. One regional carrier maintains 10% of its fleet for ensuring operational resilience. Based on the analysis of airlines' costs above (see Figure 4.7 and Figure 4.8), given aircraft lease and maintenance costs account for between 14% and 16% of the cost base, then the additional aircraft would amount to approximately 0.4%-0.9% of the total cost base (1.3% for regional carriers), which could be allocated to 261 costs rather than lease and maintenance costs.
- 4.57 In any case though, even if aircraft might be available at an airline's main base, this will not be the case at outstations. So even in combination with increased minimum connecting times and longer turnarounds, airlines stated that such measures only generate a small effect in terms of mitigating disruption. In scheduling longer turnarounds, airlines seek to balance aircraft and crew utilisation, the opportunity cost of extra revenue-generating capacity (i.e. additional leg(s) flown in a day), and the risk disruption and knock-on delays.

Cost of re-routing

- 4.58 Regulation 261/2004 defines that passengers who are entitled to re-routing should be offered one at the "earliest opportunity". The interpretation of "earliest opportunity" varies significantly. Airlines generally view that this should be at the earliest opportunity on one of their own services, rather than on competitors' flights. However, practice varies between airlines with some having well-defined approaches that set out the priority in which alternative options (own services > other alliance carriers > other interline carriers > other

carriers) may be used within given timeframes, while others handle re-routing on a case-by-case basis. How readily an airline will re-route passengers on competitors' flights depends on factors such as the frequency with which the original airline serves a given destination, the capacity available on alternative carriers and, to some degree, passenger preference around the re-routing option. Land transport is usually offered if no alternative by air is available.

- 4.59 For IATA airlines, based on IATA Resolution 735d, the cost of re-routing is not more than the value of the ticket already paid by the passenger, so in this case airlines forgo the relevant revenue but still incur relevant care and compensation costs. For other airlines though, the cost of re-routing may simply be the face value of a new last-minute ticket purchased at the time of the disruption, which could be very expensive. In this case, airlines keep the revenue for the original ticket, but have to incur the cost of a new and likely more expensive ticket, in addition to any care and compensation obligations.
- 4.60 The engagement with NEBs has not indicated that a clear consensus exists among them on how the re-routing obligation should be interpreted – we note that Austria has made it a legal requirement that the re-routing at the earliest opportunity should include competitors' services. Passengers travelling on a package are covered by the Package Travel Directive (see Chapter 6) in which case their travel organiser may make alternative re-booking arrangements, rather than relying on the original airline.

Drivers of air passenger rights cost growth for airlines

- 4.61 The cost of implementation of Regulation 261/2004, which airlines view as disproportionate, and its evolution in recent years was the main concern raised by them during the stakeholder consultation. As discussed above, the increase in APR costs is, at a high level, driven by increased disruption combined with increased claim rates and increased focus on compensation. The level of disruption is expected to continue to increase as the system becomes more congested and capacity constraints, particularly in Air Traffic Management over the summer period, generate a large amount of delays. This may be addressed through the single European sky (SES) rather than APR. On the other hand, the claim rate, eligibility of these claims and compensation levels all relate directly to APR, and according to airlines have been driving APR costs up through in the following ways:
- Increased claim rate (as displayed in Chapter 2), particularly as a result of claim agency activity;
 - As a general rule, airlines only pay compensation to passengers when it is claimed, since there is no requirement for them to do so proactively (although there are ad-hoc examples of flights where compensation has been offered proactively by airlines). Increased awareness amongst passengers of their rights and the increased involvement of claim agencies targeting such cases has resulted in an overall increase in the successful claims to airlines. The rate at which passengers claim varies significantly between Member States, reflecting the level of awareness and/or the activity of claim agencies in these.
 - Increased compensation/damages, administrative and legal costs as a result of a larger number of disputed cases ending up in ADR and courts driven by:
 - Claim agency activity.
 - Compensation and damages awarded to passengers in ADR or courts, occasionally beyond the requirements of the Regulation.
 - Legal uncertainty emerging from different interpretations by the courts across Europe, but sometimes even courts in the same jurisdiction.

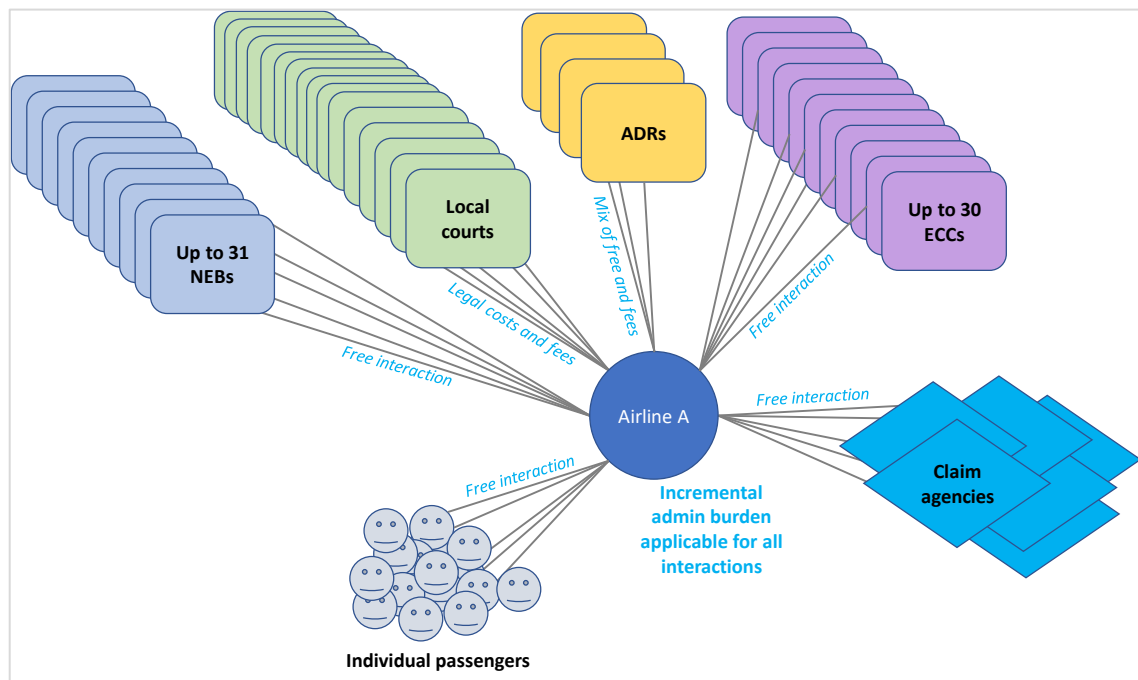
- Increasingly narrow definition of extraordinary circumstances emerging from CJEU rulings, as well as the increasingly wider interpretation of the Regulation's scope (e.g. journey-basis, including connections outside the EU/EEA/CH).

4.62 From a practical perspective, it can be observed that most airlines are called to interact with a very large number of bodies (at a minimum all the NEBs in countries they fly to/from, all the ADRs in countries where they fly to/from, many courts in countries where they fly to/from and sometimes beyond, a number of ECCs) as well as multiple claim agencies and individual passengers. In part, this is inherent in the nature of the activities of most European airlines, serving passengers across many different countries. For instance, airlines would very well be expected to have customer service departments equipped to deal with the typical level of activity generated by the passengers they carry. However, in addition to individual passengers, airlines operating in the EU/EEA/CH may be called to interact on air passenger rights with:

- Up to 31 NEBs for Regulation (EC) 261/2004 (these interactions are free for airlines);
- National and local courts (these interactions may incur legal costs and fees);
- ADR bodies (these interactions may be free or may incur a fee for airlines);
- Up to 30 ECCs (these interactions are free); and
- Numerous claim agencies (these interactions are free but may result in costs for airlines).

4.63 All of these interactions and the complexity associated with them generate an incremental administrative burden for airlines. Figure 4.14 below illustrates this situation.

Figure 4.14: Interactions of airlines other parties on air passenger rights



Source: Steer

Airline interaction with passengers

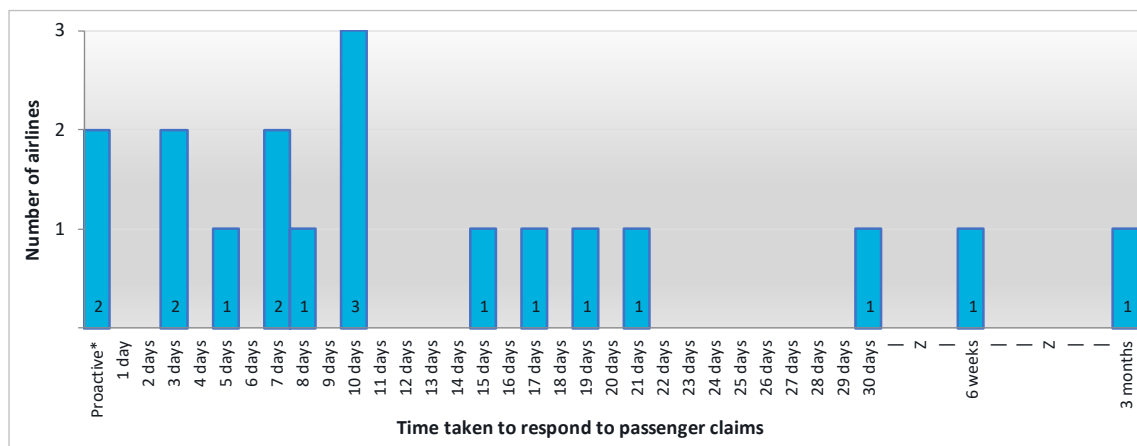
- 4.64 The fact that practice with respect to claims under Regulation 261/2004 varies between airlines and between NEBs (see Chapter 5), generates confusion for passengers. When there is a dispute, airlines encourage passengers to use NEBs and/or ADRs. The different approaches taken by NEBs and ADRs (see Chapter 6) in different Member States generate further confusion for passengers and airlines, with the link between NEBs and ADR in some cases (e.g. at least 2 non-Danish airlines that fly to DK were not aware that the DK NEB is also an ADR) not being very clear. As a result of this passenger confusion, passengers' trust in the system and particularly towards the airlines is low (sometimes justifiably – e.g. where travel companions on the same disrupted flight received different outcomes from the airlines; and sometimes not justifiably – e.g. passengers misunderstanding the rules).
- 4.65 One network carrier and one airline association stated that they have observed an increase in the proportion of disputed claims being escalated to NEBs and ADRs, while at the same time the proportion of claims received from claims agencies has stabilised – indicating that passengers are more aware of the free steps (i.e. NEBs and ADRs) that they can take to dispute the airline's response, but nonetheless in doing so they are generating additional administrative burden for airline. Another network carrier, however, indicated that the proportion of disputed claims has been relatively stable – which again highlights the differences between airlines and between Member States.
- 4.66 Passengers' low intelligibility of the system, according to airlines, also results in the airlines sometimes receiving the same claim simultaneously from multiple sources (e.g. ADR and two different claim agencies), as passengers try to maximise their chances of receiving compensation. Claims for flights disrupted due to extraordinary circumstances, for which airlines are in principle exempt from paying compensation for, may in fact end up being just as costly as legitimate claims that are compensated, given the additional time and resources required to handle them. If not received simultaneously, passengers may dispute claims with NEBs and/or ADRs and then claim agencies, if the former do not find in their favour. Claims agencies will then bring the case to court, generating additional legal costs for the airlines in cases where they do not settle in order to avoid the courts altogether (see Courts and claim agencies section below).

Claim handling by airlines

- 4.67 The way in which airlines receive and handle claims varies from completely manual handling at smaller airlines to more sophisticated, (semi-)automated handling at very large ones. Customer care departments are the first point of contact for passengers. Customer care receives all passenger enquiries, including claims related to Regulation 261/2004, complaints related to Regulation 1107/2006, and any other customer-related issues. For small and medium-sized airlines this function may be centralised, while for larger, network airlines it may be distributed around the world (although somehow coordinated centrally). Some airlines have established dynamic Regulation 261/2004 processes through which disrupted flights are tracked in real-time by operations control and are classified as due to extraordinary circumstances (compensation not to be paid) or not (compensation to be paid) in almost real time, enabling customer service agents to then respond directly and as consistently as possible to claims received from passengers. More complicated cases (e.g. complex connections) or disputed cases are passed on to internal legal teams and may draw on airline internal experts.

4.68 Subject to complete information being received and additional information not needing to be clarified with outstations, for example, airlines aim to respond to passenger claims in a timeframe that they define themselves (from within 3 days or up to 3 months). Figure 4.15 below shows the number of days (given in their responses to the stakeholder consultation) that airlines indicated they will take to provide an initial decision to passenger claims. In some cases, the actual response time may be shorter than the target time; in complex cases it may be longer.

Figure 4.15: Number of days airlines state they take to respond to passenger claims



* Proactive: airlines contact passengers affected by disruption proactively, rather than waiting for a claim to be received from passengers

Source: Stakeholder consultation responses

4.69 Two airlines, one very small regional airline and one medium-sized network airline, stated that they contact passengers affected by disruption proactively in order to offer them compensation, but we have not been able to verify this, and they would certainly be a minority of cases among their peer airlines. As can be seen in the figure above, there is not one set of time frame and therefore customer experience will differ. Airlines explained that in some cases, response times have had to be increased in order to be able to handle the high volume of claims now being received (the airline with 19 days above), in another case the response time includes the payment of the compensation, not just the response to the passenger (one airline with 10 days above), while in the case of the 30 day target, this has been specified in national law (actual response times may be lower).

4.70 In responding to passenger claims and complaints, most airlines indicated that priority is given to PRMs and, where applicable, to passengers who are members of their loyalty programs and have tier status.

4.71 As noted above, one medium-sized network airline proactively contacts passengers requesting their bank details so it can pay the compensation due after a long delay or cancellation. In general, however, we note that proactive compensation is complicated by a number of factors, which is why passengers have to be contacted to provide bank details, including:

- Payment and credit card rules on fraud protection and money laundering; and
- The passenger to whom compensation is due may not have been the one who arranged the travel and paid for the flights.

- 4.72 Additionally, airlines do not always have the contact details of their passengers when these have booked via a third party (i.e. travel agency) (see Chapter 0 for more on provision of passenger contact details).

Airline interaction with National Enforcement Bodies

- 4.73 NEBs monitoring and enforcement activities under Regulation 261/2004 are presented in Chapter 5. Overall, whilst some NEBs had some issues with some airlines, most airlines that we interacted with during the stakeholder consultation did not point to significant issues in their interactions with NEBs. They acknowledged that most NEBs liaise well with passengers and to a lesser degree with airlines, but highlighted that the variety of approaches, frameworks, decisions and justifications required by the 31 NEBs was particularly complicated and added an administrative burden.
- 4.74 As presented in more detail in Chapter 5, NEBs have different and sometimes contradicting views among themselves on similar issues (such as the type of proof that has to be provided by airlines, NEBs assessment of extraordinary circumstances and reasonable measures taken by airlines, etc.). This requires airline policies to be adapted in different Member States to correspond to each NEB's interpretations and expectations (process, documentation, acceptable evidence), which creates added complexity and cost.
- 4.75 Further to this, airlines sometimes also end up in disputes with NEBs over the interpretation of certain issues (e.g. re-routing) and extraordinary circumstances (e.g. industrial action). Cases are ongoing for example between airlines and NEBs in Finland and the UK around disagreements on the application of extraordinary circumstances. One airline also highlighted that, according to some NEBs, it is not possible to deduct compensation already paid under Regulation 261/2004 from other compensation claimed in accordance with Article 19 in Montreal Convention (for example pre-paid event), despite Article 12 of Regulation 261/2004 specifying that such a deduction may be made.
- 4.76 As also indicated in Chapter 5, the application of sanctions by NEBs is overall quite limited, and in most cases this has been in relation to non-compliance with Article 14 of Regulation 261/2004 on information provision, as a result of audits completed by the NEB. The impact of NEB sanctions does not appear to represent a material cost for airlines nor a material incentive to change behaviour. Nevertheless, adapting the information provision to meet different NEBs' expectations also contributes to the overall complexity that airlines have to address. Specifically on compliance with Art. 14, airlines also indicated that it is not necessarily possible in practice to prove that all affected passengers have been informed of their rights of care and assistance in the case of long delays. Many passengers will not go to the gate, if one has even been assigned, if airport information boards indicate that their flight is delayed and while technology may help with contacting passengers, the airline may not have all of its passengers' contact details (see section above).
- 4.77 Some NEBs coordinate meetings or workshops with airlines, which airlines described as constructive in terms of understanding NEB expectations. Some airlines have adapted their policies and the information provided to passengers in response to such meetings and/or NEB audits.

Airline interactions with courts and claim agencies

- 4.78 Despite the large number of interactions and interfaces that Regulation 261/2004 creates for airlines, in our engagement with them, the airlines repeatedly highlighted that the courts are the most problematic for them, as these generate a lot of uncertainty, complexity and cost:
- Uncertainty: according to operational stakeholders, most courts are not particularly specialist in Regulation 261/2004 and there is no guarantee that they will always follow Regulation 261/2004 and its associated jurisprudence.
 - Burden of proof: this differs between countries and in some cases, it can be particularly difficult to demonstrate that all reasonable measures were taken or prove why it was not possible nor reasonable for given measures to be taken. It can also be difficult to explain to non-aviation industry specialists the complexity of the aviation system and the direct or indirect causality between an event (e.g. bad weather or ATC restrictions), a specific flight delay or cancellation and the mitigation measures an airline may have put in place to limit the overall impact of the event.
 - Appeals: in some cases, court decisions are not appealable.
 - Complexity and costs: All court processes and representation vary between countries, which generates cost as multiple legal teams need to be appointed.
 - Jurisdiction: if a case goes to court it may be in the country of arrival, departure, residence of the passenger, or domicile of the airline;
 - Statute of limitations: this differs between countries and generates cost and complexity making it complicated for airlines to be certain about when claims may be considered to have expired and no longer represent a liability.
- 4.79 Claim agencies prefer to pursue cases in the courts. As discussed in Chapter 0, claim agencies may be motivated to readily take court action, since they charge/withhold higher fees than when resolving a claim directly with an airline. Additionally, claim agencies are understood to target courts in specific jurisdictions that are assessed as being particularly consumer-friendly in their interpretation of Regulation 261/2004. Airlines explained that this presents a risk to them, since they want to avoid incurring legal costs when the ruling is likely to award the passenger compensation anyway— as well as potentially generating jurisprudence – so they may end up settling out of court, even when they are strongly of the opinion that the claim should not be eligible. According to airlines, it is also the case that even if an airline’s defence is successful, airlines tend to not seek and courts would tend to not award costs to the airline, as the passenger would be liable for these costs, even if represented by a claim agency. Passengers and claim agencies, on the other hand, try to recover court costs against airlines in most cases.
- 4.80 As a result, operational stakeholders explained that disrupted flights, to which they believe that extraordinary circumstances applied (thus a right to compensation does not exist), can be as costly, when having to be defended in the courts, as disrupted flights to which extraordinary circumstances did not apply and for which airlines compensated passengers. Therefore, the exemption afforded by the application of extraordinary circumstances can sometimes in practice not be as effective as intended, as airlines incur equivalent costs whether extraordinary circumstances applied or not.
- 4.81 By comparison to the courts, the issues raised by airlines with respect to their interactions with NEBs (see above and Chapter 5), ADRs or ECCs (see Chapter 0) were not as significant. In general, airlines and other stakeholder groups welcomed ADR (where it is available) as a comparatively efficient and effective way for handling disputed claims within the existing

framework, though some issues remain, particularly around the consistency of interpretation, the (non-)binding nature of decisions, and the fact that airlines have to engage with multiple bodies all over Europe on the same issues.

Right to redress

- 4.82 Clyde & Co provided the study with detailed material on the right to redress specified in Article 13 of Regulation 261/2004. This detailed review, the legislative background and its application in practice are presented in Appendix D and are summarised below.
- 4.83 Air carriers have argued that any revision to Regulation 261/2004 should include explicit provisions for redress from third parties in circumstances where they have caused or contributed to disruption for which, under the current provision of the Regulation, air carriers are liable. Air carriers argue that such redress procedures would allow them to meet their obligations to passengers under the Regulation in the knowledge that a right of recourse exists against any third party responsible for the underlying flight disruption. Nevertheless, such procedures present a number of clear practical difficulties, including because:
- any guaranteed right of recourse would cut across the contractual freedom as between air carriers and other aviation stakeholders. Any such interference with the prevalent commercial distribution of risk could have associated economic implications, including on the level of insurance cover that aviation stakeholders need to carry and consequently the price that air carriers pay for access to essential service and infrastructure. Any such increased costs may ultimately be passed on to passengers;
 - to the extent any aviation stakeholders benefit from immunity from prosecution under national law, conflict would potentially arise between a right of recourse under the Regulation and such domestic statutory protections;
 - issues are likely to arise where flight disruption is attributable to a number of concurrent or consecutive causes. Unless any revision of the Regulation is able to effectively deal with apportionment of liability in such circumstances (which seems unlikely), potentially complex legal disputes could arise;
 - whilst CJEU jurisprudence means that the Regulation now effectively imposes a regime of semi-strict liability on the part of the operating air carrier, subject to the relevant temporal threshold for flight delay or cancellation being met, it is unclear what standard of proof would apply to an air carrier's claim against a responsible third party. Indeed, the relevant standard of proof may vary between EU Member States;
 - noting that the time limit for bringing claims under the Regulation is a matter of national law⁵⁶, air carriers could face a situation where they remain exposed to passenger compensation claims, but any right of recourse against a responsible third party is time-barred (unless that was overridden by a revision to the Regulation). Whilst that situation theoretically exists at present, given the current practical difficulties faced by air carriers in pursuing recourse action (as discussed above) the issue rarely, if ever, arises;
 - unless a right of recourse under the Regulation specifically allows the consolidation of claims, the modest compensation sums payable under the Regulation (assessed on a passenger-by-passenger basis) may make recourse action unattractive in practice. For instance, it is understood that in Spain it is difficult to consolidate an air carrier's financial

⁵⁶ Joan Cuadrench Moré v Koninklijke Luchtvaart Maatschappij NV, (Case C-139/11)

exposure arising out of multiple passenger claims under a single recovery claim against a responsible third party.

Impact of air passenger rights cost

- 4.84 The implementation of APR contributes to airlines' costs, however the way in which it impacts different carriers varies depending on their business model. The table below provides an initial view of how key aspects of Regulation 261/2004 affect different business models. We discuss below some of the most difficult issues highlighted by airlines during the consultation.

Table 4.5: Impact of APR by airline business model

Business model	Topic	Description
Network carriers	Flight vs journey perspective	The application of the Regulation to the whole journey, covering all connections (including those made outside the EU) presents particular challenges for network carriers who may be selling long-distance, multi-leg through itineraries that involve several connections. For such itineraries, a short delay (e.g. one hour) may result in a missed connection. Given airline schedules, where long-haul flights are often organised in waves (e.g. one in the morning and one in the evening), the opportunities to re-route may be limited, resulting in a long (e.g. 10 hours) arrival delay at the destination. Thus, a short delay on one leg, may generate the maximum compensation liability for the airline (i.e. €600). Additionally, where onward (e.g. domestic) connections are being offered by non-EU partner carriers and these are delayed, airlines consider that the journey perspective creates extraterritorial issues (e.g. a connection offered by Thai Airways between Bangkok and an island, as part of a Lufthansa itinerary from Frankfurt).
	Competition	The exclusion from the scope of the Regulation of flights arriving at EU/EEA/CH airports operated by non-EU carriers, is seen by EU carriers as providing non-EU carriers with an unfair competitive advantage on those routes. As a result, EU network carriers: • have to set their fares in response to market demand and competition from non-EU airlines that do not face the same level of APR costs; and • do not have the opportunity to externalise their relevant APR costs.
	Impact on fares	Three out of seven responding EU network carriers stated that Regulation 261/2004 has not had an impact on their fares, due to competition, particularly on non-EU routes (see above). In this case Regulation 261/2004 costs impact these carriers' profitability instead of passenger fares. The remaining four responding network carriers agreed, but added that ultimately their fare revenues have to cover their costs, so there is an indirect effect on fares.
Low cost carriers	Compensation levels vs fare levels	The standard compensation levels defined in the Regulation can be very high compared to the average fare. In 2018, the average fare for Ryanair was €39 and for easyJet it was €60. LCCs consider that compensation should be linked to the fare paid by passengers and not be punitive, as currently defined.
	Impact on fares	Low cost carriers stated that the costs of Regulation 261/2004 have led to both an increase in fares and also a reduction in profitability. This

Business model	Topic	Description
		suggests that part of the relevant costs have been externalised, with the remaining costs impacting LCCs' profits.
Regional carriers	Flight vs journey perspective	The issues highlighted above around the flight vs journey perspective of network carriers are exacerbated in the case of regional carriers providing feeder connections to network hubs. A small delay on the flight operated by the regional carrier may result in a missed connection that generates the maximum compensation liability (i.e. €600). This liability sits with the regional carrier and is not commensurate to the revenue it is allocated as part of the connecting itinerary or indeed the overall scale of its operations. Regional carriers state that the impact of this is such that it threatens their viability and risks reducing the connectivity that they offer to more remote regions.
	Impact on fares	Fares have been impacted by Regulation 261/2004 costs, as regional carriers' exposure can be disproportionate to the scale of their operations (see above) and fares revenues ultimately have to cover costs. However, regional carriers operating Public Service Obligation (PSO) routes may be limited to the extent that they can increase their fares, subject to the terms of the PSO.
	Care and assistance	Regional carriers can be operating in remote, peripheral regions, where the supporting infrastructure may limit their ability to provide adequate care and assistance. For instance, on some islands, there can be a limited hotel capacity, especially in peak season.
	Administrative burden	This may be particularly disproportionate for small regional carriers who do not benefit from economies of scale that larger airlines have in terms of internal systems and processes, customer relationship management databases and legal expertise.
Charter carriers	Reactionary delay	Charter carriers operate according to the requirements of the tour operators they are associated with. Charter carrier capacity will correspond to capacity on the ground (e.g. hotel-beds) and, as a result, these carriers do not tend to cancel flights as readily as some other airlines operating under different business models may do, in order to avoid knock-on effects to the wider set of linked services that form the package. In cases of disruption, charter carriers will tend to tolerate more reactionary delay than others might before cancelling a given flight. This is also a function of the potentially limited alternatives available for accommodating passengers affected by disruption on other flights. The frequencies operated across a charter airline's network could be no more than once a week for certain destinations, while the availability of alternative routings or capacity on other (competing) airlines may be limited, particularly during peak season.
	Impact on fares	Charter carriers suggested that there has been no impact on fares given the very high level of competition in the price-sensitive leisure market. Instead, costs impact their profitability.

Source: Steer analysis of stakeholder consultation responses and airline annual reports

Cost of air passenger rights implementation for airports

Regulation 261/2004

- 4.85 The airports that responded to the consultation (21 out of 59 airports contacted, plus ACI-Europe) found that passengers overall were not well aware of their rights, but that awareness was improving, in some cases supported by improved access to information online at times of disruption. However, even passengers who were aware of their rights were often not clear about which party the obligation to fulfil these rests with.
- 4.86 Regulation 261/2004 does not impose a legal obligation on airports, since passengers' direct relationship is with the airlines. Nevertheless, some airports stated that they routinely provide support beyond their legal obligations to passengers, as not all airlines comply with Regulation 261/2004 in the same way. One airport group stated that visiting airlines which are only represented by groundhandling agents at the airport tend to underperform in terms of the provision of care and assistance to passengers compared to airlines that are based at the airport with airline staff. Uneven and sometimes poor oversight by NEBs also contributes to the situation, which overall results in operational and financial consequences for airports.
- 4.87 In the case of mass disruptions (i.e. large-scale extreme weather events affecting all flights, groundhandling or ATC strikes, etc.), airports have put contingency crisis management plans in place that include preparations for information provision and assistance for passengers (food and beverages, communications, showers, beds, clothing, medical care, special care for children and occasionally transport by alternative modes) and involve the participation of multiple stakeholders active at the airport (airlines, groundhandlers, other suppliers operating at the airport and national authorities). Mass disruptions and airline insolvencies have highlighted the limitations of Regulation 261/2004, as airlines have not been able to offer passengers sufficient assistance and airports have had to step in to assist passengers. Guidance on reinforcing resilience procedures at airports is coordinated by ACI.
- 4.88 Outside of mass disruptions though, some airports (particularly larger ones) are regularly involved in providing care and assistance to passengers whose flights have been delayed or cancelled as a backstop when assistance is not provided by the airlines. Airports may intervene when airlines fail to fulfil their obligations and/or when passengers have specific needs that airlines may not have been able to address. For example, passengers affected by disruption who are connecting and do not have a valid visa for the country in which they are connecting are not able to leave the airport and so overnight accommodation cannot be provided. Airports in these cases have provided mattresses, blankets, pillows and toiletries to such passengers. Other examples in which airports assist passengers directly include when passengers are in severe difficulty (e.g. have insufficient funds and no access to credit, do not speak the local language, have not booked their own travel and are unable to use digital media, require access to medication), are pregnant or elderly and ought to be prioritised in being seen by an airline representative, or have missed separately booked connecting flights with different airlines, in which case they fall out of the scope of Regulation 261/2004, but nevertheless require assistance.
- 4.89 In addition to supporting passengers directly, airports also take steps to support airlines in fulfilling their duties in a number of ways. Some airports explained that they have made arrangements for food and beverage outlets to remain open for extended periods, ensuring that staff and adequate supplies are available to provide services to passengers, or that they have made airport-operated lounges available to vulnerable passengers. Airport staff have

also helped airlines with coordinating local accommodation and extra airport staff have been deployed to provide information or direct passengers, as sufficient airline staff or representatives (groundhandling agents) may not be visible/available in the airport to assist passengers. ACI-Europe stated that the presence of an airline point of contact at the airport, who is empowered to assist and compensate passengers is key for the effective implementation of Regulation 261/2004. The presence of airline representatives in baggage reclaim is also key in ensuring that passengers' rights with respect to their baggage under the Montreal Convention can be properly enforced.

4.90 As a result of the lack of awareness amongst passengers about which party Regulation 261/2004 obligations sit with, airports often receive claims from passengers which they have no obligation to address. The degree to which this happens varies by country and airport, and may amount to a few tens of misdirected claims from passengers for smaller airports to several thousand for larger ones. Although there is no compensation cost associated with these, there is an administrative cost in reviewing these claims and responding to passengers (that it is not the airport's responsibility and that they have to address their claim to the relevant airline). In the context of Regulation 261/2004, airports also stated that they receive enquiries about the precise departure and arrival times of flights, often from claim agencies.

4.91 Overall, airports incur some costs as shown in Table 4.6 that can be associated with the protections offered to passengers under Regulation 261/2004, although airports are not in the scope of the Regulation.

Table 4.6: Overview of airport costs for assisting passengers

Description of cost	Beneficiary	Occurrence	Strictly an airline obligation under Reg. 261/2004	Cost
Direct cost for assistance for some passengers affected by disruption	Vulnerable passengers or passengers in severe difficulty	Low	Mostly, but not always (e.g. self-connecting)	Low
Direct cost for welfare resources (e.g. mattresses)	Passengers whose airline failed to meet its obligations. Passengers whose needs airlines may not have been able to address (e.g. visas when in transfer)	Low	Yes	Low (partly offset by airports' own resilience planning)
Administrative cost for coordinating the availability of food outlets (staff/products/etc.) in the terminal (outside of normal operating hours)	Passengers affected by disruption and airlines who are enabled to meet their Reg. 261/2004 assistance obligations	Medium	No	Very low (airport only incurs the admin cost – outlets operated by in terminal concessions and third party staff – cost of products covered by extra sales).
Administrative cost for communication	Passengers who submit claims under Reg.	Medium	No	Low

with passengers who misdirected claims	261/2004 to airports instead of airlines		Airlines are required to provide information to passengers about their rights (Article 14). Passengers may nonetheless misunderstand these and contact airports instead of the airline.	(indistinguishable from other passenger contact centre costs)
Administrative cost for providing information to passengers and claim agencies about flight delays/cancellations.	Passengers enquiring about their flights in order to collect evidence to support a claim with the airline.	Medium	No	Low (indistinguishable from other passenger contact centre costs)

Source: Stakeholder consultation, Steer analysis

- 4.92 As shown in the table above, the support provided by airports to airlines and to passengers generates some incremental costs for airports, however these are small, indistinguishable from costs that the airport would anyway incur (e.g. passenger contact centre staff) and not always directly related to Regulation 261/2004. Any costs incurred are generally not charged directly back to individual airlines, but do form part of airports' overall cost base, which is eventually recovered through airport charges (so the costs are effectively passed through). Meanwhile, the assistance offered in the case of mass disruptions or to passengers who are in particular difficulty is not directly related to the rights defined by Regulation 261/2004, for which airports have no obligations in any case, but rather part of airports' resilience planning and the customer care that they would seek to provide even in the absence of the Regulation.

Regulation 1107/2006

- 4.93 A detailed overview of the situation for PRMs, combining the views of passengers, airports, airlines and NEBs, is provided in Chapter 2. All relevant stakeholders agreed that the number of PRMs is increasing strongly, representing an increasingly large proportion of total passengers, which presents certain challenges to service providers at airports (e.g. staffing and equipment requirements during peak periods).
- 4.94 The costs of PRM service provision are covered by the PRM charge that all passengers pay on their tickets. The value of this charge is overseen by the independent supervisory authority (ISA) competent for airport charges. Revenues raised by the PRM charge are held in a trust (escrow) account and are used to cover the cost of service provision by airports (or their subcontractors if the service has been outsourced). Any accumulated revenue or shortfalls in revenue is rolled over or recovered during the next period for which the charge is set (e.g. a shortfall in revenue compared to the costs in one year will be recovered through a slightly higher charge the following year). The costs airports incur for providing PRM services are passed through to passengers.

Positions of operational stakeholders

Airlines

- 4.95 The airline industry stated that it recognises that regulation benefits consumers and the industry alike by providing clarity and certainty for all stakeholders. In the case of Regulation 261/2004, the airline industry considers that it has generated confusion amongst passengers, airlines, NEBs and other stakeholders, alongside generating cost, without creating value, since the practice of commercially denied boarding and cancellations, which the Regulation aimed to address, is very limited indeed. Costs are seen as disproportionate and the result of the numerous CJEU rulings which have interpreted Regulation 261/2004 to have a wider scope than that understood by airlines. Additionally, the increasingly wide definition of extraordinary circumstances and the burden of proof required to demonstrate that all reasonable measures have been taken by airlines to avoid the disruption is seen as effectively imposing strict liability on airlines, at least for cases disputed in the courts.
- 4.96 IATA has proposed the following core principles on passenger protection:
- Passenger rights legislation should allow airlines the ability to differentiate themselves through individual customer service offerings, thereby giving consumers the freedom to choose an airline that corresponds with their desired price and service standards. Regulations should form the “lowest common denominator” and market forces should be allowed to determine additional standards of service levels.
 - Legislation should be clear and unambiguous.
 - Passengers should have access to information on their legal and contractual rights and to efficient complaint-handling procedures.
 - Passenger entitlements enshrined in regulations should reflect the principle of proportionality and the impact of extraordinary circumstances; there should be no compromise between safety and passenger rights protection and safety-related delays or cancellations, such as those resulting from technical issues with an aircraft, should always be considered as extraordinary circumstances that exonerate air carriers from liability.
 - The industry recognises the right to re-routing, refunds or compensation and care & assistance in cases of denied boarding and cancellations, where circumstances are within the carrier’s control.
 - The industry recognises the right to refunds and care & assistance to passengers affected by delays where circumstances are within the carrier’s control.

- 4.97 Extending on the IATA principle of proportionality, LCCs add that compensation levels ought to be proportionate to the fare paid by passengers, also reflecting passenger rights in other modes.

Issues around safety

Safety is paramount in the aviation industry and as a result air travel is the safest form of transport. Common safety rules constitute the backbone of the EU aviation safety system, providing a uniform level of requirements for the certification of aircraft, definition of safety standards, monitoring of aviation safety and consistent application of the rules.

In spite of all precautions and mitigation measures that can be thought of by the aeronautics and aviation industry, natural and/or man-made events will happen that may render the operation of an aircraft unsafe: birdstrikes, safety authorities removing the operating certificates to aircraft at very short notice (such as the B737 MAX grounding on 12 March 2019 in Europe), very unruly passengers in flight, volcanic ash cloud, aircraft being hit by a groundhandling vehicle, etc. The highly effective aviation safety system in place in Europe (and globally) relies in part on a safety culture of promptly reporting technical faults.

When such events happen, the safety system in place in Europe makes airlines cancel flights, directly affecting passengers. In these circumstances, airlines will classify the event as “extraordinary circumstances” as they have assessed that it is beyond their control. However, NEB and CJEU rulings do not always side with the airlines: for instance, the CJEU classified as extraordinary circumstances an aircraft rendered unsafe when hit by birds (Pěšková v. Travel Service a.s, Case C-315/15, 4 May 2017) but not when hit by a groundhandling vehicle (Siewert v. Condor Flugdienst GmbH, Case C-394/14, 14 November 2014).

Whilst there is no evidence to date that flight safety has been compromised by Regulation 261/2004 or that it has been a contributing factor, European airlines, and more so the regional ones as they are disproportionately affected, are concerned that the financial burden of paying compensation for events that took place for safety purposes may create internal decision biases and delay the reporting of technical faults on aircraft. In Canada, this issue has been recognised in the recent air passenger rights legislation by the authorities who have specifically not given passengers rights to compensation for “situations within airline control but required for safety purposes” and “situations outside airline control including conditions that makes the safe operating of the aircraft impossible, medical emergency, collision with wildlife, a manufacturing defect in an aircraft that reduces the safety of passengers and that was identified by the manufacturer of the aircraft concerned, or by a competent authority, instructions from air traffic control, airport operation issue, etc”.

Airports

- 4.98 In the wider context of air passenger rights, ACI-Europe and some airports raised the need for there to be clear and consistently applied rights regarding minimum allowable cabin baggage, while respecting individual airlines' rights to apply their own specific rules. According to ACI-Europe, unreasonable restrictions on cabin baggage allowances by some airlines undermine the passenger experience. The lack of recognised passenger rights in relation to this issue has led to very restrictive and changing practices by some carriers, who limit passengers to carrying a single piece of hand baggage on-board and charging for any additional items, such as airport shopping. Such restrictions cause distress to passengers who are asked to choose at boarding gates between paying penalties or forfeiting possessions. Additionally, the inconsistency of such airline practices discourages passengers (including those not travelling with an airline with restrictive rules) from shopping at airports, which impacts airports' commercial revenues. In 2017, non-aeronautical revenues accounted for 41% of total airport revenues on average.

Summary of findings

- 4.99 Our analysis indicates that the cost generated for airlines by the implementation of Regulation 261/2004 has grown significantly since 2011. The average cost per passenger has increased at a CAGR of +13.6% from €1.8 in 2011 to €4.4 in 2018, driven by a combination of increased levels of disruption and increased claim rates for compensation. The increase in disruption comes mainly in the form of delays (1.0% of passengers in 2011, 1.5% of passengers in 2018) and corresponds with the higher levels of ATFM delay generated in the single European sky, which although not caused by airlines, can end up being attributed to them as, for example, reactionary delay. The increase in the claim rate (8% in 2011, 38% in 2018) has been driven increased awareness among passengers of their rights, the activity of claim agencies and the evolving interpretation of extraordinary circumstances, which has become narrower (e.g. through the Siewert ruling (Case C-394/14)) and the Regulation's scope, which has become wider (e.g. the Wegener ruling (Case C-537/17)).
- 4.100 The cost of Regulation 261/2004 forms a relatively small part of airlines' cost base, however, as the overall cost of this Regulation has increased, this share has also grown and in the case of LCCs has overtaken the cost of marketing and distribution. At the same time, airlines' average yield (i.e. fare) has fallen and in 2018, the estimated average cost per passenger generated by Regulation 261/2004 represented nearly 3.0% of the yield, up from 1.0% in 2012. While the average cost per passenger is not very high (€4.4 in 2018), as costs are spread over a very large number of passengers, the average cost of Regulation 261/2004 for passengers who are disrupted is high, representing over 90% of airlines' yield on average in 2018. The Regulation was designed for this cost to be high to discourage airlines from taking commercial actions that would inconvenience passengers (e.g. overbooking), however, as more operational disruptions are also covered (e.g. technical defects inherent in the normal exercise of the activity of the air carrier), the cost of passengers affected by disruption may generate disincentives for airlines to actually operate severely delayed flights and incur operating costs in addition to the disruption costs.
- 4.101 It is important to recognise that in the absence of any EU legislation, airlines would probably offer, on their terms, some aspects of consumer protection voluntarily, as seen in other countries that do not have legislative frameworks protecting air passenger rights. In such a case, airlines would still then voluntarily incur some relevant costs. The incremental cost of Regulation 261/2004 is just part of the total costs described above (i.e. incremental costs is

equal to total costs less voluntary costs) and we estimated that it represented 51% of the total costs for 2018 (see paragraph 4.12 and Appendix C).

- 4.102 In addition to the direct costs for compensation, care and assistance, and reimbursement and re-routing that airlines incur as a result of implementing Regulation 261/2004, airlines also incur administrative costs and legal costs for handling passenger claims, as well as costs for measures taken to mitigate the risk of disruption. Based on stakeholder inputs, administrative and legal costs were found to be up to 0.6% of the overall cost base in 2018, while the cost of mitigation measures (e.g. lease and maintenance costs for spare aircraft) contributed approximately 0.4% to the overall cost base. The extent to which all of these costs may be attributed to Regulation 261/2004, as opposed to normal steps taken to ensure a level of operational resilience is not straightforward to evidence.
- 4.103 One of the drivers of airlines' administrative and legal costs is the fact that they need to interact with individual passengers, a very large number of bodies (NEBs, ECCs, ADRs, courts) as well as claim agencies, which generates complexity and an additional burden, particularly where the same claim may simultaneously be submitted in several ways by a passenger (such as directly, through an ADR, and via a claim agency). Of these interactions, the one of greatest concern for airlines is the courts, as these generate a lot of uncertainty, complexity and cost. By comparison to the courts, airlines did not raise any significant concerns with respect to their interactions with NEBs, ADRs or ECCs.
- 4.104 A key issue for the airlines is the fact that the right to redress defined in Regulation 261/2004 is not guaranteed and as a result they are not able to recover costs for care and compensation that they might have incurred from third parties (airports, ANSPs, groundhandlers) where these may have contributed to the disruption. The Regulation's costs then are either internalised by airlines, impacting their profitability, or are externalised as an increase in fares.
- 4.105 Airlines provided mixed views as to the extent to which fares have been impacted by Regulation 261/2004. Seven airlines (out of the 17 that commented on this issue) indicated that air fares have on average been impacted by costs of Regulation 261/2004, as all costs have to be covered by revenues, although the impact may not be direct on a route-by-route basis. Ten airlines (out of the 17 that commented on this issue) indicated that air fares are generally dictated by the market and that the impact of the additional costs is on profitability (and investment opportunity), resulting in a restriction in the number of routes operated and a reduction in connectivity offered. The overall impact of the Regulation on airlines varies according to their business model and the market they operate in, with network carriers, low cost carriers, regional carriers and charter carriers all highlighting different aspects of the APR protection provisions that affect them the most.
- 4.106 Regulation 261/2004 does not impose a legal obligation on airports, since passengers' direct relationship is with the airlines. Nevertheless, some airports stated that they provide support beyond their legal obligations to passengers, as not all airlines comply with Regulation 261/2004 in the same way. Airports also take steps to support airlines in fulfilling their duties in a number of ways (e.g. through making arrangements for food and beverage outlets to remain open for extended periods).
- 4.107 The support provided by airports to airlines and to passengers generates some incremental costs for airports, however these are small, indistinguishable from costs that the airport would anyway incur (e.g. passenger contact centre staff) and not always directly related to Regulation 261/2004. Any costs incurred are generally not charged directly back to individual

airlines, but do form part of airports' overall cost base, which is eventually recovered through airport charges.

- 4.108 The costs airports incur for providing PRM services are passed through to passengers in the form of the PRM charge that all passengers pay on their tickets. The value of this charge is overseen by the independent supervisory authority (ISA) competent for airport charges. Revenues raised by the PRM charge are held in a trust (escrow) account and are used to cover the cost of service provision by airports (or their subcontractors if the service has been outsourced). Any accumulated revenue or shortfalls in revenue is rolled over or recovered during the next period for which the charge is set (e.g. a shortfall in revenue compared to the costs in one year will be recovered through a slightly higher charge the following year).

5 Monitoring and enforcement processes under Regulation (EC) No 261/2004

Introduction

- 5.1 This chapter provides an overview of the monitoring and enforcement processes under Regulation (EC) 261/2004, as well as the monitoring of the application of other APR legislation including Regulation (EC) 1107/2006 and the Montreal Convention. The analysis relies on desk research, consultation of NEBs in all EU/EEA/CH States, inputs from other stakeholders and horizontal analysis. Member State fiches summarising the situation with respect to the monitoring and enforcement of APR in are provided in Appendix E.

Overview of enforcement bodies

- 5.2 Regulation (EC) 261/2004 specifies that each Member State shall appoint a NEB that can ensure that the rights of passengers are respected. Passengers are able (and encouraged through Commission communications) to complain to the NEBs about alleged infringements, but, as clarified in the Commissions Interpretative Guidelines⁵⁷ and ruled on by the CJEU in cases C-145/15 and C-146/15⁵⁸, NEBs are not required to act on such complaints in individual cases – their sanctioning role consisting of measures to be adopted in response to the infringements which they identify in the course of their general monitoring activities, rather than enforcement actions taken against carriers to compel them to pay compensation in individual cases. This means that although passengers may complain to a NEB, their complaint may not be addressed in a way that ensures that they received any compensation they may be due.
- 5.3 Nevertheless, Member States have been able to adopt legislation which requires the NEBs to adopt measures in response to individual complaints. As a result, different complaint handling, monitoring, enforcement and sanctioning approaches exist across the EU/EEA/CH NEBs. Additionally, NEBs for Regulation (EC) 261/2004 may have also been appointed as the competent bodies for Regulation (EC) 1107/2006 and/or the Montreal Convention.
- 5.4 This chapter provides an overview of:
- The competence of the NEBs with respect to Regulation (EC) 261/2004, Regulation (EC) 1107/2006 and the Montreal Convention and the type of organisation they are;
 - The NEB complaint-handling processes, the number of complaints processed, their ability to address individual complaints and the timeframes for doing so;

⁵⁷ Interpretative Guidelines 2016/C 214/04: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016XC0615%2801%29>

⁵⁸ Ruijsenaars e.a., ECLI:EU:C:2016:187

- NEBs approach to monitoring and enforcement of Regulation (EC) 261/2004 including whether their decisions are binding and their power to impose sanctions; and
- other activities undertaken by NEBs, such as inspections of airlines undertaken at airports in relation to Regulation (EC) 261/2004 and airport audits in relation to Regulation (EC) 1107/2006.

Competence

5.5 The competence of each of the NEBs for the different Member States is summarised in Table 5.1. We observe that the organisation of enforcement bodies differs widely between countries. Some Member States, such as the Nordic countries have multiple National Enforcement Bodies responsible for monitoring and/or enforcing Regulation 261/2004, whereas in most other Member States only one National Enforcement Body is in charge of air passenger rights. The majority of NEBs is responsible for both Regulation 261/2004 and 1107/2006, however, sometimes the enforcement of the PRM Regulation is delegated to another body within the Member State, as is the case for Hungary and Latvia.

5.6 In 26 countries the competence for enforcement of Regulation 261/2004 and Regulation 1107/2006 is concentrated in one National Enforcement Body. For seven Member States, there are different Enforcement Bodies for the different regulations. It should be noted that Finland and Sweden have multiple NEBs and are therefore counted twice, as one NEB in each Member State is responsible for both regulations while the others are responsible either for Regulation 261/2004 or the PRM regulation.

Table 5.1: Summary of competence for NEBs

Member State	Regulation 261/2004	Regulation 1107/2006
Belgium	SPF Mobilité & Transport	
Bulgaria	Ministry of Transport, Information Technologies and Communications	
Czech Republic	Czech Civil Aviation Authority	
Denmark	Danish Transport, Construction and Housing Authority*	
Germany	Luftfahrt-Bundesamt (LBA)	
Estonia	Consumer Protection and Technical Regulatory Authority (CPTRA)*	
Ireland	Commission for Aviation Regulation (CAR)	
Greece	Hellenic Civil Aviation Authority	
Spain	Agencia Estatal de Seguridad Aérea (AESA)*	
France	Direction générale de l'aviation civile (DGAC)	
Croatia	Croatian Civil Aviation Agency	
Italy	L'Ente Nazionale per l'Aviazione Civile (ENAC)	
Cyprus	Department of Civil Aviation	
Latvia	Consumer Rights Protection Centre (CRPC)*	Civil Aviation Agency of Latvia
Lithuania	Lithuanian Transport Safety Administration (LTSA)	
Luxembourg	Ministère de l'Économie	Direction de l'Aviation Civile
Hungary	Ministry for Innovation and Technology (ITM) & Consumer Protection Bodies	Equal Treatment Authority
Malta	Malta Competition and Consumer Affairs Authority	Civil Aviation Authority
Netherlands	Human Environment and Transport Inspectorate (ILT)	
Austria	APF - Agentur für Passagier- und Fahrgastrechte*	
Poland	Commission on Passengers' Rights & Civil Aviation Office (CAO)	
Portugal	Autoridade Nacional da Aviação Civil (ANAC)	

Member State	Regulation 261/2004	Regulation 1107/2006
Romania	National Authority for Consumer Protection (ANPC)*	Ministry of Labor, Family and Social Protection National Authority for People with Disabilities
Slovenia	Civil Aviation Agency	
Slovakia	Slovak Trade Inspectorate*	
Finland	Consumer Disputes Board*	
	Traficom	
	Finnish Competition and Consumer Authority	
Sweden	Swedish Consumer Agency (SCA)	
	National Board for Consumer Disputes (ARN)*	
United Kingdom	Civil Aviation Authority	
Iceland	Icelandic Transport Authority (ICETRA)	
Norway	Civil Aviation Authority	
Switzerland	Federal Office of Civil Aviation (FOCA)	

*NEBs which also are ADR bodies (or in the case of Spain are in the process to become an ADR)

Source: Steer analysis of stakeholder consultation responses

- 5.7 Only a few NEBs also enforce the Montreal Convention which is usually not monitored or enforced explicitly, but just forms part of the general civil legal framework. Table 5.2 lists the NEBs that are also the enforcement bodies for the Montreal Convention, usually where they are responsible for wider consumer rights and therefore also cover luggage. We note that it can be confusing for passengers to know that NEBs will only enforce some of their rights (such as delay or cancellations) but not luggage.

Table 5.2: Enforcement of the Montreal Convention

Member State	Enforcement body for Montreal Convention	Comments
Bulgaria	Ministry of Transport, Information Technologies and Communications	NEB for Regulation 261/2004 & 1107/2006
Greece	Hellenic Civil Aviation Authority	NEB for Regulation 261/2004 & 1107/2006
Latvia	Consumer Rights Protection Centre (CRPC)	NEB for Regulation 261/2004
Romania	National Authority for Consumer Protection	NEB for Regulation 261/2004
Slovakia	Slovak Trade Inspectorate	NEB for Regulation 261/2004 & 1107/2006
Finland	Consumer Disputes Board & Finnish Competition and Consumer Authority	ADR body and NEB for Regulation 261/2004
Sweden	National Board for Consumer Disputes (ARN)	NEB for Regulation 261/2004
United Kingdom	Civil Aviation Authority	NEB for Regulation 261/2004 & 1107/2006
Iceland	Icelandic Transport Authority	NEB for Regulation 261/2004 & 1107/2006
Norway	Civil Aviation Authority	NEB for Regulation 261/2004 & 1107/2006

Source: Steer analysis of stakeholder consultation responses

Type of enforcement body

- 5.8 The responsibility for monitoring and enforcing air passenger rights lies with different bodies, depending on the national legal situation in which the NEB has been nominated, as well as the existing framework on general consumer rights.
- 5.9 For most Member States, the Civil Aviation Authority has been set up to be the NEB enforcing air passenger rights, including in Belgium, Greece, Portugal, France and the UK. In Sweden, a Consumer Arbitration Board, which is also the recognised ADR, undertakes the enforcement of Regulation 261/2004 alongside a Consumer and Competition Authority.
- 5.10 An overview of the different type of enforcement body in each Member State is provided in Table 5.3.

Table 5.3: Summary of type of enforcement body

Member State	Civil Aviation Authority	Consumer Arbitration Body	Consumer and/or Competition Authority	Equality Body	Ministry of Economics
Belgium	261 & 1107				
Bulgaria	261 & 1107				
Czech Republic	261 & 1107				
Denmark	261 & 1107				
Germany	261 & 1107				
Estonia			261 & 1107		
Ireland	261 & 1107				
Greece	261 & 1107				
Spain	261 & 1107				
France	261 & 1107				
Croatia	261 & 1107				
Italy	261 & 1107				
Cyprus	261 & 1107				
Latvia	261		1107		
Lithuania	261 & 1107				
Luxembourg	1107				261
Hungary	261			1107	
Malta			261 & 1107		
Netherlands	261 & 1107				
Austria		261 & 1107			
Poland	261 & 1107				
Portugal	261 & 1107				
Romania			261	1107	

Member State	Civil Aviation Authority	Consumer Arbitration Body	Consumer and/or Competition Authority	Equality Body	Ministry of Economics
Slovenia	261 & 1107				
Slovakia			261 & 1107		
Finland	261 & 1107	261	261		
Sweden		261	261 & 1107		
United Kingdom	261 & 1107				
Iceland	261 & 1107				
Norway	261 & 1107				
Switzerland	261 & 1107				
Total number of NEBs for 261/2004 at EU level	24	3	6	-	1
Total number of NEBs for 1107/2006 at EU level	23	1	5	2	-

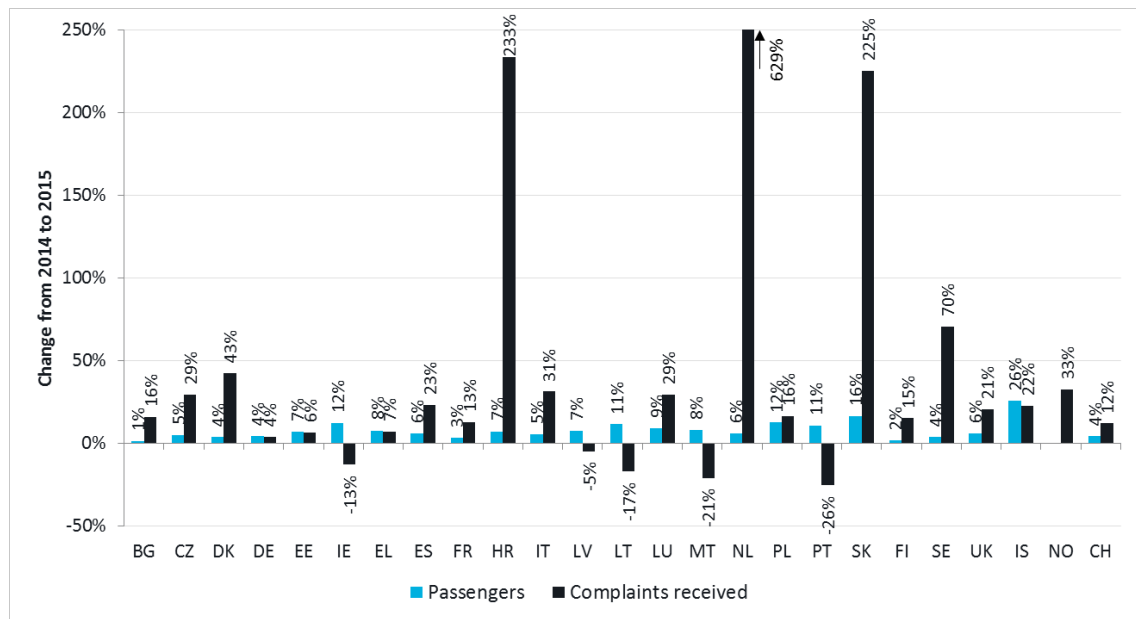
Source: Steer analysis of stakeholder consultation responses

Complaint handling

Statistics

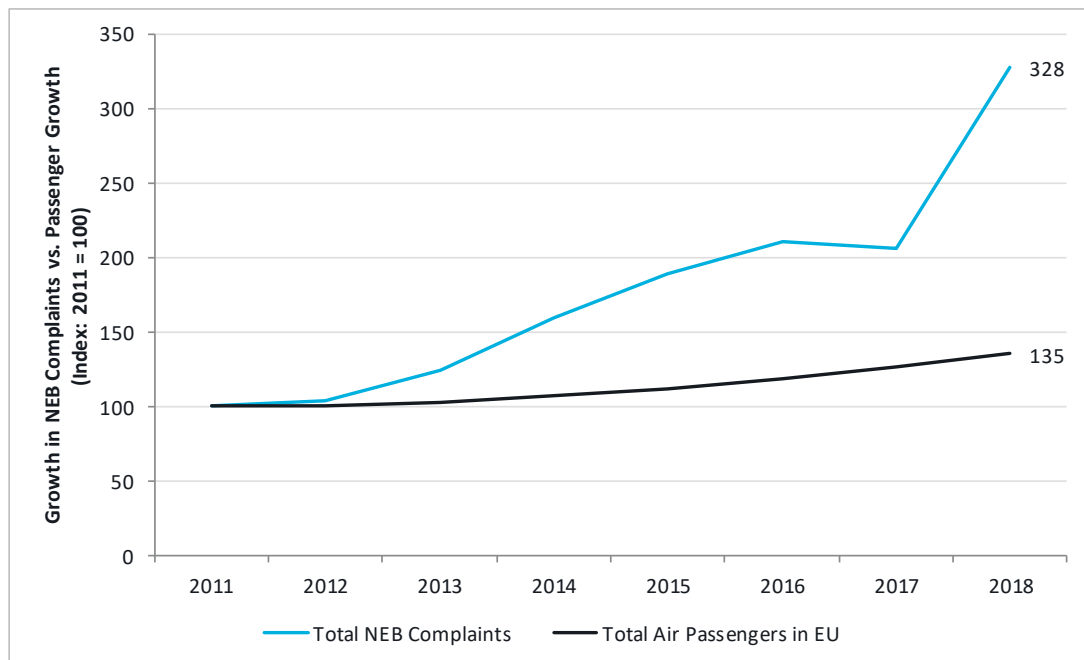
- 5.11 The number of complaints received by each NEB in 2018 is shown in Table 5.4. The numbers shown are the total number of complaints received and include some complaints that are not legitimate and are subsequently not handled by the NEB, as well as some that are forwarded to other NEBs. Furthermore, for Member States where multiple NEBs exist, some double counting may occur as complaints get transferred between the different entities.
- 5.12 Most NEBs interviewed (Croatia, Denmark, Finland, Greece, Norway, Spain, and Switzerland) have noted substantial increases in the number of complaints received since 2011, which, they themselves largely attribute to an increased level of awareness on rights to compensation from passengers, rather than an increase in traffic or a decrease in service quality provided to passengers for instance. Particularly high numbers of complaints were observed in 2015, related to the van Der Lans vs KLM ruling in favour of the passenger on the issue of ‘technical problems’ by CJEU⁵⁹. Figure 5.1 highlights how the volume of complaints received by the NEBs that provided data on this increased in 2015 compared to 2014. The change in the number of complaints was substantially higher than passenger volume growth in 17 out of the 25 NEBs that provided relevant data, especially in Croatia, the Netherlands, Slovakia and Sweden.

⁵⁹ <http://curia.europa.eu/juris/liste.jsf?num=C-257/14>

Figure 5.1: Development of complaint numbers following the CJEU ruling in 2015

Source: Steer analysis, stakeholder consultation, Eurostat

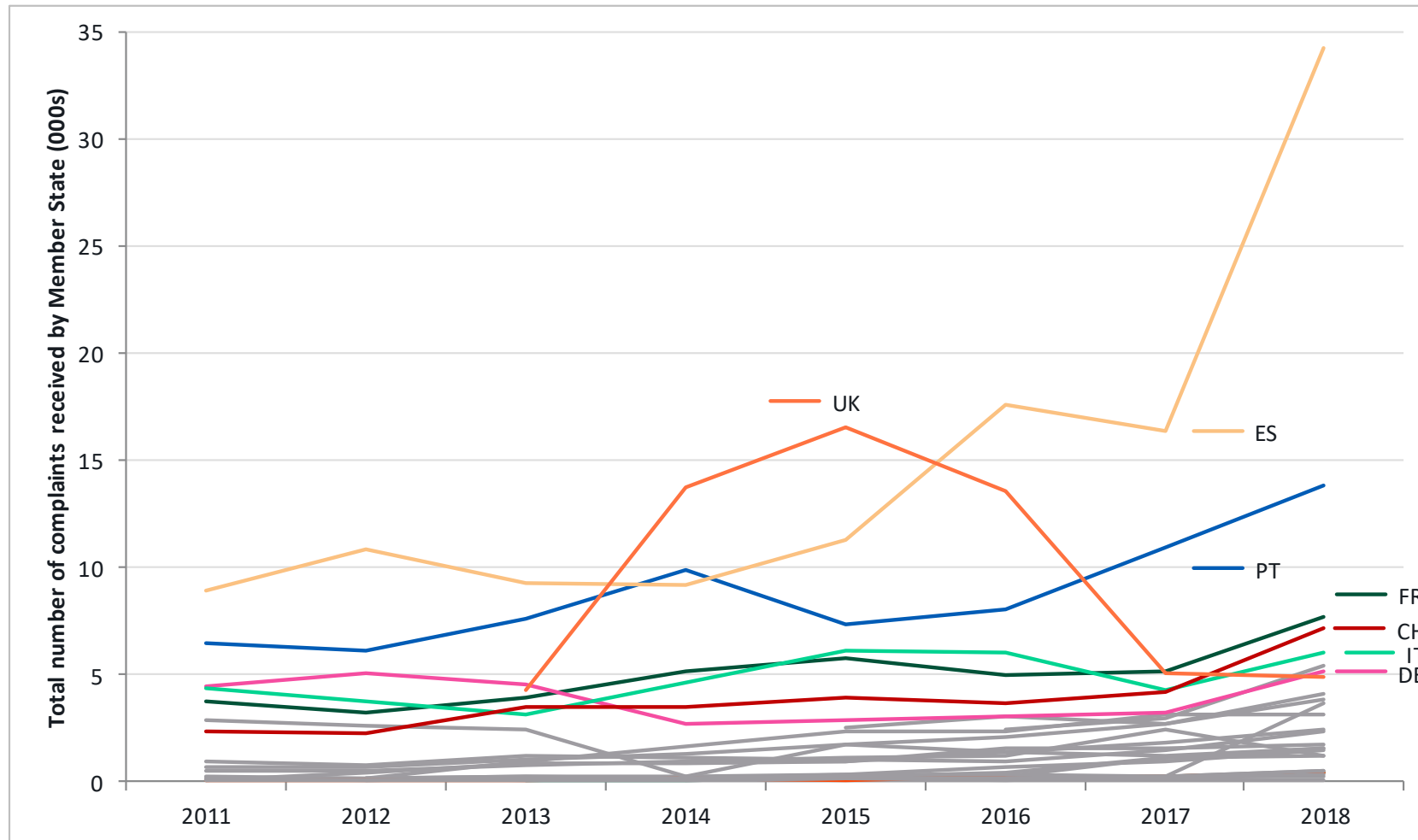
- 5.13 For a few NEBs (Malta, The Netherlands, and the UK) that note a decrease in the number of complaints in recent years, this is primarily related to an administrative change in the way that complaints are handled. The Dutch NEB informed us that because it has no power to enforce individual complaints and refer passengers to court, the number of complaints it receives has decreased over the years.
- 5.14 The extent to which the volume in complaints has increased at a much faster rate than the total air traffic across Europe since 2012 is highlighted in Figure 5.2. The number of complaints received by NEBs has more than tripled in the past seven years, whereas the total number of air passengers in the EU has increased by 35% in the same time period.

Figure 5.2: Index (2011=100) of growth in the complaint volume compared to growth in passengers

Source: Steer analysis, stakeholder consultation, Eurostat

- 5.15 The trend for the number of complaints received by each Member State is shown in Figure 5.3. In general, the complaint volume has increased across Europe, but each Member State handles significantly different volumes, for instance 13,900 in Portugal in 2018 compared to around 7,000 in Switzerland and 500 in Luxembourg in the same year. Understandably, the differences are driven by the size of the market, whether it is predominantly inbound or outbound, and the number of carriers based in that MS. The chart also shows how different types of enforcement can impact the number of complaints handled by NEBs. In the UK for instance, ADR was introduced in 2015 which led to a significant reduction in the number of complaints. In Spain, the NEB introduced an online complaint form on the AESA website in 2018 which resulted in a surge in the number of complaints received. More detail on the relevant and recent developments for each Member State is provided in the country fiches in Appendix E.

Figure 5.3: Growth in the complaint volume across Member States



Source: Steer analysis, stakeholder consultation

- 5.16 Based on complaint statistics provided by the NEBs during the stakeholder consultation, the 33 NEBs covered by this analysis received a combined total of 128,352 complaints in 2018⁶⁰. A proportion of complaints will be double counted where passengers contact several NEBs, or several NEBs operate within a single Member State. Based on data provided from 15 countries, approximately 70.8% of complaints the NEBs receive are legitimate, meaning they are found to be in scope of Regulation 261/2004 and can be handled by the NEB that the complaint was submitted to. The remaining 29.2% of complaints were either transferred to the competent Member State or the passenger was informed that they were not eligible for compensation.
- 5.17 Information on the outcome of complaints was provided by seven NEBs only. 68% of complaints received by those NEBs were made in favour of the passenger regarding compensation. Some NEBs collect statistics on airline's compliance with their decisions, for instance Spain, Italy, Lithuania, Austria, and Switzerland. In some instances, this may be facilitated by the binding nature of the NEB's decisions. Other NEBs track compliance by requesting the airline to send them a confirmation of compensation payment. However, most NEBs hold few statistics beyond the total number of complaints and the nature of the complaint itself.

Process

Steps

- 5.18 Most NEBs are second order bodies which require passengers to contact the airline initially with their complaint before submitting a complaint with the NEB. In Ireland, passengers can contact the NEB directly (as it assesses that there is no legal requirement for passengers to contact the airline first, the NEB cannot refuse to engage with passengers on this basis), however passengers are still encouraged to submit a claim to the airline first. For PRM issues under Regulation 1107/2006, passengers can often contact the NEB directly.
- 5.19 Once the passenger has contacted the airline and either receives no or an unsatisfactory response (as far as the passenger is concerned) on their complaint, they can turn to the NEB. Many NEBs follow the guidelines published by the European Commission that allow the airlines eight (six initially plus two following a reminder) weeks for a response. However, in some Member States the timescales are dictated by national regulation. In Croatia for instance, the airlines only have 30 days to respond to passengers before passengers can submit a complaint to the NEB. The Croatian NEB has informed us that a high proportion of the cases they receive are not a result of the airline refusing to pay compensation but rather the airline being unable to respond to the passenger in the pre-defined timeframe.
- 5.20 Passengers can often submit their complaint online on the NEB's website. However, the process differs significantly between Member States. The Spanish NEB has recently introduced a form on its website which allows passengers to submit a complaint online. As a result, the NEB has seen the volume of complaints it receives increase sharply. More detail on the specific process for each Member State is included in the country fiches in Appendix E.
- 5.21 Some NEBs, for example the Dutch enforcement body and SCA, one of the Swedish NEBs, have set up information centres, similar to a hotline, as a first point of contact to allow passengers to call and clarify initial questions. The approach is meant to act as an initial filter to avoid

⁶⁰ Excluding data from Poland as no statistics on complaint numbers has been received.

receiving complaints from passengers that have not yet contacted the airline or have complaints that are outside the scope of Regulation 261/2004.

- 5.22 Most NEBs have informed us that they use internal databases to log complaints with unique reference numbers. However, although this should in theory allow for statistical analysis of the complaints received, not many NEBs use this data to undertake wider trend analysis of the type of complaints received. The Belgian NEB has stated that they are still in the process of setting up their systems to allow for statistical analysis of complaints.
- 5.23 If complaints are found to be legitimate, the NEB will start an investigation by collecting evidence from the carrier, especially in cases where extraordinary circumstances have been claimed. The NEB will reject complaints that are not in scope of the regulation, for instance delays below the defined threshold of three hours.
- 5.24 27 NEBs out of 34 are able to handle individual passenger complaints and will issue a decision. This means that in six countries, including Germany the second largest EU aviation market, passengers cannot expect redress from interaction with the NEB. In both Finland and Sweden, where multiple NEBs exist, the Consumer and Competition body, which passengers can contact directly, does not deal with the enforcement of individual complaints but is responsible for the wider enforcement of the Regulation. This is explained further in the following section on enforcement.
- 5.25 Most NEBs have confirmed that complaints for which they are not competent are forwarded to the correct NEB alongside a summary translation of the case. Some NEBs provide the alternative NEB's contact details to passengers, for passengers to contact the correct NEB directly – if the passenger requires help in making contact with the competent NEB, then the original NEB may forward the complaint on the passenger's behalf at the passenger's request. The full list of National Enforcement Bodies for Regulation 261/2004⁶¹ and Regulation 1107/2006⁶² is published by the European Commission. Links to these lists, which have been recently updated, are available on most NEBs websites. However, when contacting the relevant NEBs as part of the stakeholder consultation we have noticed discrepancies for some of the NEBs listed, including Belgium, Hungary and Lithuania.
- 5.26 The Hungarian NEB responsible for Regulation 261/2004 as well as the Belgian NEB looking after the enforcement of Regulation 1107/2006 have informed us that the lists published by the European Commission on its website which provides details of all NEBs responsible for both Regulation 261/2004 and 1107/2006 (EC lists) only provide a simplified picture for passengers. Both member states are separated into regions with individual enforcement bodies responsible for the different regions each. In Belgium, different enforcement bodies exist for Brussels-Capital, the Flemish region and the Walloon region. The Belgian NEB SPF works at a federal level with its scope technically covering Brussels airport only. However, to facilitate the situation for passengers and avoid confusion, SPF does accept claims that concern a PRM issue that occurred at an airport in one of the other regions. It will forward complaints to the relevant region, if necessary, and is thus also listed as the only 1107 NEB for Belgium on the European Commission's NEB list. In Hungary, Ministry for Innovation and Technology (ITM) is listed as the NEB on the EC website even though it does not undertake individual enforcement. Individual enforcement in Hungary is done by the Consumer Protection Body of the relevant region (three, determined by the territory of the airports).

⁶¹ https://ec.europa.eu/transport/sites/transport/files/2004_261_national_enforcement_bodies.pdf

⁶² https://ec.europa.eu/transport/sites/transport/files/2006_1107_national_enforcement_bodies.pdf

Passengers can contact the relevant CPB directly with their complaint or alternatively contact the ITM which will forward the complaint to the competent NEB. In Lithuania, all functions have been transferred from the CAA to the LTSA. However, the CAA is still listed as the responsible NEB.

- 5.27 Some NEBs, including the Austrian APF have also voiced frustration at the difficulties for passengers to identify the competent enforcement body. The Austrian NEB has stated that it works on forwarded complaints, even if no translation is provided. Additionally, the Austrian NEB adopts a very flexible approach to ensure a high level of consumer-friendliness by handling complaints in multiple languages that are covered by NEB staff (e.g. English, German, French and Spanish). The Spanish NEB has furthermore noted that the NEB-NEB cooperation requires a high number of resources as well as can be problematic as a result of language and translation issues.
- 5.28 Hardly any NEBs use the Consumer Protection Cooperation (CPC) network (see Chapter 6), even when they are signed up to it. This was a finding already noted in 2011 and the situation seems largely unchanged since then. Some NEBs note that they think that the increase in complaint volume leaves them with no time to make use of the network while others state that it was more efficient to contact each other directly where assistance was required or to forward complaints.
- 5.29 NEBs generally indicate positive experiences with using the Wiki platform to exchange information and clarify questions, however some NEBs have stated that – as with any such platform – its value depended on its content and required the commitment of participants to dedicate some resources to it.
- 5.30 The cooperation of NEBs with the ECC-network is generally good, as cross-border complaints are forwarded to the relevant ECC body. The majority of NEB websites and/or published passenger information such as posters and leaflets at airports also include links to the relevant body of the ECC-Net. Some NEBs foster the NEB-ECC cooperation through regular meetings where complaint-handling, airline compliance, and general trends are discussed, for instance the Danish, Bulgarian and Slovakian NEBs.
- 5.31 In relation to the communication with airlines, specifically the Maltese NEB noted that it would help to have a direct contact at the airlines to improve their communications. The NEB has to use the general online form provided on the airline's website and, as they are not the Civil Aviation Authority, some airlines do not immediately realise the inquiry is from the NEB.

Table 5.4: Overview of individual complaint handling process for NEBs

Member State	Number of complaints received in 2018	Ability to handle individual complaints	First or second order body	Complaint forwarding
Belgium	3,887	✓	Second order	✓
Bulgaria	1,193	✓	Second order	✓
Czech Republic	1,455	✓	Second order	✓
Denmark	3,115	✓	Second order	✗
Germany	5,134	✗	Does not address individual complaints	✓
Estonia	475	✗	Second order	✓
Ireland	2,319	✓	First order	✓

Member State		Number of complaints received in 2018	Ability to handle individual complaints	First or second order body	Complaint forwarding
Greece		2,456	✓	Second order	✓
Spain		34,279	✓	Second order	✓
France		7,717	✓	Second order	✓
Croatia		437	✓	Second order	✓
Italy		6,033	✗	Does not address individual complaints	✓
Cyprus		350	✓	Second order	✓
Latvia		1,527	✓	Second order	✓
Lithuania		421	✓	Second order	✓
Luxembourg		543	✓	Second order	✗
Hungary		370	✓	First order	✓
Malta		102	✓	Second order	✓
Netherlands		1,529	✗	Does not address individual complaints	✓
Austria		5,462	✓	Second order	✓
Poland		10,281	✓	Second order	✗
Portugal		13,885	✓	Second order	✓
Romania		1,948	✓	First order	TBC
Slovenia		337	✓	Second order	TBC
Slovakia		260	✓	Second order	✓
Finland	CDB	1481	✓	Second order	✓
	Traficom	285	✓	First order	✓
	FFCA	-	✗	Does not address individual complaints	✓
Sweden	SCA	442	✗	Second order	✓
	ARN	3212	✓	Second order	✓
United Kingdom		4,929	✓	Second order	✓
Iceland		1,180	✓	Second order	✓
Norway		4,141	✓	Second order	✓
Switzerland		7,167	✓	Second order	✓
EU-wide		Total complaints (incl. double counting): 128,352	Able to handle individual complaints: 28 NEBs	Second order bodies: 26 NEBs First order body: 4 NEBs Does not address individual complaints: 4 NEBs	Complaint forwarding: 27 NEBs

Note: ✓ = Yes, ✗ = No

Source: Steer analysis of stakeholder consultation responses

Timelines

- 5.32 As shown in the table below, the length of the complaint handling process differs greatly between NEBs. The timescales are driven by the volume of complaints received, the number of resources available, the complexity of the cases and the processes in place.

Table 5.5: Time frame for complaint handling process

	< 3 months	3-6 months	6-12 months	12-18 months	>18 months
Number of NEBs	10	15	6	1	1

Source: Steer analysis of stakeholder consultation responses

- 5.33 Most NEBs suggested that the process takes between three to six months, although this may be longer in some specific cases. Details on the length of complaint processing for each individual NEB are provided in the country fiches in Appendix E.

Enforcement

Complaint-based vs system-wide enforcement

- 5.34 As introduced above, not all NEBs are able to handle individual complaints. A few, including the NEBs in Germany and the Netherlands accept individual complaints from passengers but have limited or no enforcement power for individual compensation for the passenger and will use the information to establish cases of general non-compliance against airlines instead (i.e. system-level enforcement as opposed to individual complaint enforcement). As such, it is possible to differentiate between enforcement powers on a complaint level and a wider system level.
- 5.35 The Greek NEB is a complaint-level enforcement body. Following an investigation of a passenger complaint, the NEB issues a decision on the compensation, if any, that should be paid by the carrier. In the case of Greece, this decision is legally binding. However, based on the individual complaint handling process, the Greek NEB does not additionally collect or monitor information on compliance with the Regulation by carrier to undertake additional system level enforcement.
- 5.36 Contrastingly, the NEB in Germany does not issue decisions on compensation for individual complaints but monitors carriers' compliance with Regulation 261/2004 based on the number of complaints received from passengers. If the German NEB finds a carrier to be systematically infringing on the air passenger rights provisions defined in the Regulation, it will take enforcement action against the carrier.
- 5.37 As shown in Table 5.6, the enforcement powers and processes of NEBs vary greatly across Europe. Whereas some NEBs only undertake enforcement on a case-by-case basis, such as Belgium, Denmark, and Malta, and some only undertake system-level enforcement, including Germany, The Netherlands, and Italy. A third group of NEBs, including Spain, Ireland, Latvia and the UK, enforce both on a complaint level but additionally monitor system level compliance of carriers and are able to enforce cases of repeated and systematic infringement.
- 5.38 In terms of decisions, apart from a few exceptions, (Denmark, Greece, Iceland, Ireland) most NEBs will only provide the passenger with a non-binding recommendation. This means that in the case where the NEB finds in favour of the passenger, it cannot for instance compel the airline to pay compensation or that the NEB decision may not be considered as a valid document to bring to court.

- 5.39 Due to the variety of enforcement systems alongside multiple options to claim for compensation, such as claim agencies, ADR bodies and NEBs, the enforcement bodies hold limited or no statistics on the proportion of passengers that are eligible but do not claim for compensation. For many NEBs, the resource capacity to take on monitoring and enforcement on a wider system-level, is limited by both the volume of individual complaints that they are handling as well as the lack of available information for effective oversight. Airlines that consistently do not comply with the passenger rights set out in the regulation will often not be prosecuted beyond a (non-)binding statement on compensation entitlement.

Table 5.6: Overview of enforcement powers of NEBs for Regulation 261/2004

Member State		Individual complaint handling		Enforcement at system-level	Airlines' compliance with enforcement (individual or system)
		Enforcement of individual complaints	Ability to issue legally-binding decisions		
Belgium		✓	✗	✗	No statistics
Bulgaria		✓	✗	✓	No statistics
Czech Republic		✓	✗	✗	No statistics
Denmark		✓	✓	✗	Good compliance
Germany		✗	n/a	✓	Good compliance
Estonia		✓	✗	✗ (in process to amend civil aviation code to allow more powers)	No statistics
Ireland		✓	✓	✓	No statistics
Greece		✓	✓	✗	No statistics
Spain		✓	✓ (From end of 2019)	✓	93%
France		✓	✗	✓	Good compliance
Croatia		✓	✗	✓	Compensation paid in 50% of cases before opinion is issued
Italy		✗	n/a	✓	60%
Cyprus		✗	✗	✓	No statistics
Latvia		✓	✗	✓	No statistics
Lithuania		✓	✗	✓	94%
Luxembourg		✓	✗	No information	No statistics
Hungary		✓	✓	✓	No statistics
Malta		✓	✗	✗	No statistics
Netherlands		✗	✗	✓	No statistics
Austria		✓	✗	✓	96%
Poland		✗ (From April 2019)	n/a	✓	No statistics
Portugal		✓	✗	✗	No statistics
Romania		✓	✗	✗	No statistics
Slovenia		✓	✓	✗	80%
Slovakia		✓	✗	✗	No statistics
Finland	CDB	✓	✗	✗	No statistics
	Traficom	✓	✗	✗	No statistics
	FFCA	✗	n/a	✓	No statistics

Member State		Individual complaint handling		Enforcement at system-level	Airlines' compliance with enforcement (individual or system)
		Enforcement of individual complaints	Ability to issue legally-binding decisions		
Sweden	SCA	✓ (as part of ADR board only)	✗	✓	No statistics
	ARN	✗	✗	✓	No statistics
United Kingdom		✓ (only where airline is not signed up to UK ADR)	✗	✓	No statistics
Iceland		✓	✓	✗	No statistics
Norway		✗	n/a	✓	No statistics
Switzerland		✓	✗	✓	90%
EU-wide		Enforcement of individual complaints: 26 NEBs	Legally-binding decisions: 8 NEBs	Enforcement at system-level: 19 NEBs	

Note: ✓ = Yes, ✗ = No

Sanctions

- 5.40 Similar to the differences related to the type of enforcement power, the ability to issue sanctions varies between NEBs. Sanctioning powers are a result of the existing national legal context in each Member State.
- 5.41 Some NEBs are not able to issue sanctions directly but instead have to refer the individual case to courts in the case of non-compliance. In the UK, the NEB can issue an enforcement order against a carrier which can then be taken to the court in case of non-compliance, where a fine may be issued against the carrier. A similar situation exists in Italy.
- 5.42 A number of NEBs have noted problems with issuing sanctions as a result of difficulties to provide the required evidence in court under their national legal system. For example, Switzerland noted that the Regulation is difficult to enforce under the penal law framework applicable there, as the burden of proof for the lack of care and assistance often cannot be provided retrospectively.
- 5.43 Similar issues relating to the difficulty to issue sanctions have been noted in a number of Member States, including Lithuania, Malta, and the Netherlands. The Maltese NEB for instance notes that it can only sanction carriers with a registered office ("headquarter") in Malta. Cases for airlines that do not would have to be referred to the competent NEB in the Member State where the airline is registered for sanctioning, if possible.
- 5.44 The maximum values for sanctions differ significantly between Member States, ranging from a fine of €73 per day of not adhering to a NEB decision in Iceland to a fixed fine €1.5 million in Hungary⁶³.

⁶³ This is the maximum legal fine available in Hungary which would likely only be imposed in cases of grave and repeated non-compliance.

Table 5.7: Overview of sanctioning power of NEBs for Regulation 261/2004

Member State	Ability to directly issue sanctions	Policy on sanctioning
Belgium	✗	NEB can refer cases to the inspection department which can issue sanctions; the maximum value is €4 million
Bulgaria	✓	NEB issues 'prescriptions' (warnings) first as sanctions are seen as the last resort; the maximum value is 10,000 lev (approx. €5,000)
Czech Republic	✓	Sanction will be issued in cases where airlines are reluctant to respond, provide evidence or pay compensation in a timely manner; the maximum value is CZK 1million (approx. €39,000)
Denmark	✗	NEB can refer cases to the public prosecutor which can issue sanctions; the maximum value is 20,000 DKK (approx. €2,700)
Germany	✓	NEB issues a warning first before imposing a sanction; the maximum value is €30,000
Estonia	✗	€640 Per offence not per passenger*
Ireland	✗	NEB can refer cases to the court which can issue sanctions; the maximum value is €5,000
Greece	✓	The maximum value for sanctions is €3,000
Spain	✓	The maximum value for sanctions is €70,000
France	✗	NEB can refer cases to the French Administrative Commission of Civil Aviation for sanctioning; the maximum value is €7,500 per passenger and per failing
Croatia	✓	NEB can issue sanctions but has policy not to do so; the maximum legal limit for sanctions is 50,000 HRK (approx. €6,800)
Italy	✓	The maximum value for sanctions from ENAC is €50,000
Cyprus	✓	No information on maximum sanction values.
Latvia	✓	NEB can open an administrative case; the maximum values for sanctions differ depending on the infringement (€3,000 for lack of information, €7,000 for other breaches, and €100,000 for unfair commercial practices)
Lithuania	✓	Sanctioning process is complex due to legal context; the maximum value is €8,300 (in the case of repeated infringement)
Luxembourg ⁶⁴	✓	Article L. 311-9 of the Consumption Code suggests that the NEB has the power to urge an air carrier to comply with its decision. Non-compliance can be punished with a fine ranging from 251 EUR to 50,000 EUR.-
Hungary	✓	The maximum value for sanctions from CAA is €1.5 million
Malta	✓	The NEB (within its ADR capacity) can issue sanctions to carriers with a registered office in Malta only; the maximum value is €47,000
Netherlands	✓	Sanctions are complex to enforce; the maximum value for punitive sanctions is €83,000
Austria	✗	NEB can file a case with the local panel authority for sanctioning
Poland	✓	The president of the CAA can impose sanctions in cases where non-compliance with passenger rights are noted.
Portugal	✓	Cases get transferred to the legal department of the NEB for sanctioning; the maximum value is €150,000
Romania	✓	LEI 2,500 (€588) Per offence, not per passenger*
Slovenia	✓	NEB can issue a sanction with a maximum value of €20,000 which is enforced by the tax authority

⁶⁴ The NEB itself has informed us that the existing legislation in Luxembourg does not define a sanction process for non-compliance with Regulation 261/2004 which contradicts the Consumption Code.

Member State		Ability to directly issue sanctions	Policy on sanctioning
Slovakia		✓	NEB can issue a sanction with a maximum value of €66,000 and €166,000 for repeated non-compliance
Finland	CDB	✗	-
	Traficom	✗	-
	FFCA	✓	NEB has duty to negotiate with carrier first before issuing a sanction
Sweden	SCA	✓	NEB has duty to negotiate with carrier first before issuing a sanction
	ARN	✗	-
United Kingdom		✗	NEB can only issue enforcement orders and refer cases to court which can issue a fine for non-compliance with such an order
Iceland		✓	NEB can issue sanctions but has policy not to do so; the maximum legal limit for sanctions is ISK 10,000 per day (approx. €73)
Norway		✓	NEB can issue sanctions but has policy not to do so
Switzerland		✓	Sanctions are difficult to enforce due to legal context; maximum value is CHF 20,000 (approx. €17,500)
EU-wide		Ability to directly issue sanctions: 23 NEBs	

Note: ✓ = Yes, ✗ = No

* information based on findings of 2011 study, updated information on sanctions not received during the 2019 stakeholder consultation

Source: Steer analysis of stakeholder consultation responses

- 5.45 Sanctions relating to compliance with Regulation 261/2004 have never been issued by NEBs in 13 Member States, although in some of these (e.g. Denmark, Estonia) sanctions have not been issued, as a result of airlines responding to warnings (i.e. the threat of sanctions) from the NEBs. As summarised above and detailed in the fiches in Appendix E, the approach to issuing sanctions varies between Member States, where these have been issued. From the NEBs that provided relevant statistics to allow a rate to be estimated, it can be observed that sanctions have been issued in approximately 1% of the complaint cases handled by NEBs. Where sanctions have been issued, these have usually been paid by airlines. The German NEB indicated that airlines tended to be quite reactive in changing their practices in response to sanctions being imposed. In Spain, the NEB stated that it issued fines in 30% of the inspections it carried out at airports (see paragraph 5.51) and that it too had found airlines to be responsive to these. Based on this, sanctions could be seen as being dissuasive for airlines, however these have only been applied (or threatened to be applied) in a very small proportion of cases handled by NEBs, which in turn represent only a small proportion of claims received by airlines. Overall then, the amounts involved are comparatively small and likely to be less than the cost that airlines may in some circumstances avoid through non-compliance with the Regulation.

Other activities undertaken by NEBs

Enforcement of other legislation

- 5.46 Under Regulation 1107/2006, the responsible NEBs receive only a minimal number of complaints from passengers, in part because the PRM Regulation is not claim-based like Regulation 261/2004 is and does not prescribe any standard compensation. The Dutch NEB has stated that it addresses PRM questions through its hotline at pre-booking stages, which additionally helps to avoid issues arising during the journey.
- 5.47 The low volume of complaints makes it difficult for NEBs to assess if the regulation is working well. Monitoring and enforcement of Regulation 1107/2006 is focused at system-level enforcement and tends to be more proactive, in line with other oversight activities undertaken by transport authorities, where service providers are audited to ensure that they meet required standards. Most NEBs use the ECAC Doc 30 recommendations as a basis for their audits.
- 5.48 The consensus from some NEBs is that provisions for PRM passengers generally work well at airports and that any issues are dealt with directly with the airport and/or airline (Estonian NEB, Bulgarian NEB, Slovakian NEB, UK NEB, Austrian NEB, Greek NEB). However, other NEBs believe that the lack of monetary compensation associated with the Regulation is also believed to result in many complaints not being reported (Dutch NEB, Finnish NEB). The Hungarian NEB also view the fewer number of complaints as a result of historically different approaches to PRM rights, with PRMs only recently moving more towards air travel as a result. Overall, NEBs have a lack of transparency over the number of PRM passengers who do submit complaints to either the airport or airline unless they also contact the NEB itself. The Finnish NEB notes that PRMs do contact the NEB because they feel that they should receive compensation for the problems they incurred on their journey. The Finnish NEB might refer PRMs to the Finnish ADR body or the non-discriminatory ombudsman (or vice versa).
- 5.49 Some NEBs have established communication to disability forums within its Member States. The Icelandic NEB has set up communication with a disability forum to discuss training needs for handling mobility equipment. The Belgian NEB has also set up an FAQ working group with the accessibility department within the Ministry to disseminate and share information. In Norway, the CAA has established systematic dialogue with PRM organisation and has set up regular meetings with airlines and airports to discuss issues in order to ensure pro-active enforcement.
- 5.50 The standards found at UK airports have been described by the UK CAA and other NEBs (Hungarian NEB) as exemplary. General awareness levels of PRM requirements as well as PRM expectations are very high. The UK CAA has cited the detailed guidance issued by the Department for Transport as a key factor.

Other activities

- 5.51 Some NEBs (Dutch NEB, Slovenian NEB, Spanish NEB, German NEB, etc.) regularly perform inspections at airports to monitor carriers' compliance with the requirement to provide information. Some NEBs (Portugal, Spain, Greece) also take a proactive approach during periods of disruption, when staff members visit airports to ensure care and assistance is provided to passengers in line with Regulation 261/2004 requirements.

View of NEBs on airline compliance with the Regulation

Compliance of airlines on the provision of information

- 5.52 Article 14 of Regulation 261/2004 states that the airline is required to provide passengers with information on their rights at check-in as well as in the case of a cancelled flight or denied boarding. The provision of information, unlike other aspects of the Regulation, can be monitored and checked by NEBs through regular audits and airport inspections. Out of the 33 NEBs that responded to the question, 25 NEBs indicated that they view that airlines show strong levels of compliance with Article 14. Some NEBs (check if do not know ones) have noted more limited compliance or have indicated that they do not know.
- 5.53 The Slovenian NEB undertakes inspections around 4-5 times annually. The Dutch NEB has informed us that it undertakes ten inspections annually, mostly focusing on the bigger airports in the Netherlands, but is planning to reduce the number in the future. The German NEB has informed us that they do between 80 and 100 inspection annually at German airports to assess compliance with Article 14. AESA, the Spanish NEB undertakes an even higher number of inspections, with 250 annually at Madrid, Barcelona and one of the other Spanish airports. Due to the increasing volume of complaints that NEBs have to handle, the Austrian NEB has noted that they could not undertake inspections at airports in 2018 although they had initially planned to.
- 5.54 Generally, most NEBs have noted an increased level of passenger awareness, either through awareness campaigns done by the national ECCs at airports (Slovakian NEB), the media, claim agencies that are handing out information material to passengers at the airport (Spanish NEB), or word of mouth between passengers (Belgian NEB).

Compliance of airlines on the provision of care and assistance

- 5.55 Under Article 9, airlines are required to provide passengers with care and assistance, including meals and refreshments in a reasonable relation to the waiting time, hotel accommodation where a stay becomes necessary, and transport between airport and hotel. Similar to the provision of information, most NEBs (17) rate airlines' compliance with the care and assistance requirement as strong while a number also notes more limited compliance or again has no information.
- 5.56 The Norwegian CAA has noted that while they believe that airlines show strong compliance, it is generally difficult for the NEB to know how passengers are treated in the moment when the circumstances arise. The UK CAA states that Article 9 is an area of the regulation which tends to be accepted and complied with. Airlines have been cited to have a good overview and records over how many vouchers are handed out. However, the UK NEB also notes that the reasons for complaints received have changed in recent years from lack of assistance towards compensation claims.
- 5.57 The Maltese NEB states that they have observed trends on certain routes and airlines where passengers are instructed to arrange their own subsistence and expense them with the airline later, which has caused some issues. The Croatian NEB furthermore noted that they have observed a trend where passengers are given vouchers for relatively low amounts (€5) that are not enough to cover the cost of subsistence at airports. Passengers are then required to send receipts for costs beyond the voucher value to the airline afterwards to get additional costs expensed. However, this process adds to the burden of the passenger, with a proportion of passengers potentially not claiming back their additional costs.

- 5.58 A point raised by the Croatian NEB around the provision of care and assistance related to the difficulties for airlines to find available hotel accommodation in the main tourist destinations during the peak holiday season.

Compliance of airlines on re-routing

- 5.59 Article 8 of Regulation 261/2004 specifies the passengers' right to reimbursement or re-routing. Re-routing should occur at the earlier opportunity however many carriers have a policy to re-route on their own services only. Due to the different ways of interpreting the requirement under Article 8, 23 out of the NEBs that responded to the question indicated that airlines only provided limited compliance. A smaller number of NEBs (8) noted strong levels of compliance.
- 5.60 In Austria, a decision has been issued by the Supreme Court in 2018 on the issue of re-routing (OGH 1 Ob 133/18t). The ruling states that airlines are required to re-route passengers on competing airlines. The UK CAA is also currently investigating the issue of re-routing further following a review of airline's compliance with the subject and has published an open letter to the airlines in December 2018. In its review, the UK CAA observed a varied picture with many airlines demonstrating that re-routing passengers on competing airlines was an available option but providing little clarity over the circumstances in which it would be taken up. The open letter further states how the UK CAA interprets Article 8 and the circumstances in which it would consider enforcement action for breaches.
- 5.61 The Dutch NEB notes that this aspect of the regulation is difficult to monitor and judge for the NEB, related to ambiguities around the phrasing "at the earliest opportunity" and "under comparable transport conditions". The NEB believes that airlines do not offer passengers all possible re-routing opportunities, but without access to the airline's booking system is unable to confirm this assumption.
- 5.62 The policy on re-routing does not only differ between airlines, but how the wording of Article 8 of the regulation is interpreted also varies across the different NEBs. As a result, two passengers on the same disrupted flight who submit complaints with two different enforcement bodies in different Member States might receive different outcomes due to the lack of clarity in the Regulation.
- 5.63 The Hungarian NEB has stated that due to lower levels of staff at the airport they believe passengers are given less assistance with re-routing on LCCs compared to network carriers. The UK CAA stated that the re-routing process is overall difficult to enforce during peak periods. The ability to re-route passengers faster on its own services or carriers within the same alliance was noted to be easier for network carriers compared to LCCs. The UK CAA has also observed that LCCs tend to only re-route on other LCCs.

Compliance of airlines on paying compensation

- 5.64 Airlines are required to provide the passenger with compensation for long delays or cancellations, with the amounts specified in Article 7 of Regulation 261/2004. Ten NEBs observe a strong level of compliance from airlines whereas a higher number of NEBs (20) only observe limited compliance.
- 5.65 NEBs, such as the Austrian APF, the Dutch NEB and the Hungarian NEB note that compliance is mostly unrelated to whether an airline operates a low cost or full-service model. Rather compliance relates to the airline's approach to complaint handling. The Dutch NEB states that newer airlines, including several LCCs, and network carriers often have standardised processes

to handle passenger complaints. Lower levels of compliance are observed from foreign carriers, as well as seasonal charter airlines and regional carriers. Smaller airlines result in a lower volume of complaints for the Belgian NEB, however proportionally to the number of passengers flying with these carriers are problematic.

- 5.66 The Maltese has observed one airline applying delay tactics to the complaint handling process, for instance though providing several individual reference numbers for the same complaint if there are multiple passengers under the same booking. The Italian NEB has noted lower levels of compliance from LCCs compared to network carriers resulting in the NEB's need to intervene for passengers to receive compensation.
- 5.67 Compliance with the provision of compensation is not always consistent, as noted by the Irish NEB CAR. CAR has observed cases of delayed or cancelled flights for which airlines will pay compensation to some passengers but not all. The NEB has received complaints from passengers whose claims were rejected but who are aware that claims from other passengers have been accepted.
- 5.68 Multiple NEBs, including the Slovenian, Czech, Irish and Hungarian NEB have stated difficulties with enforcement and compliance of non-EU carriers. The process to request and receive the correct documentation are often lengthier due to a lack of effective complaint management from the airline. Some NEBs, such as the Hungarian NEB does not have the power start an official procedure against a foreign, thereby increase the possibility of non-compliance from foreign carriers.
- 5.69 Whereas airlines tend to be compliant with straightforward complaints, there is less compliance on the more complex cases as noted by the Dutch NEB. The Maltese NEB furthermore stated that specifically cases relating to connecting flights and missed connections can be interpreted differently, for instance only taking into account one of the two travel legs. Several NEBs (Iceland, Sweden and Denmark) have also noted that compliance with Article 7 of the regulation corresponds quite closely with the financial performance of the relevant airline. The Icelandic NEB has noted struggling carriers were responsible for the increased complaint volume in recent years.
- 5.70 The varying levels of enforcement powers of the different NEBs also impact the levels of compliance that the NEBs observe. In Austria, the legal context requires the NEB to file a complaint against the CEO of an airline instead of the airline itself in case an infringement with the regulation is found. The NEB has noted that according to the Austrian flight act, if a panel proceeding is opened against an individual their pilots license is removed. Therefore, most airlines will comply with the NEBs decision to avoid the repercussions of the panel proceeding and court. The Danish NEB voiced a similar point where it observes that in some cases, airlines will decide to pay compensation rather than potentially face a fine in addition to the compensation payment.
- 5.71 The Dutch NEB, in contrast to the Austrian NEB/ADR body, cannot issue legally binding decisions. Even though some airlines respond to the NEBs recommendation on compensation eligibility, others ignore the recommendation based on the NEBs' limited enforcement powers.

Summary of findings

- 5.72 Significant differences exist across the different Member States, both in terms of the way that NEBs are dealing with individual complaints, as well as the enforcement powers they have. The approach to enforcement and complaint handling varies between NEBs. Whereas some NEBs are able to accept and enforce individual complaints, others cannot deal with passenger complaints from individuals but instead perform enforcement on a system-wide level and refer passengers to an ADR body.
- 5.73 In many cases, when NEBs have been set-up, their organisation and powers have not been defined in terms of adequate outcomes for passengers or for effective monitoring and enforcement of the industry. Instead they reflect already existing administrative authorities, among which many had no consumer protection background, that have been given additional functions to handle passenger rights with more or less resources, access to systems or legal frameworks.
- 5.74 The analysis of the different types of NEBs did not identify a standout approach that could be recommended as best practice in terms of encouraging airline compliance. The effectiveness of NEB enforcement may vary depending on the perspective from which it is being assessed. A NEB that handles individual complaints may be viewed as more effective by affected passengers, as it will provide them with support in potentially obtaining compensation from an airline. By comparison, a NEB which only focuses on wider system-level enforcement may appear more dissuasive to airlines (i.e. effective in ensuring compliance) in the way that it maintains oversight of their overall performance, but less so to individual passengers. No evidence was found that airline compliance differs between airlines predominantly subject to one NEB approach over another. This is further complicated by the degree of fragmentation that exists across the EU+3 NEBs which potentially limits the degree to which individual NEBs are able to influence airlines across their entire network of routes (unless they are their home-based airline).

Complaint handling

- 5.75 As summarised above, all NEBs act on referral of passenger complaints but not always for the benefit of the passenger itself. Some NEBs are also ADRs, although this is not the case everywhere. Although the European Commission publishes a list of all NEBs and their contact details, it is then up to the passenger to navigate to find the competent NEB body for their complaint themselves. In Member States where the situation is additionally complex due to regional jurisdictions, the NEB that is listed on the EC's list may not be the NEB ultimately responsible for handling and individual passenger's complaint. No central portal or website exists that helps passengers to identify and/or contact the correct NEB for their needs, for example through a simple questionnaire. Some NEBs have set up a hotline to address passengers' initial queries as a way to reduce the number of complaints submitted.
- 5.76 Rather surprisingly, different powers and binding/non-binding nature of NEBs decisions are also creating different outcomes for passengers across the EU/EEA/CH (theoretically even for the same flight). This is also the case for the assessment of extraordinary circumstances which creates an unfair application of APR for passengers and for all stakeholders involved.
- 5.77 The number of complaints received varies considerably across NEBs (understandably, driven by the size of the market, whether its predominantly inbound or outbound, the number of carriers based in that MS), however this means that the size of the NEBs and the processes

and systems in place vary too. In most cases, the timeframe for resolution is around 6 months with more time for the most complex cases.

- 5.78 In recent years, most NEBs have noted a substantial increase in the number of complaints received under Regulation (EC) 261/2004. Whilst there has been a growth in air traffic combined with ATC capacity constraints, strikes and airline insolvencies, many NEBs attributed this increase by an increased level of passenger awareness about their rights. Media coverage, especially of big disruptions, such as the Ryanair strikes, has helped to inform passengers about their rights to claim compensation from airlines. Information provided by claim agencies at airports, word of mouth, and information campaigns done by ECCs are other ways which have been cited to result in increased passenger awareness.
- 5.79 In general, the number of complaints has been increasing steadily since 2011, presenting challenges for resources or timeframes. Many NEBs have noted increases of up to 200% in the number of complaints received since 2013. For passengers this may result in a delay to complaint handling process. NEBs have had to react by increasing the number of staff (where possible) that deals with air passenger rights within their organisation. The workload for the complaint handling may also prevent the NEBs from performing more systematic enforcement. A NEB noted that inspections at airports could not be undertaken in a given year due to the high volume of complaints received.
- 5.80 Claim agencies have been quoted by NEBs in having a role in this increase, particularly where they do not provide adequate documentation, increasing the “complexity” of case-handling. The volume of complaints received by claim agencies has increased, representing up to 30% for some NEBs. Additionally, NEBs note that the quality of documentation provided to support complaints is often not adequate, which creates additional work for the NEB that must go back to the claim agency to request missing information. Issues with seemingly forged signatures or missing power of attorney confirmation have been noted in several Member States.
- 5.81 NEB services are free to passengers and airlines (unlike ADRs) and funded by tax-payers, so increases in claims and complexity either puts a strain on public funds or run the risks of less efficient public action. The complaint enforcement system across the EU/EEA/CH additionally varies greatly, including multiple NEBs in a single Member State and compensation claims that are handled only by an ADR body instead of the NEB, generating complexity, which may create obstacles for passengers seeking to submit a complaint about a claim already made to an airline.

Monitoring, enforcement and sanctioning (Regulation 261/2004)

- 5.82 In principle, NEBs should be undertaking monitoring activities to maintain oversight of airlines’ compliance with the requirements of Regulation 261/2004, however NEBs do not all do this at system level either “by definition” (e.g. Greece) or because their resources are dedicated to handling individual passenger complaints.
- 5.83 As with complaint-handling, different sanctioning powers and binding/non-binding nature of decisions also create different outcomes for airlines across the EU/EEA/CH – possibly contributing to some competitive distortions – although this was not a concern raised by airlines (within the EU at least). Points were raised however about the competitive impact for carriers outside the EU.

- 5.84 The level of information available to NEBs to allow them to fulfil their monitoring and enforcement role is not sufficient. There is a lack of reporting requirements for airlines on overall compliance. As a result, the NEBs' enforcement is based only on complaints received and, potentially, inspections. Some NEBs do proactively carry out inspection activities at airports to monitor aspects of the regulation such as information provision and care and assistance (as opposed to compensation). NEBs generally find that the provision of care and assistance is accepted and widely complied with by airlines.
- 5.85 Some aspects of the requirements under the regulation are also not readily measurable and/or enforceable. Difficulties with enforcement may be a result of a wording which allows a case-by-case assessment (e.g. re-routing under comparable transport conditions at the earliest opportunity) which results in different interpretations of what constitutes as an infringement. The issue has been investigated further by two NEBs (Austria and the UK), which has resulted in an official ruling in Austria and an open letter to airlines in the UK. NEBs have noted a number of difficulties that emerge in trying to assess compliance with aspects of the Regulation (e.g. the requirement to ask for volunteers for denied boarding) which are difficult to record or provide evidence for retrospectively. The burden of proof required by courts, alongside lengthy and costly court procedures may result in NEBs not initiating official administrative proceedings against airlines. Many NEBs have noted that they assess sanctioning to be a final measure and will issue warnings to airlines in the first instance to encourage behavioural change.
- 5.86 Where infringements are found, sanctioning powers vary. Most Member States (e.g. Denmark, Ireland, France, and Austria) require going through an administrative court process for sanctions to be applied. In the case of Switzerland, it is actually a penal court process, for which the 261 legal text is not sufficient tight to be able to pursue a case "beyond reasonable doubt".
- 5.87 As a result of the complexity of the process, very few sanctions have been applied across the EU/EEA/CH, and where sanctions are applied (e.g. GR and ES) it is unclear whether they are effective and driving any systematic change in airlines' behaviour.
- 5.88 Overall, airlines indicated that their engagement with NEBs is not particularly material, either with respect to complaint handling or monitoring/enforcement. There were however individual examples of where airlines and NEBs disagree (for instance Finnair and FCCA on technical issues, and Ryanair and UK CAA on own-staff strikes) and where airline cooperation with NEBs is good (KLM and NL NEB on the proactive assessment of extraordinary circumstances for individual flights).
- 5.89 Enforcement of NEBs with foreign carriers can be more problematic or not possible within some legal contexts of certain Member States. Some NEBs have noted lower responsiveness from low-cost carriers (LCCs), seasonal chart airlines and smaller regional carriers than legacy carriers, while other NEBs have noted that LCCs can be very responsive to passenger complaints and have set up good internal processes for managing these – perhaps indicating some variation by Member State even within the same airline. A point about the correlation between an airline's financial performance and the number of passenger complaints has been made by a few NEBs.

Cooperation between NEBs, CPC network and Wiki platform

- 5.90 Good cooperation exists between NEBs regarding the forwarding of complaints. Upon the passenger's request, almost all NEBs will forward the complete complaint to the competent NEB alongside a short summary of the case.
- 5.91 Hardly any NEBs use the Consumer Protection Cooperation (CPC) framework. There is no indication from stakeholders that the situation with the CPC has changed since 2011. NEBs prefer to contact each other directly where assistance was required or to forward complaints (although we note that the mutual assistance mechanism is also covered in the CPC Regulation).
- 5.92 Some NEBs also said that the CPC network was of limited relevance to enforcement of Regulation 261/2004. As discussed above, most NEBs only take action in response to individual incidents identified through individual complaints or (in a few cases) through inspections (11 NEBs exclusively act on individual complaints without considering wider enforcement, and 15 act on individual complaints and do wider enforcement on the back of these). Article 16 defines that NEBs are competent to enforce these individual incidents if they occur within their State, and therefore they do not need to involve other NEBs through the CPC system in responding to them. NEBs do not take action in response to general practices such as a failure to have appropriate policies or procedures in place, which might involve multiple enforcement bodies. NEBs also generally would not have a legal mandate under Article 16(1) to undertake enforcement in relation to an incident that occurred in another State and may not have a mandate under national law to assist with enforcement in another State. Regulation 2006/2004 may provide such a mandate but only in response to cases of collective consumer interest, not individual infringements.
- 5.93 Some NEBs, such as the FCCA in Finland, KV in Sweden and the UK CAA, are designated the liaison point for the CPC Network. They said that the CPC system was primarily useful where there was a need to force a one-off change to a particular practice (such as to change an unfair contract term), rather than respond to an individual incident.
- 5.94 Some NEBs note positive experience with using the Wiki platform to exchange information and clarify questions, however – as with any such platform – NEBs noted that its value depended on its content and required the commitment of participants to dedicate some resources to it.

6 Contribution of the general consumer protection framework, other means of redress and claim agencies

Introduction

- 6.1 This section focuses on the contribution of the general consumer protection framework and other means of redress in protecting air passenger rights. Air passenger rights protections are complementary to other, wider protections offered by the general consumer protection framework. Similarly, air passenger rights enforcement mechanisms can be complemented by wider public enforcement mechanisms established under the Consumer Protection Cooperation (CPC) Regulation. In parallel, passengers may seek individual redress by turning to private enforcement tools or claim agencies.
- 6.2 Table 6.1 provides an overview of the relevant aspects of the general consumer protection framework and the various complementary tools that exist for public and private enforcement in the area of air passenger rights.

Table 6.1: Tools in the area of air passenger rights

Type		Description	Available to consumers?
General consumer protection framework		• Directive 2015/2302 on Package Travel⁶⁵ • Directive 93/13/EEC on Unfair Contract Terms⁶⁶ • Directive 2005/29/EC on Unfair Commercial Practices⁶⁷	Yes
Public enforcement mechanisms		Consumer Protection Cooperation ⁶⁸	No
Individual complaint handling and redress mechanisms	Facilitators and information points	European Consumer Centres	Yes
	Private enforcement mechanisms	• ADR • ODR • Courts (including European Small Claim Procedure)	Yes

⁶⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L2302>

⁶⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31993L0013>

⁶⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029>

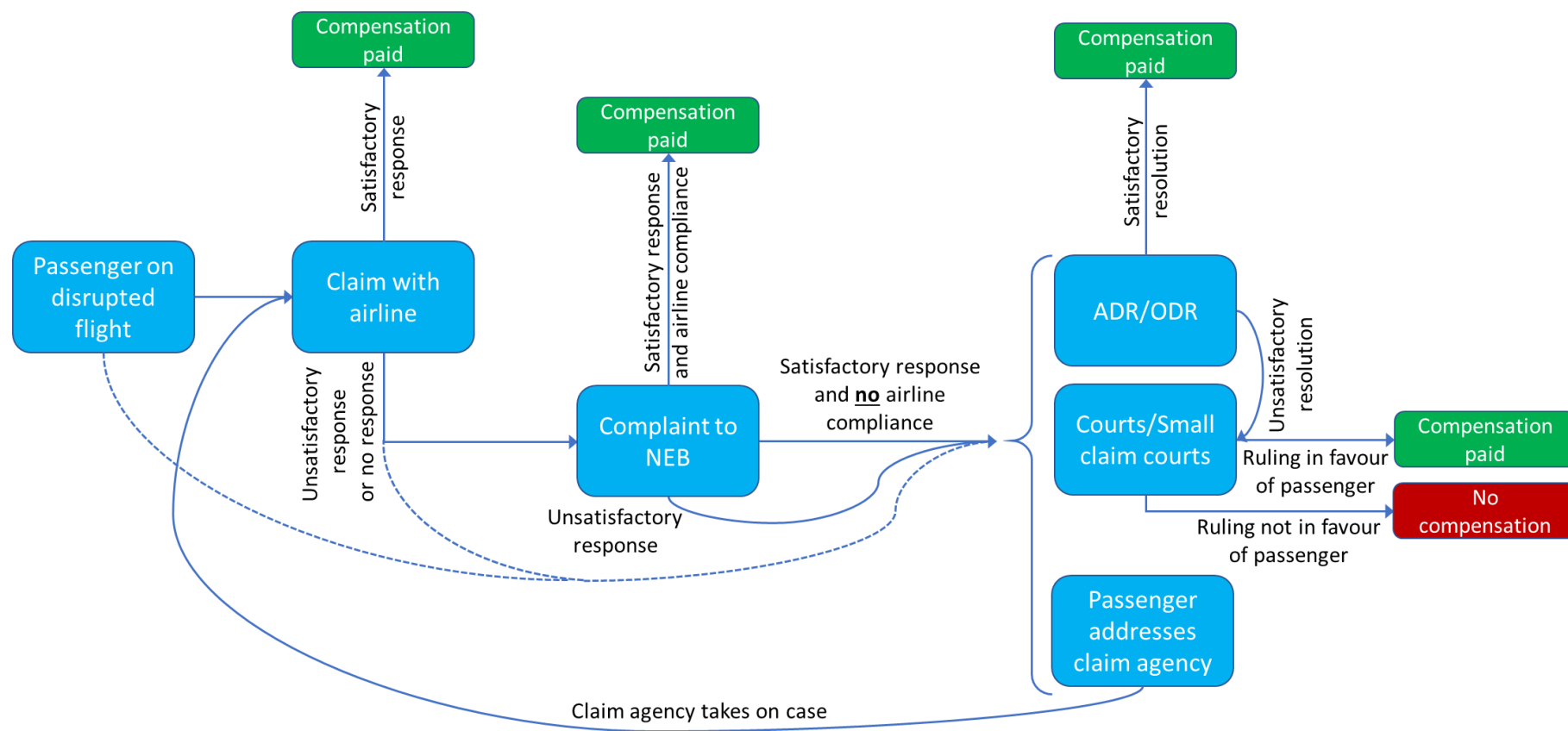
⁶⁸ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004R2006>

Type		Description	Available to consumers?
	Private companies	Claim agencies	Yes

Source: European Commission

- 6.3 Passengers can seek redress when they believe that their passenger rights have not been asserted as required. Figure 6.1 provides a (non-exhaustive) illustration of the avenues and steps that passengers may take, when it comes to redress in the form of financial compensations. They may:
- Contact the airline directly. If passengers are not satisfied with the airline's response, they may then;
 - Contact the NEB. They may also go directly to the NEB, in which case they may either be redirected to contact the airline first or in some cases have their complaint handled by the NEB (regardless of whether they have first contacted the airline, as is the case in Ireland). If passengers are not satisfied with the NEB's decision or if passengers cannot get the NEB decision fulfilled by the airline, they may then;
 - Contact the ADR/ODR body, if an ADR/ODR is available. They may also go directly to the ADR/ODR body from one of the previous steps. If passengers are not satisfied with the resolution offered or if passengers cannot get the ADR/ODR decision fulfilled by the airline, they may;
 - Go to the courts. If no ADR body is available, then passengers might address the courts after contacting the NEB or after contacting the airline.
- 6.4 At any point in this sequence, passengers may decide to use a representative such as a lawyer or a claim agency, which will act on their behalf and contact the airline, and/or NEB, and/or ADR, and/or courts, but note that some airlines oblige passengers to first submit their claim directly to them and may refuse to process a claim directly submitted by a third-party.
- 6.5 Additionally, when a passenger resides in a different country to those between which the disrupted flight was operated, or where the airline is based in another Member State than the passenger, they may address their European Consumer Centre (ECC) as well as or instead of the competent NEBs.
- 6.6 The diagram below shows the variety of private enforcement mechanisms available to passengers (apart from ODRs which are not shown in the diagram below) to obtain financial compensation. Overall, the interaction between the system of redress dedicated to air passenger rights (airline systems, NEBs, specialist ADRs) and the private enforcement tools available more widely (general ADRs, courts including small claims courts), coupled with the involvement of claim agencies, creates a lot of complexity, has poor intelligibility and generates delay and cost as part of the process.

Figure 6.1: Illustration of possible private enforcement mechanisms available to passengers to obtain financial compensation



Source: Steer

General consumer protection framework

Package Travel Directive

- 6.7 The Package Travel Directive 2015/2302⁶⁹ which replaces the previous directive from 1990 provides consumer protection for those booking at least two different types of travel services for the same trip or holiday. The Directive specifies the package organiser's levels of liability for compensation.
- 6.8 The European Travel Agents' and Tour Operators' Association (ECTAA) noted that in the case of travel disruptions there could be overlapping compensation entitlements for travellers under the Montreal Convention (for delay), Regulation 261/2004 and, where the traveller bought the flight as part of a package, under the Package Travel Directive. As explained in Chapter 2, Article 14(5) of the Package Travel Directive 2015/2302 stipulates that any right of compensation or price reduction under the Directive shall not affect the rights of travellers under, inter alia, Regulation 261/2004 and international conventions. This means that whilst travellers are entitled to present claims under different acts, compensation granted under those shall be deducted from each other to avoid overcompensation: passengers can only claim globally once for delays or cancellations under the PTD and/or Regulation 261/2004.
- 6.9 In practice, however, the right to refund defined in Regulation 261/2004 is difficult to handle for tour operators who sold a package. A long delay may trigger a right to refund under Regulation 261/2004, but not necessarily under the PTD, with stakeholders not clear about their liabilities as the case law for Regulation 261/2004 and the PTD differs and packages/linked travel arrangements are usually not sold with the price of the individual services itemised. Additionally, ECTAA explained that, related to Article 12 of Regulation 261/2004 on further compensation, it remains unclear whether the standard compensation paid by airlines under Regulation 261/2004 can be deducted from the compensation paid by tour operators for loss of enjoyment under the PTD or whether they are separate types of compensation.
- 6.10 With respect to overlapping compensation entitlements and responsibilities of different stakeholder, package travellers may seek compensation in different ways:
- They may seek compensation from airlines under Regulation 261/2004 (standard compensation) or the Montreal Convention (delay damages);
 - they may also seek the same damages for loss of enjoyment from tour operators under the PTD; or
 - they may seek damages for loss of enjoyment from insurance providers if they had relevant cover.
- 6.11 Better demarcation of responsibilities, transparency and information exchange would be required between stakeholders in order to avoid that travellers purposely seek to obtain multiple compensation in this way actually receive it. A recent CJEU case⁷⁰ on tour organiser liability for reimbursement of the cost of air tickets and the right to claim reimbursement from the air carrier, found that Article 8(2) of Regulation 261/2004 must be interpreted as meaning that a passenger who, under Directive 90/314, has the right to hold his tour organiser liable for

⁶⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L2302>

⁷⁰ C-163/18 (July 2019):

<http://curia.europa.eu/juris/document/document.jsf?docid=216037&mode=req&pageIndex=1&dir=&cc=first&part=1&text=&doclang=EN&cid=3664268>

reimbursement of the cost of their air ticket, can no longer claim reimbursement of the cost of that ticket from the air carrier, on the basis of that regulation, even where the tour organiser is financially incapable of reimbursing the cost of the ticket and has not taken any measures to guarantee such reimbursement.

- 6.12 Regulation 261/2004 does not have any specific requirements for travel agents (TAs) or tour operators (TOs) as it focusses its operational requirements only on airlines. So in principle, the role of travel agents and tour operators should be limited to directing customers to the relevant airline. As confirmed by one TO, administrative costs are incurred in facilitating this communication and explaining that compensation claims under Regulation 261/2004 are not the responsibility of TAs/TOs, but these costs are not recorded separately and presumably are marginal compared to general customer service and communication costs for TAs/TOs.
- 6.13 However, TAs/TOs are the natural point of contact with respect to all aspects of the trip for travellers who booked package travel and travellers often do not perceive the separation of duties between the different service providers. As such, when airlines do not comply with their obligation to pay compensation or do not respond to passengers' claims, package travel customers seek compensation from TOs. ECTAA indicated that TOs sometimes provide this compensation in order to maintain a good relationship with their customers, but are often unable to subsequently obtain redress from the relevant airlines. TOs then end up incurring high costs due to airlines' failure to comply with their obligations. TAs also incur costs in helping passengers to understand and assert their rights, as passengers turn to them in cases of disruption where airlines have not provided information or have not offered assistance and care of travel disruptions.
- 6.14 The fact the TAs and TOs are the natural point of contact for passengers who booked their flights through such intermediaries or as part of a package is also relevant to the airlines' obligation to provide passengers with information. Airlines only need to receive basic information with respect to their passengers in order to make a reservation and they also have to receive Advance Passenger Information (API) from passengers (e.g. passport details) before they travel or when they check in. Airlines often though do not have the contact details of their passengers. In any case, personal data of this form is governed by GDPR, but TAs/TOs view that such contact details are commercially sensitive, since these passengers form their customer base.
- 6.15 Article 14 of the EC's proposed revision of Regulation 261/2004 stipulates that airlines are obliged to inform passengers of delays and cancellations, in so far as they received the passenger contact details from the intermediary if the ticket was sold through an intermediary. It further provides that TAs have to provide the contact details to the airline, unless there is an alternative system that ensures that passengers are informed without the transmission of the relevant contact details.
- 6.16 In this context, ECTAA highlighted that travel agents can only provide the contact details to the airline if they have received the contact details from customers, which are not always provided (e.g. group bookings) and if they have also received customers' consent for these contact details to be shared with the airline. Airlines have confirmed that this is the case and that they can indeed be in a position to not have contact details of the passengers on their own flights. We understand that TAs and TOs think there is a risk that airlines may use customers' contact details for commercial purposes (e.g. marketing offers). ECTAA stated that if there were to be a requirement for TAs to have to inform passengers of disruption, there must be an obligation for airlines to share real-time data with TAs.

Other relevant general consumer protection legislation

- 6.17 All other relevant general consumer protection legislation is presented in Chapter 2. With the exception of no-show clauses used by airlines, other issues were not raised by stakeholders relating to general consumer protection legislation, although a 2012 study⁷¹ undertaken by Steer Davies Gleave noted that compliance of airlines and travel agents with Directive 93/13/EEC on Unfair Contract Terms⁷² and with Directive 2005/29/EC on Unfair Commercial Practices⁷³ was mixed.
- 6.18 On no-shows clauses, which are also discussed in Chapter 2 from the point of view of passengers, there are currently no EU laws forbidding their use, but a number of EU Member State courts, including in Germany, Spain and Austria, have ruled that the no-show clauses are unfair contract terms which breach national legislation based on EU Directives. In its 2013 proposal, the European Commission proposed to (partially) ban no-show clauses. This was supported and reinforced by the European Parliament. However, the Council removed the relevant provision from the legislative proposal.

Public enforcement mechanisms

- 6.19 The Consumer Protection Cooperation (CPC) is a network of authorities responsible for enforcing EU consumer protection laws to protect consumers' interests in the EU and EEA. Regulation (EC) No 2006/2004⁷⁴ on consumer protection cooperation (the CPC Regulation) lays down a cooperation framework enabling national authorities from all countries in the EEA to jointly address breaches of EU-wide consumer protection laws, including passenger rights, in cases where the trader and the consumer are based in different countries.
- 6.20 The CPC Regulation links national competent authorities to form a European enforcement network. The CPC Network enables authorities to share best practices and provides a mutual assistance mechanism for authorities to alert each other about malpractices that could spread to other countries and ask for assistance in ending the infringement. The Network also acts to agree on common positions, when acting jointly to oblige traders involved in widespread problematic practices to change them across the EU/EEA. As of 17 January 2020, Regulation (EU) 2017/2394⁷⁵ (a revised CPC regulation) will become applicable.

⁷¹

https://ec.europa.eu/transport/sites/transport/files/modes/air/studies/doc/internal_market/final_report_price_transparency.pdf

⁷² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31993L0013>

⁷³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029>

⁷⁴ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004R2006>

⁷⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2394&from=EN>

It shall improve the current framework by 1) extending the scope of the CPC regulation to allow for cooperation in new areas. These new areas include infringements of short duration, such as short-term misleading advertising campaigns. Also included are legislative areas not previously covered such as Regulation 1008/2008. 2) strengthening the minimum powers of the competent authorities to cooperate in the cross-border context, and especially to tackle bad online practices faster. These include the power to carry out test purchases and mystery shopping, to suspend and take down websites, to impose interim measures, to impose penalties proportionate to the cross-border dimension of the imputed practice. 3) putting in place stronger coordinated mechanisms to investigate and tackle widespread infringements. 4) allowing authorities to accept commitments from traders to provide remedies to affected consumers in cases of widespread illegal commercial practices. The authorities will also be able to inform the affected

- 6.21 As already described in Chapter 5, hardly any NEBs use the CPC Network. The CPC Network concerns action in response to general practices (such as failure to have appropriate policies or procedures in place or infringements of consumer protection laws) which might involve multiple enforcement bodies in several Member States. As a result, the network is viewed by NEBs as being “*of limited relevance to the enforcement of Regulation 261/2004*”, which as seen in Chapter 5, predominantly involves the enforcement of individual incidents by an NEB in the same Member State as that within which the incident occurred.
- 6.22 Some NEBs, such as the FCCA in Finland, KV in Sweden and the UK CAA, said that the CPC system was primarily useful where there was a need to force a one-off change to a particular practice (such as to change an unfair contract term), rather than respond to an individual incident. Despite the opportunity for common positions to be adopted through the CPC Network, NEBs have not used this for providing a coordinated position, for example, with respect to the application of extraordinary circumstances in the case of mass flight disruptions – an approach that passenger representatives would welcome.
- 6.23 In the context of addressing widespread problematic practices, passenger representatives also highlighted that they welcome the Commission’s proposal on representative actions⁷⁶, as in cases of mass disruptions, a possibility to seek collective redress would increase enforcement levels and lower costs, compared to passengers having to address courts individually.

Individual complaint handling and redress

Facilitators and information mechanisms on complaint handling

- 6.24 The role of the European Consumer Centres Network (ECC-Net) is to provide information on consumer rights and assist in resolving disputes when the consumer (a passenger) and trader (an airline) involved are based in different European (EU28, Norway and Iceland) countries. It is important to clarify that ECCs are not enforcement mechanisms.
- 6.25 Air passenger rights issues are very often of a cross-border nature and therefore relevant to the network’s activities. In 2017, ECC-Net reported that approximately 20% of its activities related to air passenger rights issues.
- 6.26 ECC-Net supports passengers seeking redress by providing a single contact point for them to address their complaint to, which is able to handle this complaint in their mother tongue. The network acts as a facilitator and has flexibility in the way in which it can follow up a passenger complaint. It can interact with the airlines in other Member States on behalf of the passenger and/or turn to the competent NEB.
- 6.27 In its engagement with NEBs, ECC-Net noted that in many countries the NEBs can only be reached in their national language (or English) and that they have different powers/remits (with some only able to offer limited support to consumers) and timescales for handling complaints. ECC-Net acts as a mechanism for reducing the fragmentation of the NEBs across Europe. For example, ECC-Net is happy to address NEBs with an enquiry about whether extraordinary circumstances applied to a particular flight (even if the NEB does not handle

consumers about how to seek compensation as provided for in national legislation. 5) allowing external bodies such as consumer and trade associations and European Consumer Centres to post alerts and signal issues to authorities and the Commission.

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https://ec.europa.eu/info/sites/info/files/proposal_for_a_directive_on_representative_actions_for_the_protection_of_the_collective_interests_of_consumers_0.pdf

individual complaints) and then follow up with the airline concerned. Additionally, ECC-Net is able to handle all complaints related to air passenger rights, not limited to Regulation 261/2004, but also Regulation 1107/2006 and the Montreal Convention. ECC-Net can also help passengers with identifying the relevant ADR bodies or courts, if necessary. ECC-Net stated that sector-specific ADR with relevant expertise and better integration of NEBs with ADR would be desirable to facilitate greater fairness and access to redress.

- 6.28 However, passengers' awareness of ECC-Net and the various approaches that it can use in trying to resolve a complaint on their behalf is not very good. In addition, while ECC-Net is a valuable resource for passengers, it does not have powers to issue any (binding or non-binding) decisions in the cases it handles, and cannot represent passengers in ADR or court.

Private enforcement mechanisms

Alternative dispute resolution and online dispute resolution

- 6.29 Alternative dispute resolution (ADR) and online dispute resolution (ODR) are not aviation-specific consumer protection mechanisms. They offer a way for consumers to obtain impartial mediation and arbitration for a dispute with a trader in their Member State. The two most common forms of alternative dispute resolution are mediation and arbitration:
- Mediation, where an independent third party helps the disputing parties to come to a mutually acceptable outcome; and
 - Arbitration, where an independent third party assess the facts and makes a decision which is often binding on one or both parties.
- 6.30 The ADR body competent for air passenger rights matters may be:
- a general consumer arbitration body;
 - a consumer arbitration body focussing on transport (France, Iceland and Norway); or
 - a consumer arbitration body focussing specifically on air transport (Germany, Poland and the UK).
- 6.31 Note that there can be more than one ADR in a Member State. For the enforcement of air passenger rights within Europe, some NEBs are also the relevant ADR body in their Member State (Austria, Denmark, Estonia, Finland, Latvia, Romania, Slovakia and Sweden). The Spanish NEB has informed us that it will become an ADR body by the end of 2019.
- 6.32 As with NEBs, the form and enforcement power of ADR bodies differs. Some ADR bodies are able to issue legally binding decisions (Cyprus, Denmark, Italy, Lithuania, the Netherlands, Portugal, Slovenia, Spain and the UK), while others cannot.
- 6.33 Passengers are able to use the ADR system in most Member States for free, but small fees have to be paid in Cyprus, Iceland, Italy, the Netherlands and the UK. In Iceland, the Netherlands, and the UK this fee is refunded if the decision the ADR makes is in favour of the passenger. Table 6.2 and Table 6.3 below provide an overview of ADR bodies relevant to air passenger rights in each Member State and their enforcement powers. Many of the relevant ADRs were not easy to identify, despite the list available on the European Commission website, as the competence of each ADR and the participation of airlines in these is not clearly indicated.

Table 6.2: Overview of ADR bodies in each Member State

Member State	ADR body/bodies	Contact	Type of ADR
BE	Consumer Mediation Service - Conciliation Committee	https://consumerombudsman.be/en	General consumer ADR
BG	Commission for Consumer Protection	https://kzp.bg/pomiritelna-komisiya	General consumer ADR
CZ	Czech Trade Inspection Authority	https://www.coi.cz/en/	General consumer ADR
DK	Danish Transport, Construction and Housing Authority	https://klage.flypassager.dk/en	NEB is ADR body
DE	söp - Conciliation Body for Public Transport	https://soep-online.de/index.html	Consumer arbitration body for transport
	Aviation Conciliation Body at the Federal Office for Justice (BfJ)	www.bundesjustizamt.de/luftverkehr	Consumer arbitration body for aviation
EE	Consumer Complaints Committee	https://www.ttja.ee/et	NEB is ADR body
IE	No ADR body that covers Air Passenger Rights	n/a	n/a
EL	ADR POINT Greece	https://www.adrpoint.gr/en/consumers/adr-point	General consumer ADR
ES	Agencia Estatal de Seguridad Aérea (AESA)	https://www.seguridadaerea.gob.es/LANG_EN/home.aspx	NEB is ADR body (from end of 2019)
FR	Médiation Tourisme et Voyage (MTV)	https://www.mtv.travel/en/	Consumer arbitration body for transport
HR	The Mediation Centre of the Croatian Employers' Association	http://www.hgk.hr/centar-za-mirenje/o-centru-za-mirenje	General consumer ADR
	The Court of Honour at the Croatian Chamber of Economy	http://www.hgk.hr/sud-casti-pri-hgk/o-sudu-casti	General consumer ADR
IT	RisoltiOnline - Milan Chamber of Arbitration	https://www.RisoltiOnline.com	General consumer ADR
CY	Cyprus Consumer Center for Alternative Dispute Resolution	https://adrcyprus.com/en/	General consumer ADR
LV	Consumer Rights Protection Centre of Latvia (CRPC/PTAC)	http://www.ptac.gov.lv/en	NEB is ADR body
LT	State Consumer Rights Protection Authority	http://www.vvtat.lt/en/about-authority.html	General consumer ADR
LU	National Consumer Ombudsman Service	http://www.ombudsman.lu/EN/MGDL-001.php	General consumer ADR
HU	Conciliatory body of Budapest	http://www.bekeltet.hu/	General consumer ADR
MT	Complaints and Conciliation Directorate within the Office for Consumer Affairs	https://mccaa.org.mt/Section/index?sectionId=1061	Office for Consumer Affairs
NL	General consumer ADRs exists, but airlines are not obliged to accept passenger complaints	n/a	n/a
AT	APF - Agentur für Passagier- und Fahrgastrechte	https://www.apf.gv.at/de/flug.html	NEB is ADR body

Member State	ADR body/bodies	Contact	Type of ADR
PL	Network of consumer courts of arbitration	n/a	General consumer ADR
	The Passengers' Rights Ombudsman	https://pasazerlotniczy.ulc.gov.pl/	ADR for 261/2004
PT	National Information and Arbitration Centre for Consumer Disputes (CNIACC)	https://www.cniacc.pt/pt	General consumer ADR
RO	National Authority of Consumer Protection in Romania	http://www.anpc.ro/	NEB is ADR body
SI	ADR bodies exist but airlines usually do not participate in the procedure.	n/a	General consumer ADR
SK	Slovak Trade Inspection	https://www.soi.sk/en/SOI.soi	NEB is ADR body
FI	Consumer Disputes Board	https://www.kuluttajariita.fi/en/index.html	NEB is ADR body
SE	National Board for Consumer Disputes (ARN)	https://www.arn.se/	NEB is ADR body
UK	Centre for Effective Dispute Resolution (CEDR)	https://www.cedr.com/	General consumer ADR
	Aviation ADR (AADR)	https://www.aviationadr.org.uk/	Consumer arbitration body for aviation
IS	The Ruling Committee in Travel Industry matters	https://ns.is/	Consumer arbitration body for transport
NO	Transportklagenemda Norsk Reiselivsforum (NRF)	https://reiselivsforum.no/web/home/	Consumer arbitration body for transport
CH	- (Swiss participates in German ADR)	n/a	n/a

Source: Steer analysis of stakeholder consultation responses

Table 6.3: Overview of enforcement power of ADRs

Member State	Legally binding decision?	Costs for passengers
BE	✗	None
BG	✗	None
CZ	✗	None
DK	✓	None
D	✗	None
E	Binding upon agreement by both parties	None
EE	✗	None
IE	n/a	n/a
EL	✗	None
ES	✓	None
FR	✗	None

Member State		Legally binding decision?	Costs for passengers
HR		Binding upon agreement by one or both parties at the Mediation Centre and binding at the Court of Honour	Some fees (registration, mediator, administrative) at the Mediation Centre, none at the Court of Honour
IT		✓	Consumer pays fee of €30
CY		✓	€20 filing fee plus arbitration fee (depending on value of claim)
LV		✗	None
LT		✓	None
LU		Binding upon agreement by both parties	None
HU		✗	None
MT		Binding upon agreement by one or both parties	None
NL		n/a	n/a
AT		Binding upon agreement by both parties	None
P L	Courts	✓	None
	Ombudsman	No information provided	No information provided
RO		✗	None
SI		✗	None
SK		Binding upon agreement by both parties	None
FI		✗	None
SE		✗	None
U K	CEDR	✓ Where the passenger accepts ADR's decision	£25, which is refunded in case of a decision made in favour of passenger
	AADR	✓ Where the passenger accepts ADR's decision	None
IS		✗	Small fee of 3,500 ISK (€26) which is refunded if ruling is made in favour of passenger
NO		✗	None
CH		n/a	n/a

Source: Steer analysis of stakeholder consultation responses

- 6.34 In general, all stakeholder groups (airlines, consumer representatives and NEBs) welcomed ADR as a comparatively efficient and effective way for handling disputed claims within the existing framework, especially as compared to the courts. The ADR process is simpler, can be (in most cases) completed “remotely” without the physical presence of claimants or defendants, more cost-effective and without the risk of large procedural costs falling to either party.
- 6.35 Some ADR schemes appear to work well, but the approach is not common across all Member States and there are aspects that do not work well with respect to air passenger rights. Such aspects include:
- Voluntary participation of airlines: in some Member States, the participation of airlines in an ADR scheme is not mandatory. As such, even if an ADR exists in a country, it may not

be available to passengers seeking redress on APR disputes if the airline does not participate. Additionally, there have been cases where airlines have withdrawn their participation in ADR schemes.

- Sector expertise: general consumer ADRs may lack the expertise to properly understand technical aspects of the aviation system as part of their assessment of a case (e.g. the detailed functioning of Air Traffic Control and Network Manager functions).
- Legal scope and interpretation: some ADRs are only able to assess cases on the basis of the Regulation only, while others can also take case law into account (which for Regulation 261/2004 there is a significant volume of). In some countries (e.g. in France and Germany) the ADR uses the legal text as a basis for negotiation and may not award the standard compensation amount when it finds in favour of the passenger, or may seek to negotiate an amount with the airline even when compensation to the passenger is not strictly due.
- Non-binding decisions: Not all ADRs are able to issue binding decisions that, if necessary, are enforceable in the courts. As a result, the ADR process is viewed by some airlines as redundant if disputed cases are going to be escalated to the courts in any case.
- Burden of proof: According to some airlines, a number of ADRs require a level of evidence that is commensurate to that requested by courts, which they believe undermines the value of the ADR process (which is intended to be simpler than the courts), despite the lower procedural costs. Some airlines also indicated that fraudulent cases may be escalated to an ADR, as the risk of perjury is not as high as it would be in court.
- Appeals: At some ADRs there is no possibility of appeal.
- Language: most ADRs are only addressable in the national language or in English.

6.36 Despite potential shortcomings, ADR schemes are welcomed by NEBs as a way of lessening the burden of individual complaint handling (e.g. in the UK where the ADR bodies and NEB are separate), allowing the NEB to focus on overall system-level oversight and enforcement; or, where the NEB is also an ADR (e.g. in Austria, Denmark), as a way of making the NEB's decisions binding.

6.37 Authorities may also welcome ADR schemes as a way of relieving some of the pressure that APR cases have created on the courts (e.g. one of the reasons that the NEB in Spain is becoming an ADR in late 2019 is to reduce the number of cases ending up in the local courts). However, the case load can be substantial for ADRs too (e.g. the German ADR (söp) has a significant backlog). This was echoed by general consumer ADRs too (e.g. Finland), which observed that they process a disproportionate number of air passenger rights cases relative to wider and potentially more important consumer issues, such as housing disputes.

6.38 The NEBs and ECCs did not specifically discuss the ODR process during the stakeholder engagement. Most airlines stated that the EU ODR platform is not used very much by passengers and thus they have little experience with it.

Courts

6.39 When a claim is disputed between a passenger and an airline, this may ultimately be resolved in the courts, as with other civil and contractual matters. Court processes can be procedurally complex, time-consuming and potentially costly, and as a result tend to be a last resort mechanism for individual consumers seeking redress.

6.40 From the perspective of operational stakeholders, as described in Chapter 4, courts create a lot of uncertainty, complexity and cost too, since many courts are not particularly specialist in

Regulation 261/2004 (there is no guarantee that they will always follow the Regulation and its associated jurisprudence) and court processes and representation all vary widely across EU Member States.

- 6.41 For a passenger, it is not necessarily straightforward to determine the competent court, both in terms of the geographical jurisdiction and also the legal basis of the claim. According to ECCs, cases ought to typically be brought in the country of departure or the country of arrival of the disrupted flight, which may be different to the country of residence of the passenger and in a language they may not speak.
- 6.42 When taken to court, airlines potentially face similar jurisdiction and language issues as passengers do. If cases are brought to court in countries in which they do not have significant operations, airlines may not have the language capability or procedural experience to defend these cases in-house. They may of course engage legal support in the country in question, but this generates additional costs and does not necessarily resolve the complexity of defending a case through an unfamiliar procedure.
- 6.43 The use of small claims courts, where available, and the European Small Claims Procedure is seen by ECCs as a potentially effective and inexpensive means of dealing with claims that could not be resolved out-of-court. However, these procedures usually still attract a charge and while most may be completed in writing, the courts may call a hearing if deemed necessary, which may involve additional time and costs for passengers (travel costs, representation costs etc.). In using the courts, claiming passengers also run the risk of being liable for airlines' legal costs if their claim is not successful, which presents a further barrier for passengers to seek redress.
- 6.44 Where claims are brought to court is also influenced by the different statutes of limitations that are applicable across Member States. The CJEU case of *More v KLM* (C139/11) confirmed that limitation is a matter of domestic law in each EU Member State.
- The applicable time limit in Scandinavian countries can be very short (i.e. 6 months);
 - The applicable time limit in the Netherlands is two years;
 - The applicable time limit in Germany is at least three years (three full years plus the remainder of the year in which the event took place);
 - The applicable time limit in Spain is five years;
 - The applicable time limit in Ireland and the UK is six years;
- 6.45 The variation in time limitations that apply further complicate the situation for passengers and may mean that they are able to pursue a claim in only one of the qualifying jurisdictions, if a shorter time limit has been exceeded in another. ECCs highlighted that this can especially be the case if passengers have first gone through lengthy enforcement processes with NEB which have proven ineffective. Airlines have also questioned why time limitations reach five or six years for flights cancelled or delayed where the passenger prejudice is limited, when time limitations for bringing a claim against an airline under the Montreal Convention for damage sustained in case of death or bodily injury is limited to two years only.
- 6.46 The uneven time limitations applicable (very short in some countries and very long in others) can present a practical challenge, particularly linked to information retained: even if airlines retain relevant information of their own for some time, it is not always straightforward to collect and provide relevant evidence from third parties (e.g. ANSPs) four or five years after the event. The different time limitations applicable across Member States also make it

complicated for airlines to be certain as to when claims may be considered to have expired and no longer represent a liability.

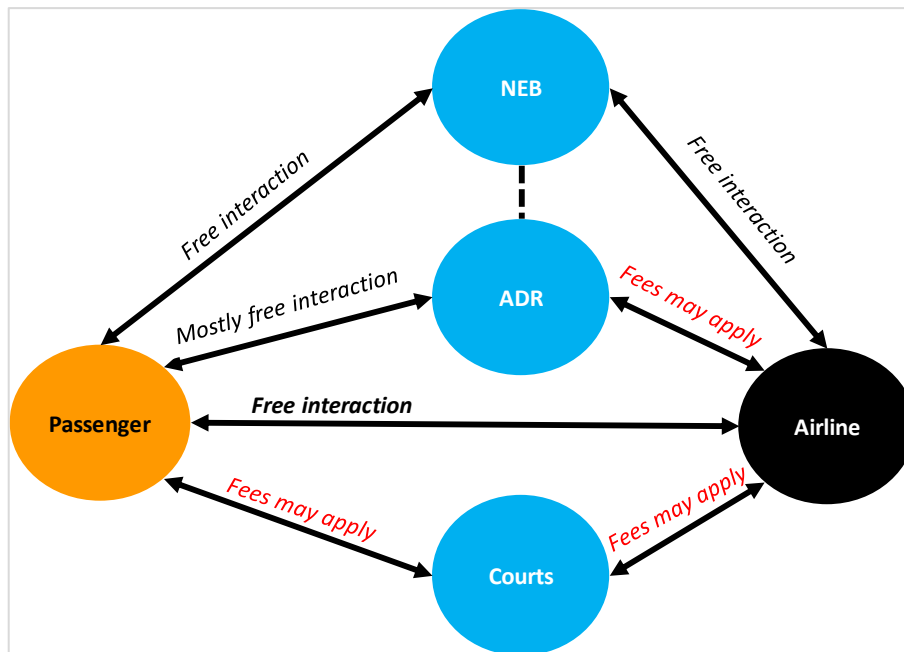
- 6.47 Most airlines stated that courts are being consumer-friendly (with some courts more so than others) and often without specialist knowledge of the aviation sector. The level of evidence needed differs between countries and, according to airlines, in some cases, it can be very difficult to demonstrate that all reasonable measures were taken or prove why it was not possible nor reasonable for given measures to be taken. The low value of the claims often means that there is no possibility for appeal.
- 6.48 According to the airlines, claim agencies carefully select the best courts in front of which the case should be brought, based on their understanding of the different statutes of limitations and court approaches to “consumer-friendliness”. Airlines stated that they have been called to defend case brought not only in the country of departure or arrival of the disrupted flight, but also in the country of residence of the passenger (if different) and the country in which the airline is domiciled. Airlines explained that this presents a risk to them, since they want to avoid incurring legal costs when the ruling is likely to award the passenger compensation anyway – as well as potentially generating jurisprudence – so they may end up settling out of court, even when they are strongly of the opinion that the claim should not be eligible. Research by our legal advisor indicates that some airlines have been successful in getting such cases rejected on jurisdictional grounds.
- 6.49 The readiness with which claim agencies escalate cases to the courts, generates a large volume of court activity. Anecdotal evidence suggests that some courts may be overwhelmed by Regulation 261/2004 cases, although this would have the benefit, if any, to provide the courts with more specialist knowledge of the European legislation on air passenger rights. The research shows that:
- Approximately 70% of the air passenger rights cases brought in Spanish courts in 2018 were by claim agencies;
 - Around 40% of all cases in the District Court of Copenhagen in 2018 concerned claims under Regulation 2016/2004;
 - In the Netherlands:
 - In 2018, the District Court of Noord-Holland rendered 1,973 judgements on Regulation 261/2004, while the District Court of Amsterdam handled 1,997 APR cases in the same year.
 - At the time of writing, the District Court of Noord-Holland is handling 3,172 Regulation 261/2004 cases, while the District Court of Amsterdam is handling 572
 - In 2018, 170 judgments on Regulation 261/2004 cases were published by Dutch courts on www.rechtspraak.nl. Of these, 20 judgments related to procedural aspects (such as jurisdiction) only, while of the remaining 150 judgments, 46 (31%) judgments were in favour of the airline and 104 (69%) judgments were in favour of the passengers. In all of these 170 cases, the passengers were represented by a claim agency.
- 6.50 The level of activity generated in the courts consumes considerable public resources, which create wider consequences and delays in the judicial system too. This is despite the fact that a significant proportion (the majority according to the District Court of Amsterdam) of the cases are withdrawn after reaching out-of-court settlements, administrative court time is still taken up to process these. This also appears to confirm that airlines seek to avoid going to court by settling cases.

- 6.51 In struggling under the volume of cases, contradictory rulings are seen on cases that appear similar, although this may be related to the evidence brought forward by the parties. It also indicates that sufficient systems to record and consolidate rulings may not be in place. Overall, the visibility of court activity and rulings at national level is very low across the European system, so neither industry nor NEBs have a full understanding of the scale of activity and the outcomes.

Claim agencies

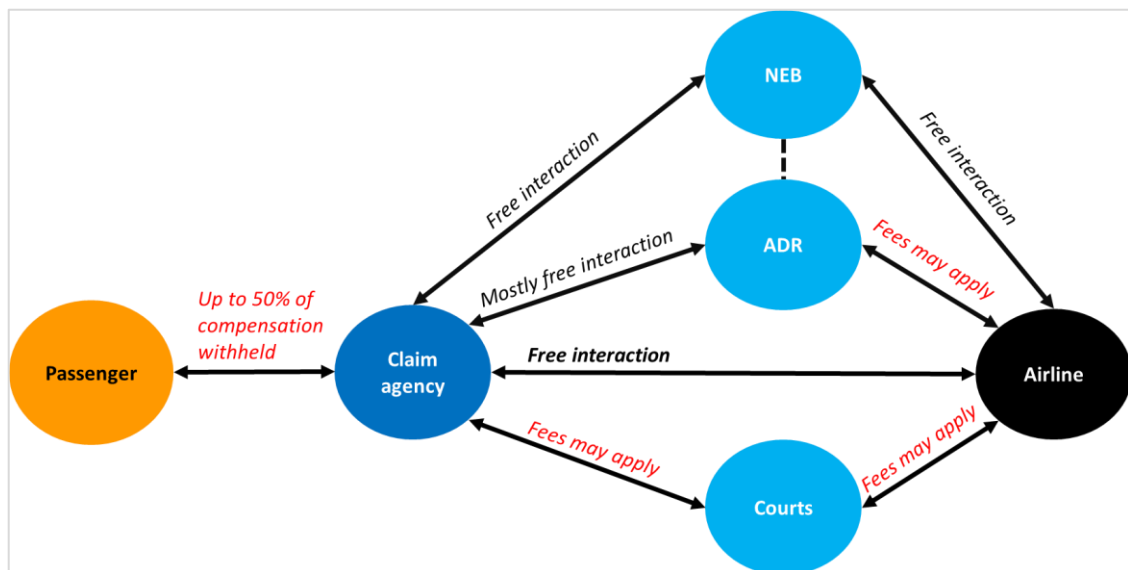
- 6.52 A significant development since 2011 is the emergence of claim agencies, which was particularly concentrated between 2013 and 2015, at a time when ADR bodies were not yet as well-recognised. Claim agencies more generally tend to focus their activity in high-volume, low value areas where standard compensation regimes are in place that effectively guarantee them a return for successful claims and consumer awareness of their eligibility to compensation or their motivation to do so is low. In this sense, the air passenger rights environment provides the market conditions for claim agencies to establish themselves, since:
- Regulation 261/2004 defines standard compensation;
 - Redress processes can be complex and time-consuming;
 - Regulation 261/2004 and its jurisprudence have low intelligibility to most passengers;
 - Airline compliance has been poor; and
 - Passengers usually distrust responses provided by airlines.
- 6.53 Claim agencies primarily engage with compensation claims under Article 7 of Regulation 261/2004 and the Montreal Convention, as well as under equivalent air passenger rights frameworks around the world. They generally do not engage with other claims brought under Regulation 261/2004 (e.g. for reimbursement) or complaints brought under Regulation 1107/2006, which does not define a standard compensation framework. Most agencies advertise their service on a “no win no fee” basis, with any costs incurred by the agency being funded through a proportion of the compensation being retained if the claim is successful. Claim agencies describe themselves as providers of “justice as a service” (JaaS) that work to close the “justice gap” in APR resulting from the issues noted above.
- 6.54 Figure 6.2 shows the possible interactions between passengers, airlines, and other redress bodies. Passengers may engage with airlines, NEBs and most ADRs for free. Fees may apply for using the courts. Claim agencies represent passengers by taking their place in this set of interactions (as shown in Figure 6.3) and withholding a proportion of compensation awarded to passengers. The claim agencies may benefit from the free interactions that passengers would in any case have had available to them.

Figure 6.2: Interactions between passengers, airline and other redress bodies



Source: Steer

Figure 6.3: Interactions between passengers, claim agency, airline and other redress bodies

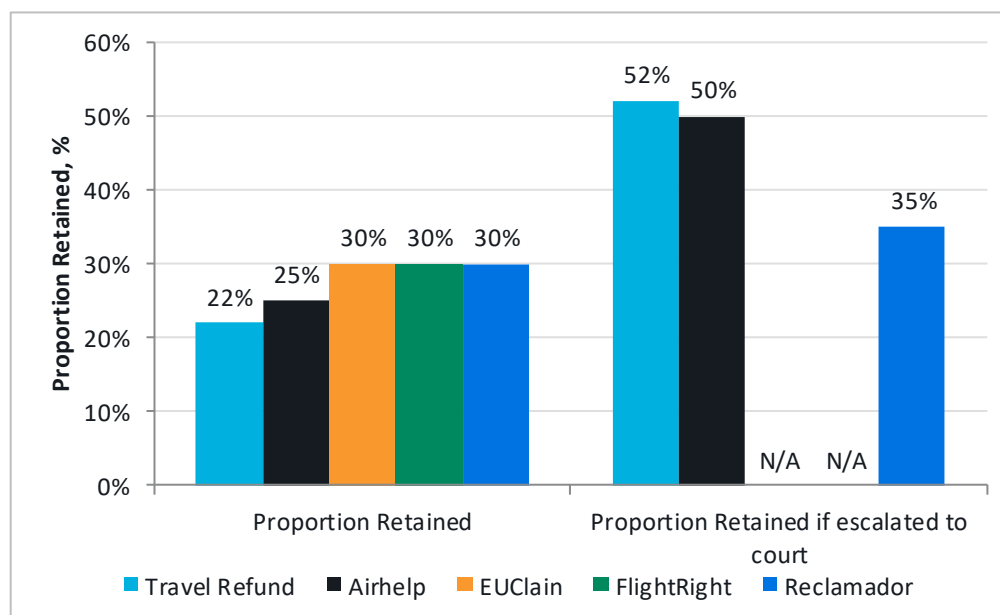


Source: Steer

6.55 Figure 6.4 below shows the share of compensation retained by five claim agencies operating in the EU. Charges across all distance bands are broadly the same, however charges between agencies vary from around 22% to just over 30%. It is worth noting that the two cheapest agencies, Travel Refund and AirHelp, as well as Reclamador, charge higher fees if the claim is escalated to the courts, whilst EUClaim and FlightRight, which charge higher fees overall, do not mention any increases in fees in these cases. The proportion of compensation retained if the claim is escalated to the courts for Travel Refund and AirHelp represents a substantial increase on the standard fees being charged, with the resulting fee being at least half of the

compensation being paid by the airline. Reclamador charges an additional flat fee of €15+VAT for this service, but charges all claimants higher fees (30%) in the first place.

Figure 6.4: Proportion of compensation retained



Source: Steer analysis, Claim agency terms and conditions

- 6.56 Claim agencies deal with claims enquiries, process eligible claims and monitor flight disruptions on a very large scale with a high degree of automation. To do this they have developed bespoke and sophisticated infrastructure and technologies that allow them to maintain records of flight activity and disruptions, as well as automatically classify disruption as (likely) due to extraordinary circumstances or otherwise, alongside customer-facing websites and contact centres.
- 6.57 In offering services to consumers, claim agencies are subject to consumer protection rules, and additionally, their activity, or certain aspects of it, is regulated in some Member States but not in others. In some Member States, their services are considered legal or enforcement services, in which case they are subject to the relevant rules and monitoring from relevant authorities. For example, Ireland has laws preventing so called “ambulance-chasing” and, as a result, claim agencies are not able to operate there. In Denmark on the other hand, claim agencies are not allowed to set their fees as a proportion of the compensation that might be due, and so have to set fixed fees instead (but given that compensation under Regulation 261/2004 is anyway set at standard levels, the Danish rules do not effectively change the situation with respect to the fees charged to passengers).
- 6.58 A large number of claim agencies of different sizes exist in most Member States and compete with each other. Four of the largest claim agencies active across Europe (AirHelp, EUClaim, Flightright and Reclamador) formed the Association of Passenger Rights Advocates (APRA) in 2017 shortly after the publication of the Information Notice to Air Passengers⁷⁷ which was

⁷⁷ Information notice on relevant EU consumer protection, marketing and data protection law applicable to claim agencies' activities in relation to Regulation 261/2004 on air passenger rights, 9 March 2017 https://ec.europa.eu/transport/sites/transport/files/2017-03-09-information-note-air-passenger-rights-on-claim-agencies_en.pdf

published by the European Commission in March 2017. The information notice provides passengers with information on the EU legal background of the activities of claim agencies in the field of air passenger rights, but it is unclear whether this is well-known by passengers. One of APRA's first actions was to adopt a code of conduct aimed at preventing bad practice, although the extent to which this is adhered to by the APRA members themselves and its influence on the wider claim agency industry is not clear yet, since many NEBs and airlines reported that many of the practices addressed by the code of conduct continue.

- 6.59 We have compared the key obligations set out in the EC Information Notice of March 2017 with the code of conduct published on the APRA website, as summarised in Table 6.4 and found that the code of conduct adheres to the legal obligations highlighted to passengers in the Information Notice.

Table 6.4: Adherence of APRA's code of conduct to EC's information notice

Legal obligations for claim agencies listed in the EC's information notice	Relevant rules/principles from APRA's code of conduct
Claim agencies must clearly display the price of their services, i.e. showing an initial price on their website which includes all applicable fees.	APRA members display the price of their services transparently.
Claim agencies must be able to produce a clear power of attorney.	APRA members are able to produce a clear and signed power of attorney or notice of assignment to prove their authorization.
Claim agencies should not resort to persistent unsolicited telemarketing.	- APRA members always clearly identify themselves to all parties they make contact with during the course of their activities. - APRA members do not make use of misleading marketing activities, such as unsolicited telemarketing.
Transmission of personal data.	- APRA members comply with the laws and rules applicable to their business activity, including rules on data security, such as GDPR. - APRA members maintain necessary confidentiality about information relating to customers and airlines.

Source: European Commission, APRA

- 6.60 APRA notes that the Information Notice has had a negative impact on the operations of its members. The Information Notice is seen (by APRA) as favouring airlines rather than passengers by supporting practices that discourage passengers from claiming compensation (for example the requirement to provide ID, when this is not required from passengers to make an airline booking).
- 6.61 Claim agencies are very active in promoting awareness of air passenger rights since this drives their income. They have sponsored public relations, media and social media campaigns to highlight the protections available to passengers and advertise their services. Additionally, claim agencies use mass marketing and sponsored search engine results to bring air passenger rights to the attention of consumers and attract them to their services. According to APRA, the

websites of its four member agencies receive more than two million visits per month. This activity can be seen as a welcome contribution towards increasing passengers' awareness of their rights, however in some cases the transparency with which this is done is low (e.g. certain claim agencies set up URLs that include an airline's name – e.g. `airlinename.claimagencyname.com` – as a way to attract passengers seeking compensation).

- 6.62 APRA explained that only a proportion of website visitors (not quantified by APRA) file claims, and of those only about 10% have a valid claim. The rest are informed by the website that their claim is not valid and may be given a reason why, although in some cases this is limited to *"in our experience the likelihood of success of such a claim is not high"*, which does not help clarify the situation for passengers. We found that some claim agencies inform passengers of the non-eligibility of their claim only after passengers have provided their contact details. APRA stated that the opportunity for passengers to instantly check the eligibility of their claims on its members' websites contributes to better awareness amongst passengers and relieves airlines, NEBs and other stakeholders from having to process and reject and ineligible claim.
- 6.63 APRA indicated that it considers the application of Regulation 261/2004 to now be clear, following the contribution of the CJEU rulings, but that airlines are not compliant. In particular, APRA stated that airline responses to claims are still not justified or evidenced well enough, unless the cases are taken to court. Meanwhile APRA explained that it sees the enforcement system as insufficient, with the impact of NEBs and ADRs described as *"immaterial"*.
- 6.64 APRA also explained that it is important to separate the preventive effect of the compensation levels specified in the APR framework and the question of airline compliance once disruption occurs. The higher the level of compensation, the more the airlines will do to avoid disruptions, but regardless of the size of the compensation, APRA believes that the airlines will always try to avoid paying it, which creates a need for claim agency services.
- 6.65 A number of issues have been highlighted by NEBs, ECCs, passenger representatives and airlines with respect to the activities of claim agencies, including the following:
- On marketing practices:
 - NEBs and airlines reported that some claim agency staff have stationed themselves at airport arrivals and targeted passengers who they identify as having been on a disrupted flight. Similar targeting is understood to also take place at airport hotels, where passengers affected by disruption might have been transferred to in cases of very long delays.
 - Some claim agencies now also provide services to and through online travel agencies to proactively alert passengers of their rights to compensation if the travel agency's records show them as having been on a disrupted flight, as monitored by the claim agencies. The claim agencies explained that this does not involve the transfer of passengers' data from the travel agency to the claim agency – but the study has not been able to verify this. Instead, the travel agency receives information from claim agencies about flights it has reserved for passengers and it then contacts passengers affected by disruption (who opted-in to receiving communications) to inform them about their compensation rights, with a click-through to a claim agency that can make the claim for them. It is not clear to what extent such passengers recognise that they are clicking through to a separate service provider or whether the opportunity to contact the airline for free is highlighted to them. ECCs have recorded some passenger complaints to this effect, while passenger representatives raised concerns

around data protection infringements, both with respect to travel agencies and more broadly about passengers contacted by claim agencies in relation to flights that might have taken place several years previously.

- On unfair terms:
 - Some ECCs and passenger representatives pointed out that although in principle claim agencies are good for consumers since their interests are aligned, the terms that claim agencies use in some Member States (e.g. the Netherlands) are not always fair and are therefore disadvantageous to consumers.
- On value-added:
 - All of these stakeholders challenged the value added by the claim agencies that simply forward the claims to NEBs or ECCs for them to resolve. Two airlines also stated that claim agencies have requested an application programming interface (API) with their internal systems to automate the transmission of claims, which could have been submitted by passengers on the airlines' websites in the first place.
- On transparency:
 - All these stakeholders highlighted that some claim agencies provide poor quality documentation and evidence, including power of attorney paperwork (or electronic power of attorney (e-POA)) that should prove that they are acting on the behalf of passengers. The scope of such powers of attorney that passengers are asked to sign is also unclear. ECCs have been contacted by passengers who are not able to fully understand the content of the documents they have been asked to sign, including the extent to which these bind them to going to court.
 - Passenger representatives highlighted that compensation awarded by airlines is sometimes withheld by claim agencies for a long time before being paid (less claim agency fees) to passengers.
- On high volume of activity:
 - The number of claims generated by claim agencies is shifting the balance of the claim-based APR regime and generating a large compensation and administrative burden for airlines, as well an administrative burden for NEBs, ADRs and the courts. Airlines reported that the proportion of claims received from claim agencies ranges from between 10% to 50%, with most airlines reporting a proportion between 30% and 40%. The proportion of complaints received from claim agencies by NEBs ranged from 5% in Ireland (where the legal framework discourages claim agencies) and Austria (a combined NEB and ADR with good levels of passenger awareness) to 40% in Slovenia.
 - According to airlines, some claim agencies do not allow reasonable timeframes for them to process the claims. The timeframe for a response may be set within a few days. If a satisfactory response is not received in time, the agency would generally escalate the claim to the courts. Some claim agencies have also been described as having "stockpiled" claims and submitted them *en masse* to the airlines, while setting short response deadlines, overwhelming the airlines' claim handling systems. As a result, airlines have had to divert resources to address agency-submitted claims (either to avoid a writ of summons or in response to it) in the place of other passenger-submitted claims which have been received earlier.
 - Airlines stated that claim-handling time is also taken up by investigating cases where a passenger is represented multiple times by a number of agencies, ascertaining the validity of the power of attorney or proving that a claim may have already been settled.
- On the use of courts (see next section also):

- Airlines and NEBs highlighted that the volume of cases taken to the courts is very high and has created a backlog in the system. The Spanish NEB indicated that by becoming an ADR it will help relieve the pressure on Spanish courts.
- Airlines did not welcome the readiness with which claims are addressed to the courts, and the way in which the threat of court action is used to get airlines to settle out-of-court, in order to avoid legal fees, particularly since courts are often seen as being more consumer-oriented.
- Claim agencies are seen, by airlines, to be forum-shopping and targeting courts which are seen as being particularly consumer/passenger-friendly or in which individual airlines may not find it straightforward to represent themselves.
- On flexibility:
 - Claim agencies are perceived by airlines as removing airlines' flexibility towards customer care and the opportunity to offer alternatives to monetary compensation to passengers. Such alternatives (e.g. loyalty scheme miles or status) are of course preferred by the airlines, since they are likely to not involve a direct cost and overall have a lower marginal cost than the standard Regulation 261/2004 compensation, but it could be that, in some cases but far from all, these could actually be preferred by some passengers. Airlines consider that claim agencies damage the relationship with their passengers, particularly when claim agencies portray that is difficult to claim from airlines. Whilst airlines do not like to be depicted as such, passenger representatives, NEBs and ECCs confirmed that claiming from some airlines in Europe still remains problematic for passengers.

6.66 As pointed out by claim agencies themselves, NEBs, ECCs and passenger representatives, claim agencies do fulfil an enforcement gap and act to ensure passengers' rights are fulfilled in situations where passengers might have encountered difficulties in doing so themselves (or are happy to pay someone else to do so for them) and although we cannot be certain about the level of satisfaction of passengers who use claim agencies, many of them are likely to be satisfied⁷⁸. Although in many cases claim agencies duplicate a service that NEBs and ECCs would offer for free, the information provided on claim agency websites and apps, along with the eligibility checks offered do contribute to passengers being better informed. In looking to uphold consumer rights and providing that all free, extra-judicial options failed, some ECCs welcomed that passengers might have the possibility to get some of the compensation they are entitled to if claim agencies are willing to pursue cases in court. ECCs and passenger representatives noted though that claim agencies in their experience only take cases to court if it is clear that they will win and that they avoid more complicated cases, to the disappointment of consumers.

⁷⁸ Trustpilot reviews of some of the biggest claim agencies tend to be positive, however this cannot be relied on a fully representative survey/sample.

Summary of findings

- 6.67 Air passenger rights protections are complementary to other, wider protections offered by the general consumer protection framework. Similarly, air passenger rights enforcement mechanisms can be complemented by wider public enforcement mechanisms established under the Consumer Protection Cooperation (CPC) Regulation. In parallel, passengers may seek individual redress by turning to private enforcement tools or claim agencies. The interaction between the complaint handling schemes (ECC, ADR, courts) and the system of redress dedicated to APR (airlines, NEBs) coupled with the involvement of claim agencies, creates a lot of complexity, has poor intelligibility and generates delay and cost as part of the process.
- 6.68 There are overlapping compensation entitlements for consumers under Regulation 261/2004 and, where the traveller bought the flight as part of a package, under the PTD, which creates some complexity for travel agents and tour operators. Travel agents and tour operators are the holders of the relationship with customers who booked a package and the natural point of contact for these travellers when they are subject to disruption. Better demarcation of responsibilities, transparency and information exchange would be required between stakeholders to ensure that liabilities for compensation rest with the correct party and to avoid that travellers who purposely seek to obtain multiple compensation actually receive it.
- 6.69 The fact the travel agents and tour operators are the natural point of contact for passengers who booked their flights through such intermediaries or as part of a package is also relevant to the airlines' obligation to provide passengers with information. Airlines often though do not have the contact details of their passengers and travel agents/tour operators view that such contact details are commercially sensitive, since these passengers form their customer base. Where customers' contact details are provided to an airline, travel agents and tour operators state that airlines should not be permitted to use customers' contact details for commercial purposes (e.g. marketing offers).
- 6.70 With the exception of no-show clauses used by airlines, other issues were not raised by stakeholders relating to general consumer protection legislation. A number of EU Member State courts, including in Germany, Spain and Austria, have ruled that the no-show clauses are unfair contract terms which breach national legislation based on EU Directives.
- 6.71 Hardly any NEBs use the CPC Network. The CPC Network concerns action in response to general practices (such as failure to have appropriate policies or procedures in place) which might involve multiple enforcement bodies in several Member States. As a result, the network is viewed by NEBs as being "of limited relevance to the enforcement of Regulation 261/2004", which predominantly involves the enforcement of individual incidents by a NEB in the same Member State as that within which the incident occurred. NEBs have also not used the functions offered by the CPC Network for providing a coordinated position, for example, with respect to the application of extraordinary circumstances in the case of mass flight disruptions – an approach that passenger representatives would welcome.
- 6.72 The ECC-Net is a valuable resource cross-border for passengers. It supports them in seeking redress by essentially providing a single contact point for them to address their complaint to, which is able to handle this complaint in their mother tongue. The network acts as a facilitator and has flexibility in the way in which it can follow up a passenger complaint. It can address the airline in the other country on behalf of the passenger and/or turn to the competent NEB. The ECC-Net then acts as a mechanism for reducing the fragmentation of the NEBs across

Europe and additionally can handle all complaints related to APR, covering Regulation 261/2004, Regulation 1107/2006 and the Montreal Convention. ECC-Net however does not have the powers to issue any (binding or non-binding) decisions in the cases it handles.

- 6.73 In general, ADRs are a comparatively efficient and effective way for handling disputed claims within the existing air passenger rights framework, especially as compared to the courts. However, the coverage of ADRs across the EU/EEA is fragmented and suffers shortcomings such as the participation of airlines only being voluntary; a lack of sector expertise at general consumer bodies; restricted legal scope and interpretation of the legislation (e.g. not including case law); and the non-binding nature of their decisions.
- 6.74 The emergence of claim agencies in recent years has been a particularly significant development in the area of air passenger rights. Most agencies advertise their service on a “no win no fee” basis, with any costs incurred by the agency being funded through a (substantial) proportion of the compensation being retained if the claim is successful. Claim agencies describe themselves as providers of justice as a service (JaaS) that work to close the “justice gap” in APR resulting from the difficulty that passengers encounter in enforcing their rights.
- 6.75 Claim agencies deal with claims enquiries, process eligible claims and monitor flight disruptions on very large scale with a high degree of automation that has shifted the balance in the air passenger rights system, generating a significant compensation, administrative and legal burden for airlines and a large number of cases in the courts. At the same time, passengers may have to pay up to 50% of their compensation to the claim agencies in some cases, depending on steps taken for the claim to be resolved (i.e. whether this is resolved between the claim agency and the airline or whether the case is taken to court by the claim agency). A number of the practices used by claim agencies have been highlighted as problematic by NEBs, ECCs, passenger representatives and airlines. A particular concern for airlines is the readiness with which claim agencies resort to the courts, as courts generate a lot of uncertainty, complexity and cost through their sometimes-inconsistent interpretation of the Regulation’s provisions at a local level.
- 6.76 However, as also pointed out by NEBs and passenger representatives, claim agencies have supported increased awareness of air passenger rights (since this drives their income), and do indeed fill an enforcement gap, acting to ensure passengers’ rights are fulfilled in situations where passengers might have encountered difficulties in doing so themselves.

7 Development of air passenger rights outside the EU

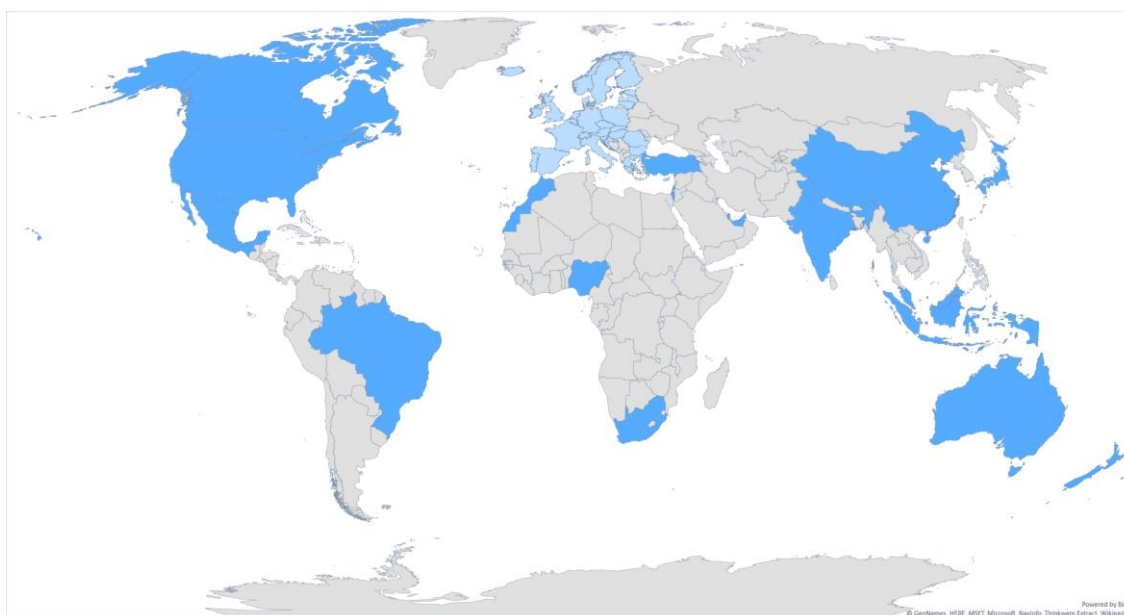
Introduction

- 7.1 This chapter focuses on the development of air passenger rights (APR) outside the EU. The analysis covers 19 non-EU countries as detailed in Table 7.1 and shown in Figure 7.1. Fiches for all of these countries are included in Appendix F.

Table 7.1: Non-EU countries covered by the analysis

Non-EU countries	
Australia	Mexico
Brazil	Morocco
Canada	New Zealand
China	Qatar
Ethiopia	Singapore
India	South Africa
Indonesia	Turkey
Israel	UAE
Japan	United States
Malaysia	

Figure 7.1: Map of non-EU countries covered by the analysis



Source: Steer

7.2 This chapter presents the results of a comparative analysis of air passenger rights approaches drawing on desktop research, inputs from the stakeholder consultation and the international workshop (Air Passenger Rights: International Lessons) held as part of this study on 14-15 May 2019. A copy of the discussion held at this workshop is available in Appendix B. The analysis covers two main elements:

- A comparison of the EU framework against the International Civil Aviation Organisation (ICAO) Core Principles on Consumer Protection; and
- A comparison of the EU framework against frameworks in non-EU countries.

7.3 We summarise the protection available to passengers in non-EU countries and identify any best practices and lessons learnt with respect to enforcement, which may be applicable in the EU context. We also summarise issues highlighted by airlines operating internationally and having to comply with different air passenger rights frameworks.

ICAO core principles on consumer protection

7.4 ICAO has developed a set of Core Principles on Consumer Protection⁷⁹, which are meant to serve as guidance for States and industry stakeholders in dealing with consumer protection matters. The principles were developed in 2013 and adopted by ICAO in 2015, in the context of a significant number of States (more than 60 in the past 15 years) having adopted regulatory measures concerning air passenger rights, for example on access to air travel for passengers with reduced mobility, price transparency and obligations of airlines toward passengers in cases of flight disruption (cancellation, delays or denied boarding due to overbooking).

7.5 At the industry level, many airlines have adopted voluntary commitments (i.e. non-legally binding self-regulation) to clarify or improve their policies or practices with regard to certain customer services (such as fare offers, ticket refunds, denied boarding, flight delays and cancellations, baggage handling, response to complaints, and special passenger needs), often in response to public pressure and to avoid regulatory measures being imposed.

7.6 The ICAO Core Principles on Consumer Protection state that *“Government authorities should have the flexibility to develop consumer protection regimes which strike an appropriate balance between protection of consumers and industry competitiveness and which take into account States’ different social, political, and economic characteristics, without prejudice to the safety and security of aviation”*. The ICAO guidance provides that consumer protection regimes should:

- Reflect the principle of proportionality;
- Allow for the consideration of the impact of massive disruption;
- Be consistent with the international treaty regimes on air carrier liability (Warsaw Convention 1929; Montreal Convention 1999).

The principles recommend that stakeholders make efforts to raise passengers’ awareness of their rights, so that they can make informed choices.

7.7 ICAO has structured the principles around three phases:

- Before travel;
- During travel; and

⁷⁹ <https://www.icao.int/sustainability/Documents/ConsumerProtection/CorePrinciples.pdf>

- After travel.

7.8 **Before travel**, the principles focus on clarity and transparency of information provided by airlines with respect to the air transport contract, including the total price, general conditions applying to the fare and the identity of the operating carrier. In the EU, these principles are covered by Regulation 1008/2008 and Regulation 2111/2005. The general conditions of carriage are often also discussed by passenger representatives and airlines in the context of air passenger rights with respect to the use of no-show clauses. Passenger representatives would like to see these banned, whereas airlines consider that they are a fundamental aspect of their pricing freedom (see Chapter 2). Transparency of the clauses, as part of the conditions of carriage, are covered by Regulation 1008/2008.

7.9 **During travel**, the ICAO Core Principles focus on:

- Keeping passengers informed about their journey, particularly in the event of service disruption. In cases of service disruption, the provision of due attention, including re-routing, refund, care and/or other compensation (where provided). In the EU, these principles are mainly covered by Regulation 261/2004.
- Accessibility of air transport to persons with disabilities and the availability of appropriate assistance. In the EU these principles are covered by Regulation 1107/2006.
- Contingency mechanisms planned in advance by all relevant stakeholders to ensure that adequate assistance is available to passengers in cases of massive disruptions⁸⁰. Corresponding EU legislation does not exist on this principle, however, guidance on developing contingency crisis management plans and reinforcing resilience procedures at airports is coordinated by ACI-Europe. A requirement for care and assistance to be provided to passengers in all circumstances, including massive disruptions, is defined in Regulation 261/2004.

7.10 **After travel**, the principles specify that efficient complaint handling procedures should be available to passengers and that they should be clearly informed about such procedures. In the EU this is mainly covered by Regulation 261/2004.

7.11 Table 7.2 below summarises how the EU framework corresponds to the ICAO Core Principles on Consumer Protection. Overall, most ICAO principles are covered by requirements specified in EU legislation, with the exception of the requirement for passengers to be kept informed throughout their journey and particularly in cases of disruption. A specific obligation for this requirement does not exist in EU legislation, despite it forming one of the ten EU core passenger rights that the European Commission has envisaged for passengers across all transport modes.

⁸⁰ Massive disruptions include situations resulting from circumstances outside the operator's control, of a magnitude such that they result in multiple cancellations and/or delays' and leading to a considerable number of passengers stranded at the airport.

Table 7.2: Comparison of ICAO Core Principles on Consumer Protection and EU framework

ICAO core principles on consumer protection		Principle in EU framework	Legislation
Before travel	Passengers should have access to clear and transparent information on the total price, including the applicable air fare, taxes, charges, surcharges and fees.	✓	Regulation 1008/2008
	Passengers should have access to clear and transparent information on the general conditions applying to the fare.	✓	Regulation 1008/2008
	Passengers should have access to clear and transparent information on the identity of the airline actually operating the flight and advice on any change occurring after the purchase as soon as possible.	✓	Regulation 2111/2005
During travel	Passengers should be kept regularly informed throughout their journey on any special circumstances affecting their flight, particularly in the event of service disruption.	✗	A specific obligation to keep passengers informed, particularly during disruption, does not exist
	Passengers should receive due attention in cases of service disruption including re-routing, refund, care and/or other compensation (where provided).	✓	Regulation 261/2004
	Persons with disabilities should, without derogating from aviation safety, have access to air transport in a non-discriminatory manner and to appropriate assistance.	✓	Regulation 1107/2006
	Mechanisms should be planned in advance by all concerned stakeholders to ensure that passengers receive adequate attention and assistance in cases of massive disruptions.	✓	Regulation 261/2004 provides for passengers receiving care and assistance in all circumstances. An obligation to put plans in place in advance in case of massive disruptions does not exist.
After travel	Efficient complaint handling procedures should be available.	✓	Regulation 261/2004
	Passengers should be clearly informed about such procedures.	✓	Regulation 261/2004

Source: ICAO Core Principles on Consumer Protection, Steer analysis

7.12 In response to an increasing number of countries adopting air passenger rights regulations, IATA also defined a set of IATA Core Principles on Consumer Protection in 2013, which are not mandatory in nature but voluntary commitments by IATA airlines. These principles include the airline industry's position on the role of States' passenger rights regulations and their territorial scope. As to their substance, the IATA Core Principles broadly correspond with the ICAO ones and, given the above, also correspond with the EU framework, with the exception of the following EU legal requirements:

- Provision of care and assistance to passengers in all cases of disruption, including those outside the control of the airlines;

- Provision of reimbursement or re-routing in the case of cancellations, including those outside the control of the airlines; and
- Provision of reimbursement in the case of very long delays of five hours or more, including those outside the control of the airlines.

7.13 Table 7.3 below summarises the ICAO Core Principles and the corresponding IATA Core Principles on Consumer Protection and indicates whether the IATA principles are, at a high level, compatible with the EU framework.

Table 7.3: Comparison of ICAO and IATA core principles on consumer protection and EU framework

ICAO core principles on consumer protection		Corresponding IATA core principle on consumer protection	IATA compatibility with EU framework	Legislation
Before travel	Passengers should have access to clear and transparent information on the total price, including the applicable air fare, taxes, charges, surcharges and fees.	Passengers should have clear, transparent access to fare information, including taxes and charges, prior to purchasing a ticket.	✓	Regulation 1008/2008
	Passengers should have access to clear and transparent information on the general conditions applying to the fare.	Passengers should have access to information on their legal and contractual rights.	✓	Regulation 1008/2008
	Passengers should have access to clear and transparent information on the identity of the airline actually operating the flight and advice on any change occurring after the purchase as soon as possible.	Passengers should have clear, transparent access to information about the airline actually operating the flight in case of a codeshare service.	✓	Regulation 2111/2005
During travel	Passengers should be kept regularly informed throughout their journey on any special circumstances affecting their flight, particularly in the event of service disruption.	Airlines should employ their best efforts to keep passengers regularly informed in the event of a service disruption.	–	A specific obligation to keep passengers informed, particularly during disruption, does not exist
	Passengers should receive due attention in cases of service disruption including re-routing, refund, care and/or other compensation (where provided).	The industry recognizes the right to re-routing, refunds or compensation in cases of denied boarding and cancellations, where circumstances are within the carrier's control. The industry recognizes the right to re-routing, refunds or care and assistance to passengers affected by delays where circumstances are within the carrier's control.	✓ ✓	Regulation 261/2004

ICAO core principles on consumer protection		Corresponding IATA core principle on consumer protection	IATA compatibility with EU framework	Legislation
		In cases where delays or disruptions are outside an airline's control, governments should allow market forces to determine the care and assistance available to passengers.	✗	
	Persons with disabilities should, without derogating from aviation safety, have access to air transport in a non-discriminatory manner and to appropriate assistance.	Airlines should assist passengers with reduced mobility in a manner compatible with the relevant safety regulations and operational considerations.	✓	Regulation 1107/2006
	Mechanisms should be planned in advance by all concerned stakeholders to ensure that passengers receive adequate attention and assistance in cases of massive disruptions.	Not applicable	–	–
After travel	Efficient complaint handling procedures should be available.	Airlines will establish and maintain efficient complaint handling procedures that are clearly communicated to passengers.	✓	Regulation 261/2004
	Passengers should be clearly informed about such procedures.			

Source: ICAO, IATA, Steer analysis

- 7.14 Although the IATA principles may be compatible with the EU framework at a high level, there may still be differences in the detailed implementation, for example the approach to re-routing and whether this is offered at the “earliest opportunity”, including on competing carriers. With respect to extraordinary circumstances and their impact, these are highlighted by the ICAO principles, the IATA principles and the EU framework, albeit to a different extent. The ICAO principles acknowledge the impact of extraordinary circumstances in the case of massive disruptions, whereas both the IATA principles and the EU framework consider the application of extraordinary circumstances on an individual flight basis. However, as indicated above and discussed in Chapter 4, the airlines’ position and the EU framework do not agree on the obligations of carriers in such circumstances, while they are also not aligned on the definition of such circumstances.
- 7.15 As shown in Table 7.2 and Table 7.3 above, there exists a gap in the EU framework with respect to the provision of information to passengers throughout their journey and particularly during disruptions. If airlines are following the IATA principles, then this gap is voluntarily closed by good industry practice on customer service, however, this point is also addressed by the EC’s 2013 proposal for the revision of Regulation 261/2004, which defines an obligation for airlines to keep passengers informed about the situation, as well as their rights. Note that the enforceability of such an obligation could be a challenge as it can be a qualitative and subjective issue, where passenger expectations of the level of information to

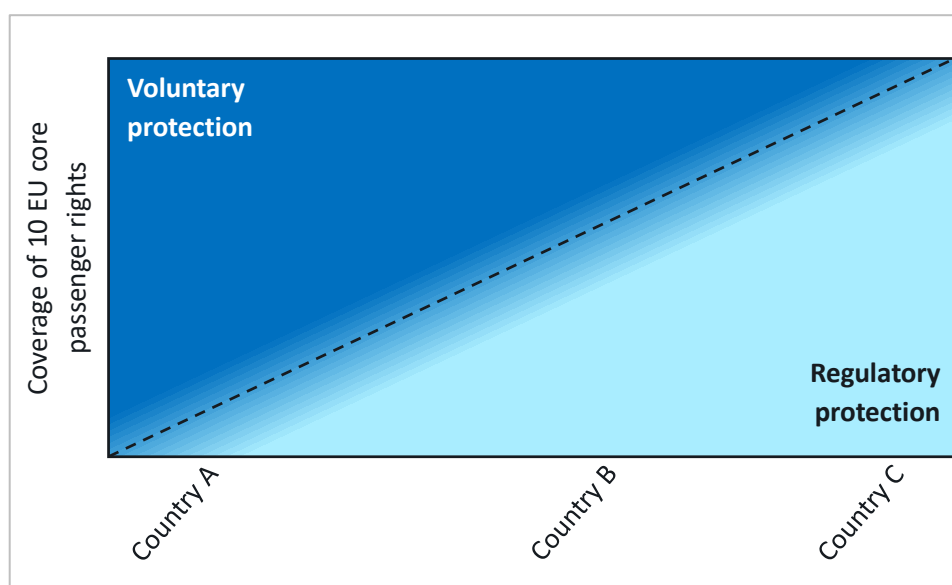
be received and the level of information actually available to operational stakeholders are not necessarily matched (also discussed in Chapter 2).

- 7.16 As also shown above, the EU framework does not consider the impact of massive disruptions separately from the impact of extraordinary circumstances on an individual flight basis. Regulation 261/2004 defines an obligation for airlines to provide care and assistance to passengers in all cases and does not allow for different approaches in the case of massive disruptions. This was challenged by some airlines in the aftermath of the volcanic ash cloud which forced the closure of large parts of European airspace in 2010 and resulted in significant care and assistance liabilities being generated for carriers. The EC's 2013 proposal for the revision of Regulation 261/2004 addressed this issue by proposing an assistance limit of three nights in the case of such extraordinary events (the limit would not apply to PRMs and some other passengers with specific needs) and an obligation for airports, air carriers and other airport users to prepare contingency plans to care for passengers stranded in mass disruptions.

Air passenger rights in non-EU countries

- 7.17 The ICAO Core Principles on Consumer Protection provide some high-level guidance on the scope of air passenger rights, however the specification of such rights is not universal. The EU core rights may not necessarily be recognised by all industry stakeholders or other countries, however, they provide a useful framework within which different approaches to air passenger rights that have been adopted across the world may be compared. The approach to defining and protecting air passenger rights may be top-down (i.e. regulatory) or bottom-up (i.e. voluntary or market-based). For a given set of rights (in this case the 10 EU core passenger rights), in some countries these may be protected by regulations, in others they may only be protected (if at all) by voluntary industry commitments, or it may be a mix of the two approaches where some rights are protected in law and others are protected voluntarily. Figure 7.2 provides an illustration of the spectrum of approaches to protecting (a given set of) passenger rights.

Figure 7.2: Illustration of spectrum of approaches to protecting passenger rights



Source: Steer

- 7.18 In Country A in the figure above, air passenger rights are mainly protected voluntarily by airline commitments with only basic protections provided in law. In country C, on the other hand, air passenger rights are mainly protected by obligations for air carriers that are defined in law. In Country B, the protections emerge from a mix of regulatory obligations and voluntarily, market-based commitments. The scope of the protections may also vary between countries. For example, legal protections may be well defined in a given country, but may only apply to domestic flights.
- 7.19 Appendix F includes fiches for 19 non-EU countries in which the protections available to air passengers have been summarised and mapped to the EU core rights⁸¹. Below we summarise relevant aspects of the different approaches and highlight similarities and differences with the EU framework, as well as any good practices identified.
- 7.20 Recognising that air passenger rights protection frameworks may contain both regulatory and voluntary elements and that their scope may vary, Table 7.4 below presents whether the approach taken in the 19 countries considered in this study is predominantly regulatory or voluntary.

Table 7.4: Regulatory, voluntary and mixed air passenger rights regimes

Country	Predominantly regulatory	Predominantly voluntary
Australia	-	✓
Brazil	✓	-
Canada	✓	-
China	✓	-
India	✓	-
Indonesia	✓	-
Israel	✓	-
Japan	-	✓
Malaysia	✓	-
Mexico	✓	-
Morocco	✓	-
New Zealand	✓	-
Nigeria	✓	-
Qatar	-	✓
Singapore	-	✓
South Africa	-	✓
Turkey	✓	-
United Arab Emirates	-	✓
United States	✓	-

⁸¹ The analysis maps the protections available to nine core rights (rights 2 to 10). The right to non-discrimination to access to transport relates to ticketing transparency (access to fares shall be granted without discrimination based on the nationality or the place of residence of the customer or the travel agent) and has not been assessed for non-EU countries. The right to non-discrimination to access to transport based on denied boarding and based on disability and/or reduced mobility has been covered under other rights.

Country	Predominantly regulatory	Predominantly voluntary
Total	13	6

Source: Steer analysis

- 7.21 All of the countries featured deemed to be predominantly regulatory have a regime in which air passenger rights protections are specifically defined with obligations for airlines. The protections available may not be as extensive as those in the EU (e.g. no compensation), but they are defined specifically for airlines. The remaining 6 have no specific legislation on (air) passenger rights, with any air passenger rights rules then emerging from voluntary commitments made by airlines in their conditions of carriage – general consumer protections may nonetheless apply in these countries, such as Australia. For illustration, unfair contract term protections are a general feature of the Australian consumer law, but there is nothing specified in law about providing care and assistance to air passengers in the event of disruptions – this is only specified by airlines voluntarily in their terms and conditions.
- 7.22 Canada has recently adopted a regulatory framework for air passenger rights. The relevant regulations were developed, subject to consultation, during 2018 and will be phased in during 2019. Rules on denied boarding came into effect in July 2019, while rules on delays and cancellations are expected to come into force in December 2019. In this analysis Canada is considered on the basis of the incoming regulatory framework.
- 7.23 Table 7.5 below shows the scope for each of the regulatory frameworks.
- The most limited scope is that of frameworks that apply to domestic flights only (Indonesia, Mexico⁸² and New Zealand);
 - The widest scope applies in Canada, India, Israel, Malaysia and the United States where the passenger rights frameworks apply to all arriving and departing flights, both domestic and international;
 - The frameworks in Brazil and China apply to all departing flights; while
 - The scope of frameworks in Morocco, Nigeria and Turkey is the same as that for Regulation 261/2004 in the EU, covering all departing flights plus all flights on carriers registered in the country/region.
- 7.24 Where voluntary commitments are provided in airlines' conditions of carriage, these apply to all of their flights domestically and internationally, unless international flights are to/from a country where a regulatory framework is in place, in which case the relevant legal requirements will apply. For example, passengers' rights on a domestic flight in Australia will be as specified in the conditions of carriage of their chosen airline, but passengers on the same airline flying from Malaysia to Australia will also be afforded the protections specified in the Malaysian air passenger rights framework.

⁸² The Mexican air passenger rights framework does not explicitly specify a scope, but is understood to apply domestically only.

Table 7.5: The scope of air passenger rights legislation in EU vs non-EU

Country/Region	Air passenger rights framework applies to:			
	Domestic flights	International departing flights	International arriving flights	
			Foreign airline	Local airline
EU+3	✓	✓	✗	✓
Australia	Voluntary framework			
Brazil	✓	✓	✗	
Canada	✓	✓	✓	✓
China	✓	✓	✗	
India	✓	✓	✓	✓
Indonesia	✓	-	-	-
Israel	✓	✓	✓	✓
Japan	Voluntary framework			
Malaysia	✓	✓	✓	✓
Mexico	✓	-	-	-
Morocco	✓	✓	✗	✓
New Zealand	✓	-	-	-
Nigeria	✓	✓	✗	✓
Qatar	Voluntary framework			
Singapore	Voluntary framework			
South Africa	Voluntary framework			
Turkey	✓	✓	✗	✓
United Arab Emirates	Voluntary framework			
United States	✓	✓	✓	✓
Total (excluding EU)	13	10	5	8

Source: Steer analysis

7.25 The observations above indicate potential legislative gaps and overlaps which can potentially generate confusion for both passengers and airlines. For example:

- Passengers travelling on a flight from Indonesia to the EU on an Indonesian carrier will not be eligible for any assistance in case of disruption under any passenger rights framework legislation, given that Indonesian rules cover only domestic flights, and EU legislation only covers arriving flights if operated by an EU carrier. The degree of assistance offered will rely only on the Indonesian carrier's policy. This will be the case for EU(-resident) passengers also, who would have been protected by Regulation 261/2004 on their outbound flights from Europe.
- Passengers subjected to a long delay on a disrupted flight from Canada⁸³ to the EU, operated by an EU carrier will be eligible to receive care and compensation specified under both the Canadian and EU frameworks:

⁸³ <https://laws.justice.gc.ca/eng/regulations/SOR-2019-150/index.html>

- The expected level of care specified in the two frameworks is similar, however the time thresholds for its provision differs between the regimes. Under the Canadian rules, care should be offered after 2 hours, whereas under Regulation 261/2004 care should be offered after 4 hours for a flight that is longer than 3,500 km. The introduction of the Canadian framework creates an incremental obligation for EU carriers above what is already specified under EU rules. In principle however, the frameworks are coherent in that care has to be provided to passengers affected by disruption, and, indeed, the EC's proposal for the revision of Regulation 261/2004 puts forward that care should be provided to all passengers after 2 hours, irrespective of the length of their flight.
- Unlike the approach to care, the approach to compensation specified under the two frameworks differs. Under the Canadian regime, the level of compensation varies according the length of the delay, whereas under the EU framework the compensation is fixed according to the length of the flight. For a flight between Toronto and Frankfurt that has been delayed by 4.5 hours, passengers would be entitled to C\$400 (about €270) under the Canadian regime, whereas they would be entitled to €600 under EU rules. The EU carrier will be liable for compensation in both jurisdictions. It is the carrier's responsibility to manage the risk of double compensation (under both regimes) for individual passengers through maintaining accurate records. Both passenger rights frameworks allow for compensation granted under other regimes to be deducted from the total compensation paid to passengers (so that the total is no more than the greater of the two entitlements). However, particular complexity arises from the potential exemptions to the payment of compensation. Both regimes recognise the application of extraordinary circumstances, however the interpretation of these is not necessarily coherent between the two regimes. Under Canadian rules, carriers are exempt from paying compensation in cases where the delay is within the airline's control but required for safety purposes, whereas under EU rules the same situation would not constitute an extraordinary circumstance⁸⁴.

Principles

- 7.26 As introduced in Chapter 2, the consumer organisations which represent air passengers and industry stakeholders generally agree on the following priorities for passengers affected by disruption:
- Care and assistance to be provided in the event of travel disruption;
 - Re-routing to be offered so that passengers may arrive at their destination as soon as possible; and
 - Reimbursement and/or compensation to be paid where relevant.
- 7.27 Given these principles, Table 7.6 below summarises in which non-EU countries with a regulatory framework on air passenger rights these principles are covered as part of consumer protection legislation.

⁸⁴ Based on the CJEU Case C-549/07 Wallentin-Hermann and Case C-257/14 van der Lans rulings

Table 7.6: EU vs non-EU air passenger rights legislation (regulatory) - general features

Country (Regulatory frameworks)	Recognition of extraordinary circumstances	Care obligation	Reimbursement or re-routing obligation	Compensation obligation
European Union	✓	✓	✓	✓
Brazil	✗	✓	✓	✗
Canada	✓	✓	✓	✓
China	✓	✓	✓	✗
India	✓	✓	✓	✓
Indonesia	✓	✓	✓	✗
Israel	✓	✓	✓	✓
Malaysia	✗	✓	✓	✗
Mexico	✓	✓	✓	✓
Morocco	✓	✓	✓	✓
New Zealand	✓	✗	✓	✓
Nigeria	✓	✓	✓	✓
Turkey	✓	✓	✓	✓
United States	n/a	Tarmac delays only	Denied boarding only	Denied boarding only
Total (excluding EU)	10	12	13	9

Source: Steer analysis

- 7.28 Extraordinary circumstances are recognized in ten of the non-EU countries included within the study. Both Brazil and Malaysia do not recognise extraordinary circumstances and as a result will provide care and reimbursement or re-routing for passengers in all cases, irrespective whether a long delay or cancellation is due to the airline or not. As a result, the obligation to compensate passengers also does not exist in both countries.
- 7.29 In the United States, the notion of extraordinary circumstances does not apply. Care is provided for passengers during tarmac delays, which fall outside of the airlines' responsibility. Denied boarding is a commercial decision that airlines make and as a result will provide passengers with reimbursement or re-routing options. The obligation to compensate also applies in the case of denied boarding only.
- 7.30 In New Zealand, the existing legislation introduces delay as a general concept for which damages can be claimed. As such, the national legislation has effectively transposed the scope of the Montreal Convention into domestic transport, thus not including any obligation for care.
- 7.31 Indonesia and China both recognise extraordinary circumstances, as well as specify obligations for care, and reimbursement or re-routing if the disruption is due to the airline operations. However, in China airlines are only required to provide care if the disruption is not due to an extraordinary circumstance, whereas the European framework specifies the obligation for care even if a delay is caused by weather. In the respective Indonesian and Chinese regulatory frameworks the obligation to compensate passengers does not exist.

- 7.32 The application of the air passenger rights principles in non-EU countries with a voluntary framework only is summarised in Table 7.7 below.

Table 7.7: EU vs non-EU air passenger rights legislation (voluntary) - general features

Country (Voluntary frameworks)	Recognition of extraordinary circumstances	Care obligation	Reimbursement or re-routing obligation	Compensation obligation
Australia	✓	✓	✓	✗
Japan	✓	✗	✓	✗
Qatar	✓	✗	✓	✗
Singapore	✓	✗	✓	✗
South Africa	✓	✗	✓	✗
United Arab Emirates	✓	✗	✓	✗
Total	6	1	6	0

Source: Steer analysis

- 7.33 Extraordinary circumstances are recognised by all six countries, as is the obligation for reimbursement or re-routing. In contrast to the countries with regulatory air passenger rights frameworks where the majority recognised the obligation for compensation, this is up to the airline's discretion and as such not recognised by any of the countries with a voluntary framework only. Unlike carriers in other countries, Australian carriers have specified in their conditions of carriage what care obligations they have in place in case of disruptions not caused by extraordinary circumstances.
- 7.34 The compensation structure across the different jurisdictions varies, as shown in Table 7.8.

Table 7.8: EU vs non-EU compensation amounts

Country/Region	Criteria	Compensation
European Union	< 1500 km flight	Base compensation rate
		€ 250
	Intra-EU > 1,500 km or 1,500-3,500 km flight	Re-route arrival within 2 hours of initially scheduled time
		€ 125
Morocco	> 3500 km flight	Base compensation rate
		€ 400
	> 3500 km flight	Re-route arrival within 3 hours of initially scheduled time
		€ 200
Turkey	> 3500 km flight	Base compensation rate
		€ 600
	> 3500 km flight	Re-route arrival within 4 hours of initially scheduled time
		€ 300
Canada	Delays and cancellations	3-6 hours waiting time
		€ 265
		6-9 hours waiting time
		€ 465
		> 9 hours waiting time
		€ 665
India	Denied boarding	0-6 hours waiting time
		€ 600
		6-9 hours waiting time
India	Cancellation	€ 1,200
		> 9 hours waiting time
		€ 1,600
India	Cancellation	< 1-hour flight
		€ 65
India	Cancellation	1-2-hour flight
		€ 100

	Denied boarding	> 2-hour flight	€ 130
		Re-route departure time 1-24 hours after original departure	200% of ticket, capped at € 130
		Re-route departure time >24 hours after original departure	400% of ticket, capped at € 255
Israel	< 2000 km flight	Base compensation rate	€ 300
		Re-route arrival within 2 hours of initially scheduled time	€ 150
	2000-4500 km flight	Base compensation rate	€ 500
		Re-route arrival within 3 hours of initially scheduled time	€ 250
	> 4500 km flight	Base compensation rate	€ 750
		Re-route arrival within 4 hours of initially scheduled time	€ 375
Mexico	Base cancellation compensation rate		25% of ticket price
	2-4 hours delay compensation rate		7.5% of ticket price
Nigeria	International flights	Base cancellation compensation rate	30% of ticket price
		Re-route arrival within 3 hours of initially scheduled time	15% of ticket price
	Domestic flights	3 -4 hours delay	30% of ticket price
		Base cancellation compensation rate	25% of ticket price
		Re-route arrival within 1 hour of initially scheduled time	12.5% of ticket price
New Zealand	Domestic flights	Damages resulting from the delay	Capped at 10 times the ticket price
United States	Denied boarding due to overbooking – Base compensation rate		400% of passenger's fare capped at USD 1,350 (€ 1,200)
	Denied boarding due to overbooking – Re-route arrival within 4 hours (international flights), and 2 hours (domestic flights)		200% of passenger's fare capped at USD 675 (€ 610)

Source: Steer analysis

- 7.35 In Canada, the United States, Nigeria, and Mexico compensation increases the longer the wait time is. Contrastingly, in India, Morocco, and Turkey compensation increases the longer the disrupted flight is. In Israel compensation increases the longer the wait time and the disrupted flight is.

- 7.36 In some jurisdictions, including the United States, Nigeria, Mexico, and India, compensation is proportional to the ticket price whereas for others a fixed compensation limit is defined. The issue of proportional compensation in regard to the ticket price is something that LCCs in Europe feel strongly about (as discussed in Chapter 4).

Good practices

- 7.37 Several good practices which are applied in air passenger regimes outside of the EU on reporting obligations and on complaint handling process have been identified.

Reporting

- 7.38 Airlines in the United States are required to report their statistics to the Department of Transportation (DoT) who collects and processes the information. In addition to internal monitoring, performance information is also published as part of Air Travel Consumer reports which are published monthly on the Air Consumer website. The reports are aimed to provide consumers with information on airline service quality and includes statistics such as on-time flight performance/delays, mishandled baggage, overbooking, consumer complaints, and the airline's reports of loss, injury or death of animals during air transport.
- 7.39 Reporting requirements also exist under the Malaysian air passenger rights framework. The Consumer Protection Code of Flight from 2016 (MACPC) specifies the obligation for airlines and airports to submit a report to the Aviation Commission (MAVCOM) which contains statistics about (repeated) complaints against airlines and violations and breaches of the code, including also measures taken, and measures on the development of internal compliance systems. MAVCOM publishes a bi-annual consumer report which is publicly available.

Information provision during the journey (including the causes of disruption)

- 7.40 In line with ICAO principles for information provision during travel, a number of regulatory air passenger rights regimes (e.g. Canada, China, Malaysia) specify that passengers ought to be kept informed about their journey, any disruption and the reasons for this. Time thresholds for providing this information (e.g. within 30 minutes of the airline becoming aware of a potential delay, passengers should be updated about this disruption). The provision of information during the journey is not a requirement that exists under Regulation 261/2004, however this is addressed by the Commission's 2013 proposal for the revision of the Regulation.

Quick and accessible system of complaint handling

- 7.41 The regulatory regime in China specifies that three aspects that support quick and accessible complaint handling for passengers, which do not exist in the EU approach:
- airlines should proactively provide passengers with contact details (e.g. email address) that passengers can use to register a complaint;
 - foreign airlines should be able to handle complaints in mandarin (essentially setting a language requirements that corresponds to the market served); and
 - deadlines are set by which airlines must provide update to passengers on the status of their complaint (e.g. 10 days).

Complaint monitoring and handling with the use of technology

- 7.42 The Malaysian Aviation Commission (MAVCOM) which was established in 2016 to regulate economic and commercial matters related to civil aviation in Malaysia provides a good

example of how technology can be integrated into the complaint handling process to facilitate awareness and monitoring.

- 7.43 MAVCOM has developed a consumer awareness platform called FlySmart, which has been set up as a consumer-centric initiative to improve passenger's awareness of their rights. The platform, which can be downloaded in the form of a mobile application, provides passengers with travel alerts, articles and tips, as well as their travel rights.
- 7.44 Furthermore, technology is an integral part of the complaints management system set up by MAVCOM. The system is fully integrated, thereby allowing MAVCOM to review a complaint received from a passenger within a short time period before sending it through to the relevant airline or airport. The airline or airport is then able to provide a full resolution directly to the passenger, a copy of which is provided to MAVCOM too. As the regulator, MAVCOM furthermore has overview over all complaints, their status and resolution which makes it possible to address delays or unsatisfactory resolutions more quickly.
- 7.45 In Brazil, the ODR body Consumidor was introduced in 2018, following strong growth in the air transport sector after deregulation of the market. Data from the ODR on the level of complaints is used by the Brazilian air traffic regulator ANAC to undertake enforcement at a system level. Consumidor also produces an airline ranking, based on a resolution index which is determined by passenger ratings. This has been found to act as an incentive for airlines.

Impact on interlining and extra-territorial issues

- 7.46 Airlines have highlighted issues around interlining and extra-territorialism that result from inconsistencies due to overlaps of different regimes. There are also many extraterritorial aspects which airlines argue can have a negative impact on the competitive position of some carriers.
- 7.47 In the EU, Regulation 261/2004 can affect the competitive position of EU carriers who have to comply with it on routes to and from the EU when no equivalent passenger protection regime is in place in the third country where they operate from. EU and non-EU airlines stated that the application of the Regulation should be limited to a flight basis instead of a journey basis⁸⁵ to ensure fair competition and not to put an unfair economic burden on them.
- 7.48 A medium-sized network carrier stated that other costs associated with non-EU air passenger rules are averaging around €1.8 million per year and have remained quite stable from year to year.

⁸⁵ Regulation 261/2004, as clarified in Case C-11/11 Folkerts, applies on a journey basis (including connecting points) rather than on an individual flight basis: "The compensation for long delays is also due to passengers of directly connecting flights reaching their final destination with a delay of at least three hours. The delay to be taken into account is the delay at arrival, including in case of flight connections. It does not matter whether the delay occurred at the departure airport, at the connecting airport(s) or at any stage of the journey, only the delay at the final destination of the journey is relevant for the right to compensation."

Summary of findings

- 7.49 ICAO has established a set of Core Principles on Consumer protection for before, during and after travel. The EU legislative framework is generally consistent with these Core Principles through a combination of requirements specified in Regulation 1008/2008, Regulation 2111/2005 and Regulation 261/2004. The gaps between the ICAO Core Principles and the EU framework (e.g. on keeping passengers informed throughout their journey) are addressed by the 2013 Proposal for the revision of Regulation 261/2004.
- 7.50 In response to an increasing number of countries adopting air passenger rights regulations, IATA also defined a set of IATA Core Principles on Consumer Protection in 2013, which are not mandatory in nature but voluntary commitments by IATA airlines. The IATA Core Principles broadly correspond with the ICAO ones and also correspond with the EU framework, with the exception of the following EU legal requirements:
- Provision of care and assistance to passengers in all cases of disruption, including those outside the control of the airlines;
 - Provision of reimbursement or re-routing in the case of cancellations, including those outside the control of the airlines; and
 - Provision of reimbursement in the case of very long delays of five hours or more, including those outside the control of the airlines.
- 7.51 In non-EU countries, the approach to protections available to air passengers ranges from regulatory regimes (as in the EU and Malaysia) to voluntary ones (as in Australia and the UAE). Typically, regulatory and voluntary regimes both recognise an obligation for re-routing/reimbursement, but none of the voluntary regimes reviewed offer compensation to passengers affected by disruption. Further, regulatory regimes in Brazil, China, Indonesia and Malaysia do not offer compensation in addition to reimbursement. The approach towards provision of care under extraordinary circumstances is also weaker under voluntary regimes than under regulatory ones.
- 7.52 A number of good practices were identified through the review of air passenger rights outside the EU, including the following:
- Monitoring of compliance, including formal reporting requirements for airlines to provide authorities with information on operational performance and claim handling performance;
 - The requirement for airlines to provide information to passengers about their journey during the journey (including the causes of disruption);
 - The requirement for airlines to provide contact details to passengers, handle local languages and adhere to deadlines for keeping passengers up to date on the status of their complaints; and
 - Transparent claim handling processes and platforms between airlines and authorities, leveraging suitable technologies.

8 Impact of airline insolvencies

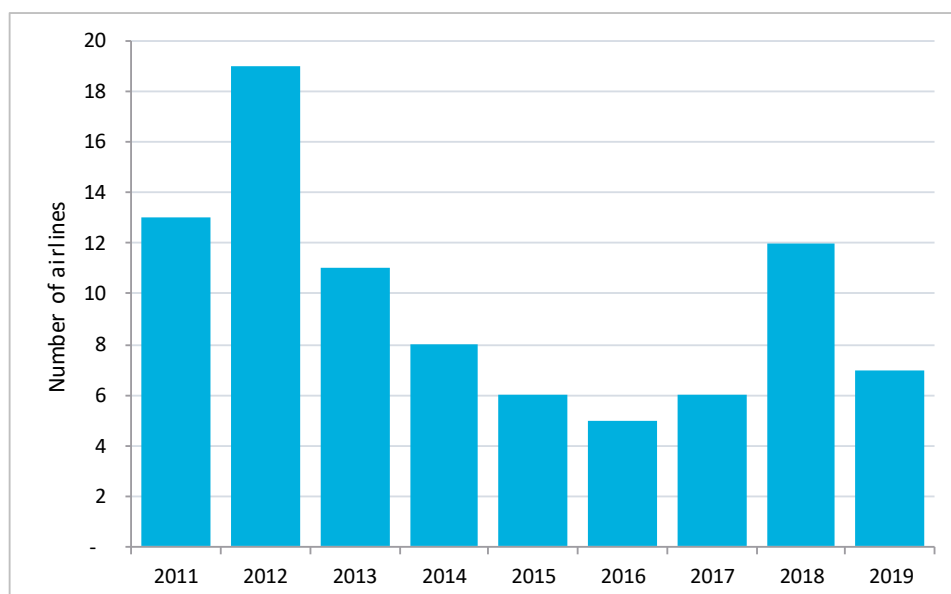
Introduction

- 8.1 This chapter presents the analysis of recent insolvencies and the number of passengers affected by these. It presents an estimate of the costs incurred by passengers as a result of the insolvencies and provides a review of the possible protection mechanisms, including rescue fares, available to passengers. The analysis is supported by four case studies on airline insolvencies: Cyprus Airways, Monarch Primera Air and Air Berlin (see Appendix G).
- 8.2 Please note that the entire analysis displayed in this chapter had been completed by the end of June 2019. After the bankruptcies of Adria, Thomas Cook UK, Aigle Azur and XL Airways France in the third quarter of 2019, we updated the analysis to reflect the number of airlines, and passengers affected. However, it was not possible to also update the cost analysis, so its results cover the insolvencies until the end of June 2019. This is clearly specified in each section, table and figure shown.

Airline insolvencies

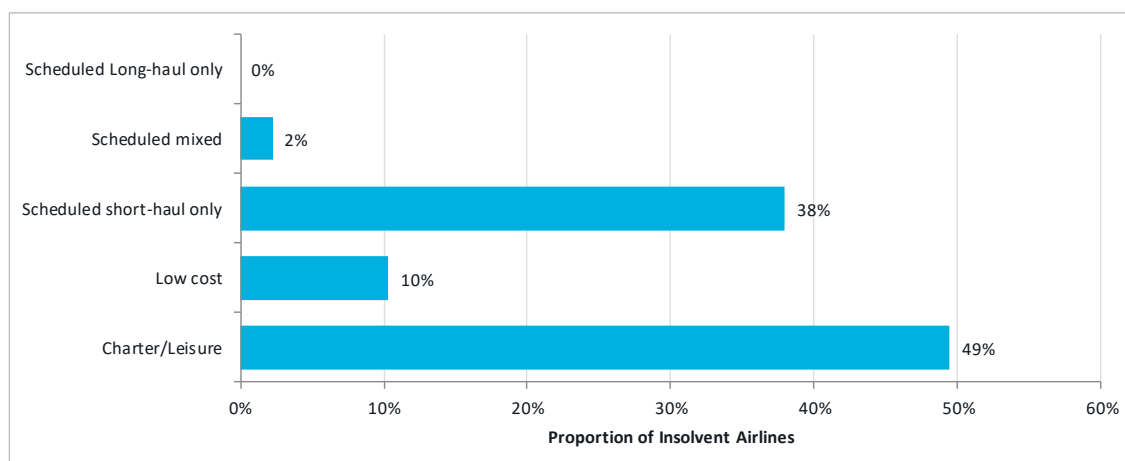
Number of airlines insolvencies

- 8.3 We identified airlines which had ceased operations between January 2011 and October 2019 in a manner which would have caused disruption to passengers, which were registered in the EU and provided at least some scheduled seats. As there is no comprehensive source for such insolvencies, this list displayed below has been built based on a number of sources including primarily data from the Official Airline Guide (OAG) combined with additional verification from stakeholders. This list was added to the insolvencies identified by previous reports, to create a complete list of insolvencies in the EU. It is displayed in Appendix H. It lists the 87 insolvencies of airlines who offered scheduled seats that ceased operations between 1 January 2011 and 1 October 2019.
- 8.4 Figure 8.1 shows that the frequency of airlines ceasing operations has fluctuated considerably since 2011: a peak of 19 insolvencies were observed in 2012, while in 2016 only 5 were identified. Over the period defined for this study, the average number of insolvencies per year was 9.7.

Figure 8.1: EU airlines ceasing operations 2011-October 2019

Source: Steer analysis. Note: 2019 includes insolvencies up to October only.

8.5 Figure 8.2 shows that charter/leisure airlines (including Thomas Cook and Monarch) made up just under half of airline insolvencies (49%) between 2011 to 2019, whilst scheduled short-haul airlines (such as Adria) made up a further 38%. Low-cost airlines were responsible for 10% of insolvent airlines, whilst scheduled mixed carriers made up just 2%. Note that this does not necessarily mean that the largest number of passengers nor the greatest impacts were the result of charter and scheduled short-haul airlines, as capacity offered by the different carriers varies.

Figure 8.2: Proportion of insolvent airlines by airline service type between 2011-October 2019

Source: Steer analysis.

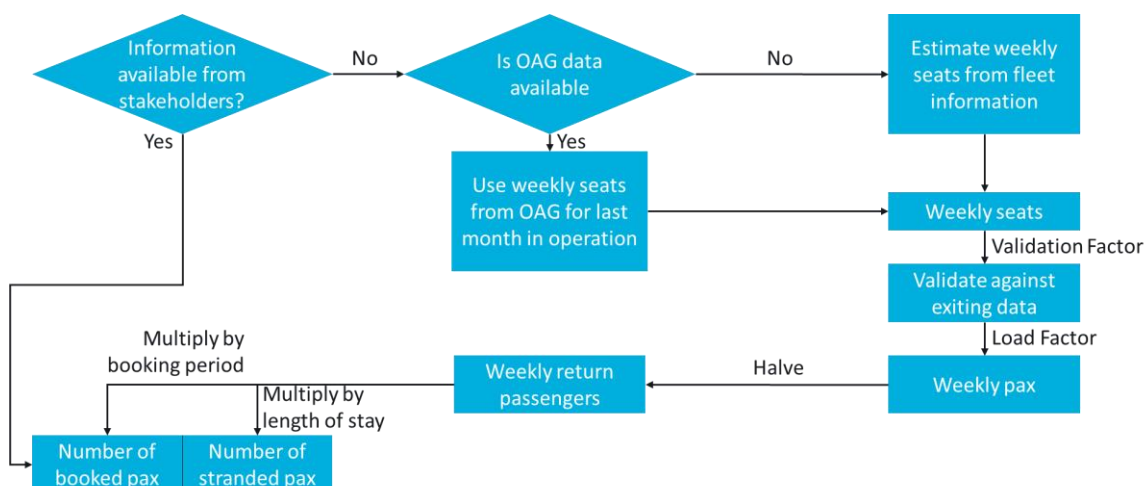
Passengers affected and stranded

8.6 When an airline becomes insolvent the number of passengers it affects will vary depending on the nature of the services the airline had provided, the timing of the insolvency and the process by which the airline became insolvent. Several possible scenarios for insolvency are set out below:

- If an airline becomes insolvent, but its operations do not stop and are taken over by another operator, then passengers will not experience any impact from the insolvency. These cases are excluded from the analysis.
- If an airline ceases operation due to insolvency, but its operations are later taken over by another airline, there will be a gap in services which may cause some passengers to be stranded or to lose previously booked tickets. If the new airline purchases only some of the assets of the defunct airline, rather than its entire operations, then the affected passengers may have no claim against it. The new carrier might nonetheless agree to transport some or all of the passengers.
- The time that the carrier ceases operations may impact the number of passengers: if it takes place in a low season this will minimise the effect on passengers. This timing may occur by chance or because the airlines' income is lower during the off-peak season, but in some cases has resulted from a deliberate decision by the licensing authority⁸⁶ to withdraw the license at a time when impacts would be minimised (a prerequisite of this is active monitoring by the licensing authority).
- If an airline ceases operations during high season or when, immediately before ceasing operations, it has been selling as many tickets as possible to remain solvent, this will have the greatest impact on passengers.

- 8.7 The impact of an insolvency on passengers is therefore affected by when and how the insolvency occurs. This is driven to an extent by bankruptcy laws in each Member State. Other characteristics of the airline will also change its impact on passengers, such as its network of operations and load factor (which impact the number of passengers affected) and whether it is a long- or short-haul carrier (which impact the magnitude of costs incurred by passengers affected).
- 8.8 Where available, we used information collected from stakeholders or reported in the press at the time that the airline ceased operations, for the number of passengers stranded, or booked to travel, and therefore impacted by the insolvency of a carrier.
- 8.9 Where this information was not available, estimates of the number of passengers impacted were derived from data on the capacity that the airline provided. This was based on the number of seats provided (based on OAG data, or size and composition of fleet where this was not available) combined with a load factor to estimate weekly passengers transported. We then used typical passenger stay lengths to estimate the number of passengers that would have been stranded, and advance booking periods to estimate the number passengers who would have been booked to travel but unable to do so.
- 8.10 These figures were then adjusted to take account for validation of our estimates against airlines for which we had data from stakeholders or other sources.
- 8.11 The approach to estimating passenger impacts is set out in the figure below, and each individual element of the process is described in detail in the following text.

⁸⁶ As per Regulation 1008/2008. Note that this Regulation is under possible revision

Figure 8.3: Estimation of number of passengers affected

Source: Steer

- 8.12 Where we were not able to obtain information from stakeholders or from press reports, we estimated the number of passengers impacted on the basis of the capacity that the airline provided. To do this, we first estimated the number of passengers the airlines carried, based on the following calculation:

Number of passengers carried per week	=	Seats transported by airline per week * Load factor

- 8.13 The number of seats transported by the airline based on the reports in OAG in the month before it became insolvent (as afterwards the data is no longer available). In some cases, OAG did not include information on the number of seats provided. In these cases, we had to estimate the number of seats offered weekly from the airlines' fleet, taking into account the nature of its operations (for example that a short haul aircraft will typically operate five or six flights per day whereas a long-haul aircraft will typically operate one or two).

- 8.14 Table 8.1 shows the load factors used in the analyses and how they have been derived.

Table 8.1: Assumed load factors by airline classification (2018)

Airline classification	Load factor	Sample
Charter/leisure	92%	Average of Thomas Cook and TUI
Low-cost	94%	Average of Ryanair and easyJet
Scheduled short-haul only	82%	Average of IAG and Air France-KLM short-haul
Scheduled mixed short and long	83%	Average of scheduled short-haul and long-haul
Long-haul	85%	Average of IAG and Air France-KLM long-haul

Source: Steer analysis of airline annual reports and industry press

- 8.15 For passengers to be stranded by an airline ceasing operations, the airline must cease operations in the period between when they departed and when they returned, i.e. during the period of their stay; similarly, for booked affected passengers and booking period. We therefore estimated the number of stranded and other affected passengers on the basis of the following calculations:

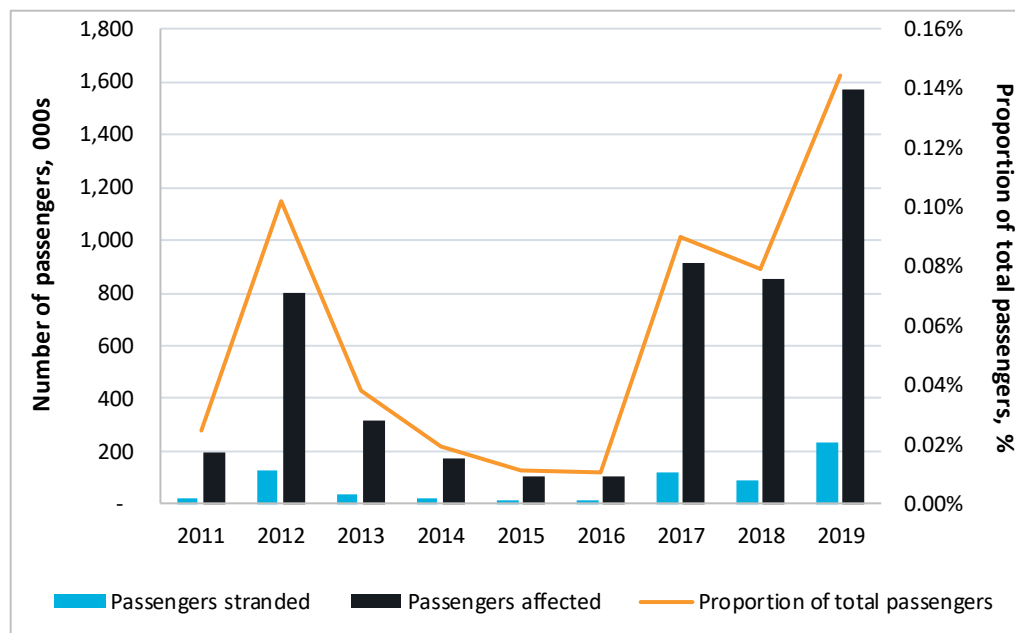
Number of stranded passengers	=	Passengers carried per week * Average length of stay (weeks) * 0.5 (returning passengers)
Number of booked affected passengers	=	Passengers carried per week * Average booking horizon (weeks) * 0.5 (return bookings)

- 8.16 Typical passenger stay lengths were calculated from Eurostat and UK ONS data sets, whilst the average booking horizon was calculated from unearned airline revenue data and cross-checked with booking horizons calculated by Yieldr. Different lengths of stay were calculated for Business, Leisure and VFR passengers as well as for short and long-haul passengers.

Results

- 8.17 Figure 8.4 shows the number of passengers affected by airline insolvencies over the study period, January 2011 to October 2019. In total, between 2011 and 2019, we estimate that 5.6 million passengers were impacted by airline insolvencies in some way.
- 8.18 In 2017 this equated to 0.09% of total EU passengers being affected or stranded due to airline failure compared with 0.02% in 2011. 2017 was heavily influenced by the demise of Monarch in October, which accounted for 88% of total affected and stranded passengers. In the context of the UK market Monarch's closure affected 0.65% of total UK passengers in 2017, or 1.17% when viewed against the UK - western European market. Similarly NIKI's closure in 2018 accounted for 47% of affected and stranded passengers, whilst it also affected 2.70% of 2018 passengers departing Austria.
- 8.19 The proportion of total passengers affected in 2019 has been heavily influenced by the demise of Thomas Cook, Germania, Adria, Aigle Azur and WOW air.

Figure 8.4: Passengers impacted by airline insolvencies (2011-October 2019)



Source: Steer analysis

- 8.20 Table H.1 in Appendix H shows the number of passengers that were affected by each of the insolvencies identified during the study period. Since 2017 there has been a marked increase

in the numbers of passengers affected versus previous years owing to a larger proportion of higher-profile insolvencies occurring. The sudden closures of relatively established airlines such as Monarch (2017), NIKI (2018), Primera Air (2018), WOW (2019), Germania (2019) and Thomas Cook UK (2019) contributed to the majority of affected passengers.

Table 8.2: Passengers affected by airlines ceasing operations (2011-October 2019)

Airline	Country	Date of ceasing operations	Passengers affected		Notes
			Stranded	Booked	
Thomas Cook UK ⁸⁷	UK	2019	140,000	800,000 ⁸⁸	Data available at high-level only
Germania	DE	2019	20,000	260,000	Data available
Aigle Azur	FR	2019	27,244	190,067	Estimated
WOW Air	IS	2019	10,000	168,796	Stranded pax data available
XL Airways France	FR	2019	7,402	71,132	Estimated
Adria Airways	SI	2019	9,375	50,975	Estimated
BMI Regional	UK	2019	5,330	29,023	Estimated
NIKI	AT	2018	40,000	400,000	Data available
Primera Air	DK	2018	18,110	174,032	Estimated (see case study in Annex H)
Small Planet Airlines GmbH	DE	2018	8,662	67,337	Estimated
Small Planet Airlines	LT	2018	6,248	48,576	Estimated
Small Planet Airlines	PL	2018	6,248	48,576	Estimated
Primera Air Nordic	LV	2018	4,155	39,927	Estimated
Nextjet	SE	2018	5,471	29,791	Estimated
Cobalt Aero	CY	2018	2,600	18,000	Data available
Sky Work Airlines	CH	2018	2,000	10,000	Data available
VLM Airlines D.D.	SI	2018	150	8,373	Stranded pax data available
FlyViking	NO	2018	1,212	6,598	Estimated
Surf Air Europe	UK	2018	8	60	Estimated
Monarch Airlines	UK	2017	110,000	800,000	Data available (see case study in Annex H)
Air Berlin	DE	2017	3,000	100,000	Data available (see case study in Annex H)
Atlas Atlantique Airlines	FR	2017	1,103	8,576	Estimated
Fly KISS	SI	2017	585	3,188	Estimated
Citywing	UK	2017	550	3,071	Stranded pax data available
Darwin Airline	CH	2017	409	2,226	Estimated
Belair Airlines	CH	2017	280	1,525	Estimated
Air Mediterranee	FR	2016	5,793	45,033	Estimated
Limitless Airways	HR	2016	2,550	19,821	Estimated
Air Via	BG	2016	1,442	11,266	Estimated
VLM Airlines N.V.	BE	2016	710	8,322	Stranded pax data available
European Coastal Airlines LTD	HR	2016	441	2,404	Estimated

⁸⁷ This refers to Thomas Cook UK, which is the airline that ceased operating. As the other carriers in the group are still operating, they do not feature in this analysis.

⁸⁸ UK CAA figures indicate that ATOL expects more than 360,000 booking refund claims for 800,000 passengers

Airline	Country	Date of ceasing operations	Passengers affected		Notes
			Stranded	Booked	
Cyprus Airways	CY	2015	300	28,000	Data available (see case study in Annex H)
Estonian Air	EE	2015	4,937	26,883	Estimated
Intersky	AT	2015	3,185	17,345	Estimated
SkyGreece Airlines	GR	2015	1,955	15,196	Estimated
Air Lituanica	LT	2015	1,734	9,445	Estimated
Linxair	SI	2014	5,770	45,063	Estimated
Fly Romania	RO	2014	4,624	33,760	Estimated
Belle Air Europe	IT	2014	3,202	33,480	Booked pax data available
4YOU Airlines	PL	2014	2,164	16,899	Estimated
Livingston Air	IT	2014	1,458	11,334	Estimated
Danube Wings	SK	2014	1,379	10,720	Estimated
Krohn Air	NO	2014	856	4,666	Estimated
Hamburg Airways	DE	2014	190	1,476	Estimated
Jetalliance	AT	2013	10,097	78,861	Estimated
Orbest Orizonia Airlines	ES	2013	6,491	50,696	Estimated
Helitt Lineas Aereas	ES	2013	5,420	42,133	Estimated
FLM Aviation	DE	2013	3,606	28,165	Estimated
XL Airways Germany	DE	2013	3,606	28,165	Estimated
Medallion Air	RO	2013	2,885	22,532	Estimated
OLT Express Germany GmbH	DE	2013	3,058	16,651	Estimated
Hello	CH	2013	1,500	5,000	Data available
Sky Wings Airlines	GR	2013	412	3,199	Estimated
FlyNonstop	NO	2013	927	2,333	Estimated
Avies Air Company	EE	2013	158	863	Estimated
Spanair	ES	2012	20,000	219,689	Stranded pax data available
Wind Jet	IT	2012	32,360	205,000	Booked pax data available
MALEV Hungarian Airlines	HU	2012	30,000	119,431	Stranded pax data available
Cimber Sterling	DK	2012	13,258	72,194	Estimated
Astraeus	UK	2012	3,056	23,758	Estimated
Islas Airways	ES	2012	3,914	21,313	Estimated
Air Finland	FI	2012	2,726	21,195	Estimated
ItAli Airlines	IT	2012	3,509	19,109	Estimated
Air Poland	PL	2012	2,164	16,899	Estimated
Skyways	SE	2012	5,134	12,000	Booked pax data available
Mint Airways	ES	2012	1,442	11,266	Estimated
Ryjet	ES	2012	1,442	11,266	Estimated
Cirrus Airlines	DE	2012	1,610	8,769	Estimated
City Airline	SE	2012	1,232	6,711	Estimated
Freedom Airways	AT	2012	850	6,607	Estimated
Tor Air AB	SE	2012	501	3,894	Estimated
Czech Connect Airlines	CZ	2012	685	3,733	Estimated
Air Alps Aviation	AT	2012	421	2,293	Estimated
Sweden Airways AB	SE	2012	37	290	Estimated
Hamburg International	DE	2011	5,403	42,252	Estimated
Livingston	IT	2011	3,196	23,853	Estimated

Airline	Country	Date of ceasing operations	Passengers affected		Notes
			Stranded	Booked	
Pyrenair	ES	2011	2,885	22,532	Estimated
Athens Airways	GR	2011	3,227	18,777	Estimated
Viking Hellas Airlines	GR	2011	1,580	12,934	Estimated
Amsterdam Airlines	NL	2011	1,490	12,273	Estimated
Comtel Air	AT	2011	1,442	11,266	Estimated
Dubrovnik Airline	HR	2011	1,442	11,266	Estimated
Hellenic Imperial Airways	GR	2011	1,134	8,553	Estimated
Eagles Airlines	IT	2011	1,044	4,969	Estimated
Viking Airlines	SE	2011	503	3,908	Estimated
Robin Hood Aviation	AT	2011	299	1,657	Estimated
Romavia	RO	2011	163	1,264	Estimated

Source: Steer analysis

Total costs incurred by passengers

- 8.21 The cost analysis presented in this section does not include insolvencies in the third quarter of 2019 (i.e. Thomas Cook UK, Aigle Azur, Adria and XL Airways France).

Structure of costs incurred

- 8.22 The way in which a passenger is impacted by an airline insolvency will have different implications on the level of cost borne by the passenger. Table 8.3 outlines the components of costs immediately incurred for each category of passenger. As stranded passengers are already at their destination, only the return segment of their flight is unusable, and a one-way ticket home will need to be purchased. Passengers with future bookings will lose both the outbound and return segments of their tickets and are able to decide whether they still intend to travel in the future. For this study we have assumed that 75% of passengers will rebook a new return flight with another carrier, whilst the remaining 25% will forfeit their trip. In addition to the cost of the flight, costs relating to additional accommodation and communication for stranded passengers and non-refundable accommodation and services for other affected passengers have also been taken into consideration.

Table 8.3: Costs incurred by passenger type

	Loss of original flight		Purchase of replacement flight		Loss of non-refundable accommodation and other services	Additional accommodation, food, etc.	Information
	Outbound	Return	Outbound	Return			
Stranded	-	✓	-	✓	-	✓	✓
Booked (does not travel)	✓	✓	-	-	✓	-	-
Booked (rebooks)	✓	✓	✓	✓	-	✓ ⁸⁹	-

Source: Steer analysis

Overview of assumptions

- 8.23 The costs of each of these elements has been estimated using publicly available information, including:
- Dummy bookings of flights to estimate the incremental booking costs at different time horizons;
 - Tourism statistics for average cost of accommodation and care;
 - Cost of accessing information. The estimated cost of making a call or accessing wifi has been estimated at €3.50. Whilst roaming charges have now been removed in the EU, it may be required that passengers need to pay to access wifi or call centres will charge a fee.
- 8.24 Depending on the type of protection a passenger has (if any), they may be able to recover a proportion of these costs. Table 8.4 below outlines which costs are recoverable under different protection mechanisms:
- Passenger Travel Directive;
 - Schedule Airline Failure Insurance (SAFI)⁹⁰;
 - Credit card protection and chargeback;
 - Hahn Air⁹¹; and
 - IATA Billing and Settlement Plan (BSP)⁹².
- 8.25 These protection mechanisms are described in more detail in the next section. Passengers, who are travelling as part of a package are protected under the Package Travel Directive (PTD). To a certain extent this protection extends to passengers with linked travel arrangements (LTA) under the new PTD, applicable since July 2018, when the airlines are the facilitator of the LTA.

⁸⁹ Assumes 20% of passengers are required to extend their stay by one night⁹⁰ SAFI cover ensures that a passenger is protected in the event that the airline with which the tickets were booked with declares bankruptcy.⁹¹ Provides protection for passengers with Hahn Air (HR-169) tickets in case of insolvency of one of Hahn Air's partners.⁹² A system aimed to facilitate and simplify the selling with IATA accredited passenger sales agents by enabling to make only one single payment to the BSP to cover sales on all BSP airlines.

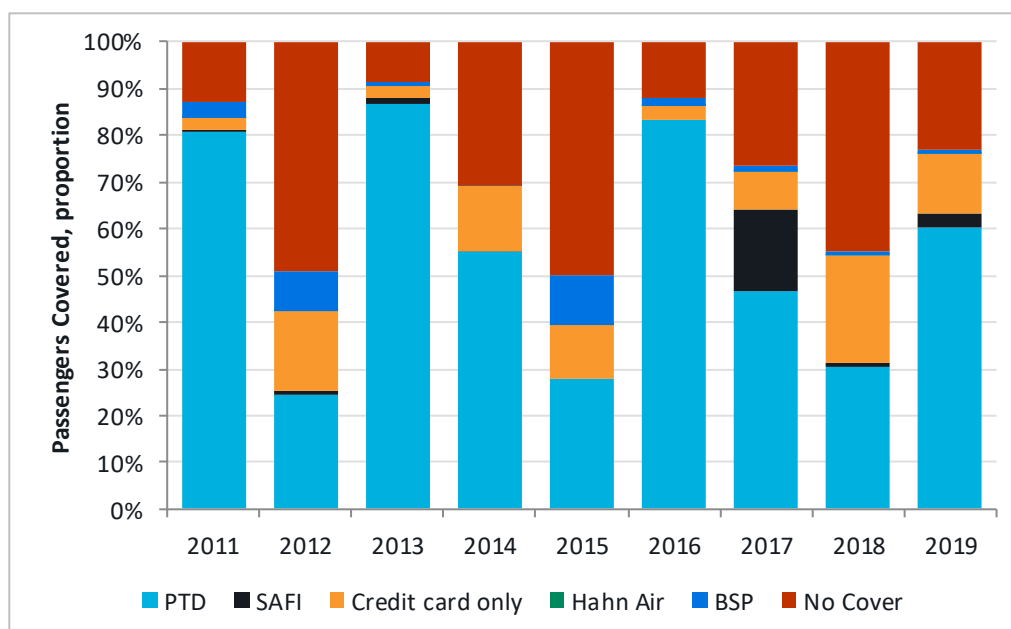
Table 8.4: Recoverable costs under different protection schemes

Cost	Package travel	SAFI	Credit Card	Hahn Air	BSP	No cover
Original flight	✓	✓	✓	✓	✓	✗
Replacement flight	✓	✓ ⁹³	✗	✓ ⁹⁴	✗	✗
Non-refundable accommodation and services	✓	✗	✗	✗	✗	✗
Additional accommodation	✓	✗	✗	✗	✗	✗
Communication	✓	✗	✗	✗	✗	✗
Compensation for damages	✓					

Source: Steer analysis

Results

8.26 Figure 8.5 shows the estimated proportion of passengers with different types of cover for the insolvencies between 2011 and June 2019. These estimates are based on assumed passenger profiles by airline type, journey purpose and origin, which determine typical levels of cover sought by each group. Since July 2018, some passengers who previously would have been considered flight-only ticket holders may, under the new Package Travel Directive, be covered by the provisions for linked travel arrangements. Forms of protection vary widely year-on-year, primarily a consequence of the type of airline going insolvent in each year. For example, in 2016, the proportion of passengers covered by the Package Travel Directive (PTD) is high, as charter passengers accounted for 87% of the total affected passengers in that year.

Figure 8.5: Proportion of passenger cover for airline insolvencies by year (2011-July 2019)

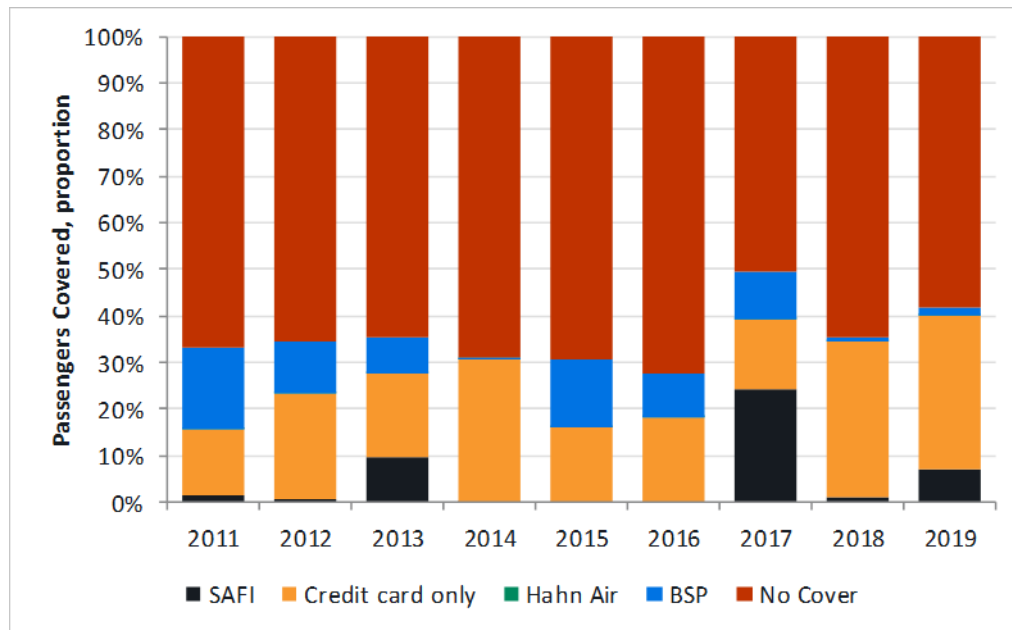
⁹³ Replacement flight provided when stranded only, not if the airline declares bankruptcy before the outbound trip.

⁹⁴ Provided as an allowance of €125 which may or may not cover the incremental cost of a new ticket in full.

Source: Steer analysis. Note that 2019 only covers January to July

- 8.27 Once the contribution of PTD is removed the proportion of passengers by cover type are more consistent as seen in Figure 8.6. Between 2011 and 2016 around 65% of consumers remained without cover, whilst this has reduced to around 55% between 2017 and 2019. The differences in proportion are influenced by the composition of airline types becoming insolvent in each year.

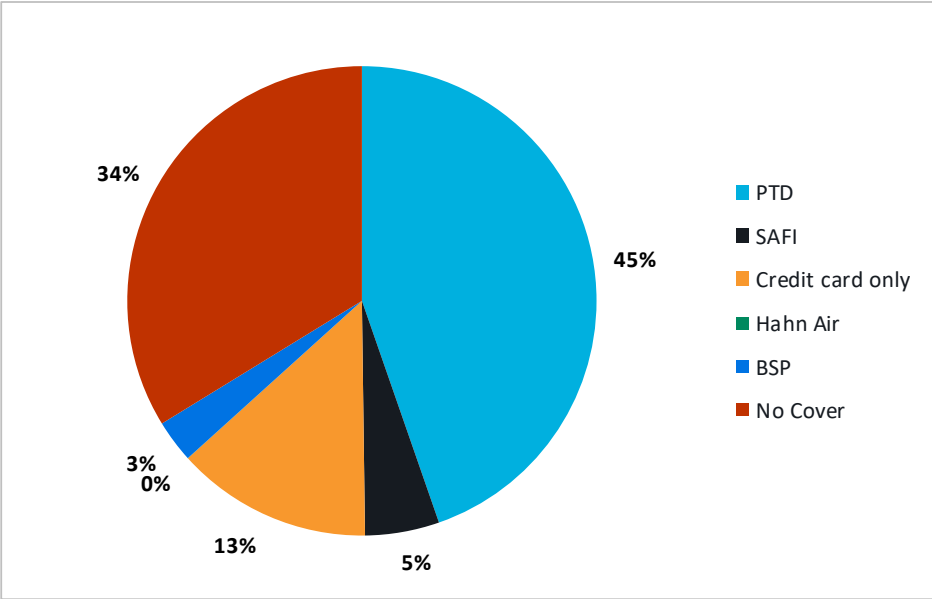
Figure 8.6: Proportion of passenger cover for airline insolvencies by year (PTD excluded)



Source: Steer analysis. Note that 2019 only covers January to July

- 8.28 Figure 8.7 shows the protection status of passengers of insolvent airlines between 2011 and 2019. 45% of passengers in the period were estimated to be travelling as part of a package and thus would be covered by the PTD, whilst only a further 2% were covered by scheduled airline failure insurance (SAFI). 13% of passengers will have some protection from their credit card, whilst a further 3% may be covered by IATAs Billing and Settlement Plan (BSP). It should be noted that all passengers, excluding those covered under the PTD, would not have had all their incurred costs covered; for example, the other forms of protection would not cover costs associated with required accommodation after airline failure. It is estimated that 34% of consumers did not have any form of protection (61% when PTD is excluded).

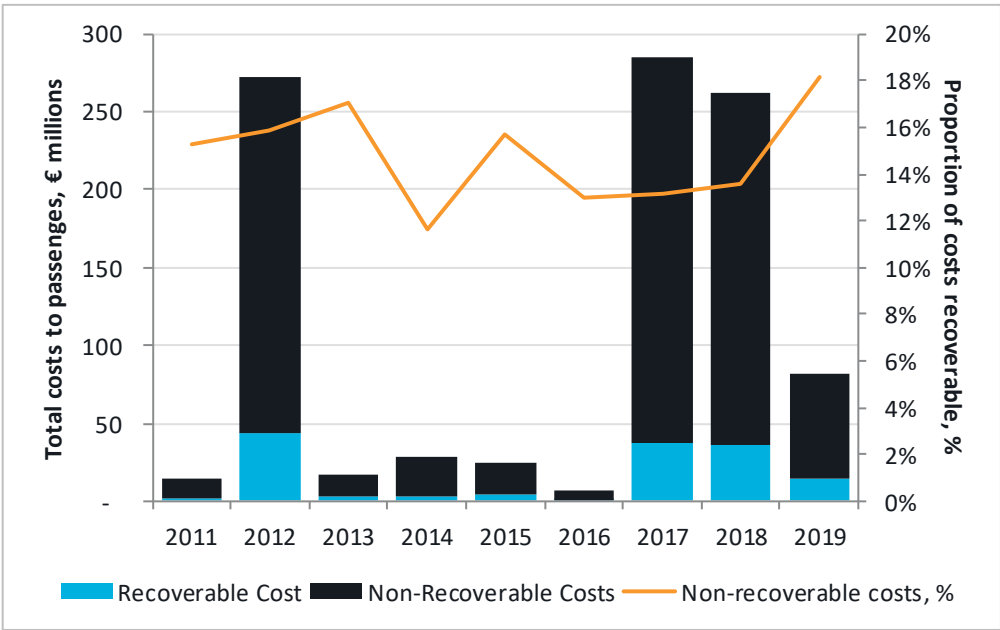
Figure 8.7: Proportion of passenger cover for airline insolvencies (2011-July 2019)



Source: Steer analysis. Note that 2019 only covers January to July

8.29 Figure 8.8 shows the total costs that we estimate to have been incurred by passengers as a result of airline insolvencies between 2011 and 2019. This has been divided into recoverable and non-recoverable costs to the consumer. It has been estimated that between only 12% and 18% of total costs are recoverable, depending on airline type and originating country of the consumer. Note that, since costs that are involved in either repatriating passengers or for providing alternative outbound and return flights for their package/linked travel arrangement trip to be completed are incurred by the travel organiser/trader facilitating linked travel arrangement (who may call on their insurance or guarantee fund) and not by the passengers themselves, these costs have not been included here as these passengers do not incur additional costs.

Figure 8.8: Recoverable and non-recoverable costs incurred



Source: Steer analysis. Note that 2019 only covers January to July

- 8.30 Table 8.5 shows the average cost we estimate to have been incurred by each affected passenger type. The costs are highest for passengers who choose not to travel, primarily owing to the increasing prevalence of pre-paid accommodation, which would not be refundable in the event of not travelling. Stranded passengers need to purchase a replacement one-way flight at very late notice, in addition to an additional night's accommodation. Passengers who rebook their trip incur the cost of rebooking a replacement flight at shorter notice than for their first flight, which generally leads to a higher cost of purchase.

Table 8.5: Average incremental cost incurred per passenger by type over 2011-July 2019

	Stranded	No travel	Rebook	Assumption
Information	€ 3.68	-	-	
Care (including additional accommodation)	€ 112	-	€ 30	One additional day of trip, including accommodation, food and other necessary spending. Assumes 20% of rebooking passenger require an extended stay. 50% of accommodation costs applied to Leisure and VFR bookings assuming they will share accommodation.
Cost of original flight ticket(s)		€ 196		Single ticket for stranded passengers, return ticket for affected passengers ⁹⁵
Cost of replacement flight for repatriation or replacement travel	€ 264	-	€ 156	For rebooked, the incremental cost of a return flight booked at half the average booking period. For stranded passengers, a one-way flight booked at half the average length of stay
Non-refundable components (e.g. hotel, car-hire, activities)	-	€ 372	-	Based on weighted average length of stay and average price by journey type. 50% of costs attributed to Leisure and VFR passengers assuming they will share accommodation. Assumes 40% of passengers have pre-paid for their accommodation
Total	€ 379	€ 568	€ 185	

Source: HCIP, OAG, Skyscanner, Steer analysis. Note that 2019 only covers January to July

- 8.31 Table 8.6 shows the weighted proportion of these costs that we estimate to have been recoverable depending on the passenger's situation and the type of cover they had. This weighted average is calculated based on the total passenger mix, coverage mix and journey origin throughout the time series. Rebooking passengers were able to recoup the largest proportion of their trip back, however the overall rate is still low, whilst those who did not travel were affected heavily by pre-booked accommodation. Stranded passengers could only

⁹⁵ This is zero for stranded and rebooking passengers as these passengers still travel and would have had to have purchased a ticket in the first instance. Only the cost of the replacement ticket can be considered as additional cost in these circumstances.

reclaim a significant proportion of incurred expenses if they have SAFI or a Hahn Air-issued ticket.

Table 8.6: Proportion of incremental cost recoverable by passenger type

	Stranded	No travel	Rebooked	Total
SAFI	77%	32%	49%	45%
Credit Card	16%	32%	50%	40%
Hahn Air	99%	42%	93%	80%
BSP	19%	42%	63%	50%
Nothing	0%	0%	0%	0%
Weighted average	8%	14%	21%	17%

Source: Steer analysis

- 8.32 The protection offered by the different schemes depends primarily on the situation which the passenger is in:
- For those who do not travel, most of the protection schemes refund the costs of the original flights, and the only non-recoverable costs are therefore any non-refundable accommodation costs. The passenger loses the benefit of making his/her planned trip, but this cannot be quantified in monetary terms.
 - For those who rebook, only the cost of the original flights is refunded, and they may have to pay for short-notice and therefore expensive replacement flights. Again, there is little difference between the coverage offered by the schemes. The slight variations in the proportion of costs which are recoverable result from factors such as the date at which the insolvencies on which these figures are based took place (this may affect, for example, the relative costs of flights against accommodation). Hahn Air stands out in this situation as it provides an allowance of €125 to rebooking passengers to help bridge the gap between the original and new fare, although depending on booking horizon and journey length of the new ticket, this may or may not be of significant help.
 - Passengers who are stranded and have SAFI or Hahn Air cover are refunded the cost of their original flight in addition to the (likely very expensive) incremental cost of any additional flight. Only the cost of the original flight is recoverable from the other protection schemes identified, and passengers will incur the incremental cost of an additional flight and other additional costs too.
- 8.33 Table 8.7 shows the total estimated costs incurred by passengers and the proportion of these costs that were recoverable for insolvencies in the study period. The change in level of cover is largely dependent on the types of airlines that ceased operations in each year and the States within which they operated; this affects the availability of protection via SAFI or other methods.
- 8.34 Air Berlin's total cost to passengers was heavily reduced by the government's bridging loan allowing for a wind down in operations. This cost would have been significantly higher to passengers if this was not implemented. Costs per passenger are high as Air Berlin operated long-haul flights, which heavily impacts costs for stranded and rebooking passengers.
- 8.35 Monarch's costs were reduced by the UK government's decision to repatriate all stranded passengers, regardless of cover. It was estimated that 50% of passengers with forward booking were travelling as part of a package and this was reflected in the model. Non recoverable cost appear higher as most insurance covers stranded passengers most effectively.

Table 8.7: Total estimated costs to passengers and proportion of costs recoverable 2011-July 2019

Airline	Member State	Costs to passengers € 2018	Costs per passenger € 2018	Non-recoverable	Recoverable
Monarch Airlines ⁹⁶	UK	€ 217,059,981	€ 477.05	79.3%	20.7%
NIKI	AT	€ 146,068,630	€ 397.85	87.20%	12.80%
Spanair	ES	€ 81,338,078	€ 406.69	80.00%	20.00%
Wind Jet	IT	€ 71,655,981	€ 362.19	86.90%	13.10%
Primera Air	DK	€ 63,695,312	€ 397.58	85.80%	14.20%
Air Berlin	DE	€ 63,576,183	€ 739.72	73.80%	26.20%
WOW Air	IS	€ 58,460,107	€ 391.85	85.10%	14.90%
MALEV Hungarian	HU	€ 53,750,135	€ 431.07	86.90%	13.10%
Cimber Sterling	DK	€ 29,932,925	€ 420.32	87.60%	12.40%
Primera Air Nordic	LV	€ 14,613,230	€ 397.58	87.40%	12.60%
Nextjet	SE	€ 13,784,868	€ 469.09	78.80%	21.20%
BMI Regional	UK	€ 13,429,602	€ 469.09	65.70%	34.30%
Fly Romania	RO	€ 12,051,546	€ 376.64	89.40%	10.60%
Estonian Air	EE	€ 11,849,771	€ 446.85	85.00%	15.00%
Belle Air Europe	IT	€ 11,364,755	€ 371.56	86.30%	13.70%
Germania	DE	€ 9,932,351	€ 567.56	84.60%	15.40%
Islas Airways	ES	€ 8,836,926	€ 420.32	81.30%	18.70%
ItAli Airlines	IT	€ 7,922,820	€ 420.32	81.30%	18.70%
Intersky	AT	€ 7,645,549	€ 446.85	81.60%	18.40%
Athens Airways	GR	€ 7,372,036	€ 401.98	82.60%	17.40%
OLT Express Germany	DE	€ 7,155,151	€ 435.63	73.10%	26.90%
Cobalt Aero	CY	€ 6,942,809	€ 403.91	88.50%	11.50%
Skyways	SE	€ 6,407,374	€ 449.24	80.40%	19.60%
Sky Work Airlines	CH	€ 4,737,990	€ 473.18	81.80%	18.20%
Air Lituanica	LT	€ 4,163,164	€ 446.85	85.90%	14.10%
Cirrus Airlines	DE	€ 3,635,694	€ 420.32	74.00%	26.00%
VLM Airlines N.V.	BE	€ 3,200,966	€ 424.75	84.50%	15.50%
VLM Airlines D.D.	SI	€ 3,120,200	€ 438.74	85.30%	14.70%
FlyViking	NO	€ 3,052,881	€ 469.09	87.30%	12.70%
City Airline	SE	€ 2,782,642	€ 420.32	79.60%	20.40%
Small Planet Airlines	DE	€ 2,466,435	€ 567.55	84.60%	15.40%
Jetalliance	AT	€ 2,368,804	€ 526.42	92.40%	7.60%
Eagles Airlines	IT	€ 2,039,904	€ 407.16	81.70%	18.30%
Krohn Air	NO	€ 2,024,967	€ 440.03	87.20%	12.80%
Small Planet Airlines	LT	€ 1,779,269	€ 567.55	92.60%	7.40%
Small Planet Airlines	PL	€ 1,779,269	€ 567.55	92.60%	7.40%
Air Mediterranee	FR	€ 1,548,170	€ 532.69	91.70%	8.30%
Czech Connect Airlines	CZ	€ 1,547,648	€ 420.32	80.70%	19.30%
Orbest Orizonia Airlines	ES	€ 1,522,803	€ 526.42	91.50%	8.50%
Fly KISS	SI	€ 1,442,128	€ 458.55	87.10%	12.90%
Helitt Lineas Aereas	ES	€ 1,431,581	€ 526.48	91.50%	8.50%
Citywing	UK	€ 1,387,531	€ 459.22	65.90%	34.10%
Linxair	SI	€ 1,367,729	€ 531.91	93.70%	6.30%

⁹⁶ Monarch costs take account of repatriation of stranded passengers at no additional cost.

Airline	Member State	Costs to passengers € 2018	Costs per passenger € 2018	Non-recoverable	Recoverable
Hamburg Int'l	DE	€ 1,330,909	€ 488.28	85.90%	14.10%
FlyNonstop	NO	€ 1,254,644	€ 462.38	88.70%	11.30%
European Coastal Airlines LTD	HR	€ 1,043,350	€ 439.98	81.60%	18.40%
Darwin Airline	CH	€ 1,006,856	€ 458.55	81.50%	18.50%
Air Alps Aviation	AT	€ 950,738	€ 420.32	81.60%	18.40%
FLM Aviation	DE	€ 846,002	€ 526.42	84.40%	15.60%
XL Airways Germany	DE	€ 846,002	€ 526.42	84.40%	15.60%
Astraeus	UK	€ 779,202	€ 508.20	79.50%	20.50%
Livingston	IT	€ 754,652	€ 488.77	91.70%	8.30%
Air Finland	FI	€ 695,147	€ 508.20	91.30%	8.70%
Belair Airlines	CH	€ 689,619	€ 458.55	81.50%	18.50%
Limitless Airways	HR	€ 681,435	€ 532.69	92.00%	8.00%
Medallion Air	RO	€ 676,801	€ 526.42	94.70%	5.30%
Robin Hood Aviation	AT	€ 657,294	€ 403.15	81.70%	18.30%
Pyrenair	ES	€ 627,777	€ 488.29	91.60%	8.40%
SkyGreece Airlines	GR	€ 529,833	€ 540.24	95.20%	4.80%
4YOU Airlines	PL	€ 512,898	€ 531.91	94.00%	6.00%
Air Poland	PL	€ 489,975	€ 508.14	94.00%	6.00%
Viking Hellas Airlines	GR	€ 405,725	€ 487.82	95.20%	4.80%
Livingston Air	IT	€ 389,138	€ 531.97	91.60%	8.40%
Amsterdam Airlines	NL	€ 384,795	€ 487.76	85.90%	14.10%
Avies Air Company	EE	€ 370,840	€ 435.63	84.90%	15.10%
Danube Wings	SK	€ 368,052	€ 531.97	92.90%	7.10%
Air Via	BG	€ 342,396	€ 532.63	95.70%	4.30%
Mint Airways	ES	€ 326,650	€ 508.14	91.60%	8.40%
Ryjet	ES	€ 326,650	€ 508.14	91.60%	8.40%
Comtel Air	AT	€ 313,888	€ 488.29	92.50%	7.50%
Dubrovnik Airline	HR	€ 313,888	€ 488.29	91.90%	8.10%
Atlas Atlantique Airlines	FR	€ 307,074	€ 554.79	91.60%	8.40%
Hellenic Imperial Airways	GR	€ 270,325	€ 488.66	95.20%	4.80%
Hello	CH	€ 224,859	€ 553.50	92.90%	7.10%
Freedom Airways	AT	€ 216,699	€ 508.20	92.40%	7.60%
Tor Air AB	SE	€ 127,730	€ 508.20	85.10%	14.90%
Viking Airlines	SE	€ 123,180	€ 488.34	85.80%	14.20%
Sky Wings Airlines	GR	€ 108,706	€ 526.48	95.20%	4.80%
Hamburg Airways	DE	€ 50,671	€ 531.97	84.50%	15.50%
Romavia	RO	€ 39,828	€ 488.34	94.70%	5.30%
Sweden Airways AB	SE	€ 9,523	€ 508.20	85.10%	14.90%
Surf Air Europe	UK	€ 2,181	€ 567.55	78.30%	21.70%
Cyprus Airways ⁹⁷	CY	€ 876	€ 0	€ 876	-

⁹⁷ The Cypriot Government rebooked all affected passengers at no cost. The only cost incurred by passengers was rebooking and care.

- 8.36 On average, over the period 2011-June 2019, we estimate that passengers directly affected by insolvencies incurred €431 in costs, 83% of which (i.e. €357) were not recoverable under one of the protection mechanisms.

Protection mechanisms and effectiveness

- 8.37 The level of protection obtained by a passenger depends mainly on where and how their itinerary was purchased. The most significant difference being between standalone (flight-only) tickets and those purchased as part of a package/linked travel arrangement. The current EU framework does not provide any direct insolvency protection requirements for flight-only ticket holders and these passengers must instead ensure their own protection.
- 8.38 Protection can be based in law (statutory protection), offered by companies involved in organising or selling the ticket (non-statutory) or sold directly to the customer as a product, normally in the form of travel insurance (also non-statutory). These protections overlap and none are universal, such that on one flight several passengers may be covered multiple times, for example if they had purchased their ticket with a credit card, and were also covered by a travel insurance policy which included SAFI protection, whilst others may not have any protection at all. In the case of Hahn Air and BSP, the protection provisions differ slightly from the policies above and are described in more detail below.
- 8.39 Protection can arise from the following sources:
- In general terms, purchases of other travel services such as accommodation made at the same time as the purchase of a flight, will normally result in the creation of a package holiday or otherwise a linked travel arrangement and be subject to the protections set out in the Package Travel Directive;
 - Other protections include those available through the payment system used (such as credit cards); and finally
 - Passengers may benefit from travel insurance policies which include supplier failure cover, although not all such policies do.

EU and national legislations

The Package Travel Directive

- 8.40 A package is defined as the purchase of a pre-arranged combination of two elements, including flights, accommodation, car hire and other tourist services. Since 1 July 2018, date of entry into application of the updated rules (Directive 2302/2015) , a package now also covers customised combinations of travel services (online and offline) that are put together at the request of or in accordance with the selection of the traveller. In addition, the Directive introduces the concept of 'linked travel arrangements'⁹⁸ which is a combination of travel services facilitated by a trader, such as an airline The Directive provides as well as organiser's liability for the performance of all travel services that are part of the package. Traders facilitating a linked travel arrangement, when airlines, must provide for money-back guarantee and repatriation when they become insolvent. Contrary to an organiser of a package, they are only liable for their own services.

⁹⁸ Linked travel arrangements are travel services that are bought from different traders in separate contracts but are linked. They are classed as linked when one trader facilitates the booking of the subsequent service(s), and they are purchased within 24 hours for the purpose of the same trip or holiday.

- 8.41 The new Directive also introduces a system of mutual recognition of insolvency protection, accompanied by a structured cooperation mechanism between the Member States. As an EU Directive, national transposition and resulting implementation will be done at national level.
- 8.42 The number of traditional package holidays being purchased are in a state of decline as consumers are increasingly constructing their own itineraries by purchasing travel, accommodation and other activities separately. This has partly been driven by the expansion of low-cost capacity in Europe, which has made it far easier for travellers to purchase flights to desired destinations at desired times, whilst historically these passengers would have been dependent on charter services. The revision of the PTD in 2015 was aiming at covering these changes by extending the definition of packages and introducing the concept of linked travel arrangements.
- 8.43 However, the new PTD does not cover all hypotheses and have some limitations. Travellers are now more likely to create their own itinerary as they were in the past, allowing them to incorporate more flexibility into their trip. For example, the traveller would have the ability to fly one carrier to the destination and a different carrier back if the departure times were more suitable and/or the prices were lower, which is not the case under a package deal. Under the new PTD, airlines are contributing to insolvency protection for flights sold with other services. Therefore, some airlines are now contributing to insolvency protection, which is a change of trend from the past.

Travel Funds

- 8.44 Travel funds were formed in some Member States to allow them to conform with the Package Travel Directive. This role has been allocated to private organisations, e.g. SGR⁹⁹ in the Netherlands, state organisations e.g. ATOL in the UK and mixed systems, such as in Denmark, where the foundation is underwritten by a state guarantee. For each qualifying booking a small surcharge is applied and paid into the fund. In the event of insolvency, money can be extracted from the fund to assist with the repatriations of stranded passengers and the reorganisation of affected bookings.
- 8.45 In Denmark, the responsibilities of the Danish Travel Guarantee Fund (Rejsegarantifonden) have been extended further to also include passengers on flight-only tickets. Passengers affected by the insolvency of an airline can lodge a claim with the Travel Guarantee Fund to obtain a refund on their unusable ticket, minus a DKK1000 (€134, July 2019) administration charge. Other practical aspects include:
- For passengers stranded abroad who have bought a package tour with accommodation, the fund will find them another place to stay, but this may result in a disruption of their travel arrangements. In this case, the passenger can make a compensation claim for the disrupted part of their travel arrangements.
 - For passengers who have bought a package tour where repatriation is included, the Fund or SOS International A/S will ensure repatriation within "a reasonable period of time". Passengers may have to stay longer than planned at the destination but the Fund will not be able to offer compensation to cover for the disruption such as lost wages, etc. If the passengers do not consent to wait the repatriation arranged by the Fund/SOS International A/S and instead arrange their own return, they will need to do so at their own cost.

⁹⁹ Stichting Garantiefonds Reisgelden

- For passengers who have bought a return flight ticket cross-border from Denmark, the Fund or SOS International A/S will ensure repatriation "within a reasonable period of time". If the passengers do not consent to wait the repatriation arranged by the Fund/SOS International A/S, they will need to do so at their own cost.

8.46 Whilst the Danish Travel Guarantee fund does address the problem further than other Member States, the DKK1000 administration fee will negate a large proportion of the cost incurred by the consumer and essentially benefits long-haul customers far greater than short-haul leisure customers. The fund also highlights that compensation will be paid out only if there is sufficient money remaining in the fund.

Scheduled Airline Failure Insurance

8.47 Scheduled Airline Failure Insurance (SAFI) provides consumers with some protection when their ticketed carrier becomes insolvent. Normally the coverage provides a fixed quantity of money per traveller, from which the cost of any new required travel arrangements can be deducted.

8.48 SAFI provides:

- The cost of new flight tickets if the airline goes bankrupt before departure up to the limit defined in the policy; and
- The cost of a replacement flight home if an airline goes bankrupt while the consumer is away up to the limit defined in the policy.

8.49 SAFI can be purchased as stand-alone insurance, but it is also present within some travel insurance policies. In 2019 SAFI was included in 48% of travel insurance policies in the UK¹⁰⁰. According to IPP's questionnaire response, SAFI insurance is now available in all Member States. This was not the case in 2011 where SAFI was primarily concentrated on the UK and Ireland with some prevalence in Germany, the Netherlands, Sweden and Czech Republic. Despite this most NEBs were not aware of SAFI products being available in their countries.

8.50 Whilst SAFI insurance covers the additional costs involved with having to buy a new ticket, the cover does not cover other associated costs incurred as a result of disruption, such as the possible need to purchase additional accommodation if an extra night's stay is required. SAFI insurance may also have clauses excluding certain airlines from the cover if they have been determined to be at risk of bankruptcy.

8.51 Many consumers with travel insurance are likely unaware of whether it includes SAFI protection or not and likely assume the former. In Germany, the proportion of people reading terms and conditions is only half¹⁰¹, whilst in the UK, only 12%¹⁰² travellers read their insurance documents and truly know what their level of cover is.

8.52 Additionally, many European passengers do not buy travel insurance, especially for intra-EU trips as the health insurance aspect (often viewed as the most important aspect) is covered by the citizens' European Health Insurance Card. Levels of cover vary widely across Europe; in

¹⁰⁰ <https://www.thisismoney.co.uk/money/holidays/article-6746403/Half-travel-insurance-policies-dont-cover-airline-difficulties-best-cover.html>

¹⁰¹ https://www.focus.de/finanzen/recht/studie-zu-allgemeinen-geschaeftsbedingungen-die-meisten-deutschen-ignorieren-die-agbs-im-internet-voellig_id_4271443.html

¹⁰² Travel Insurance Facts, Foreign and Commonwealth Office, 2012

Italy between 75% and 85%^{103 104} of citizens do not purchase insurance before travelling, with slightly lower proportions in Poland¹⁰⁵ (58%) and the UK (approximately 24%).

Credit card protection and chargeback

- 8.53 When flights are purchased with a credit card, the responsibility for the delivery of services (i.e. the flight) may be shared with the credit card company or the issuing bank, sometimes subject to a minimum value.
- 8.54 Average credit card ownership across European countries (EU 28, Norway, Switzerland) was 39%¹⁰⁶ in 2017, 3% higher than in 2014. The country with the highest credit card ownership was Norway with 71% in 2017, which was significantly higher than ownership of 12% in Romania.
- 8.55 In the UK, purchases made via credit card costing between £100 and £30,000 (€112 to €33,435, July 2019) are covered under section 75 of the Consumer Credit Act 1974, which states that the credit card company is jointly and severally liable for any breach of contract or misrepresentation by the retailer. This means that the credit card company is just as responsible as the airline is for providing the consumer with their purchase. In the case of an airline insolvency a passenger can make a claim to their credit card supplier for the value of the ticket, provided it was purchased with the card and cost more than £100¹⁰⁷ (€112, July 2019).
- 8.56 The following countries mentioned protections set out by law in their stakeholder responses:
- Finland (general provision in the Finnish Consumer Protection Act regarding the liability of credit card companies)
 - Iceland (no detail provided)
 - Norway (The Norwegian Financial Contracts Act § 54b regulates chargeback)
 - Sweden (The Swedish Consumer Credit Act regulates chargeback)
 - United Kingdom (Section 75 of the Consumer Credit Act 1974)
- 8.57 Flights purchased with a debit card are generally not covered, however customers are able to claim a refund on the ticket if they can prove it was purchased with an overdraft facility¹⁰⁸.
- 8.58 Chargeback is another method by which consumers can attempt to recoup the costs of their unusable flight. Chargeback is written into the Visa and Mastercard terms and conditions and allows banks to withdraw funds that were previously deposited into an airline's bank account in the event that the good or service purchased is not received or provided. Affected customers must contact their bank to request the chargeback and also prove that the airline has ceased trading. The bank can then attempt to action the chargeback. Chargeback is not written into consumer protection law, but instead is an industry scheme that many banks choose to participate in. The scheme however is not widely known about and there is also no

¹⁰³ <https://www.intermundial.it/blog/assicurazioni-viaggio/>

¹⁰⁴ <https://www.salmeri.it/allianz-global-assistance-quasi-il-70-degli-italiani-conosce-le-polizze-viaggio-ma-meno-del-15-si-assicura/>

¹⁰⁵ <https://tueuropa.pl/artykuly/1217,112/d,aktualnosci,moze-nad-morze-a-gdzie-polisa-turystyczna>

¹⁰⁶ The Global Findex Database, World Bank, 2017

¹⁰⁷ <https://www.which.co.uk/consumer-rights/regulation/section-75-of-the-consumer-credit-act>

¹⁰⁸ <https://www.gocompare.com/travel-insurance/scheduled-airline-failure-insurance/>

guarantee that the claim will be successful¹⁰⁹. Unlike credit card refunds in the UK, chargeback has no minimum transaction value.

- 8.59 Table 8.8 shows the availability of chargeback in the EU28 and Norway. It should be noted that whilst chargeback is available in these states, this does not guarantee that all citizens are able to use the facility.

Table 8.8: Availability of chargeback in the EU and Norway

Voluntary chargeback available	Voluntary chargeback not available
Bulgaria, Cyprus, Czech Republic, Estonia, France, Hungary, Ireland, Italy, Lithuania, Malta, Netherlands, Portugal, Romania, Slovakia, Spain, Sweden, United Kingdom, Norway	Austria, Belgium, Denmark, Finland, Germany

Source: European Consumer Centre Sweden

- 8.61 Both credit card and chargeback limit protection to the costs of the flight purchased only and will not factor in the fact that the cost of a new ticket may be substantially more expensive owing to the reduced booking horizon, nor will it cover any other incurred costs such as accommodation.
- 8.62 Credit card protections only work in cases when the ticket is purchased directly from the airline, and not from an intermediary as the protection is only valid when the supplier has failed to provide agreed services. In the case that a ticket was purchased from a travel agency and the airline goes insolvent, the travel agency has still carried out all its contractual obligations and thus a claim cannot be raised.
- 8.63 Levels of credit card ownership in each Member State will also influence the ability to take advantage of this form of protection. Historically consumers may have been reluctant to purchase flights with a credit card as this payment form often attracted higher charges compared with paying with a debit card.

Hahn Air

- 8.64 In addition to operating a small airline, Hahn Air also provides a ticketing solution to travel agencies that allows them to sell insolvency protected HR-169 tickets. Hahn Air HR-169 tickets were introduced in 2010 and over 30 million have been sold to date via a network of over 100,000 travel agencies¹¹⁰.
- 8.65 In the case that a passenger with an HR-169 ticket is affected by the insolvency of one of Hahn Air's 279 partner airlines (including 56 EU+3 carriers), the passenger will receive a full refund of the unused part of the ticket including taxes. Additionally, passengers also benefit from additional cover whereby stranded passengers can receive up to an additional €125 to cover any difference in cost between the original and the new ticket. The insurance also covers the costs of meals and hotel accommodation up to €75 and other extra expenses like transfers and phone calls up to €50.

¹⁰⁹ <https://www.which.co.uk/consumer-rights/advice/how-do-i-use-chargeback#how-does-chargeback-work>

¹¹⁰ <https://www.hahnair.com/en/insolvency-insurance-securtix>

- 8.66 Whilst the level of cover provided addressed incurred costs better than most other protection measures, Hahn Air's exposure to the market is limited and only 30 million Hahn Air tickets have been sold since 2010, representing a market share of just 0.1%¹¹¹.

IATA Billing and Settlement Plan (BSP)

- 8.67 The IATA Billing and Settlement Plan (BSP) provides a mechanism by which passengers can potentially claim the cost of their flight back if IATA has not yet transferred the funds to the insolvent airline in question. If a ticket is booked via an IATA accredited agency, which utilises BSP, the ticket revenue is held by IATA for a period before being transferred to the airline¹¹². Payments are normally made to the airline either weekly, fortnightly or monthly in lump sum. If an airline becomes insolvent prior to the transfer of funds, the affected passenger should be able to claim the ticket cost back via their travel agent.
- 8.68 The success of this method is highly dependent on the date and frequency of when the BSPs are settled. As most accounts are settled on a monthly basis on the 15th of the month, tickets bought on the 16th of the month generally have the largest protection window, however this is variable.

Goodwill of national authority

- 8.69 Stranded Monarch customers (110,000) were transported home through a scheme set-up by the UK CAA in 2017 regardless of whether they were travelling as part of a package, or on a flight-only ticket. The decision was taken because "there were too few spare seats on other airlines flying the same routes as Monarch. If left to fend for themselves, many of Monarch's passengers would have had to wait days – or even weeks – to return to the UK, and face the unwelcome prospect of not being able to book somewhere to stay¹¹³". Whilst this was a requirement to fly home passengers on an ATOL package (If an ATOL holder fails, the CAA draws on Air Travel Trust funds to cover repatriation and refund costs), it was a goodwill gesture for passengers on a flight-only ticket.
- 8.70 The repatriation scheme was funded through the Air Travel Trust fund which had been paid for, in part, by Monarch's passengers travelling on a package over the years. The scheme that the UK CAA put in place covered the repatriation of passengers from abroad to the UK, but did not appear to include non-UK based passengers left stranded in the UK. A NEB with passengers stranded in the UK explained having contacted other airlines who offered rescue fares for these passengers.
- 8.71 As with all goodwill arrangements, it is not possible to know how decisions are taken and whether they would happen again in different set of circumstances or in different Member States.

Rescue fares

- 8.72 Rescue fares can be offered by competing airlines to stranded customers, allowing them to make their journey home at a reduced price. Rescue fares are normally available for two weeks after insolvency and are not normally available online and instead must be booked via a call centre. Based on the information made available to WOW air passengers after its

¹¹¹ Assumes total air passengers in the period 2010-2018 was 30.0 billion – World Bank

¹¹² <https://www.iata.org/services/finance/bsp/Pages/index.aspx>

¹¹³ Airline Insolvency Review, UK Government, 2018

insolvency, it can be inferred that reservations can only be made via an airline's call centre and that reduced fares are not available in Global Distribution Systems. Passengers must show proof of their original ticket at check-in in order to validate that has not been bought fraudulently. There is no formal approach for informing passengers about rescue fares and which airlines offer them. Individual airlines will advertise these fares on their websites if they have made them available and relevant authorities may provide a webpage summarising options available to stranded passengers.

- 8.73 IATA¹¹⁴ and A4E stated that some of their member airlines provided assistance to passengers under a voluntary agreement by providing access to discounted transport home. These tickets are subject to available capacity but are mostly offered at a fixed price by the airline. Rescue fares are normally available to passengers, but not travel agents, for two weeks after insolvency and are not normally usually available online and instead must be booked via a call centre. Passengers must show proof of their original ticket at check-in in order to validate that the rescue fare has not been bought fraudulently.
- 8.74 After the collapse of WOW air, Aer Lingus offered fares through its Dublin hub. Paris to Washington DC was available for €219, whilst London to Washington was available for £160¹¹⁵. Interestingly after the collapse of Primera Air, Virgin Atlantic offered rescue fares to passengers stranded on either side of the Atlantic, whilst British Airways only offered fares to passengers wishing to return to London¹¹⁶. This may be a function of available capacity on each airline. Non-IATA airlines also offer rescue fares to passengers, however these can take various forms. After the collapses of Primera Air and WOW air, Norwegian offered discounts to the base fare of its tickets to stranded passengers. Primera passengers were entitled to a 50% reduction, whilst a year later WOWair passengers were offered a 25% reduction. After the collapse of Primera Air, Ryanair offered discounts to customers with forward bookings. For a two-day period customers with bookings for between October 2018 and March 2019 were able to purchase tickets online at reduced fares.
- 8.75 After the collapse of XL Airways, Air Caraibes and French Bee announced rescue fares to offer an alternative solution for the return journeys of passengers between Paris and the Dominican Republic. These rescue fares were only available (subject to availability) to passengers wishing to return to their departure destination, upon presentation of proof of purchase of an XL Airways flight ticket and whose flight had been cancelled. To benefit from these offers passengers were invited to visit the points of sale of the companies or by telephone, noting that these special rates were not available for sale on the companies' websites or in travel agencies.
- 8.76 After the collapse of Thomas Cook, easyJet, British Airways and Virgin Atlantic released advice to Thomas Cook customers about arranging alternative travel. As the majority of UK-based stranded short-haul customers were already being accommodated by the CAA repatriation plan, easyJet (as a short haul operator) requested that all customers returning to the UK followed this plan, whilst British Airways also directed affected passengers to the

¹¹⁴ <https://www.iata.org/pressroom/pr/Documents/Voluntary-Repatriation-Assistance-to-Passengers-Report-PR-2014-11-25-01.pdf>

¹¹⁵ <https://www.forbes.com/sites/michaelgoldstein/2019/03/29/wow-collapse-airlines-offer-rescue-fares-to-thousands-stranded/>

¹¹⁶ <https://www.independent.co.uk/travel/news-and-advice/primera-air-collapse-suspended-passengers-stranded-travel-plans-repatriation-fares-a8564851.html>

'thomascook.caa.co.uk' website where they could view alternative flight arrangements that had been made for them.

- 8.77 In the event that no alternative flight arrangements for UK based stranded customers had been made, which was the case for some long-haul routes, passengers could call British Airways or Virgin Atlantic to arrange transport back from the US and the Caribbean. In these circumstances there was no mention of rescue fares from either airline, which implies that cost was forwarded to the CAA. Passengers were required to have their Thomas Cook booking details to hand at the time of calling.
- 8.78 easyJet and British Airways mentioned the availability of rescue fares to non-UK based stranded customers. easyJet offered a flat rate rescue fare of €140 to all stranded customers on the presentation of a Thomas Cook booking reference, whilst British Airways requested passengers to contact their call centre to discuss options.
- 8.79 Following the collapse of Monarch, ANAC, the Portuguese CAA, was in close contact with the UK CAA and also tried to negotiate rescue fares with several airlines, although easyJet was the only airline to agree to these with ANAC. Only about 40 passengers were rebooked on easyJet rescue fares with ANAC's support. The remaining passengers made their own alternative arrangements for returning to Portugal if the availability of rescue fare seats did not suit their plans.

Claim to the estate after liquidation

- 8.80 After the collapse of Primera Air, the European Consumer Centres recommended that affected passengers try to claim their ticket costs as part of the liquidation process. This method relies on the airline having assets that can be liquidated, and there being sufficient money available after higher priority creditors, such as aircraft leasing firms and airports, have settled their claims.

Potential improvements

Direct measures to increase recoverable costs

- 8.81 Table 8.9 presents a summary of the effect of improving some of the available consumer protection mechanisms. The rate of non-recoverable costs experienced by non-covered passengers could be reduced by simply improving consumer guidelines, but also through measures such as the greater formalisation of credit card consumer protection across Europe. Improvements to the scope and availability of SAFI and Hahn Air insurance would widely benefit non-stranded customers, who still want to travel.

Table 8.9: Possible improvements to consumer facing measures

Recoverable cost of	Non-covered passengers			Insured customers	
	Improved consumer guidelines	Travel Guarantee Fund	Formalised credit card consumer protection	Improved SAFI coverage	Greater Hahn Air exposure
Original flight	Increase in % of recoverable cost	Increase in % of recoverable cost	Increase in % of recoverable cost	Already covered	Increase in % of recoverable cost

Recoverable cost of	Non-covered passengers			Insured customers	
	Improved consumer guidelines	Travel Guarantee Fund	Formalised credit card consumer protection	Improved SAFI coverage	Greater Hahn Air exposure
Replacement flight	Increase in % of recoverable cost ¹¹⁷	No change	No change	Increase in % of recoverable cost	Increase in % of recoverable cost
Non-refundable accommodation and services	No change	No change	No change	No change	No change
Additional accommodation needed to wait for new flight	No change	No change	No change	No change	No change
Communication	No change	No change	No change	No change	No change
Consequence	None beyond marginal cost of information provision	May require additional legislation. Additional pass through cost to consumers	Requires additional legislation	Cost to consumer	Cost to consumer

Source: Steer analysis

Non-covered passengers

- 8.82 The following measures would allow for a greater proportion of ‘non-covered passengers’ to claim the cost of their original ticket at little or no addition cost. These measures would slightly increase the overall rate of non-recoverable costs.

Improved consumer guidelines

- 8.83 In many cases the number of non-covered passengers could be reduced simply through improved consumer guidelines by better publicising the most effective way to purchase tickets, or what to check for in their insurance policy. This would be most effective for flight-only travellers as other travellers tend to get better protection: there is a requirement of the PTD that when travellers book a package, they are informed that they booked a package and receive the name/contact details of the insolvency protection provider. In the case of linked travel arrangements, travellers receive the information that they are about to book a linked travel arrangement, and therefore have insolvency protection from the facilitators, noting that if the information is not provided by the linked travel arrangement facilitator, the facilitator has obligations as an organiser of a package.

¹¹⁷ For stranded passengers who are encouraged to purchase a SAFI inclusive insurance policy.

- 8.84 In Member States where credit cards provide consumer protection by law, customers could be notified when booking that they will receive a refund in the case of airline insolvency should they choose to book via credit card.
- 8.85 Consumers could also be made more aware of the benefits of a comprehensive travel insurance policy and to check for the inclusion of SAFI (if applicable) or more simply the benefits of having a standalone SAFI insurance policy and where to purchase it. SAFI is theoretically available in all EU Member States, so this should provide no barriers to its market prevalence.
- 8.86 However, the UK Insolvency Review¹¹⁸ noted that “consumer research shows that few travellers think about these risks when they book a flight or understand how they could protect themselves” and assessed that this approach would not be sufficient.

Greater formalisation of consumer protection

- 8.87 A more EU-wide view to credit card consumer legislation and protection and/or greater formalisation of chargeback procedures would increase the applicability of these processes across the EU market.

Improvements to rescue fares

- 8.88 One of the soft measures proposed in COM communication from 2013 was to formalise the existing voluntary agreements on the provision of rescue fares and their effective promotion as well as to develop voluntary arrangements to complement “rescue fares” for example with offering reduced airport charges.
- 8.89 As presented in paragraph 8.73, IATA has agreed in 2014 to a voluntary repatriation assistance scheme, where passengers will be returned, subject to available capacity, to their point of origin, or to the nearest airport served by an IATA member airline, at a discounted rate (also known as a “rescue fare”). The agreement further explains that to ensure maximum awareness, the State responsible for the licencing of the insolvent airline should communicate to stranded passengers the possibility of this rescue service, e.g. via national Government websites. This rescue service should only be available for passengers who do not have insurance covering such repatriation.
- 8.90 During this study, no authority in charge of insolvency consulted has called for improvements to rescue fares, and whilst some airlines have stated that they offer them, they have not called for a formal agreement with the EU on this either.
- 8.91 Note that we have not consulted with airports in this study on the possibility mentioned by the 2013 Commission COM to offer “reduced airport charges” to complement rescue fares. However, we note that as per Directive 2009/12, airport charges have to be cost-reflective of the services that airports provide to airlines and ultimately to passengers and that it would therefore appear highly improbable for airports, even if they were willing, to provide discounts on charges on rescue fare grounds.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800219/airline-insolvency-review-report.pdf

Extension of the Travel Guarantee Fund

- 8.92 Implementing a model similar to the Danish Travel Guarantee Fund across Member States could provide an alternative means by which all consumers are able to claim their original ticket cost. A small surcharge could be collected on all fares ticketed in each Member State to provide proceeds for their respective funds. In the event of an airline insolvency passengers can make a claim to the fund for their original ticket price, minus an administration fee.
- 8.93 The administration fee ought to be set in such a way that it is not prohibitive, so consumers can claim a proportion of their original ticket price, back but also avoids the fund being abused. An assessment of whether the administration fee should be applied per booking, rather than per passenger, should also be made, so that group/family bookings will receive a notable rebate, even on short-haul leisure bookings.
- 8.94 Airlines stated that there would be resistance from the industry to apply such measures more widely as they would increase ticket prices and more financially stable carriers would essentially be required to provide a subsidy to passengers of other less financially stable airlines.

Flight Protection Scheme

- 8.95 The UK Insolvency Review concluded that a formal repatriation protection scheme should be put in place in the UK, which would finance the cost of protection, based on requiring all airlines serving the UK market to pay for financial protections. The scheme, called Flight Protection Scheme would protect any air passenger whose journey began in the UK, and who has a ticket to return on an airline that becomes insolvent while they are already overseas. The protection would apply irrespective of how, or from whom, the ticket was purchased or paid for.
- 8.96 A major part of this cost should be met through requiring airlines to put up security through a financial instrument that can be relied on to pay out should they become insolvent. This should be supplemented by a small centrally-held fund to cover the remainder of each airline's exposure, establish reserves against future claims, and meet the Scheme's current expenditure. This could be funded, according to the Review, by a small contribution from each airline. On average, the overall cost of this protection would be estimated by the Review to be less than 50p per UK originating passenger.
- 8.97 It is interesting to note that the design of the UK scheme appears to fulfil most of the objectives of the European Parliament resolution¹¹⁹ calling for the creation of guarantee funds guaranteeing assistance, reimbursement, compensation and re-routing in the event of insolvency or bankruptcy.
- 8.98 The concept developed by the UK Review could be considered for use across Europe, but only after serious considerations of the national situations all across Europe as these will vary significantly and may not be conducive to the same solutions.

Insured passengers

- 8.99 Additional costs incurred by stranded passengers for replacement flights are covered under SAFI and Hahn Air protections, however customers who have yet to begin their journey are often left with significant non-recoverable costs as, despite being able to claim back the

¹¹⁹ 2019/2854(RSP)

original cost of their ticket, they are required to purchase a new ticket closer to the date of travel which in most cases will invoke a higher fare.

Hahn Air

8.100 Hahn Air goes some way to address this by offering an additional €125 to passengers wishing to rebook to assist with covering the additional fare. In certain cases, this may be sufficient, however in others, especially long-haul itineraries, this amount will not cover a significant proportion of the new ticket price. Another issue with Hahn Air is its availability. Only 0.1% of tickets sold have Hahn Air protection, and travel agencies are the primary purchasing channel. Greater awareness of and easier ability for general customers to book Hahn Air tickets could substantially increase the proportion of tickets purchased with this cover. We attribute the low prevalence of Hahn Air issued tickets to:

- The competitive nature of the ticketing market; most travel agents will be reluctant to publish fares with surcharges applied as their fares will appear more expensive than competitors’;
- Airlines not wanting to advertise bankruptcy insurance on their websites as an add-on purchase; and
- The fact that Hahn Air tickets cannot readily be purchased online.

SAFI

8.101 The scope of SAFI could be increased to also include required additional funds to passengers wishing to rebook. Depending on the policy this could be up to a fixed amount, as per Hahn Air, or the total rebooking cost. This cost would be reflected in the price of the policy to consumers.

Indirect measures to increase recoverable costs

8.102 Airline bankruptcies rarely happen instantaneously and are often a culmination of events, which place financial stress on an airline over a period of time. With greater visibility of these issues, the relevant authorities will be more aware of impending bankruptcies and will be able to respond appropriately by ensuring that as few passengers are affected as logistically possible and that effective repatriation measures are in place for stranded passengers. The following measures could be pursued to assist with this. Many of these measures were also identified in the UK DfT Airline Insolvency Review, published in May 2019.

Overview of financial robustness

8.103 Airlines could be required to submit more information regarding the state of their financial robustness over the next year, although Article 8 of Regulation 1008/2008¹²⁰ already provides Member States with this possibility as it states that “the competent licensing authority may at any time assess the financial performance of a Community air carrier to which it has granted an operating licence by requesting the relevant information” This would indicate to authorities, whether an airline needs further investigation regarding accommodating the needs of potentially affected consumers.

¹²⁰ Note that Regulation 1008/2008 is currently under potential revision

Supply of advanced booking data

- 8.104 It became evident whilst researching for this study that statistics regarding the status of advanced bookings on insolvent carriers was generally not available; instead an estimate was calculated for this study in line with other market findings.
- 8.105 Carriers at risk of insolvency could be required to provide forward booking data to their relevant aviation authority to allow greater visibility of the scale of affected passengers in the case of bankruptcy. This would also provide a means by which affected passengers could be contacted regarding alternative travel arrangements and also so any repatriation effort (if required) can be seized accordingly.

Ability to mitigate future passenger risk

- 8.106 Measures could be enacted to reduce the risk of an impending bankruptcy unnecessarily affecting passengers. Introducing measures to prevent or dissuade passengers from making further bookings in the hours before the airline officially declares bankruptcy, or ensuring that all/part of the money collected by the airline is stored in a trust account, similarly to what is done in Denmark, which can be refunded or used for repatriation if required are possible actions that could be implemented. Primera Air was widely criticised for accepting bookings right up until the public announcement of the bankruptcy, despite knowing internally that the bankruptcy was inevitable, whilst Monarch increased fares substantially in the 24 hours prior to its bankruptcy to price itself out of the market.

Organisation of appropriate repatriation measures

- 8.107 Passengers generally purchase their own tickets to return home in the case of airline failure (self-repatriation), often using rescue fares offered by other airlines and claiming some of the cost back at a later date (if possible). Repatriation measures could be more coordinated to better assist customers through offering a more formalised repatriation procedure, where the relevant authority takes responsibility for finding tickets for affected passengers and also negotiating a price where necessary. This could be enacted through different means depending on what would be most cost-effective under the circumstances, including:
- Organising tickets home for passengers on other carriers where capacity allows;
 - Chartering aircraft where additional capacity is needed (as seen after the bankruptcy of Monarch); or
 - Introducing measures to allow airlines to keep their fleets flying for a limited amount of time to reduce the number of stranded passengers.
- 8.108 Associated costs would have to be covered by a fund, most likely levied on ticket sales.

Orderly wind-down of operations

- 8.109 Once an EU carrier can no longer meet its actual or potential obligations for a 12-month period, the national licensing authority shall suspend or revoke the license (Regulation (EC) No 1008/2008¹²¹). As a sudden revocation can lead to disrupting effects on the market for passengers, workers and the carrier may sometimes be able to restructure its operations, licensing authorities may grant a temporary license for a duration not exceeding 12 months to

¹²¹ Ex-post evaluation of Regulation 1008/2008:

<https://ec.europa.eu/transport/sites/transport/files/legislation/swd020190295.pdf>

the carrier, provided safety is not at risk and there is a realistic prospect of financial reconstruction within that time period.

- 8.110 Some Member States may use this time to discuss arrangements for restructuring or reducing the disruption on passengers with the air carrier. However, the Evaluation of the Air Services Regulation has found that the issuing of temporary licenses does not ensure that such a dialogue takes place and, in some cases, may send a negative signal to the market further exacerbating the financial position of the air carrier. The bankruptcy of Air Berlin, for example, was handled in this way at a cost of €150m, which was provided as a bridging loan by the German government (DG COMP State Aid SA.48937). There was an expectation of the German government that this loan would be re-paid, however owing to the structure of the eventual sale of Air Berlin, it is unlikely that this will be realised¹²².

Duty of care

- 8.111 Issues would arise regarding which State authority would be responsible for the care of affected passengers owing to the more cross-state nature of the airline industry in Europe versus the package holiday industry. For example, the three largest low-cost carriers in Europe – Ryanair, easyJet and Wizzair – are headquartered in Ireland, the United Kingdom and Hungary respectively¹²³, but all operate many routes both domestically and internationally in and between other Member States. If a bankruptcy were to occur in these situations a clear line of responsibility would need to be established as to whether the relevant authority in the country of departure or the country where the airline is domiciled would be responsible.

Summary of findings

- 8.112 Between 2011 and October 2019, we estimate that 5.6 million passengers were impacted by airline insolvencies in some way. This is equivalent to 0.04% of total EU passengers during this period. In 2017, which included the relatively large bankruptcy of Monarch, this equated to 0.09% of total EU passengers being affected (i.e. unable to travel) or stranded due to airline failure. In 2019 this has grown to 0.14% due to the bankruptcies of Thomas Cook, Germania, Aigle Azur and WOW air.
- 8.113 On average, over the period 2011-June 2019, we estimate that passengers directly affected by insolvencies incurred €431 in costs, 83% of which (i.e. €357) were not recoverable under one of the protection mechanisms.
- 8.114 The level of protection obtained by a passenger depends mainly on where and how their itinerary was purchased. The most significant difference being between standalone (flight-only) tickets and those purchased as part of a package or linked travel arrangement. The current EU framework does not provide any direct insolvency protection requirements for flight-only ticket holders and these passengers must instead ensure their own protection. Insolvency protections for flight-only (i.e. single travel service) ticket holders have not materially changed since 2011. However, some passengers who previously would have been considered flight-only ticket holders may, under the new Package Travel Directive since July 2018, be covered by the provisions for linked travel arrangements/packages. This implies that

¹²² The loan would have likely been covered had Lufthansa purchased Air Berlin subsidiaries LGW and NIKI (estimated €230m), but owing to competition concerns they did not continue with the purchase of NIKI and purchased LGW for an estimated €30m.

¹²³ We note that this situation is currently in a state of change as all three airlines have recently opened subsidiaries, based in other countries, to better deal with market developments.

some airlines are already contributing to the different insolvency protection put in place in the EU/EEA Member States. This is a change of trend since 2011, with all types of airlines (charter, low-cost, scheduled short-haul only, scheduled mixed short and long, long-haul) being concerned.

- 8.115 Across Europe, there only exists partial solutions for the protection of passengers in the case of airline insolvency. These protections overlap and none are universal, such that on one flight several passengers may be covered multiple times, for example if they had purchased their ticket with a credit card and were also covered by a travel insurance policy, whilst others may not have any protection at all, especially if they booked flight-only tickets directly from the carrier.
- In general terms, purchases of other travel services such as accommodation made at the same time as the purchase of a flight, will normally result in the creation of a package or linked travel arrangement and be subject to the protections set out in the Package Travel Directive;
 - Scheduled Airline Failure Insurance (SAFI) has allowed passengers to insure themselves against some of the costs resulting from the insolvency of an airline on which they are booked. SAFI covers the costs of repatriation if the passenger is stranded, or reimbursement for the cost of the original flight tickets in the case that the passenger cannot recover it. However, SAFI is only available in a small number of Member States and excludes any carriers publicly known to be in financial difficulty. It is also not very well-known by passengers;
 - Some Member States have put in place Travel Funds. In the event of insolvency, money can be extracted from the fund to assist with the repatriations of stranded passengers and the reorganisation of affected bookings. However, compensation will be paid out only if there is sufficient money remaining in the fund which may be an issue for large-scale events;
 - Payments for tickets purchased via IATA travel agents are held by a central payment mechanism before being passed on to the airline, in settlements at regular intervals (usually monthly). If the airline becomes insolvent, passengers whose payments have not yet been passed on to the airline should be able to recover what they paid. Across Europe, this type of protection does not appear particularly useful;
 - Other protections include those available through the payment system used (such as credit cards) but these are only available in a limited number of Member States to credit card holders only;
 - Passengers may benefit from travel insurance policies which include supplier failure cover, although not all such policies do;
Rescue fares may be offered by competing airlines (at their discretion) to stranded customers, allowing them to make their journey home at a reduced priced, but there is little public awareness of these.
- 8.116 With four bankruptcies over a very short period of time, the European Parliament is keen to remedy this patchy level of protection and asked for the creation of guarantee funds and insurance contracts for that purpose (Resolution RC-B9-0118/2019), echoing their amendments of the 2013 Proposal adopted in 2014¹²⁴. This should be further considered by

¹²⁴ <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2014-0020&language=EN>

the Commission, in particular taking into consideration the recommendations made by the UK Insolvency Review in 2019 to establish a UK-wide protection fund. However, insolvency laws differ widely across Europe, explaining why the current situation is so heterogeneous. This further means that a solution that works in the UK may not necessarily be well-adapted to another Member State, so any further recommendations on possible improvements at EU level ought to be carefully researched. Also note that the recommendation of the UK Insolvency Review has not been through the national legislative debate which may set a different outcome for the recommendation made.

9 Conclusions

Introduction

- 9.1 The first legislation on air passengers rights dates back to the early days of the internal market in the 1990s, focusing on denied boarding¹²⁵, the objective being to limit potential negative impacts of the liberalisation of the air transport market on the service quality to passengers. It was then complemented by rules on air carrier liability (Regulation 889/2002), cancellation, long delay of flights and denied boarding (Regulation 261/2004), passengers with reduced mobility (Regulation 1107/2006), and price transparency and insolvencies (Regulation 1008/2008). Regulation 261/2004 has been at the core of this framework. The implementation of passenger rights has also been supported by consumer protection legislation.
- 9.2 In March 2013 the Commission proposed¹²⁶ a revision of Regulation 261/2004. Following a dispute between the United Kingdom and Spain over Gibraltar's airport, the proposal has been "on hold" since November 2015. Meanwhile, the Commission adopted Interpretative Guidelines¹²⁷ in 2016, which aim to explain more clearly a number of provisions contained in Regulation (EC) No 261/2004, in particular in the light of the Court of Justice of the European Union's (CJEU) case law, in a bid to make current rules more effectively and consistently enforced.
- 9.3 Given the time that has elapsed since the drafting of the Commission proposal in 2013, the overall context has evolved. For this reason, the Commission procured this study, of which the overall objective it described as "to assess the current level of protection of air passengers rights as well as the state of play of the air passengers rights environment as they stand in 2018".

Summary of evolution of air passenger rights

Level of disruption

Development since 2011

- 9.4 The analysis indicates that the number of flights disrupted, in terms of cancellations and delays over two hours, has increased significantly between 2011 and 2018, although the proportion of all flights disrupted remains relatively low; cancellations grew from 1.0% to 1.7% of flights between 2011 and 2018, and delays grew from 0.9% to 1.4% of flights. The increased

¹²⁵ Regulation (EEC) No 295/91 establishing common rules for a denied-boarding compensation systems in scheduled air transport.

¹²⁶ Proposal amending Regulation (EC) No 261/2004 and Regulation (EC) No 2027/97 (COM(2013) 130 final of 13.3.2013)

¹²⁷ Interpretative Guidelines on Regulation (EC) No 261/2004 and on Regulation (EC) No 2027/97 as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council, OJ C 214, 15.6.2016, p. 5–21

level of disruption corresponds with increasing levels of ATM delay generated in the single European sky, which also causes further knock-on effects throughout the system. The causes of delay across airlines and across the system vary, however we do observe a small overall reduction in airline-attributable delay, which could also be a reflection of the increased ATM disruption in the system that would usually be classed as an extraordinary circumstance.

- 9.5 The number of passengers affected by flight disruptions follows the same trend as flight disruptions, but due to increasing load factors between 2011 (85%) and 2018 (89%), the number of passengers affected has increased at a greater rate over the period. The proportion of passengers affected remains relatively small, with passengers affected by cancellations growing from 0.9% to 1.6% and the proportion affected by delays growing from 1.0% to 1.5%. Compared to delays and cancellations, the proportion of passengers affected by denied boarding and downgrading was very low. We estimate that 0.14% of passengers were denied boarding in 2018 and just 0.01% of passengers were downgraded.

Rising claim rates

- 9.6 Passenger claim rates for compensation have increased significantly between 2011 and 2018, reflecting increasing awareness. In 2018, we estimate that 38% of eligible passengers claimed compensation, up from 8% in 2011. There is a large disparity between claim rates for cancellations and delays; in 2018, close to 60% of eligible passengers affected by delays claimed compensation, as opposed to under 20% affected by cancellations. The overall claim rate (38%) is broadly consistent with the level of awareness amongst passengers of their rights. Note that the claim rate measure used here does not differentiate between whether an airline provided compensation after a passenger submitted an eligible claim, or after the intervention of a NEB, ECC, ADR/ODR/court or claim agency.

Air passengers' perspective regarding their rights

Overall passengers' expectations and rights

- 9.7 Surveys indicate that passengers' priorities are unchanged since 2011 (and since Regulation 261/2004 was implemented), which are that:
1. Care and assistance are provided by airlines in the event of disruption;
 2. Re-routing is offered so that they arrive at their destination as soon as possible; and
 3. Reimbursement and/or compensation is due if issues within the control of the airline go wrong (i.e. in cases of denied boarding, downgrading, cancellation or long delay within the control of the airline).
- 9.8 It is helpful to consider passengers' expectations and rights, through the different phases of travel: before; during; and after. Regulation 261/2004 predominantly provides protections to passengers during and after travel, while protections before travel are mostly provided by other legislation (e.g. Regulation 1008/2008). However, gaps exist between passenger expectations and the protections available through the three phases. For example:
- Before travel: Regulation 1008/2008 sets requirements for price transparency that the final price including all foreseeable and unavoidable elements ought to be shown throughout the booking process. What are considered "foreseeable and unavoidable" elements can vary between passengers and airlines though. Passengers would expect that a hand-luggage allowance should always be included as part of the ticket and that travel companions would automatically be seated together. Airline practices and the degree to

which they unbundle their services do not always align with these passenger expectations, and additionally they vary between airlines, generating complexity for passengers.

- During travel: Regulation 261/2004 defines a number of obligations for airlines with respect to passengers experiencing disruption, however it does not require that airlines should provide information to passengers about their delayed or cancelled flights – something that passengers would expect.
- After travel: Regulation 261/2004 (and associated jurisprudence) provides that passengers should be compensated if their flight has been delayed by more than three hours and passengers would expect to be able to claim such compensation in an easy and timely way. However there exists no requirement for airlines to provide clear and efficient ways for passengers to claim compensation within a specified timeframe.

9.9 Overall, passengers expect a simple system that ensures fair outcomes. Instead, they experience a complex system with limited transparency. The low intelligibility of Regulation 261/2004 and the related jurisprudence contributes to the complexity of the system, in which there is a lack of trust between passengers and airlines.

9.10 Nevertheless, according to all stakeholders who participated in this study, awareness amongst passengers of their rights has increased. This has been driven by a number of factors, including traditional media and social media campaigns by the EC, NEBs, consumer groups and claim agencies, as well as improved compliance by airlines with their obligation to inform passengers of their rights. Despite this, the level of air passengers' awareness of their rights is still not high (c.30%), while the complexity of the rules means that passengers often do not fully understand their rights even if they are aware of them. This sometimes also contributes to passengers having unrealistic expectations as a result of misunderstanding the protections available, further undermining passengers' trust in the system.

Administrative burden and costs incurred for passengers

9.11 The time and the costs involved for passengers seeking redress vary depending on the outcome at each stage of the process (i.e. whether a satisfactory response is received directly by the airline, or whether a complaint is then lodged with a NEB, or whether a case is brought to an ADR, etc.). Elapsed time may range from a few hours to several months, while costs may range from zero to as much as half the compensation amount if a claim agency is engaged and opts for court action. At the same time, the level of know-how required for passengers to pursue a claim is high and may discourage them from starting the process or continuing with it if disputes arise. The burden for passengers may be exacerbated if they are not able to contact airlines or complete the process in their own language, or if they have to refer to NEBs, ADRs or courts that are not in their country of residence.

Passengers with disabilities or reduced mobility

9.12 Approximately 10 % of the EU population lives with some type of disability¹²⁸. All relevant stakeholders agreed that the number of PRMs is growing strongly, representing an increasingly large proportion of total passengers. Reasons stated for this growth included:

- The wide scope of application. PRMs include people with disabilities (including temporary disabilities) and less mobile people (e.g. elderly passengers);
- An ageing European population with disposable income and a higher propensity to fly that is more likely to require assistance; and

¹²⁸ https://europa.eu/rapid/press-release_IP-07-1173_en.htm

- Increased awareness that PRM assistance is available.

- 9.13 The expectation of PRMs is that they are provided with appropriate assistance at their origin airport, that they are able to travel, that their mobility equipment or other assistive devices are accommodated and transported securely, and that they are able to disembark in a timely manner and receive appropriate assistance at their destination airport.
- 9.14 Airlines are prohibited from denying carriage to PRMs on the basis of their disability, except in cases where a passenger does not have a valid ticket or reservation or the size of the aircraft or its doors makes the embarkation or carriage of that PRM physically impossible. The carriage of PRMs may also be denied in order for airlines to meet safety requirements.
- 9.15 PRM representatives and NEBs agreed that the level of service provided by airports and airlines generally complies with the requirements of Regulation 1107/2006, and while PRM representatives noted that service quality can vary across airports, NEBs received very few complaints in relation to PRM issues. Despite this, there remain instances when things go wrong and the impact of these can be significant for the individuals involved.
- 9.16 PRM representatives highlighted denied boarding at the gate and damaged mobility equipment as areas of particular concern.
- Denied boarding of PRMs at the gate on safety grounds can be seen by PRMs as arbitrary (e.g. denied on the inbound flight when no issues were raised on the outbound one) and incontestable (i.e. it is not possible to contest or disprove “safety reason” justifications) and by happening at the gate, leaves very little opportunity for the issue to be resolved before the flight departs.
 - Damaged mobility equipment, depending on its severity, can have an immediate and significant impact on PRMs, while compensation is governed by the Montreal Convention and Regulation 889/2002 and limited to approximately €1,400 (1,131 SDR), where the value of some mobility equipment may be several times this amount.

Airlines’ and airports’ perspective on air passenger rights

- 9.17 The liberalisation of the European air transport market has generated significant benefits for consumers: a wider choice of air services and intense price competition between air carriers which has resulted in significantly lower fares. To limit any potential negative impacts that this might have on the quality of service delivered to air passengers and consumers, a number of measures have been taken at European Union-level to protect them. As well as protecting passengers, the European Commission expected these measures to contribute to an improvement in the quality of service that European airlines provide to their customers and make the airlines more competitive¹²⁹. The clear definition of responsibilities between airlines (e.g. for care and assistance due to passengers affected by disruption) and airports (e.g. for the provision of PRM services) was also expected to contribute to a level playing field across the EU and more uniform minimum quality standards, while supporting passenger confidence across the EU aviation market.

¹²⁹ https://europa.eu/rapid/press-release_IP-05-181_en.htm

Cost to airlines

- 9.18 The analysis indicates that the costs incurred by airlines through the implementation of Regulation 261/2004 has grown significantly since 2011. The average direct cost per passenger is estimated¹³⁰ to have increased at a compound annual growth rate (CAGR) of +13.6% from €1.8 in 2011 to €4.4 in 2018, driven by a combination of increased levels of disruption and increased claim rates for compensation. The increase in the claim rate (8% in 2011, 38% in 2018) has been driven by increased awareness among passengers of their rights and the activity of claim agencies. At the same time a larger proportion of passengers are potentially eligible to claim, as a result of the evolving interpretation of extraordinary circumstances, which has become narrower (e.g. through the Siewert ruling (Case C-394/14)) and the Regulation's scope, which has become wider (e.g. the Wegener ruling (Case C-537/17)).
- 9.19 The cost of Regulation 261/2004 forms a relatively small part of airlines' cost base, however, as the overall cost of this Regulation has increased, this share has also grown and in the case of LCCs has overtaken the cost of marketing and distribution. At the same time, airlines' average yield (i.e. fare) has fallen and in 2018, the estimated average cost per passenger generated by Regulation 261/2004 represented nearly 3.0% of the yield, up from 1.0% in 2012. While the average cost per passenger is not very high (€4.4 in 2018), as costs are spread over a very large number of passengers, the average cost of Regulation 261/2004 for passengers who are disrupted is high, representing over 90% of airlines' yield on average in 2018. The Regulation was designed for this cost to be high to discourage airlines from taking commercial actions that would inconvenience passengers (e.g. overbooking), however, as more operational disruptions are also covered (e.g. technical defects inherent in the normal exercise of the activity of the air carrier), the cost per passenger affected by disruption may generate disincentives for airlines to actually operate disrupted severely delayed flights and incur operating costs in addition to the disruption costs.
- 9.20 In addition to the direct costs for compensation, care and assistance, and reimbursement and re-routing that airlines incur as a result of implementing Regulation 261/2004, airlines also incur administrative costs and legal costs for handling passenger claims, as well as costs for measures taken to mitigate the risk of disruption. Based on stakeholder inputs, administrative and legal costs were found to be up to 0.6% of the overall cost base in 2018, while the cost of mitigation measures (e.g. lease and maintenance costs for spare aircraft) contributed approximately 0.4% to the overall cost base. The extent to which all of these costs may be attributed to Regulation 261/2004, as opposed to normal steps taken to ensure a level of operational resilience is not straightforward to evidence.
- 9.21 A key issue for the airlines is the fact that the right to redress defined in Regulation 261/2004 is not guaranteed and as a result they are not able to recover costs for care and compensation that they might have incurred from third parties (e.g. from airports, ANSPs, groundhandlers and other parties) where these may have contributed to the disruption. The Regulation's costs then are either internalised by airlines, impacting their profitability, or are externalised as an increase in fares.

¹³⁰ Estimation based on the level of disruption recorded (CODA data) and the claim rates (airline and claim agency data) and cross-checked against cost data of 8 airlines accounting for 25% of the market.

Impact on air fares

- 9.22 Airlines provided mixed views as to the extent to which fares have been impacted by Regulation 261/2004. Seven airlines indicated that air fares have on average been impacted by costs of Regulation 261/2004, as all costs have to be covered by revenues, although the impact may not be direct on a route-by-route basis. Ten airlines indicated that air fares are generally dictated by the market and that the impact of the additional costs is on profitability (and investment opportunity), resulting in a restriction in the number of routes operated and a reduction in connectivity offered. The overall impact of the Regulation on airlines varies according to their business model and the market they operate in, with network carriers, low cost carriers, regional carriers and charter carriers all highlighting different aspects of the APR protection provisions that affect them the most.

Cost to airports

- 9.23 Regulation 261/2004 does not impose a legal obligation on airports, since passengers' direct relationship is with the airlines. Nevertheless, some airports stated that they provide support beyond their legal obligations to passengers, as not all airlines comply with Regulation 261/2004 in the same way. Airports also take steps to support airlines in fulfilling their duties in a number of ways (e.g. through making arrangements for food and beverage outlets to remain open for extended periods).
- 9.24 The support provided by airports to airlines and to passengers generates some incremental costs for airports, however these are small, indistinguishable from costs that the airport would anyway incur (e.g. passenger contact centre staff) and not always directly related to Regulation 261/2004. Any costs incurred are generally not charged directly back to individual airlines, but do form part of airports' overall cost base, which is eventually recovered through airport charges.
- 9.25 The costs airports incur for providing PRM services are passed through to passengers in the form of the PRM charge that all passengers pay on their tickets. The value of this charge is overseen by the independent supervisory authority (ISA) competent for airport charges. Revenues raised by the PRM charge are held in a trust (escrow) account and are used to cover the cost of service provision by airports (or their subcontractors if the service has been outsourced). Any accumulated revenue or shortfalls in revenue is rolled over or recovered during the next period for which the charge is set (e.g. a shortfall in revenue compared to the costs in one year will be recovered through a slightly higher charge the following year).

Monitoring and enforcement processes under Regulation (EC) No 261/2004

Monitoring and enforcement practices

- 9.26 Significant differences exist across the different Member States, both in terms of the way that NEBs are dealing with individual complaints, as well as the enforcement powers they have. The approach to enforcement and complaint handling varies between NEBs. Whereas some NEBs are able to accept and enforce individual complaints, others cannot deal with passenger complaints from individuals but instead perform enforcement on a system-wide level and refer passengers to an ADR body.
- 9.27 In many cases, when NEBs have been set-up, their organisation and powers have not been defined in terms of adequate outcomes for customers or for effective monitoring and enforcement of the industry. Instead they reflect already existing administrative authorities, among which many had no consumer protection background, that have been given additional

functions to handle passenger rights with different levels of resources and access to systems, and in different legal frameworks.

- 9.28 Different powers specified at national level and the binding/non-binding nature of NEBs decisions are creating different outcomes for passengers across the EU+3 (theoretically even for the same flight). This is also the case for the assessment of extraordinary circumstances which creates an unfair application of APR for passengers and for all stakeholders involved.
- 9.29 In recent years, most NEBs have noted a substantial increase in the number of complaints received under Regulation 261/2004. The number of complaints has been increasing steadily since 2011, presenting challenges for resources and timeframes for addressing complaints. Many NEBs have noted increases of up to 200% in the number of complaints received since 2013. For passengers this may result in a delay to complaint handling process. NEBs have had to react by increasing the number of staff (where possible) that deals with air passenger rights within their organisation. The workload for the complaint handling may also prevent the NEBs from performing more systematic enforcement.

Oversight and sanctioning

- 9.30 In principle, NEBs should be undertaking monitoring activities to maintain oversight of airlines' compliance with the requirements of Regulation 261/2004, however NEBs do not all do this at system level either "by definition" (e.g. Greece) or because their resources are dedicated to handling individual passenger complaints.
- 9.31 As with complaint-handling, different sanctioning powers and binding/ non-binding nature of decisions also create different outcomes for airlines across the EU/ EEA/ CH – possibly contributing to some competitive distortions – although this was not a concern raised by airlines (within the EU). Points were raised however about the competitive impact for carriers outside the EU.
- 9.32 The level of information available to NEBs to allow them to fulfil their monitoring and enforcement role is not sufficient. There is a lack of reporting requirements for airlines on overall compliance. As a result, the NEBs' enforcement is based only on complaints received and, potentially, inspections. Some NEBs do proactively carry out inspection activities at airports to monitor aspects of the regulation such as information provision and care and assistance (as opposed to compensation).
- 9.33 Some aspects of the requirements under the regulation are also not readily measurable and/ or enforceable. Difficulties with enforcement may be a result of a wording which allows a case-by-case assessment (e.g. re-routing under comparable transport conditions at the earliest opportunity) which results in different interpretations of what constitutes an infringement. The issue has been investigated further by two NEBs (Austria and the UK), which has resulted in an official ruling in Austria and an open letter to airlines in the UK. NEBs have noted a number of difficulties that emerge in trying to assess compliance with aspects of the Regulation (e.g. the requirement to ask for volunteers for denied boarding) which are difficult to record or provide evidence for retrospectively.
- 9.34 Many NEBs have noted that they assess sanctioning to be a final measure and will issue warnings to airlines in the first instance to encourage behavioural change. Very few sanctions have been applied across the EU/EEA/CH, and where sanctions are applied (e.g. Greece and Spain) it is unclear whether they are effective and driving any systematic change in airlines' behaviour.

NEB cooperation

- 9.35 Good cooperation exists between NEBs regarding the forwarding of complaints. Upon the passenger's request, almost all NEBs will forward the complete complaint to the competent NEB alongside a short summary of the case.
- 9.36 Some NEBs note positive experience with using the Wiki platform to exchange information and clarify questions, however – as with any such platform – NEBs noted that its value depended on its content and required the commitment of participants to dedicate some resources to it.

General consumer protection framework, other means of redress and claim agencies

- 9.37 Air passenger rights protections are complementary to other, wider protections offered by the general consumer protection framework. Similarly, air passenger rights enforcement mechanisms can be complemented by wider public enforcement mechanisms established under the Consumer Protection Cooperation (CPC) Regulation. In parallel, passengers may seek individual redress by turning to private enforcement tools or claim agencies.
- 9.38 The interaction between the system of redress dedicated to APR (airlines, NEBs) and the private enforcement tools available more widely (ADR, courts), coupled with the involvement of claim agencies, creates a lot of complexity, has poor intelligibility and generates delay and cost as part of the process.

General consumer protection framework

- 9.39 There are overlapping compensation entitlements for consumers under Regulation 261/2004 and, where the consumer bought the flight as part of a package, under the PTD, which creates some complexity for travel agents and tour operators. Travel agents and tour operators are the holders of the relationship with customers who booked a package and the natural point of contact for these customers when they are subject to disruption. Better demarcation of responsibilities, transparency and information exchange would be required between stakeholders to ensure that liabilities for compensation rest with the correct party.
- 9.40 The fact the travel agents and tour operators are the natural point of contact for passengers who booked their flights through such intermediaries or as part of a package is also relevant to the airlines' obligation to provide passengers with information. Airlines do not always have the contact details of their passengers as travel agents/tour operators view that such contact details are commercially sensitive, since these passengers form their customer base. Where customers' contact details are provided to an airline, travel agents and tour operators state that airlines should not be permitted to use customers' contact details for commercial purposes (e.g. marketing offers).
- 9.41 With the exception of no-show clauses used by airlines, other issues were not raised by stakeholders relating to general consumer protection legislation. A number of EU Member State courts, including in Germany, Spain and Austria, have ruled that the no-show clauses are unfair contract terms which breach national legislation based on EU Directives.

Public enforcement mechanisms

- 9.42 Hardly any NEBs use the CPC Network. The CPC Network concerns action in response to general practices (such as failure to have appropriate policies or procedures in place) which might involve multiple enforcement bodies in several Member States. As a result, the network is viewed by NEBs as being "of limited relevance to the enforcement of Regulation 261/2004",

which predominantly involves the enforcement of individual incidents by a NEB in the same Member State as that within which the incident occurred. NEBs have also not used the functions offered by the CPC Network for providing a coordinated position, for example, with respect to the application of extraordinary circumstances in the case of mass flight disruptions – an approach that passenger representatives would welcome.

Individual complaint handling and redress

- 9.43 The ECC-Net is a valuable resource cross-border for passengers. It supports them in seeking redress by providing a single contact point for them to address their complaint to, which is able to handle this complaint in their mother tongue. The network acts as a facilitator and has flexibility in the way in which it can follow up a passenger complaint. It can address the airline in the other country on behalf of the passenger and/or turn to the competent NEB. The ECC-Net then acts as a mechanism for reducing the fragmentation of the NEBs across Europe and additionally can handle all complaints related to APR, covering Regulation 261/2004, Regulation 1107/2006 and the Montreal Convention. ECC-Net however does not have the powers to issue any (binding or non-binding) decisions in the cases it handles.
- 9.44 In general, ADRs are a comparatively efficient and effective way for handling disputed claims within the existing air passenger rights framework, especially as compared to the courts. However, the coverage of ADRs across the EU/ EEA is fragmented and suffers shortcomings such as the participation of airlines only being voluntary; a lack of sector expertise at general consumer bodies; restricted legal scope and interpretation of the legislation (e.g. not including case law); and the non-binding nature of their decisions.
- 9.45 The emergence of claim agencies in recent years has been a particularly significant development in the area of air passenger rights. Claim agencies deal with claims enquiries, process eligible claims and monitor flight disruptions on very large scale with a high degree of automation that has shifted the balance in the air passenger rights system, generating a significant compensation, administrative and legal burden for airlines and a large number of cases in the courts. At the same time, passengers may have to pay up to 50% of their compensation to the claim agencies in some cases, depending on steps taken for the claim to be resolved (i.e. whether this is resolved between the claim agency and the airline or whether the case is taken to court by the claim agency). A number of the practices used by claim agencies have been highlighted as problematic by NEBs, ECCs, passenger representatives and airlines. A particular concern for airlines is the readiness with which claim agencies resort to the courts, as courts generate a lot of uncertainty, complexity and cost through their sometimes-inconsistent interpretation of the Regulation's provisions at a local level.
- 9.46 However, as also pointed out by NEBs and passenger representatives, claim agencies have supported increased awareness of air passenger rights (since this drives their income), and do indeed fill a protection and enforcement gap, acting to ensure passengers' rights are fulfilled in situations where passengers might have encountered difficulties in doing so themselves.

Air passenger rights outside the EU

ICAO's Core Principles on Consumer protection

- 9.47 ICAO has established a set of Core Principles on Consumer protection for before, during and after travel. The EU legislative framework is generally consistent with these Core Principles through a combination of requirements specified in Regulation 1008/2008, Regulation 2111/2005 and Regulation 261/2004. The gaps between the ICAO Core Principles and the EU

framework (e.g. on keeping passengers informed throughout their journey) are addressed by the 2013 Proposal for the revision of Regulation 261/2004.

APR approaches outside the EU

9.48 In non-EU countries, the approach to protections available to air passengers ranges from regulatory regimes (as in the EU and Malaysia) to voluntary ones (as in Australia and the UAE). Typically, regulatory and voluntary regimes both recognise an obligation for re-routing/reimbursement, but none of the voluntary regimes reviewed offer compensation to passengers affected by disruption. Further, regulatory regimes in Brazil, China, Indonesia and Malaysia do not offer compensation in addition to reimbursement. The approach towards provision of care under extraordinary circumstances is also weaker under voluntary regimes than under regulatory ones.

9.49 A number of good practices were identified through the review of air passenger rights outside the EU, including the following:

- Monitoring of compliance, including formal reporting requirements for airlines to provide authorities with information on operational performance and claim handling performance;
- The requirement for airlines to provide information to passengers about their journey during the journey (including the causes of disruption);
- The requirement for airlines to provide contact details to passengers, handle local languages and adhere to deadlines for keeping passengers up to date on the status of their complaints; and
- Transparent claim handling processes and platforms between airlines and authorities, leveraging suitable technologies.

Impact of airline insolvencies

Developments since 2011

9.50 Between 2011 and October 2019, we estimate that 5.6 million passengers were impacted by airline insolvencies in some way. This is equivalent to 0.04% of total EU passengers during this period. In 2017, which included the relatively large bankruptcy of Monarch, this equated to 0.09% of total EU passengers being affected (i.e. unable to travel) or stranded due to airline failure. In 2019 this has grown to 0.14% due to the bankruptcies of Thomas Cook, Germania, Adria, Aigle Azur and WOW air. Over the period considered, the proportion of passengers affected or stranded was 0.02% in 2011, rising to 0.10% in 2012 and as low as 0.01% in 2015 and 2016.

9.51 On average, over the period 2011-June 2019, we estimate that passengers directly affected by insolvencies incurred €431 in costs, 83% of which (i.e. €357) were not recoverable under one of the protection mechanisms.

Protection of passengers

9.52 The level of protection obtained by a passenger depends mainly on where and how their itinerary was purchased. The most significant difference being between standalone (flight-only) tickets and those purchased as part of a package or linked travel arrangement. The current EU framework does not provide any direct insolvency protection requirements for flight-only ticket holders and these passengers must instead ensure their own protection. Insolvency protections for flight-only (i.e. single travel service) ticket holders have not

materially changed since 2011. However, some passengers who previously would have been considered flight-only ticket holders may, under the new Package Travel Directive since July 2018, be covered by the provisions for linked travel arrangements/packages. This implies that some airlines are already contributing to the different insolvency protection put in place in the EU/EEA Member States. This is a change of trend since 2011, with all types of airlines (charter, low-cost, scheduled short-haul only, scheduled mixed short and long, long-haul) being concerned.

- 9.53 Across Europe, there only exists partial solutions for the protection of passengers in the case of airline insolvency. These protections overlap and none are universal, such that on one flight several passengers may be covered multiple times, for example if they had purchased their ticket with a credit card and were also covered by a travel insurance policy, whilst others may not have any protection at all, especially if they booked flight-only tickets directly from the carrier.
- In general terms, purchases of other travel services such as accommodation made at the same time as the purchase of a flight, will normally result in the creation of a package or linked travel arrangement and be subject to the protections set out in the Package Travel Directive;
 - Scheduled Airline Failure Insurance (SAFI) has allowed passengers to insure themselves against some of the costs resulting from the insolvency of an airline on which they are booked. SAFI covers the costs of repatriation if the passenger is stranded, or reimbursement for the cost of the original flight tickets in the case that the passenger cannot recover it. However, SAFI is only available in a small number of Member States and excludes any carriers publicly known to be in financial difficulty. It is also not very well-known by passengers;
 - Some Member States have put in place Travel Funds. In the event of insolvency, money can be extracted from the fund to assist with the repatriations of stranded passengers and the reorganisation of affected bookings. However, compensation will be paid out only if there is sufficient money remaining in the fund which may be an issue for large-scale events;
 - Payments for tickets purchased via IATA travel agents are held by a central payment mechanism before being passed on to the airline, in settlements at regular intervals (usually monthly). If the airline becomes insolvent, passengers whose payments have not yet been passed on to the airline should be able to recover what they paid. Across Europe, this type of protection does not appear particularly useful;
 - Other protections include those available through the payment system used (such as credit cards) but these are only available in a limited number of Member States to credit card holders only;
 - Passengers may benefit from travel insurance policies which include supplier failure cover, although not all such policies do;
 - Rescue fares may be offered by competing airlines (at their discretion) to stranded customers, allowing them to make their journey home at a reduced price, but there is little public awareness of these;
- 9.54 With four bankruptcies over a very short period of time, the European Parliament is keen to remedy this patchy level of protection and asked for the creation of guarantee funds and insurance contracts for that purpose (Resolution RC-B9-0118/2019), echoing their

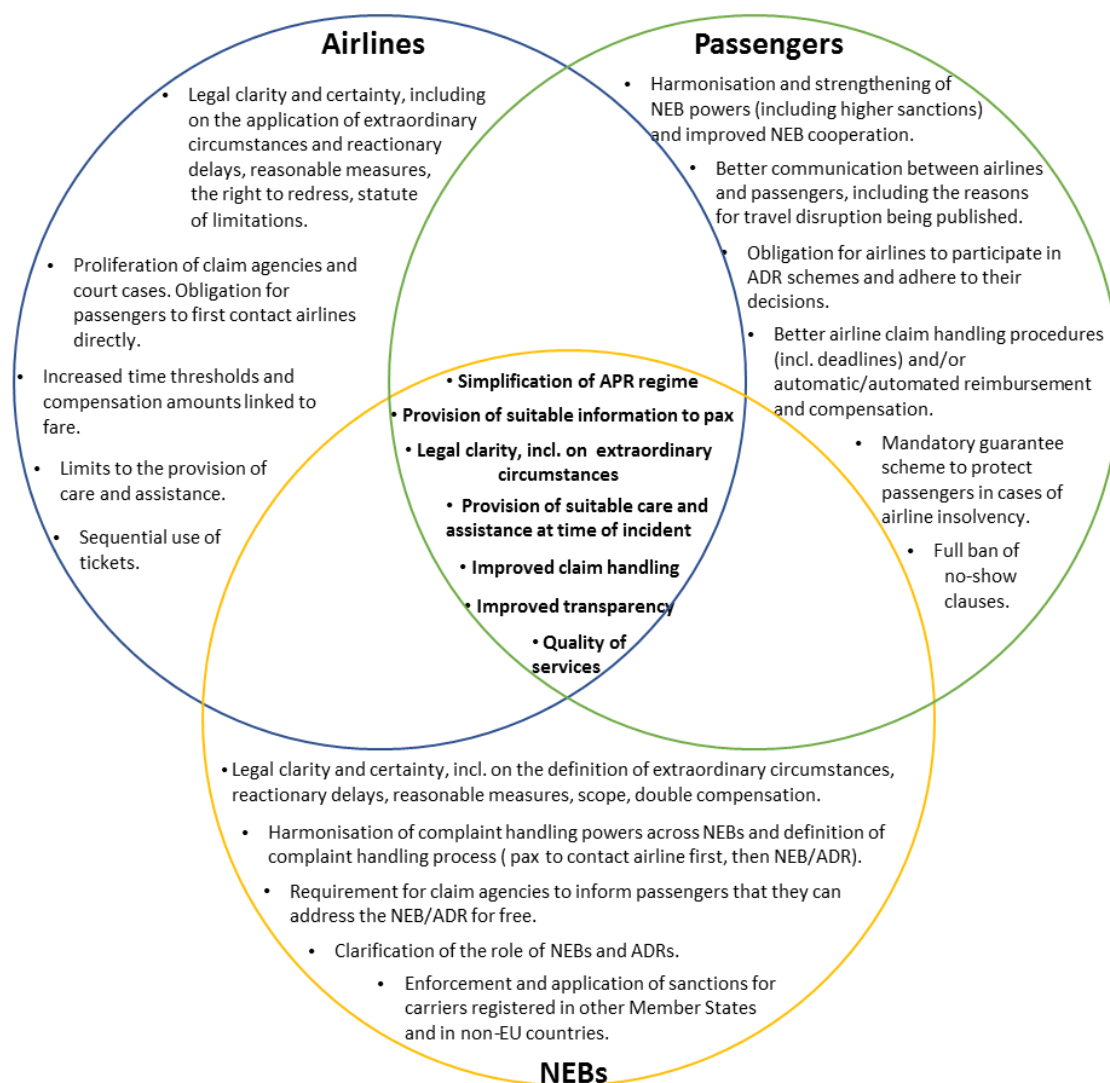
amendments of the 2013 Proposal adopted in 2014¹³¹. This should be further considered by the Commission, in particular taking into consideration the recommendations made by the UK Insolvency Review in 2019 to establish a UK-wide protection fund. However, insolvency laws differ widely across Europe, explaining why the current situation is so heterogeneous. This further means that a solution that works in the UK may not necessarily be well-adapted to another Member State, so any further recommendations on possible improvements at EU level ought to be carefully researched.

Ways forward

- 9.55 In general NEBs and industry stakeholders welcome the review of Regulation 261/2004. The EC's 2013 proposal for the revision of Regulation 261/2004 sought to balance stronger enforcement policy with economic incentives for carriers. Different aspects of this are supported by different stakeholders, depending on their perspective, but overall stakeholders were keen to see the revision move forward through the legislative process.
- 9.56 The main concerns raised by the three key stakeholder groups (i.e. passengers, airlines and NEBs) are outlined in Figure 9.1 below. As illustrated in the figure, there exist areas of overlap in stakeholders' concerns where their views converge. These areas of convergence include the following issues, which all contribute to ensuring that a good quality of service is provided to passengers who face disruption:
- Legal clarity and certainty to support implementation, including the definition of extraordinary circumstances.
 - Simplification of the air passenger rights regime to make it more intelligible and harmonise its implementation across the EU.
 - Provision of suitable information to passengers about their journey.
 - Provision of suitable care and assistance at the time of the incident.
 - Improved transparency about processes, timelines/deadlines and outcomes.
 - Improved claim (and complaint) handling processes that are easy to access, easy to follow and completed in a timely manner.
- 9.57 This convergence between interests was confirmed through the workshop held in June 2019 which focussed on potential ways forward for a more balanced air passenger rights framework and involved all three main aviation stakeholder groups (passenger representatives, airlines and NEBs).

¹³¹ <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2014-0020&language=EN>

Figure 9.1: Key stakeholders' main concerns and areas of convergence



Source: Stakeholder consultation, Steer analysis

- 9.58 The issues above are all covered to a varying extent by different aspects of the 2013 proposal for the revision of Regulation 261/2004 (as displayed in Table 1.1). For example, the provision of suitable information to passengers about their journey is covered by item 1 in Table 1.1 “Information on delayed or cancelled flights”, while the provision of suitable care and assistance at the time of the incident is supported by the harmonisation of time thresholds to two hours for all passengers facing disruption to be entitled to receive care and assistance under item 3 in Table 1.1.

Problems and possible ways forward

- 9.59 Table 9.1 below summarises the problems and their causes that emerge from the findings of this study. Possible ways to ensure effective and consistent enforcement of air passenger rights across the EU are also presented, along with the stakeholders that would be required to take action and whether these actions could be implemented within the existing framework or if it would require the framework to be adapted.

Table 9.1: Problems and possible ways forward

Item	Problem	Causes	Ways to address these	Who	Framework
1	Passengers are not able to make informed choices about airlines on the basis of airlines' air passenger rights-related performance.	Lack of consolidated reporting on airline compliance at Member State or EU-level.	Improved transparency by NEBs to the public about airline compliance.	Member States (voluntarily upon recommendation from the EC) - or - European Union	Within the existing framework - or - Adapting the framework
2	Passengers are not always adequately informed during and after travel	Regulation 261/2004 does not include a requirement for operators to inform passengers during and after travel.	Right to information of passengers during all phases of travel should be improved in Regulation 261/2004 to align it with the Ten core passenger rights	European Union	Adapting the framework
3	Poor intelligibility of air passenger rights rules for all stakeholders (passengers, airlines, NEBs, ADR, etc.).	The rules emerge from a combination of: - Regulation 261/2004 - a series of CJEU rulings	Improved legal clarity of Regulation 261/2004 and associated jurisprudence by combining into a single text, including clarity on the application to connecting flights (Definition of flight vs journey in the Regulation) Simplification of the rules, including clarity on re-routing, advance rescheduling and the harmonisation of time thresholds for the provision of care and assistance.	European Union	Adapting the framework
		Different statutes of limitations across Member States contribute to the complexity of the system.	Harmonisation of the statute of limitations applicable for Regulation 261/2004 (e.g. to be similar to that which applies for the Montreal Convention).	European Union	Adapting the framework
		No-show clauses are not always clear to passengers	Clarify whether or not no-show clauses are acceptable. If they are found to be, improved transparency required by airlines to the public	European Union	Within the existing framework - or -

Item	Problem	Causes	Ways to address these	Who	Framework
					Adapting the framework
4	Different compensation outcomes for passengers affected by the same disruption event.	Inconsistent application of Regulation 261/2004 as a result of manual claim processing by airlines.	Airlines should improve their claim handling procedures to ensure coherence for each flight.	Airlines	Within the existing framework
		Insufficient information made available by airlines to passengers affected by disruption about the cause or the nature of the disruption.	Better communication between airlines and passengers, including the reasons for travel disruption being published and the provision of clear, evidence-based explanations, and reasons for their decisions.	Airlines	Within the existing framework
		Airlines are not incentivised to fully comply with Regulation 261/2004.	NEBs should have sufficient oversight powers, sanctioning powers and resources to ensure improved airline compliance with Regulation 261/2004. The cost of compliance could be reduced so that airlines are not as disincentivised to comply with regulatory requirements.	Member States	Within the existing framework
				European Union	Adapting the framework
		NEBs (in the departure or arrival Member State) may interpret extraordinary circumstances in different ways.	Better coordination on the interpretation of extraordinary circumstances between NEBs.	Member States and European Union	Within the existing framework
		Deadlines for processing passenger claims applicable to airlines are only provided in EC guidance. NEB processes are defined national laws at Member State level.	The definition of formal deadlines for airline and NEB claim handling procedures.	European Union	Adapting the framework
		NEBs are set up under national law across the EU+3 and do not all have the same complaint handling powers on behalf of passengers.	Harmonisation of complaint handling powers across NEBs and definition of complaint handling processes.	Member States (voluntarily upon recommendation from the EC) - or - European Union	Within the existing framework - or – Adapting the framework

Item	Problem	Causes	Ways to address these	Who	Framework
5	Disputes resulting from the inconsistent interpretation of extraordinary circumstances and application of all reasonable measures.	Different airlines, different NEBs and courts may interpret extraordinary circumstances and the adoption of all reasonable measures in different ways.	Inclusion of a non-exhaustive list of extraordinary circumstances in the annex to the Regulation would support both legal clarity and coordination of its implementation by all stakeholders. A draft list of extraordinary circumstances was included in the EC's 2013 proposal. Subsequent CJEU rulings (e.g. Case C-549/07 Wallentin-Hermann) are also relevant. Clarification of the application of all reasonable measures to a specific event or at system-level.	European Union	Adapting the framework
6	PRMs not fully compensated for the value of damaged mobility equipment.	While the value of mobility equipment can be high, mobility equipment is not considered as distinct from luggage under the Montreal Convention (and Regulation 889/2002), which sets a liability limit of approximately €1,400 (1,131 SDR).	Provision for the compensation of the declared replacement value of damaged mobility equipment.	European Union	Adapting the framework
7	No specific rules on baggage in Regulation 261/2004	The only reference to rights related to baggage is on luggage liability limits in the Montreal Convention	Reflection needed as to whether there is a need to include baggage rules as part of Regulation 261/2004. If so, possible inclusion of mishandled baggage within the powers of NEBs.	Member States and European Union	Adapting the framework
8	Passenger expectations do not always correspond to NEBs' competence.	NEBs are set up under national law across the EU+3 and do not all have the same complaint handling powers on behalf of passengers or binding/non-binding decision powers. NEBs' relative position in the potential dispute escalation steps (e.g. to ADR or to courts) also differs between Member States.	NEBs should provide clear, accurate and complete information to passengers about: - the scope of complaints the organisation can consider. - what they can and cannot expect from the complaint handling arrangements, including timescales and likely remedies. - how, when and where passengers should escalate their complaints.	NEBs	Within existing framework

Item	Problem	Causes	Ways to address these	Who	Framework
9	Lack of ADR in Member States and/or voluntary participation by airlines.	ADR bodies are set up under national law. Airline participation in ADR is not mandatory in all Member States.	Development of a mandatory EU-wide mediation body on air passenger rights.	European Union	Adapting the framework
10	Potential overlap between NEB and ADR competences.	NEBs and ADR bodies are set up under national law across the EU+3 and do not all have the same complaint handling powers. In some Member States individual complaints are handled by ADRs only, in other Member States NEBs are also ADRs.	Clarification of the role of NEBs and ADRs. Provision of technical assistance from NEBs to ADRs, if relevant.	Member States	Within existing framework
11	Resource challenges for NEBs and/or ADRs	Increasing volume of complaints addressed to NEBs and/or ADRs from passengers and claim agencies.	Improved airline claim handling processes and airline communication with passengers. Increased time thresholds for compensation per the 2013 proposal for the revision of Regulation 261/2004.	Airlines European Union	Within existing framework Adapting the framework
12	Limited monitoring and enforcement of airline compliance with Regulation 261/2004 by NEBs.	NEB monitoring and enforcement activity is predominantly reactive, instigated by complaints received from passengers.	Improved transparency through the provision of information from airlines to NEBs on operational performance, handling of disruption and processing of claims would support improved monitoring and enforcement. The obligation for airlines to do so would need to be defined in the legal framework. The format in which such information should be provided ought to also be defined.	Member States and European Union	Adapting the framework
		NEBs focus on passenger complaints as a priority and have less resources available to	Organise NEBs so that they can monitor compliance (especially on care and assistance) more effectively	Member States and European Union	Within existing framework

Item	Problem	Causes	Ways to address these	Who	Framework
		monitor airline compliance, especially on provision of care and assistance.			
		Lack of reporting requirements for NEBs.	NEBs should create and maintain reliable and usable records as evidence of their activities. These records should include the evidence considered and the reasons for decisions. Best practice should be shared amongst NEBs. Agreement should be reached on the level of monitoring and enforcement undertaken by NEBs.	Member States (voluntarily upon recommendation from the EC) - or - European Union	Within the existing framework - or - Adapting the framework
13	Increasing cost of Regulation 261/2004 per passenger for airlines	Increasing disruption in the system, some of which is attributed to airlines. Increasing claim rates as a result of improved awareness amongst passengers of their rights and the emergence of claim agencies.	Increased time thresholds for compensation and limits to the provision of care and assistance, per the 2013 proposal for the revision of Regulation 261/2004.	European Union	Adapting the framework
14	Lack of flexibility to adapt air passenger rights rules.	Air passenger rights are defined in primary legislation.	Development of a primary (framework) Regulation for air passenger rights, which is supported by secondary (implementing) Regulations that can be adapted more flexibly in response to changes in the market and airline practices or complementary/interacting legislation (e.g. ADR or PTD).	European Union	Adapting the framework
15	Lack of a comprehensive protection system for passengers in the event of airline insolvency	The level of protection is patchy having never been comprehensively addressed to protect all passengers whatever booking channel used	Research possible options and assess their impacts on all relevant parties	Member States - or - European Union	New framework

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A Details of the stakeholder consultation

Approach

- A.1 For the consultation process to be as effective as possible, different methods were used to reach out to stakeholders. The figure below shows how we engaged with each group of stakeholders to maximise the benefits of the field research for the study.
- “Selected targeted stakeholders” included a large range of the main stakeholders from all groups concerned with Air Passenger Rights (NEBs, airlines and representatives, airports and representatives, passengers/consumers and representatives, other representative organisations). As part of the engagement, these stakeholders were invited to:
 - Respond to a questionnaire;
 - Take part in an interview to discuss their questionnaire or, if the interview took place before their questionnaire was submitted, focus the discussion on their key issues. Given the nature of the study and the need for discussion of a range of complex issues, it was a requirement in the Terms of Reference that this category covered 70 key stakeholders, with interviews taking place either face-to-face or by telephone;
 - Take part in a workshop (if invited); and
 - Contribute to a case study (if invited).
 - “Other targeted stakeholders” included all other key stakeholders not part of the respondents selected above. We invited these stakeholders to:
 - Respond to a questionnaire;
 - Take part in targeted interviews if, when we examined their questionnaire responses, we assessed that their contribution would enhance the study.
- A.2 We did not engage in Open Public Consultation (i.e. with the general public in an uncontrolled manner) as this was not part of the ToR. A Eurobarometer survey took place during the study. Preliminary results from this survey were considered as part of our analysis.

Figure A.1: Stakeholder engagement strategy

	TARGETED CONSULTATION	
	Selected stakeholders	Other stakeholders
Pilot interviews	✓	
Questionnaires	✓	✓
Interviews	✓	
Case studies	✓	
Workshops	✓	

Source: Steer

- A.3 We undertook pilot interviews. These interviews were carried out to ensure that the key themes highlighted in the Terms of Reference and our proposal were in line with the experience of different stakeholders and that the questionnaires that were subsequently developed for the full stakeholder engagement covered these themes.

Stakeholder engagement status

Overview

- A.4 The table and figure below provide an overview of the stakeholder engagement.

Table A.1: Overview of stakeholder engagement by method

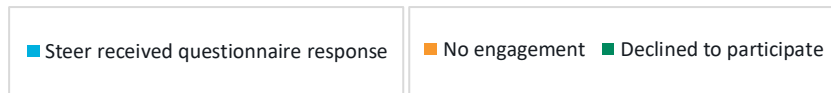
Method	Status
Questionnaires	We identified stakeholders and distributed questionnaires of eleven different types: 1. EU+3 air carriers, both low-cost and legacy, and their representative associations; 2. Non-EU carriers flying to the EU and their representative associations; 3. Consumer and passenger organisations; 4. Airports and their representative associations; 5. EU+3 National Enforcement Bodies (NEBs); 6. Alternative Dispute Resolution (ADR) bodies; 7. Claim agencies; 8. Authorities and consumer organisations in non-EU countries. 9. Travel agents/tour operators associations 10. Insurer associations 11. Online accessible version of the PRM section of the consumer and passenger organisation questionnaire, shared with EDF and its members. We distributed 297 questionnaires. We received 159 questionnaire responses, as well as some more detailed information in some cases.

Method	Status
Interviews	We undertook 31 face-to-face interviews, as well as 42 telephone interviews. The terms of reference required that all EU/EEA/CH NEBs for Regulation (EC) 261/2004 were interviewed. We were able to interview (sometimes multiple bodies) in 28 out of the 31 EU+3 countries. We received a questionnaire response from the NEBs for Luxembourg, Poland and Romania, but were not able to coordinate an interview with them. We note that some key stakeholders were consulted more than once in the process.
Case studies	We engaged with NEBs, specifically the ones in countries where the insolvent airlines were registered, and other stakeholders, to collect information on how passengers were informed about and impacted by the insolvencies.
Workshops	Two workshops took place as part of the study, with a third closing event after the publication of the report. The first two workshops took place on: 1. Air Passenger Rights: International Lessons – 14-15 May 2019 2. Air Passenger Rights: Ways forward – 12 June 2019

A.5 The figure below provides an overview of the stakeholder engagement status by stakeholder group. NEBs that are also ADRs have been counted twice.

Figure A.2: Overview of stakeholder engagement status by stakeholder group





Source: Steer - *APRA and its 4 members submitted one coordinated response

Stakeholders contacted

A.6 The tables below show the stakeholders contacted as part of the consultation.

Table A.2: EU airlines contacted

Organisation		
A4E - Airlines for Europe	British Airways / Iberia (International Airline Group)	Lufthansa Group
Aegean Airlines	Bulgaria Air	Luxair
Air Baltic	Condor	Norwegian
Air Europa	Croatia Airlines	Ryanair
Air France/KLM	easyJet	SAS - Scandinavian Airlines
Air Malta	ERAA - European Regions Airline Association	TAP Air Portugal
AIRE - Airlines International Representation in Europe	EuroAtlantic Airways	TAROM
Albastar	Finnair	Thomas Cook
Alitalia	IATA - International Air Transport Association	Travel Service/Czech Airlines
APG airlines	Icelandair	TUI
ASL Airlines	Jet2	Volotea
Azores Airlines	Loganair	Wamos Air
Binter	LOT	Wizzair

Table A.3: Non-EU airlines contacted

Organisation		
A4A - Airlines for America	Delta Air Lines	LATAM Airlines Group
AACO - Arab Air Carrier's Organisation	El Al Israel Airlines	Malaysia Airlines
Aeromexico	Emirates	Qantas
Air Canada	Ethiopian Airlines	Qatar Airways
Air China	Etihad	Royal Air Maroc
Air New Zealand	Garuda Indonesia	South African Airways
All Nippon Airways	Jet Airways (India)	Turkish Airlines
Delta Air Lines	LATAM Airlines Group	United Airlines

Table A.4: Consumer and passenger organisations contacted

Country	Type of Organisation	Organisation
EU-Wide	Association	AGE Platform
EU-Wide	Association	BEUC - The European Consumer Association
EU-Wide	Association	EDF - European Disability Forum (and members)
EU-Wide	Association	EPF - European Passenger Federation
EU-Wide	Association	Europe Direct Contact Centre
Belgium	Consumer Organisation	Test - Achats
Belgium	Passenger Organisation	ACTP – Association of Public Transport Clients

Country	Type of Organisation	Organisation
Belgium	ECC	ECC Belgium
Bulgaria	Consumer Organisation	BNAAC - Bulgarian National Association Active Consumers
Bulgaria	ECC	ECC Bulgaria
Czech Republic	Consumer Organisation	Czech association of consumers - dTest
Czech Republic	ECC	ECC Czech Republic
Denmark	Consumer Organisation	Forbrugerrådet Tænk
Denmark	ECC	ECC Denmark
Germany	Consumer Organisation	VZBV - Federation of German Consumer Organisations
Germany	ECC	ECC Germany
Estonia	Consumer Organisation	ETL - Estonian Consumers Union
Estonia	ECC	ECC Estonia
Ireland	Consumer Organisation	CAI - Consumers' Association of Ireland
Ireland	ECC	ECC Ireland
Greece	Consumer Organisation	KEPKA - Consumers' Protection Center
Greece	ECC	ECC Greece
Spain	Consumer Organisation	OCU – Organisation of Consumers and Users
Spain	ECC	ECC Spain
France	Consumer Organisation	UFC Que Choisir
France	Passenger Organisation	FNAUT – National Federation of Transport User Associations
France	ECC	ECC France
Croatia	Consumer Organisation	CAC - The Croatian Alliance of Consumers
Croatia	ECC	ECC Croatia
Italy	Consumer Organisation	CIE - Consumatori Italiani per l'Europa
Italy	Consumer Organisation	Altroconsumo
Italy	Passenger Organisation	UTP – Public Transport Users' Association
Italy	ECC	ECC Italy
Cyprus	Consumer Organisation	CCA - Cyprus Consumers Association
Cyprus	ECC	ECC Republic of Cyprus
Latvia	Consumer Organisation	LPIAA - Latvian National Association for Consumer Protection
Latvia	ECC	ECC Latvia
Lithuania	Consumer Organisation	Alliance of Lithuanian Consumer Organisations
Lithuania	ECC	ECC Lithuania
Luxembourg	Consumer Organisation	ULC – Luxembourg Consumer Association
Luxembourg	ECC	ECC Luxembourg
Hungary	Consumer Organisation	FEOSZ - National Federation of Associations for Consumer Protection in Hungary
Hungary	Passenger Organisation	DERKE - Regional Transport Association of Debrecen
Hungary	ECC	ECC Hungary
Malta	Consumer Organisation	Ghaqda Tal-Konsumaturi
Malta	ECC	ECC Malta
Netherlands	Consumer Organisation	CB - Consumentenbond
Netherlands	Passenger Organisation	Travelers Public Transport (Rover)
Netherlands	ECC	ECC Netherlands
Austria	Consumer Organisation	VKI - Austrian Consumers Association
Austria	ECC	ECC Austria
Poland	Consumer Organisation	SKP – Association of Polish Consumers
Poland	Passenger Organisation	ZM- Zielone Mazowsze
Poland	ECC	ECC Poland

Country	Type of Organisation	Organisation
Portugal	Consumer Organisation	DECO - The Portuguese Association for Consumer Protection
Portugal	ECC	ECC Portugal
Romania	Consumer Organisation	APC Romania
Romania	ECC	ECC Romania
Slovenia	Consumer Organisation	ZPS – Slovenian Consumer Association
Slovenia	ECC	ECC Slovenia
Slovakia	Consumer Organisation	ZSS – Slovakian Consumer Association
Slovakia	ECC	ECC Slovakia
Finland	Consumer Organisation	Kuluttajaliitto - Consumers' Union of Finland
Finland	ECC	ECC Finland
Sweden	Consumer Organisation	SK - Swedish Consumers' Association
Sweden	ECC	ECC Sweden
United Kingdom	Consumer Organisation	Which?
United Kingdom	Consumer Organisation	Citizens Advice
United Kingdom	ECC	ECC United Kingdom
Iceland	ECC	ECC Iceland
Norway	Consumer Organisation	Forbrukerrådet
Norway	ECC	ECC Norway
Switzerland	Consumer Organisation	FRC – Consumers' Federation of French – speaking Switzerland

Table A.5: Airports contacted

Country	Airport	Country	Airport
EU-Wide	Airports Council International (ACI) Europe	Italy	Rome - Fiumicino
Belgium	Brussels	Italy	Verona Villafranca
Belgium	Brussels - Charleroi	Cyprus	Larnaca
Bulgaria	Sofia	Cyprus	Paphos
Czech Republic	Prague	Latvia	Riga
Denmark	Copenhagen	Lithuania	Vilnius
Germany	Berlin - Schönefeld	Luxembourg	Luxembourg
Germany	Berlin - Tegel	Hungary	Budapest
Germany	Düsseldorf	Malta	Malta
Germany	Frankfurt	Netherlands	Amsterdam Schiphol
Germany	Munich	Austria	Vienna
Estonia	Tallinn	Poland	Warsaw Chopin
Ireland	Cork	Portugal	Lisbon
Ireland	Dublin	Romania	Bucharest
Greece	Athens	Slovakia	Bratislava
Greece	Thessaloniki	Slovenia	Ljubljana Jože Pucnik
Spain	Barcelona- El Prat	Finland	Helsinki
Spain	Madrid - Barajas	Sweden	Stockholm Arlanda
Spain	Palma de Mallorca	United Kingdom	London Heathrow
France	Bordeaux-Mérignac	United Kingdom	London Gatwick
France	EuroAirport Basel Mulhouse Freiburg	United Kingdom	London Stansted
France	Marseille Provence	United Kingdom	Manchester
France	Nice Côte d'Azur	United Kingdom	Glasgow
France	Paris Charles de Gaulle	United Kingdom	Aberdeen

Country	Airport	Country	Airport
France	Paris Orly	United Kingdom	Southampton
Croatia	Zagreb	United Kingdom	Newcastle
Italy	Catania-Fontanarossa	United Kingdom	London City
Italy	Milan Linate	Iceland	Keflavík
Italy	Milan Malpensa	Norway	Oslo
Italy	Rome - Ciampino	Switzerland	Zurich

Table A.6: National Enforcement Bodies contacted

Country	Organisation	Country	Organisation
Belgium	SPF Mobilité & Transport	Hungary	National Transport Authority, Consumer Protection Body
Bulgaria	Ministry of Transport, Information Technologies and Communications, Directorate General, Civil Aviation Administration	Hungary	Equal Treatment Authority
Czech Republic	Civil Aviation Authority	Malta	Malta Competition and Consumer Affairs Authority
Denmark	Danish Transport, Construction and Housing Authority	Netherlands	Human Environment and Transport Inspectorate (ILT)
Germany	National Civil Aviation Authority of Germany (LBA)	Austria	APF - The Passenger and Passenger Rights Agency
Estonia	TTJA - Consumer Protection Body	Poland	Commission on Passengers' Rights
Ireland	Commission for Aviation Regulation	Portugal	Portuguese Civil Aviation Authority (ANAC)
Greece	Hellenic Civil Aviation Authority	Romania	National Authority for Consumer Protection - Romania
Spain	Spanish Aviation Safety and Security Agency (AESA)	Romania	Ministry of Labour, Family and Social Protection National Authority for People with Disabilities)
France	French Civil Aviation Authority (DGAC)	Slovenia	Civil Aviation Agency - Slovenia
France	Transportation Quality of Service Authority (AQST)	Slovakia	Slovak Trade Inspectorate
Croatia	Croatian Civil Aviation Agency	Finland	Consumer Disputes Board, The Finish Competition and Consumer Authority & Consumer Ombudsman, Finnish Transport and Communications Agency Traficom (Traficom)
Italy	Italian Civil Aviation Authority (ENAC)	Sweden	Swedish Consumer Agency, National Board for Consumer Disputes
Cyprus	Department of Civil Aviation	United Kingdom	Civil Aviation Authority UK
Latvia	Consumer Rights Protection Centre (CRPC)	Iceland	Icelandic Transport Authority
Latvia	Civil Aviation Agency of Latvia	Norway	Civil Aviation Authority Norway

Country	Organisation	Country	Organisation
Lithuania	Civil Aviation Administration - Lithuania	Switzerland	Federal Office of Civil Aviation (FOCA)
Luxembourg	Ministry of the Economy	EFTA	EFTA Surveillance Authority
Luxembourg	Luxembourg Civil Aviation Authority		

Table A.7: Alternative Dispute Resolution bodies contacted

Country	Organisation	Country	Organisation
Belgium	Consumer Mediation Service	Luxembourg	National Consumer Ombudsman Service
Bulgaria	Conciliation Committee for disputes in the sector of air transport within the Commission for Consumer Protection	Hungary	Conciliatory body of Budapest
Czech Republic	Czech Trade Inspection Authority	Malta	Pardee Consulta
Denmark	The Danish Transport and Construction Agency (airline passengers)	Netherlands	Foundation for Consumer Complaints Committees (SGC)
Germany	Aviation Conciliation Body at the Federal Office for Justice	Austria	APF - The Passenger and Passenger Rights Agency
Germany	söp - Conciliation Body for Public Transport	Poland	Air Passenger Watchdog
Estonia	TTJA - Consumer Protection Body	Portugal	CNIACC - National Information and Arbitration Centre for Consumer Disputes
Ireland	Net Neutrals	Romania	National Authority of Consumer Protection in Romania
Greece	ADR POINT Greece	Slovenia	European Centre for Dispute Resolution (ECDR)
Spain	National Consumer Arbitration Board	Slovakia	Slovak Trade Inspection
France	MTV (Tourism and Travel Mediation)	Finland	Consumer Disputes Board
Croatia	Mediation Centre at the Croatian Chamber of Economy	Sweden	National Board for Consumer Disputes (ARN)
Italy	RisolviOnline.com - Milan Chamber of Arbitration	United Kingdom	Centre for Effective Dispute Resolution CEDR
Cyprus	Cyprus Consumer Centre for Alternative Dispute Resolution	United Kingdom	Aviation ADR
Latvia	Consumer Rights Protection Centre of Latvia (CRPC/PTAC)	Iceland	The Ruling Committee in Travel Industry matters

Country	Organisation	Country	Organisation
Lithuania	State Consumer Rights Protection Authority	Norway	Transport Complaints Board and Package Travel Committee (NRF)

Table A.8: Claim agencies contacted

Organisation
AirHelp
APRA – Association of Passenger Rights Advocates
EUClaim
Flightright
Reclamador

Table A.9: Industry associations and insurers contacted

Organisation
ASA - Airport Services Association
ECTAA - European Travel Agents and Tour Operators Association
GBTA Europe - Global Business Travel Association
Insurance Europe
IPP (Scheduled Airline Failure Insurance Provider)

Table A.10: Non-EU countries contacted

Country	Organisation	
Australia	Authority	Department for Infrastructure, Regional Development & Cities - Australian Government
Australia	Consumer	CHOICE
Brazil	Authority	National Civil Aviation Agency of Brazil
Brazil	Consumer	National Secretariat for Consumer Affairs
Canada	Authority	CTA - Canadian Transportation Agency
Canada	Consumer	CAC - Consumers' Association of Canada
China	Authority	Civil Aviation Administration of China
China	Consumer	China Consumers Association
Ethiopia	Authority	ECAA -Ethiopian Civil Aviation Authority
India	Authority	DGCA India Directorate General of Civil Aviation
India	Consumer	Consumer Coordination Council
Indonesia	Authority	Ministry of Air Transportation - Indonesia
Indonesia	Consumer	Consumers Association Indonesia (YLKI)
International	Association	ICAO - International Civil Aviation Organisation
Israel	Authority	Civil Aviation Authority of Israel
Israel	Consumer	Israel Consumer Council
Israel	Legal group	Rogel Partners - Israeli Law Firm
Japan	Authority	Civil Aviation Bureau of Japan
Japan	Consumer	Consumers Japan
Malaysia	Authority	Malaysian Aviation Commission

Country	Organisation	
Malaysia	Consumer	Federation of Malaysian Consumers Associations (FOMCA)
Mexico	Authority	Directorate General of Civil Aviation of Mexico
Morocco	Authority	Ministry of Tourism, Air Transport, Crats and Social Economy
New Zealand	Authority	Ministry of Transport NZ
New Zealand	Consumer	Consumer NZ
Nigeria	Authority	Nigerian Civil Aviation Authority (NCAA)
Qatar	Authority	Civil Aviation Authority of Qatar
Qatar	Consumer	Consumer Protection Department
Singapore	Authority	Civil Aviation Authority of Singapore
Singapore	Consumer	Consumer Association of Singapore
South Africa	Authority	Department of Transport South Africa
South Africa	Consumer	South African National Consumer Union
Turkey	Authority	Directorate General of Civil Aviation - Turkey
Turkey	Consumer	Turkish Consumer Rights Association (THD)
UAE	Authority	General Civil Aviation Authority - UAE
UAE	Consumer	Department of Economic Development, Dubai
United States	Authority	U.S DoT - Office of Aviation Enforcement and Proceedings Aviation Consumer Protection Division
United States	Consumer	NAAP - National Association of Airline Passengers

Interviews

- A.7 We undertook a large programme of stakeholder interviews, as detailed below. These were a mix of face-to-face and telephone interviews. We also took part in wider industry events (e.g. APRA round table at the European Parliament, ERA Industry Affairs Group) and coordinated a round table event with a range of airlines to discuss issues they have in common.

Table A.11: Interview status

Stakeholder group	Face to Face	Telephone	Interviews completed
EU air carriers and representative Associations	14	4	18
Non-EU air carriers and representative associations	2	1	3
Consumer and passenger organisations	2	3	5
Airports and representative associations	1	2	3
EU/EEA/CH national enforcement bodies (NEBs)	4	25	29
Alternative dispute resolution bodies	2	5	7
Claim agencies	1	1	2
Other relevant stakeholders and industry associations	1	1	2
Relevant authorities and consumer organisations in non-EU countries	4	-	4
Total	31	42	73

B Workshop summaries

International workshop

- B.1 DG MOVE.B5, with the support of ICAO and Steer, organized an international workshop on air passenger rights (APR) that took place in Brussels on 14-15 May 2019. The workshop was looking to share experiences and draw out lessons learned from the implementation of APR in non-EU countries. Experts from ICAO, the US, Canada, Brazil, Malaysia, Japan, and the Gulf Region attended together with a representative sample of EU NEBs, consumer/passenger associations and the industry.

Day 1

- B.2 We started the day with a welcome and introduction by DG MOVE Director Herald Ruijters who explained that Regulation 261/2004 on Air Passenger Rights is a flagship policy of the EU and that the Commission intends to make sure that it remains so.
- B.3 After a presentation by Steer on the study that it is conducting in parallel to this international workshop, Günther Ettl from the Commission provided a summary of the key aspects of Regulation 261/2004 and the intention of the Commission to be open about changes to the text, if there is a window of opportunity to do so.
- B.4 ICAO then explained the general considerations used when it defined in 2015 its Core Principles on Consumer Protection, such as balance between consumer rights and industry competitiveness or proportionality. We also heard that ICAO addressed passenger rights following the journey of passengers, from “before travel”, “during travel” to “after travel” and were provided with an overview of the database they are maintaining regarding specific national APR legislation in over 60 countries. ICAO also called for support from workshop participants and the wider industry so that its website¹³² displaying information on air consumer protection remains up to date.
- B.5 After the first part of the morning spent on “setting the scene” at European and worldwide level, it was time to learn from international experiences and first was Canada. We were presented an overview of the draft¹³³ Canadian protection regulation, which sometimes took inspiration from European legislation such as on delays and cancellation, but also from a blend of US and EU approach for tarmac delays. A point of interest was the expressed desire of the Canadian Transportation Agency to try to keep the claim agencies at bay, something that the European experience indicates may be difficult to achieve in practice.
- B.6 After Canada we turned to Malaysia, where we heard of the 2016 Aviation Consumer Protection Code which radically changed the landscape for consumer protection for the 120 million passengers per annum who fly to/from and within Malaysia. The speaker detailed the preparatory work and consultation that was done before the Code was implemented, and the

¹³² <https://www.icao.int/sustainability/Pages/ConsumerProtectionRules.aspx>

¹³³ Traffic Modernization Act, likely to be adopted on 16/05/2019

“cooling-off period” that was provided at first for the airlines. She also mentioned that the Code includes timelines for resolution (for both airlines and the Authority), specific consideration to the damage of mobility equipment, opt-in/opt-out clauses as well as very dynamic policy changes to the Code, something quite unheard of in Europe. It was also interesting to hear about efforts that are being done to reach out to consumers through technology as an enabler and the newly develop FlySmart app¹³⁴, as well as the desire to be transparent and report to all.

- B.7 IATA and ACI-Europe presentations followed, providing the audience with the view of the industry. IATA presented its core industry principles on consumer protection: legal certainty for airlines (including extra-territorial issues, ambiguous legislation, or consistency with international rules), commercial freedom, voluntary schemes, proportionality and the crucial question extraordinary circumstances, and lastly the question of information to passengers.
- B.8 ACI-Europe followed and explained that whilst airports have no legal requirements under Regulation 261/2004, they nonetheless have contingency plans in place. ACI regretted that there were some gaps in the Regulation, namely no foreseen long-term disruptions, no recognised rights related to baggage and the absence of a requirement for an airline point of contact at airports, but also a lack of enforcement. It was good to see that airports and airlines agreed for a change on the issue of connecting flights and the disproportionate economic burden on smaller airlines. The speaker also provided a useful comparison on the protection of PRM when travelling by air between the US and Europe, highlighting two big differences: on pre-notification (US: not required, Europe: required) and on the responsible party for PRM assistance (US: airlines, Europe: airports).
- B.9 After a lively Q&A session, it was time to hear from three NEBs: Croatia, Finland and Spain. The first point mentioned by Croatia was an increase in passenger complaints received by the NEB of 170% versus an increase in passenger traffic of only 4% in the same year. The speaker highlighted that no sanctions have been issued in Croatia (yet) because the industry responded well and proactively. She also mentioned good NEB-NEB cooperation, as well as the focus of its work to ensure that care and assistance was provided to passengers, something which she remarked could be challenging to provide during high season in touristic areas. She also observed an issue with a lack of exchange of information between travel agencies and airlines, as well as her wish that not too much information is provided to passengers.
- B.10 One of the three Finnish NEB presented a detailed explanation of the assistance provided by NEBs in Finland alongside an analysis of what works well in Regulation 261/2004 and what works less well: in particular she explained that Finnish courts now receive more air passenger rights claims related to delays than they receive housing disputes and that the Regulation had actually created a case-by-case approach, the exact opposite of standard compensation it sought to introduce. The NEB also called for a revised text that can be enforced collectively, for a compensation reduction tied to the ticket price but with no extraordinary circumstances.
- B.11 The Spanish NEB explained that it had received 35,000 complaints in 2018 which made some attendees wonder whether the system will soon be at breaking point if the rate of increase in complaints carries on at the rate witnessed today. The speaker explained that it decided in favour of airlines in only 3% of the cases, which raised the question as to how well are airlines

¹³⁴ <https://flysmart.my/en/flysmart-app/>

complying with the Regulation and responding to their passengers. As the NEB decisions are non-binding, the speaker explained that AESA will soon become an ADR.

B.12 Afterwards, participants to the workshop split in three groups, whilst focussing on the following topics in round-tables:

- Inconsistencies in enforcement;
- Claim agencies development and associated issues;
- Administrative burden faced by NEBs, airlines and passengers.

B.13 Points raised during the short summary of each of the discussion groups included the following:

- The admin burden generated is significant as cases are handled differently in different jurisdictions and legal support has to be taken on to cover this in each country by airlines;
- Claim agency activity is generating a very large number of claims/complaints for airlines and NEBs (at least those NEBs that do handle individual complaints).
- Observation that assessing delay on arrival on a journey basis generates complexity for NEBs (compared to considering flight-only). NEBs countered this point by pointing out that it should not be that complex for airlines, since they already have the information on the passenger journey.
- The size of the admin burden vs the size of the compensation cost not readily known, since it is not captured/reported in such a way as part of regular operations.
- Courts in certain countries (e.g. Spain) are inundated by 261 cases.
- There exists a burden for passengers also in trying to contact airlines and/or NEBs. Examples mentioned: broken website links, only telephone numbers available for contact, no feedback/confirmation of submission, language issues etc.
- In the US there exists an obligation for the airline to report individually and in detail on all long tarmac delays.
- Issues on extra-territoriality and the inconsistency of approaches stemming also from differing definitions used – more explicit and detailed definitions of extraordinary circumstances are required.
- A potential lack of knowledge on the way that the compensation system works which may lead to confusion for passengers.
- Compensation levels that may be too high, thus driving the development of ambulance-chasing
- Issues with enforcement powers of NEBs and the different ways of handling complaints – also from different interpretations by the courts and NEBs.
- An observation of increased levels of automated claim agencies outside the EU and the role that technological advances will play in the future.
- There exists the concept of shared responsibility and reasonable measures in the US with respect to the interaction between airlines and airports for example.

The day closed on a summary of the presentations.

Day 2

B.14 After Steer provided a summary of the previous day discussions, Brazil gave an interesting presentation, mentioning that the regulator still had a “strong hand”. The speaker explained the rationale being pressure on the regulator following full liberalisation of the aviation market in the early 2000s and a subsequent rush to implement consumer protection in the

country, with no time to consider an industry voluntary scheme. He also highlighted that the Brazilian regulator can be sued by justice prosecutors, something which is unheard of in Europe! In the Brazilian framework, care and assistance need to be provided after 2 hours, and there are no extraordinary circumstances. The speaker also highlighted that the online dispute resolution website¹³⁵ provided a great tool with 75% passenger satisfaction and an average resolution time of 7 days. It was clarified that all passenger complaints are directed to this tool now and that there are some strong incentives for airlines to use it.

- B.15 The US Department of Transportation followed Brazil and explained the legal framework it operates within and the role of its office, from education to enforcement. Again, we heard of a consumer-friendly website¹³⁶, including a form to report complaints (compatible with mobile phones), and transparent info, including monthly reports with data on on-time performance and incidents (“name and shame”). The speaker then detailed the inspections that it carries at airports but also on-site at airlines headquarters and explained that it is able to investigate based on media reports or requests from competing airlines. There is no requirement for care and assistance in the US passenger rights framework, cancellations of flights for commercial reasons are prohibited whilst airline operational performance (on-time performance, luggage issues and over sales) is regularly published. DoT focusses a lot on display and communication of information, as well as on clear display of full-fare rules. It stated that it received 18,000 complaints last year, and had noticed positive outcomes on tarmac delays, increased transparency of fare advertised, better services to PRMs, and that enforcement is largely based on negotiations with the airlines.
- B.16 After a long exchange of Q&As, we listened from BEUC, the voice of European consumers. The speaker presented the expectations of European air travellers (transparent prices, effective/enforceable rights, etc.) and compared it to the situation on the ground. She called for better enforcement of air passenger rights across Europe, less lengthy procedures, improved access to ADRs, more effective and cheaper channels of communications between airlines and passengers, an improvement in the protection of passengers with a ticket-only in the case of airline bankruptcy, automatic compensation, collective actions, dissuasive sanctions and a ban on airlines “no-shows”.
- B.17 Afterwards, we heard from FlyDubai on the regimes in place for air passenger rights in the Gulf (Saudi Arabia and Oman). Saudi rules entered into force in 2016, providing care and assistance but not opening rights to financial compensation in the case of delays. In the case of cancellation of flights, the speaker highlighted what seemed to be an inconsistency in rights granted. In Oman, provisions on care and assistance kick-in after 2 hours and as is the case in Saudi Arabia, there is no compensation for delays. The list of force majeure events is also wider than it currently is in Europe. The speaker highlighted that working with only one regulator per jurisdiction had been beneficial to both airlines and passengers.
- B.18 United Airlines provided the views of the airlines on the US situation and started by explaining at high-level how laws are passed in the US, and then presented the passenger protection framework in place. It quoted a statistic of 0.19 denied boarding per 10.000 passenger. United also mentioned that as carriers are responsible for PRMs under US law, US airlines operating to/from Europe are very careful with airports’ provision of PRM assistance in Europe. The question of emotional support animals was raised, something which we have not much

¹³⁵ https://www.anac.gov.br/consumidor/copy_of_consumidor/

¹³⁶ <https://www.transportation.gov/airconsumer>

experience (yet?) in Europe. The speaker also highlighted that sometimes there can be some unintended consequences in legislation, such as strict tarmac delay rules resulting in higher cancellation rates. The speaker finished its presentation by mentioning that no-show policies are a key part of the airline pricing freedom.

B.19 The following Q&A session immediately picked on the issue of (partial) no-shows and sequencing of tickets as well as the practicalities of automatic compensation. Elisabeth Kotthaus from DG MOVE mentioned that in any case the industry needed to explain no-show rules much better.

B.20 The round-table which followed focussed on:

- The simplification of existing processes;
- Incentives for change in behaviour by airlines; and
- How to reconcile the interests of the passengers and carriers.

B.21 The following issues were covered in the different discussion groups:

- The variety of systems that passengers can use to complain which may create confusion.
- Ways to improve the communication that airlines offer as first point of contact for passengers, including functioning links, working telephone numbers, and accessibility via mobile phones.
- The need for an exhaustive but non-binding list of Extraordinary Circumstances.
- Ways internal communication between airlines and regulators can be automated to ensure a quick complaint handling procedure.
- Ways to introduce competition through ranking practices which adds an incentive for airlines as it gives customers the option to evaluate their performance on providing care and assistance.
- Possibilities and advantages of automated compensation.
- Questions around who pays the costs for APR and if it moves back to the consumer eventually through charges and taxes.
- The need to cost out the different aspects of the Regulation and any proposed changes.
- Observation that extraordinary circumstances vary from place to another e.g. snow in the Med vs snow in the Nordics.
- Potential opportunity to improve care and assistance provision, by providing information to passengers in given situations that empowers them to act on their own, knowing the relevant value limits that have been made available to them. This would avoid having to queue at airports to speak with a representative dealing with each passenger (or group) individually. It would be very difficult however to determine the fair value in each place/time.
- Use of technology for communicating with passengers in cases of disruption should be encouraged (email/text vouchers, directions, guidance etc.).
- It was noted that Regulation 261/2004 has been effective in reducing overbooking in the EU.
- Airlines have been driven to be more customer focussed almost as a by-product of having to 261-related processes in place for handling passenger cases. Consumer experience is generally seen as having improved, however it is not possible to attribute this to 261 or the effect of increased competition.

B.22 As the workshop drew to its close, a summary of the discussions of the day was provided by Steer and a panel discussion led by Elisabeth Kotthaus allowed attendees to reflect on what

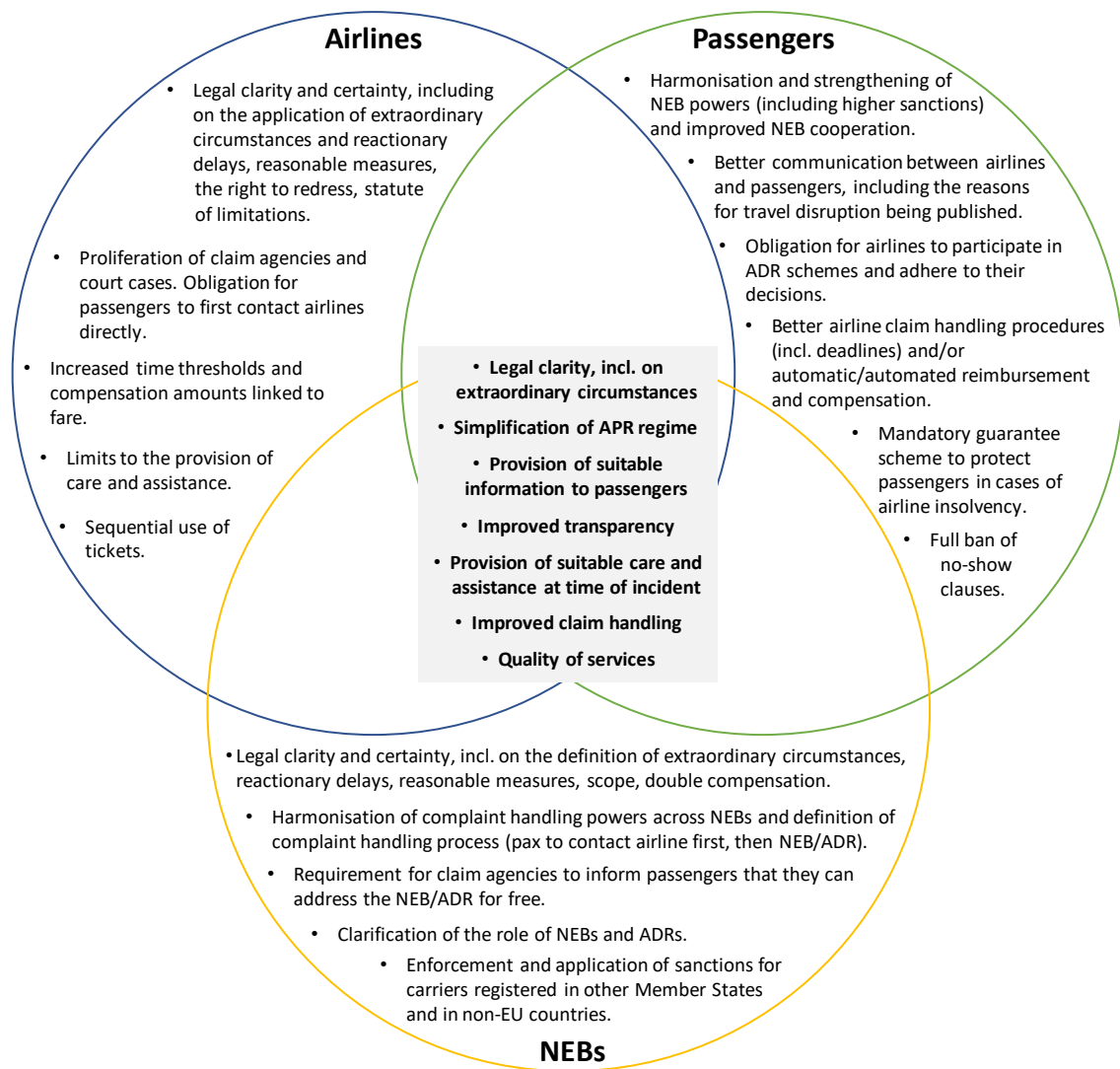
had been mentioned over the two days and what they would “take home”, such as technological tools to enable better enforcement of rights, obligations for carriers to adhere to ADR or ODR systems, and a call for ICAO to look into extra-territorial issues.

- B.23 Olivier Waldner from DG MOVE provided conclusions after thanking all participants for a genuine lively, interesting and active workshop. He mentioned that the event had been a good platform to understand solutions developed across the world and that there was plenty of innovation going on, before calling for a toolbox to better support air passenger right protection globally.

Ways forward workshop

- B.24 The second workshop took place on Wednesday 12 June 2019 in Brussels. It was a participatory workshop with selected stakeholders (8 representatives of airlines, 2 representatives of airports, 8 representatives of consumers and 10 representatives of NEBs / ADRs) and lasted a full day. There were some quick presentations, followed by three roundtables. The objective of the workshop was to explore potential areas for solutions compromise between authorities, operational stakeholders and passengers and identify possible win-win ways forward with respect to the protection of air passenger rights, with a focus on improving the rules in place and their enforcement.
- B.25 The objective of this forward-looking workshop was to explore potential areas for solutions between authorities, operational stakeholders and passengers and identify possible win-win ways forward with respect to the protection of air passenger rights, with a focus on improving the rules in place and their enforcement. To facilitate this, the workshop was designed to be participatory around a discussion format, involving a limited number of attendees (c. 30) with a balance of representation across stakeholder groups.
- B.26 Participants were invited to share expert views under Chatham House rules, rather than representing a specific category of stakeholder.
- B.27 Three high-level themes were featured as part of the round table discussions during the workshop:
- Theme 1: Main aspects of a more balanced APR framework and areas for convergence between various interests.
 - Theme 2: Improved implementation of the APR regulatory framework and possible improvements to NEB organisational models to support the enforcement of APR.
 - Theme 3: Definition and assessment of extraordinary circumstances.
- B.28 *Theme 1. Main aspects of a **more balanced APR framework** and areas for convergence between various interests*
- B.29 Some **key concerns** were identified in advance of the workshop with respect to air passenger rights for passengers, airlines and NEBs. Areas in which alignment could be found between different parties’ views are highlighted in the figure below. Participants confirmed these during the workshop and discussed further areas in which there is alignment, and areas in which alignment does not exist.

Figure B.1: Areas of alignment among stakeholders



Source: Steer

B.30 Further areas of agreement that emerged from the round-table discussions between the three stakeholder groups included:

- Improvements in assistance at the time of the incident;
- Ideas and practical points to ensure that passengers are better and more proactively informed by airlines. The issue of the lack of passenger contact details when they have booked through an intermediary (such as travel agent, tour operator, etc) was raised. The question of PRMs having to proactively notify the airline after the booking rather than during the booking was also mentioned;
- On no-shows, whilst there is evident disagreement on the policy itself, there was agreement that passengers should be better informed by airlines about them, rather than being completely hidden in the middle of terms and conditions;
- Discussions on re-routing lead to the idea of a trade-off consisting of requiring airlines to re-route passengers faster for a decrease or cancellation of the compensation requirement;

- Every group at some point during the say also wondered by NEB or ADR decisions were not binding;
- The question of time limits or deadlines for airlines (and NEBs) to respond to passengers was also something where there was some agreement.

B.31 *Theme 2. Improved implementation of the APR regulatory framework and possible improvements to NEB organisational models to support the enforcement of APR*

B.32 The second roundtable focussed on the use of technology in APR. It was clear that there are some ideas as to how technology can help to smoothen the service between airlines and passengers (noting that technology cannot be used for everything and that a human touch is necessary too). It was less clear if there is much scope for technology solutions to be implemented between airlines and NEBs, as although there is willingness, it is not clear how such systems would be financed and what their governance would look like. The most interesting gains that can be expected through technology appear to be in the area of care and assistance (for instance through automated vouchers) or compensation and claim handling. It was less clear to stakeholders of the benefits on re-routing, since individual passenger preferences usually need to be accommodated, whilst a point was made on the cost of technology for small airlines. What was also discussed was the possible split between enforcement and claim handling but there was no agreement on this point.

B.33 *Theme 3. Definition and assessment of extraordinary circumstances*

Bearing in mind the 2013 list of extraordinary circumstances included in the Annex of the Commission Proposal for the revision of Regulation 261/2004 (see box below), and acknowledging that the 2015 van der Lans and other rulings mean that this list does not necessarily reflect current interpretation perfectly, participants discussed how such a list might work and what clarity it would offer in practice.

Figure B.2: 2013 list of extraordinary circumstances included in the Annex of the Commission Proposal for the revision of Regulation 261/2004

Non-exhaustive list of circumstances considered as extraordinary circumstances for the purposes of this Regulation

1. The following circumstances shall be considered as extraordinary:

- i. natural disasters rendering impossible the safe operation of the flight;
- ii. technical problems which are not inherent in the normal operation of the aircraft, such as the identification of a defect during the flight operation concerned and which prevents the normal continuation of the operation; or a hidden manufacturing defect revealed by the manufacturer or a competent authority and which impinges on flight safety;
- iii. security risks, acts of sabotage or terrorism rendering impossible the safe operation of the flight;
- iv. life-threatening health risks or medical emergencies necessitating the interruption or deviation of the flight concerned;
- v. air traffic management restrictions or closure of airspace or an airport;
- vi. meteorological conditions incompatible with flight safety; and
- vii. labour disputes at the operating air carrier or at essential service providers such as airports and Air Navigation Service Providers.

2. The following circumstances shall not be considered as extraordinary:

- i. technical problems inherent in the normal operation of the aircraft, such as a problem identified during the routine maintenance or during the pre-flight check of the aircraft or which arises due to failure to correctly carry out such maintenance or pre-flight check; and
- ii. unavailability of flight crew or cabin crew (unless caused by labour disputes).

Source: COM(2013) 130 final

- B.34 This was recognised as being a complicated issue and one where the definition as to what is “extraordinary” for an airline varies quite significantly from what is “extraordinary” for passenger representatives. A list might be welcome but will certainly not close the debate once and for all as there will still be situations where interpretation will not be definitive. The question of how often such a list it would be updated and by who was also mentioned. An alternative that was discussed was not to have a list of extraordinary circumstances at all, in order to avoid the need for case-by-case review, but instead a strict liability regime with lower compensation amounts.

C Cost of air passenger rights implementation

Cost assumptions

- C.1 The analysis of airline costs at industry-level has been developed top down, as Steer anticipated that it would not been able to obtain comprehensive airline cost data for all years. We have therefore used estimates and made assumptions. However, the analysis has been cross-checked with cost data received from eight EU airlines, covering a range of large, medium and small network airlines, as well as low-cost and charter airlines, accounting for 25% of passengers in-scope of Regulation 261/2004 in 2018.

Care and assistance

- C.2 The care and assistance cost assumptions used in our assessment are shown in the table below. These have been categorised into:

- Refreshments (i.e. food and drink when delayed);
- Subsistence (i.e. food and drink for overnight stays in the case of long delays or cancellations);
- Accommodation, (i.e. the cost of hotel accommodation);
- Transportation costs (i.e. taxis) used to get to and from accommodation; and
- Communication costs (via phone or email).

- C.3 Our estimates for each of these costs are based on a combination of our previous study (updated to current price levels), our own research and information provided by airlines. These costs are incurred by airlines for all passengers on delayed departing flights and cancelled flights. The cost estimates shown below are for 2018, which have been deflated for preceding years using the relevant Eurostat HCIP index.

Table C.1: Care and assistance cost assumptions (2018)

Type of care & assistance	Departure delay				Cancellation
	> 2 Hours	> 3 Hours	> 4 Hours	> 5 Hours	
Cost of care & assistance					
Refreshments	€7.00	€10.00	€13.00	€18.00	€18.00
Overnight subsistence				€50.00	€50.00
Accommodation	-	-	-	€157.00	€157.00
Transport				€30.00	€30.00
Communication				€3.50	€3.50
Proportion of passengers requiring					
Refreshments	100%	100%	100%	100%	30%
Overnight subsistence	-	-	-	20%	20%

Accommodation				20%	20%
Transport				20%	20%
Communication	5%	5%	5%	5%	5%

Source: Steer estimates

- C.4 The refreshments are given to delayed passengers, as stipulated in the Regulation, in 'reasonable relation' to the length of the delay and therefore increase with the length of the delay. Delays of over 5 hours, and cancellations, are assumed to incur significantly more costs, as passengers will require one or more proper meals. Refreshments are also assumed to be required by delayed passengers in all cases.
- C.5 Care and assistance are only assumed to be required by passengers on cancelled flights in 20% of cases (30% for refreshments) as, as has been discussed in Chapter 3, cancellations can take places up to two weeks prior to the scheduled departure time, which means many passengers will not require overnight assistance. Similarly, in the case of delays over five hours, only 20% of passengers are assumed to require overnight assistance, as most delays of over five hours are not of a sufficient length to require overnight assistance or are during the day.
- C.6 Under the current situation (Scenario 3), total care and assistance costs are relatively sensitive to the assumption of 20% of cancelled and long delayed passengers requiring overnight care and assistance; an assumption of 50% (of such passengers requiring care and assistance) means total care costs more than double between 2011 and 2018, and an assumption of 5% means total care costs are less than half, relative to an assumption of 20%. However, given care costs' share of total airline costs, total airline 261 cost do not change by more than 20%.
- C.7 Communication assistance is only assumed to be required by 5% of passengers, as the vast majority of passengers are able to use their mobile phones to communicate at little extra cost. Due to low cost of communication, total care and assistance cost are not sensitive to this assumption; even if all (100%) passengers required communication assistance, total care costs would increase by less than 10% between 2011 and 2018, relative to an assumption of 5%.

Reimbursement and re-routing

- C.8 The reimbursement and re-routing assumptions used in our assessment are shown in the table below. Our estimates for each of these costs are based on a combination of our previous study, information provided by airlines and OAG average fares data. These costs are incurred by airlines for all passengers on eligible delayed departing flights and cancelled flights. The cost estimates shown below are for 2018, but average data has also been collected for all preceding years.

Table C.1: Reimbursement and re-routing cost assumptions (2018)

Distance	Reimbursement	Re-routing (Same Airline)	Re-routing (Different Airline)
<i>Cost of reimbursement and re-routing (one-way costs)</i>			
> 3,500 km	€447	€45	€595
1,500-3,500 km	€126	€13	€168
< 1,500 km	€113	€11	€150
<i>Proportion of passengers</i>			
Scenario 1 & 2	25%	40%	35%
Scenario 3 & 4	25%	65%	10%

Source: Steer

- C.9 The reimbursement costs for each flight distance band are assumed to be the average price of a fare for each respective distance. Reimbursements are paid to passengers delayed over five hours and offered to passengers with a cancelled flight, which is assumed to be chosen by passengers in 25% of cases, with a re-routing chosen in the remaining 75% of cases. Under the current situation (Scenario 3), total reimbursement and re-routing costs are not particularly sensitive to this assumption, assuming all passengers (100%) or 50% choose a re-routing total means reimbursement and re-routing costs change by less than 20% (and total airline 261 cost change by under 10%) relative to the current 75% assumption.
- C.10 Airlines are assumed to incur fewer costs when passengers are rerouted on one of the airline's own flights, which is preferable for the airline and therefore happens in 65% of cases under the current situation. Some costs will be incurred in such cases because, for example, passengers may be rerouted to an airport different to their original destination and will need to be reimbursed for any additional ground transportation expenses.
- C.11 In 10% of cases, under the current situation, when an airline has none of its own seats available on a given route, passengers are rerouted on a different airline, which, in many cases, is with a partner airline or an airline with which it possesses a reciprocal agreement. Many airlines have such agreements, through either alliances or IATA, that capacity on partner airlines' aircraft can be purchased at (or close to) the rate of the original passenger fare. We have assumed that two thirds of all airlines operating in the EU+3 have such agreements, and therefore in a third of cases, the cost of re-routing for airlines is double the cost of the original fare (and is the same price in two thirds of cases).
- C.12 Under Scenario 1 and Scenario 2, when airlines are fully compliant with the Regulation, we have assumed passengers are rerouted on other airlines in 35% of cases (and on the same airline in 40% of cases).

Compensation

- C.13 The assumed level of compensation provided to passengers is as set out in the Regulation and is shown in the table below. These levels of compensation are paid to all passengers on a flight with the specified amounts of arrival delay, when the delay is assessed to be within the control of the airline (i.e. when there are no extraordinary circumstances).

Table C.2: Compensation cost assumptions (2018)

Distance (km)	Arrival delay				Cancellation entitlement
	> 2 Hours	> 3 Hours	> 4 Hours	> 5 Hours	
< 1,500	-	€250	€250	€250	€250 (<2 Hrs. 50% of entitlement)
> 1,500 (Intra-EU)	-	€400	€400	€400	€400 (<3 Hrs. 50% of entitlement)
1,500 to 3,500 (Extra-EU)					
> 3,500 (Extra-EU)	-	€300	€600	€600	€600 (<4 Hrs. 50% of entitlement))

Source: Regulation 261/2004

- C.14 We have assumed that passengers who receive compensation for cancelled flights are re-routed to their destination within the timeframes specified in the table above, for each of the three distance bands, in 50% of cases. This means that for 50% of passengers who receive compensation for cancelled flights, the level of compensation is reduced by 50%. Under the current situation (Scenario 3), airlines' total compensation costs are relatively sensitive to this assumption, compared to using an assumption of 50%, total airline compensation costs change by approximately 30% when using an assumption of 0% or 100%. However, the impact on airlines' total 261 costs, compared to the used assumption of 50%, is less than 10%

Denied boarding

- C.15 As specified in the regulation, the compensation provided to passengers who voluntarily surrender their seat are based on 'conditions to be agreed between the passenger concerned and the operating air carrier'. We have therefore assumed such passengers are offered 50% of their original fare, where the level of fares is equivalent to those used for reimbursement (see table above).
- C.16 Given the low number of passengers that are denied boarding (compared to those on delayed or cancelled flight), under the current situation, airlines' reimbursement costs are not sensitive to this assumption. Relative to the assumption of 50%, assuming passengers that are voluntarily denied boarding receive either 25% or 100% of their original fare does not change airlines' total reimbursement costs by more than 1%.
- C.17 Passengers who are denied boarding involuntarily have the same rights as passengers with a cancelled flight, which are set out above.

Downgrading

- C.18 As discussed above, passengers are only assumed to be downgraded on extra-EU flights over >3,500km. Based on OAG business class average fares data, passenger fares for extra-EU non-economy flights are assumed to be €2,208. The Regulation stipulates that passengers who are downgraded on extra-EU flights over 3,500km will receive a 75% fare reimbursement, which we have assumed is equivalent to €1,656.

Mishandled baggage

- C.19 Airlines that mishandle passengers' baggage are liable for delay, loss or damage of baggage up to 1,000 Special Drawing Rights¹³⁷ (SDRs) – currently equivalent to approximately €1,200. Based on our information provided by airlines, we have assumed that compensation is paid by airlines in 2018 (deflated for preceding years) for each instance of mishandled baggage as follows:
- Lost/stolen: €845;
 - Damaged: €210; and
 - Delayed: €105.

¹³⁷ A form of international money, created by the International Monetary Fund, and defined as a weighted average of various convertible currencies.

Airline costs based on 100% claim rates and full airline compliance (Scenario 1)

Scenario description

- C.20 Scenario 1 assumes all passengers eligible for compensation claim it (i.e. a 100% claim rate) and passengers make baggage-related complaints for all instances of mishandled baggage. Scenario 1 also assumes full compliance by airlines with Regulation 261/2004 and the Montreal Convention, which means compensation, care, reimbursement, re-routing and mishandled baggage costs are paid to all passengers entitled to them (and re-routing on a competitor airline is offered where necessary). Scenario 1 therefore represents the theoretical maximum cost liability for airlines.

Cancellation costs

- C.21 The total care, compensation and reimbursement/routing costs liability owed by airlines to passengers is shown in the table and figure below.

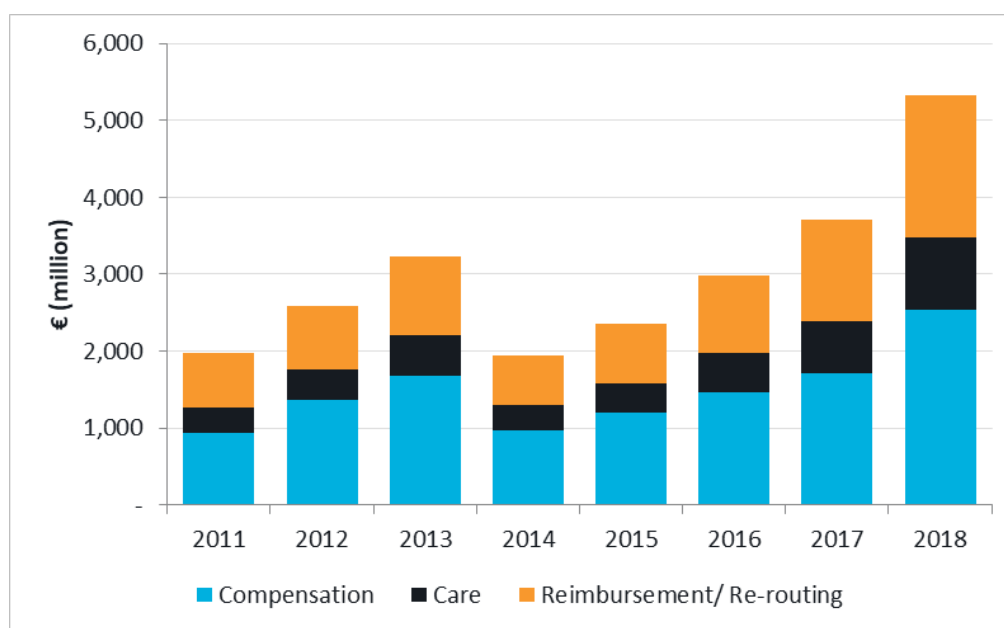
Table C.3: Scenario 1 – Cancellation costs for airlines

€ million	2011	2012	2013	2014	2015	2016	2017	2018
Compensation	933	1,369	1,686	976	1,200	1,465	1,712	2,541
Care	337	396	515	326	378	513	679	932
Reimbursement/ Re-routing	706	828	1,029	641	776	1,002	1,319	1,850
Total	1,976	2,592	3,230	1,943	2,354	2,980	3,710	5,323

Source: Steer estimates

- C.22 Although it is paid for all flight cancellations, care costs account for around 17% of all airline costs, while reimbursement/routing costs and compensation costs account for around 50% and 33% respectively. Compensation costs account for a larger share of total costs as, although they are paid only when cancellations are airline-attributable (around 70% of cases), the cost per passenger is significantly higher.

Figure C.1: Scenario 1 – Cancellation costs for airlines:



Source: Steer analysis of airline and UK CAA data

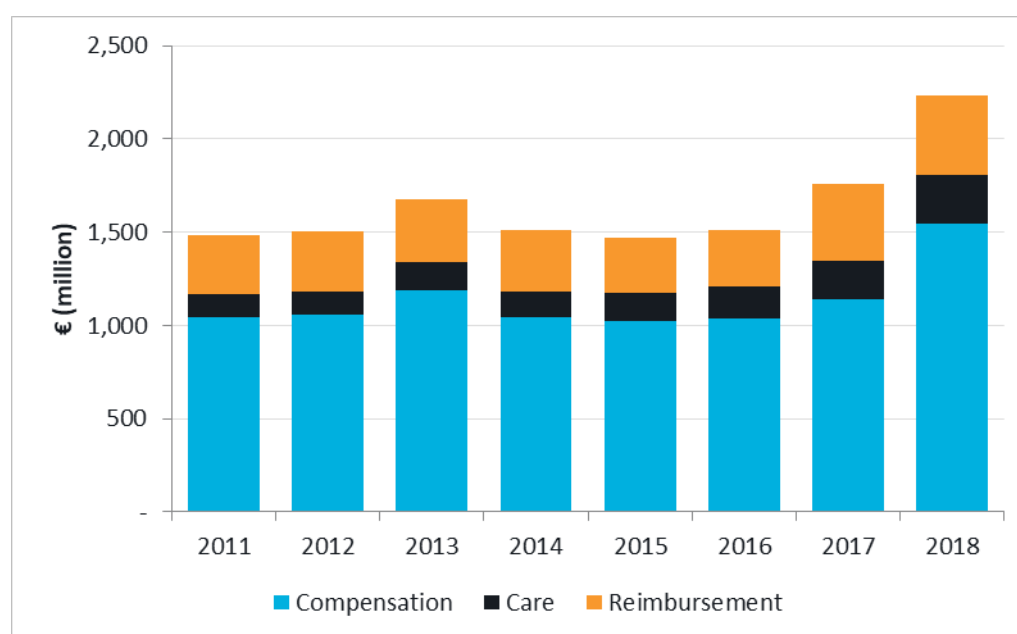
Delay costs

- C.23 The total care, compensation and reimbursement/re-routing costs liability owed by airlines to passengers is shown in the table and figure below.

Table C.4: Scenario 1 – Delay costs for airlines

€ million	2011	2012	2013	2014	2015	2016	2017	2018
Compensation	1,040	1,056	1,189	1,041	1,025	1,036	1,141	1,546
Care	125	126	152	140	146	170	205	260
Reimbursement/ Re-routing	315	320	338	330	300	308	411	430
Total	1,481	1,501	1,679	1,512	1,471	1,513	1,757	2,236

Source: Steer analysis of CODA and airline data

Figure C.2: Scenario 1 – Delay costs for airlines

Source: CODA, Steer analysis

- C.24 Although compensation is only paid when airlines are deemed to be at fault for the delay, compensation costs account for around 70% of total costs throughout the period. However, on average, care costs are significantly lower for airlines in the case of delays (compared to cancellations) and reimbursements are only paid for delays over 5 hours.

Denied boarding & downgrading costs

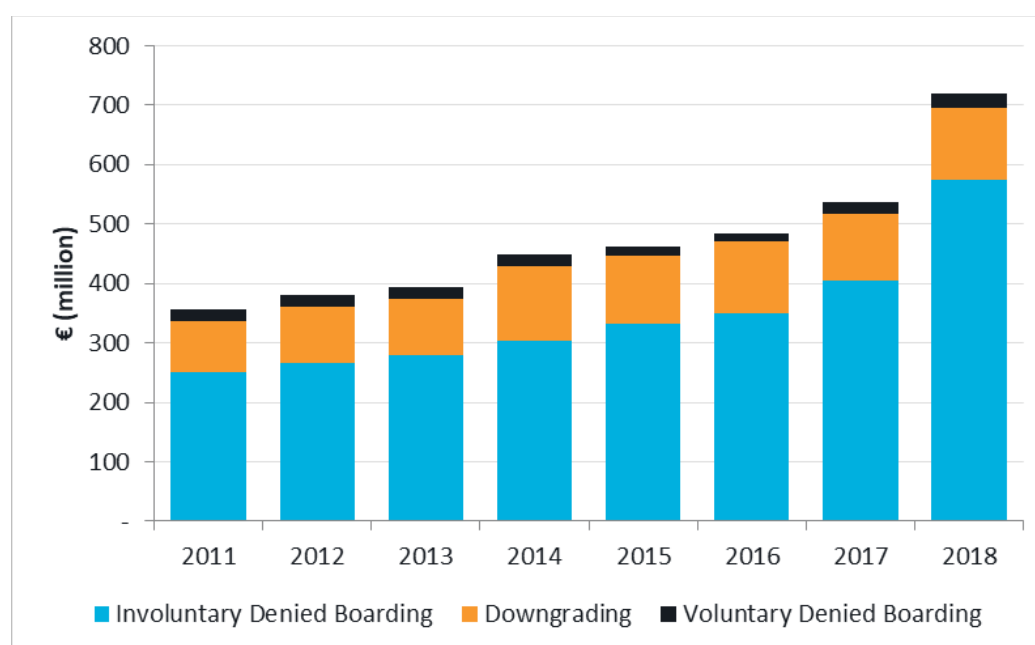
- C.25 The total cost liability owed by airlines associated with the number of passengers downgraded and denied boarding are shown in the table below. Downgraded passengers are assumed to be provided with the stipulated level of reimbursement in all cases.

Table C.5: Scenario 1 – Downgraded and denied boarding costs for airlines

€ million		2011	2012	2013	2014	2015	2016	2017	2018
Downgraded passengers		86	95	94	126	113	120	113	122
Denied boarding	Compensation	170	178	189	205	222	235	270	380
	Care	32	34	37	40	44	48	56	81
	Reimbursement/ Re-routing	68	72	73	77	82	81	99	137

Source: Steer analysis of airline data

- C.26 As a greater number of passengers are affected, and their compensation, care and reimbursement entitlements are greater, involuntary denied boarding cost are significantly larger than both voluntary denied boarding costs and downgrading costs. Although a greater number of passengers are affected by voluntary denied boarding in comparison to downgrading, the high costs of non-economy tickets means downgrading costs are greater.

Figure C.3: Scenario 1 – Denied boarding and downgrading costs for airlines

Source: Steer analysis of airline data

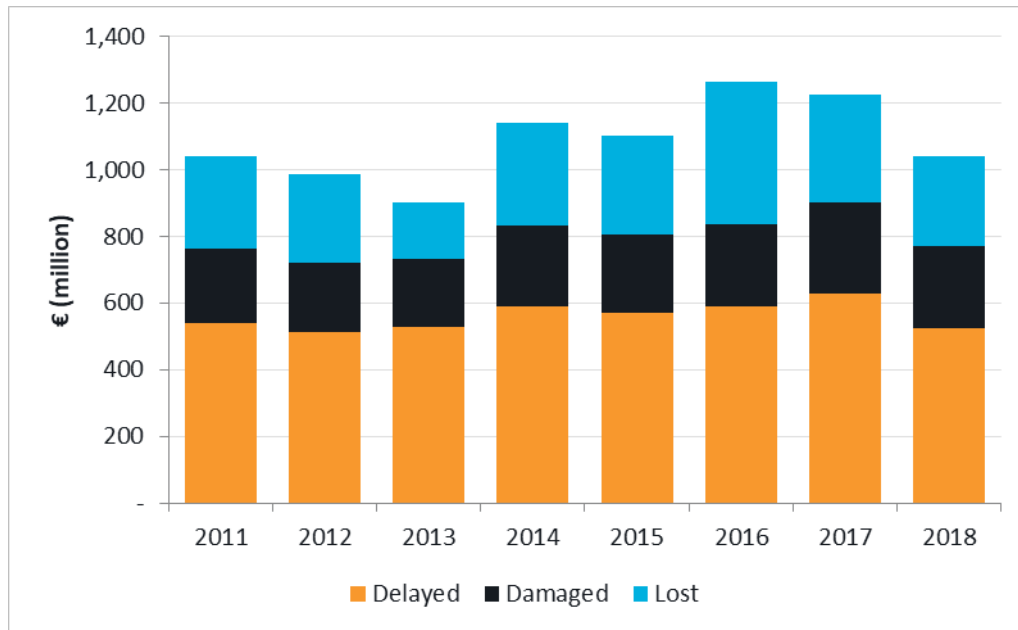
Mishandled baggage costs

- C.27 The total cost for airlines associated with instances of mishandled baggage is shown in the table and figure below.

Table C.6: Scenario 1 – Mishandled baggage costs for airlines

€ million	2011	2012	2013	2014	2015	2016	2017	2018
Lost/Stolen	280	265	172	306	296	429	322	272
Damaged	222	210	202	243	235	245	274	245
Delayed	540	511	529	591	571	590	628	524
Total	1,041	986	902	1,140	1,102	1,265	1,224	1,041

Source: Steer analysis of SITA and airline data

Figure C.4: Scenario 1 – Mishandled baggage costs for airlines

Source: Steer analysis of SITA and airline data

- C.28 Given the average cost for airlines for each type of mishandled baggage incident, the costs for airlines are more equally split, although delayed baggage still accounted for the majority. The total costs fluctuate throughout the period, reflecting a combination of a reduction in the number of instances of mishandled baggage and increasing numbers of passengers (and therefore items of baggage).

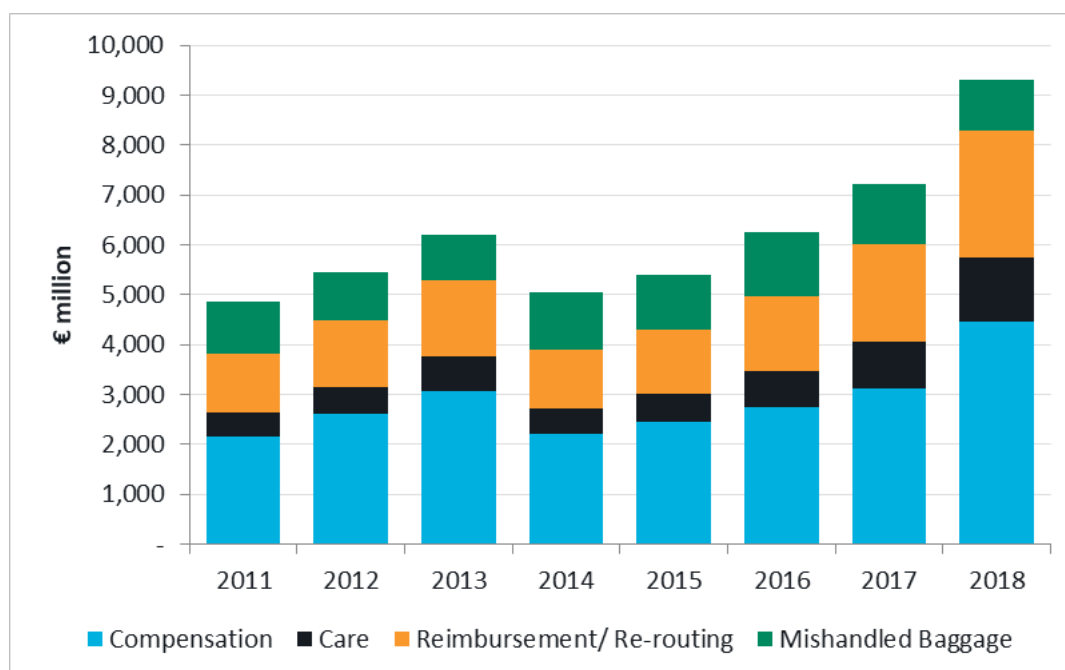
Total costs

- C.29 The total cost for airlines under Scenario 1 arising from the disruption described above are shown in the table and figure below.

Table C.7: Scenario 1 total costs

€ million	2011	2012	2013	2014	2015	2016	2017	2018
Compensation	2,144	2,603	3,064	2,223	2,447	2,736	3,122	4,467
Care	494	555	704	507	569	731	940	1,273
Reimbursement/ Re-routing	1,176	1,315	1,535	1,175	1,271	1,511	1,941	2,539
Mishandled baggage	1,041	986	902	1,140	1,102	1,265	1,224	1,041
Total	4,855	5,460	6,205	5,044	5,389	6,242	7,228	9,320

Source: Steer analysis of CODA and airline data

Figure C.5: Scenario 1 total costs

Source: Steer analysis of CODA and airline data

- C.30 Driven by a combination of increasing traffic and increasing disruption, total costs have increased from €4.9 billion in 2011 to €9.3 billion in 2018. Roughly half of these costs are comprised of compensation costs, which reach €4.5 billion in 2018 – more than double the 2018 total compensation costs under Scenario 3.
- C.31 Although they are provided to all passengers affected by disruption (unlike compensation, which is only provided in cases of airline-attributable disruption) care and the choice between reimbursement and re-routing make up a smaller share of costs due the smaller cost per passenger compared to compensation. Care and reimbursement and re-routing respectively make up approximately €1.3 billion and €2.5 billion in 2018, with mishandled baggage repayments accounting for around €1 billion of costs.

Airline costs based on current actual claim rates and full airline compliance (Scenario 2)

Scenario Description

- C.32 Regulation 261/2004 requires that passengers have to submit a claim in order to receive compensation, if due. Scenario 2 assumes full airline regulatory compliance (as in Scenario 1), but passenger claim rates (and baggage-related complaints) are assumed to be at the level observed under the current situation (Scenario 3, see below).
- C.33 As described in Chapter 2 (paragraph 2.74), due to the way that claims are recorded by airlines, we estimated a “successful claim rate” that describes the proportion of eligible passengers who actually received compensation and generated an actual cost of compensation for airlines. The successful claim rates assumed are shown in the table below. A level of compliance (below 100%) is implicit in these claim rates.

Table C.8: Passenger successful claim rates

Disruption type	2011	2012	2013	2014	2015	2016	2017	2018
Delays	10.0%	14.3%	16.5%	20.2%	29.5%	39.9%	42.5%	58.0%
Cancellations	5.0%	5.8%	7.1%	7.8%	10.0%	11.6%	15.0%	17.6%
Denied Boarding	6.0%	8.1%	9.5%	11.2%	15.9%	20.7%	23.1%	30.4%
Mishandled Baggage	7.7%	9.4%	12.3%	13.0%	17.9%	18.2%	22.4%	29.0%

Source: Steer analysis of airline and claim agency data

- C.34 As also described in Chapter 2 (paragraph 2.85), airlines are not fully compliant with the obligation to pay compensation for eligible claims or to offer care and assistance to all eligible passengers in all qualifying situations. The level of compliance assumed is shown in the table below.

Table C.9: Airline compliance rates

Entitlement type	2011	2012	2013	2014	2015	2016	2017	2018
Compensation ¹³⁸	68%	70%	73%	75%	78%	80%	83%	85%
Care ¹³⁹	63%	64%	65%	67%	68%	69%	70%	71%
Reimbursement/Re-routing ¹⁴⁰	100%	100%	100%	100%	100%	100%	100%	100%
Mishandled Baggage ¹⁴¹	100%	100%	100%	100%	100%	100%	100%	100%

Source: Steer analysis of airline, NEB, CODA, OAG and Which data

- C.35 When passengers require a re-routing, and the next available flight is with a competitor airline, airlines are assumed to re-route passengers with a competitor airline in a third of cases.
- C.36 To calculate the total costs for airlines under Scenario 2, the above compliance rates are “reversed” from the successful claim rates and the actual costs of provision of care and assistance to provide the results shown below for the theoretical situation where airlines would be fully compliant.

Total costs

- C.37 The total costs for airlines under Scenario 2 are shown in the table and figure below.

Table C.10: Scenario 2 total costs

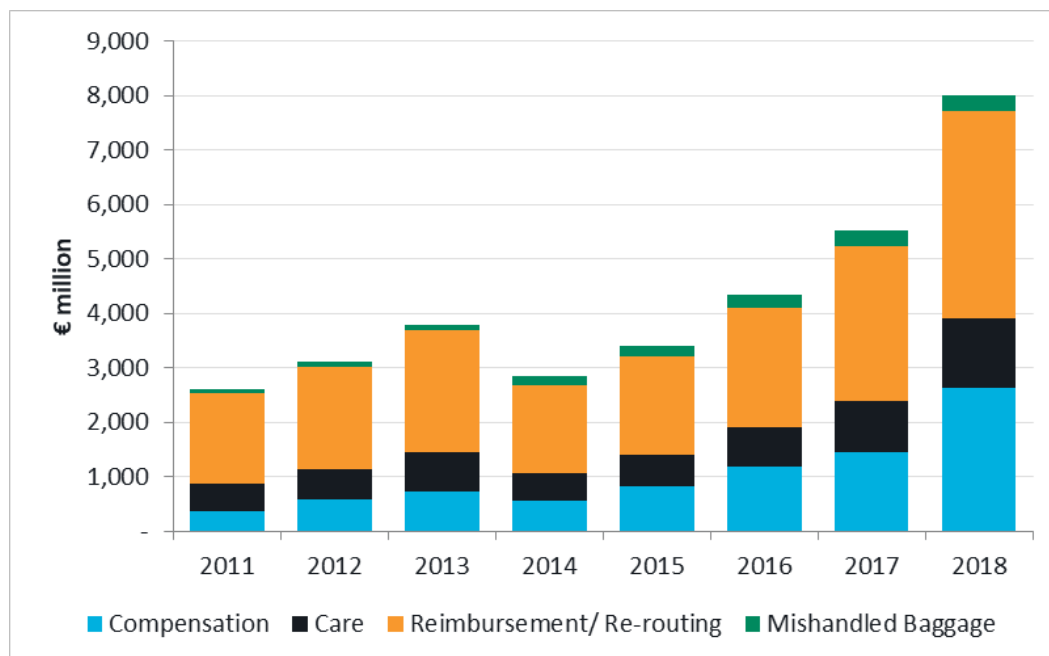
€ million	2011	2012	2013	2014	2015	2016	2017	2018
Compensation	376	571	739	569	834	1,178	1,459	2,629
Care	494	555	704	507	569	731	940	1,273
Reimbursement/ Re-routing	1,661	1,883	2,241	1,615	1,804	2,198	2,846	3,809

¹³⁸ See paragraphs 2.87-2.90¹³⁹ See paragraphs 2.92-2.93¹⁴⁰ See paragraphs 2.94-2.95¹⁴¹ See paragraph 2.102

Mishandled baggage	81	92	111	148	197	230	274	302
Total	2,612	3,101	3,795	2,837	3,403	4,336	5,520	8,012

Source: Steer analysis of CODA and airline data

Figure C.6: Scenario 2 total costs



Source: Steer analysis of CODA and airline data

- C.38 Driven by a combination of increasing traffic, increasing disruption and an increasing claim rate, total costs have increased from €2.6 billion in 2011 to €8.0 billion in 2018. Relative to Scenario 1, due the increasing passenger claim rate, total costs have increased from 54% of the Scenario 1 level in 2011 to 86% in 2018. Due to a claim rate of less than 100%, compensation costs also account for a smaller proportion of total costs, increasing from 14% to 33% over the period.

Airline costs based on current actual claim rates and actual airline compliance (Scenario 3)

Scenario description

- C.39 Scenario 3 assumes the passenger successful claim rates under the current situation (in which actual compliance levels are implicit), the actual level of airline costs for the provision of care and assistance and full compliance with reimbursement and re-routing obligations (i.e. passengers do eventually reach their destination or get their money back - when passengers require a re-routing, and the next available flight is with a competitor airline, airlines are assumed to reroute passengers with a competitor airline in a third of cases). Airlines are assumed to be compliant with reimbursing claims for mishandled baggage.

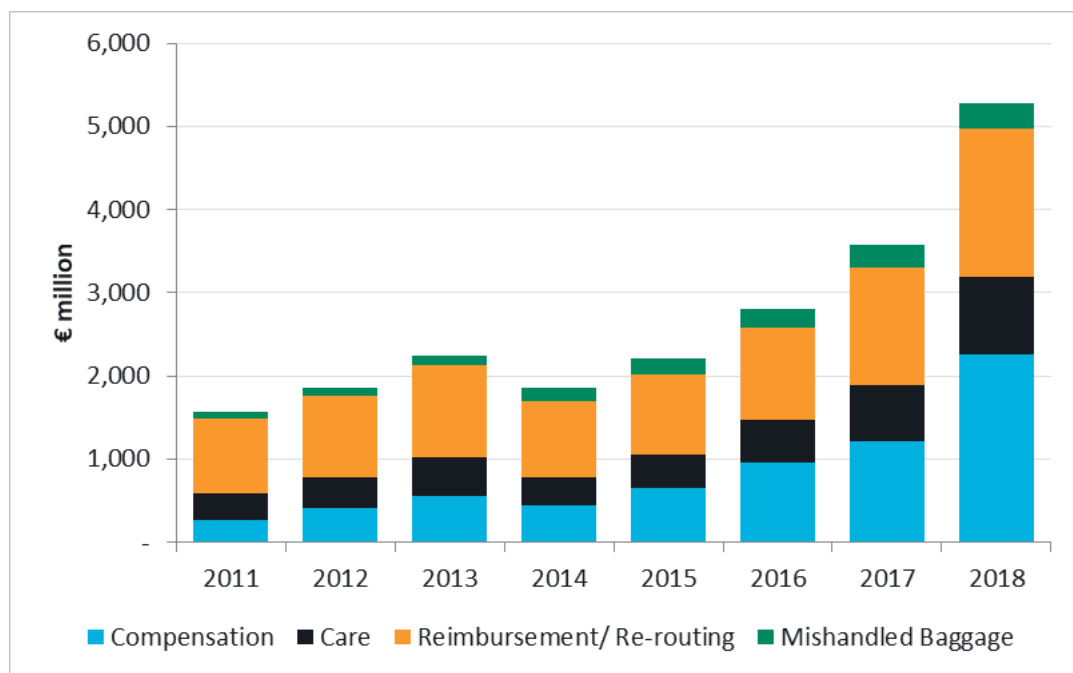
Total costs

- C.40 The total costs for airlines under Scenario 3 are shown in the table and figure below.

Table C.11: Scenario 3 total costs

€ million	2011	2012	2013	2014	2015	2016	2017	2018
Compensation	267	412	547	437	657	954	1,217	2,258
Care	324	369	473	351	400	519	677	932
Reimbursement/ Re-routing	889	978	1,116	914	956	1,103	1,404	1,787
Mishandled baggage	81	92	111	148	197	230	274	302
Total	1,560	1,851	2,247	1,849	2,209	2,805	3,572	5,279

Source: Steer analysis of CODA and airline data

Figure C.7: Scenario 3 total costs

Source: Steer analysis of CODA and airline data

- C.41 Driven by a combination of increasing traffic, increasing disruption, an increasing claim rate and increasing airline compliance, total costs have increased from €1.6 billion in 2011 to €5.3 billion in 2018. Relative to Scenario 2, due the increasing airline compliance, total costs have increased from 60% of the Scenario 2 level in 2011 to 66% in 2018 (and from 32% to 57% of the Scenario 1 level). The distribution of total costs across the four cost types remains at a similar level to Scenario 2, with compensation costs accounting for between 17% to 43% across the period.

Airline costs in the absence of EU legislation (Scenario 4)

Scenario description

- C.42 Under Scenario 4, we have made assumptions in relation to airline policies in the absence of Regulation 2004/2014. The assumptions we have used for each type of disruption are set out below.

- C.43 Note mishandled baggage has not been included in the description below, as passengers' rights in relation to this are governed by the Montreal Convention and would therefore remain unchanged in the absence of Regulation 261/2004.

Cancellations

- C.44 If a flight is cancelled for reasons that the airline defines as being within its control (i.e. airline-attributed cancellations), it offers the passenger a choice of:
- A re-routing on the same carrier subject to availability; or
 - A reimbursement of the original fare (or part fare for connecting flights).
- C.45 The airline also provides a voucher for care and pay for overnight accommodation where necessary (or reimburse reasonable costs).
- C.46 For cancellations outside the airline's control (i.e. non-airline-attributed cancellations), the airline provides either re-routing or a fare reimbursement, but it is at its discretion which of these was provided. There is no payment for care or accommodation.
- C.47 The carrier has no further obligation except as otherwise provided by the Montreal Convention, and therefore in most circumstances no compensation is payable. Therefore, no compensation is paid to passengers.

Delays

- C.48 If the airline fails to operate a flight within 5 hours of the schedule, for reasons that it defines as being within its control (i.e. airline-attributed delays), it offers the passenger a fare reimbursement (or part fare for connecting flights) if they do not wish to travel.
- C.49 The airline also provides a voucher for care and pay for overnight accommodation where necessary (or reimburse reasonable costs).
- C.50 For delays outside the airline's control (i.e. non-airline-attributed delays), there is no option of a fare reimbursement, and no payment for care or accommodation.
- C.51 The carrier has no further obligation except as otherwise provided by the Montreal Convention, and therefore in most circumstances no compensation is payable. Therefore, no compensation is paid to passengers.

Denied boarding

- C.52 If a flight is overbooked, the airline first seeks volunteers, who are offered incentives according to airline policy; assumed to include a refund or re-routing, plus compensation equivalent to 50% of the ticket price.
- C.53 For passengers denied boarding involuntarily, the airline offers the passengers a choice of:
- A re-routing on the same carrier subject to availability; or
 - A reimbursement of the original fare (or part fare for connecting flights).
- C.54 In addition, the airline provides compensation up to the amount paid for the original fare. The airline also provides a voucher for care and pay for overnight accommodation where necessary (or reimburse reasonable costs).
- C.55 The carrier has no further obligation except as otherwise provided by the Montreal Convention, and therefore in most circumstances no other compensation is payable. Therefore, no compensation is paid to passengers.

Downgrading

- C.56 For downgrading within the carrier's control (i.e. airline-attributed), affected passengers are offered the choice of:
- A re-routing in the original class on the same carrier subject to availability; or
 - A fare reimbursement of the difference in fare between the original class and the downgraded class.
- C.57 Where downgrading is for reasons which the airline determines as being outside the its control (i.e. non-airline-attributed), the choice between these are at the carrier's discretion.
- C.58 No voucher for care or overnight accommodation is offered.

Airline compliance

- C.59 In 2011, airline compliance with care obligations is assumed to be 21% (as in Scenario 3) but in following years is assumed to increase at half the rate of Scenario 3, reflecting the fact that airlines' provision of passenger entitlements is likely to be lower in a situation with no passenger rights legislation. Compliance with reimbursement is assumed to be 95% across the period (as in Scenario 3) and compliance with compensation is not included as no compensation is paid under Scenario 4.

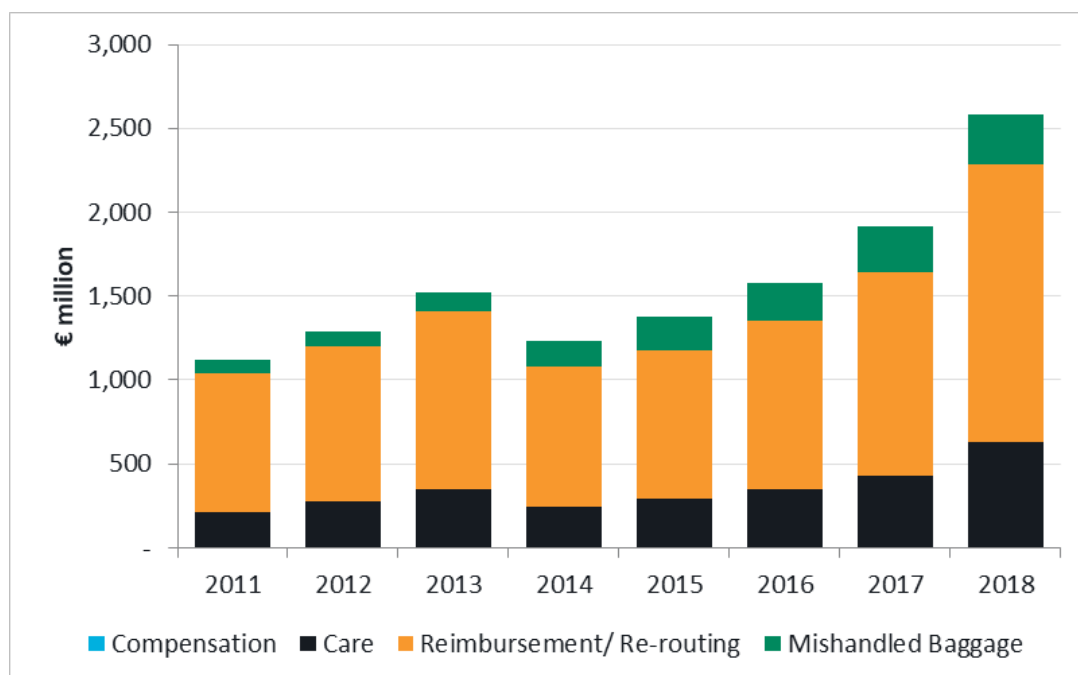
Total costs

- C.60 The total costs for airlines under Scenario 4 are shown in the table and figure below.

Table C.12: Scenario 4 total costs

€ million	2011	2012	2013	2014	2015	2016	2017	2018
Compensation	-	-	-	-	-	-	-	-
Care	210	279	352	245	291	349	427	633
Reimbursement/ Re-routing	829	920	1,059	838	888	1,002	1,216	1,650
Mishandled baggage	81	92	111	148	197	230	274	302
Total	1,119	1,292	1,522	1,231	1,376	1,580	1,917	2,584

Source: Steer analysis of CODA and airline data

Figure C.8: Scenario 4 total costs

Source: Steer analysis of CODA and airline data

- C.61 Driven by a combination of increasing traffic, increasing disruption and increasing airline compliance, total costs have increased from €1.1 billion in 2011 to €2.6 billion in 2018. Relative to Scenario 3 (i.e. the current situation), total costs have fallen from 72% of the Scenario 3 level in 2011 to 49% in 2018 (due to increasing airline compliance and passenger claims under Scenario 3) – the total Scenario 4 costs are between 20% and 30% of the Scenario 1 level (i.e. the theoretical maximum airline cost) across the period. As no compensation costs are paid under Scenario 4, total costs are comprised predominately of reimbursement and re-touring costs, which account for approximately 65% to 75% over the period.

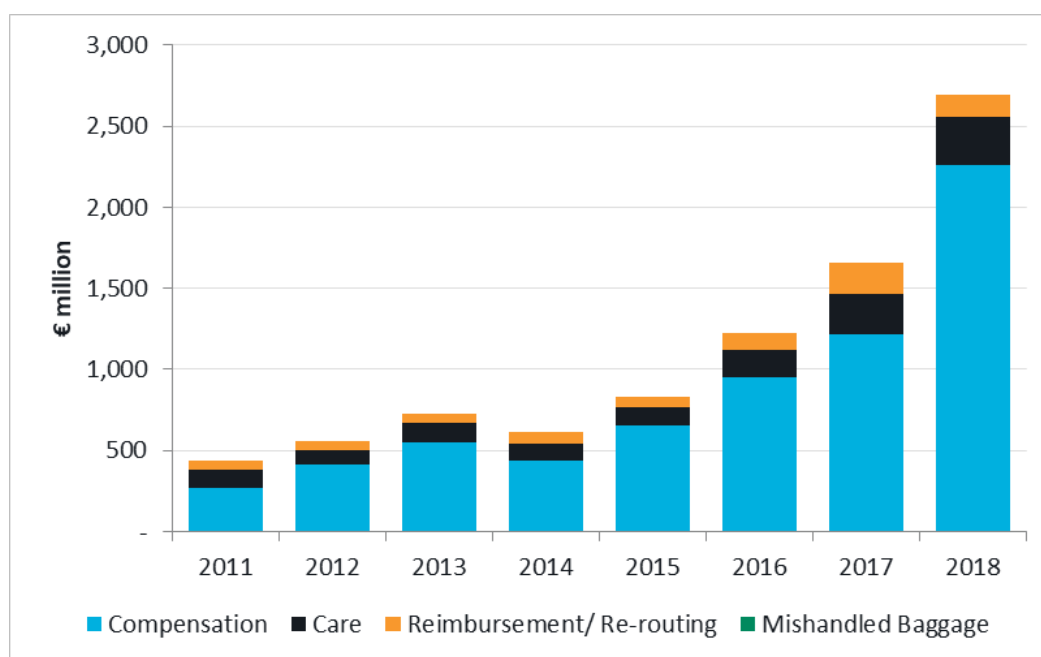
Incremental cost of APR implementation for airlines

- C.62 In terms of the scenarios we have specified within our analysis, the **incremental** costs for airlines result from the increment of Scenario 3 (the current situation) relative to Scenario 4 (no EU-wide legislation). The **incremental** costs for airlines under Scenario 3 are shown in table and figure below.

Table C.13: Scenario 3 incremental costs

€ million	2011	2012	2013	2014	2015	2016	2017	2018
Compensation	267	412	547	437	657	954	1,217	2,258
Care	114	90	121	105	109	170	250	299
Reimbursement/Re-routing	59	57	57	76	68	101	188	137
Mishandled baggage	-	-	-	-	-	-	-	-
Total	440	559	724	618	833	1,225	1,655	2,695

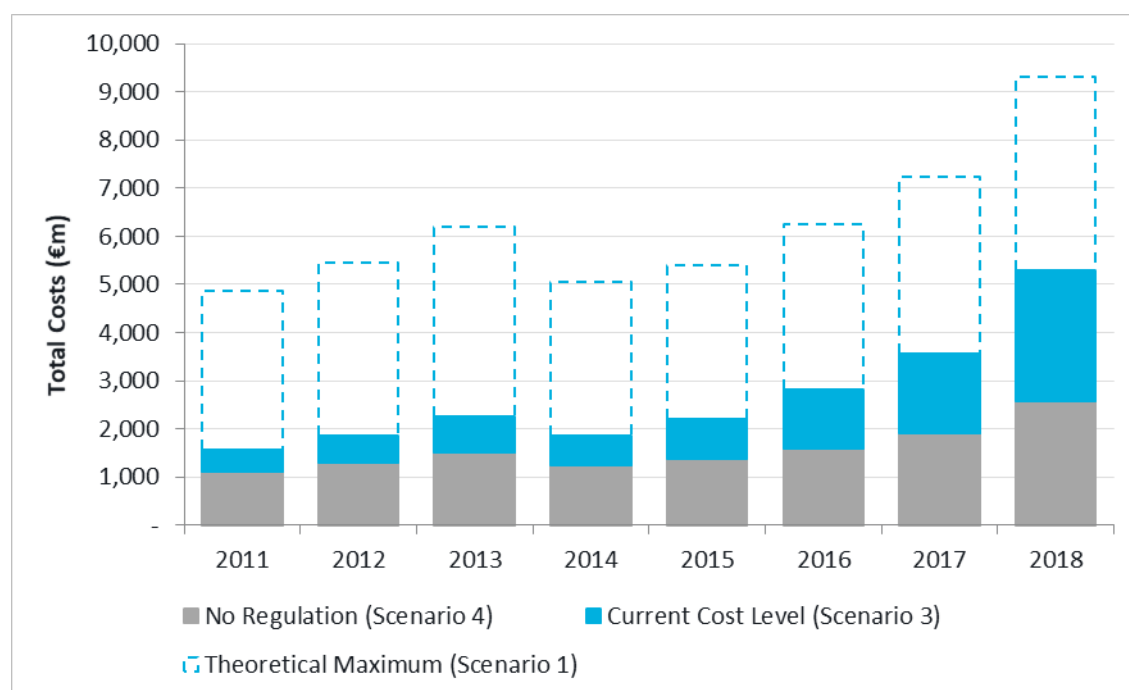
Source: Steer analysis of CODA and airline data

Figure C.9: Scenario 3 incremental costs

Source: Steer analysis of CODA and airline data

- C.63 Compensation costs accounted for the vast majority of airlines' **incremental** costs under Scenario 3: between 2011 (€0.3 billion) and 2018 (€2.3 billion), compensation paid represented between 60% and 85% of the total Scenario 3 **incremental** costs. The large incremental compensation costs are due to the fact that, under Scenario 4, airlines are assumed not to provide compensation to passengers for delays, cancellations or denied boarding.
- C.64 In the absence of APR legislation (Scenario 4), airlines are assumed to provide care and the choice between reimbursement or re-routing in cases where disruption is within their control (i.e. airline-attributed disruption). In the current situation (Scenario 3), these entitlements are provided to passengers in all cases of disruption (i.e. within and outside the control of airlines). As a result, the **incremental** costs of care (€299 million in 2018), and reimbursements and re-routing (€137 million in 2018) are small compared to the **incremental** cost of compensation.
- C.65 The **incremental** costs under Scenario 3 relative to Scenario 4 (no regulation) and Scenario 1 (100% passenger claim rate and airline compliance) are based on our analysis of airline data, which has been used to derive the current passenger claim rate and airline compliance rate, and how these have developed between 2011 and 2018. The **incremental** compensation costs shown in the figure above have increased significantly over the period shown due to the combined increase in the proportion of passengers entitled to compensation who actually claim it and improved regulatory compliance by airlines.
- C.66 Our estimate for the actual **incremental** costs for airlines (Scenario 3), relative to the theoretical maximum cost (Scenario 1) and the theoretical cost in the absence of EU legislation (Scenario 4) are shown in the figure below.

Figure C.10: Scenario 1, 3 and 4 costs



Source: Steer analysis of CODA and airline data

- C.67 Based on current passenger claim rates and airline compliance, we estimate that actual total airline costs under Scenario 3 are roughly double the costs under a no legislation scenario (Scenario 4). Scenario 3 actual costs are a little over half of the theoretical maximum total costs under Scenario 1 (if all eligible passengers were to claim compensation and airlines were to fully comply with the Regulation).

D Right to redress overview

Right to redress – legislative process

- D.1 A right to redress for air carriers was debated during both the ordinary legislative procedures leading to the enactment of the Regulation and the Commission's 2013 proposal for amendments to the Regulation¹⁴². However, Art.13 as enacted does not contain provisions through which air carriers can recover costs from third parties; the Commission's subsequent efforts to revise the Regulation have ultimately stalled on account of political differences between the UK and Spain in relation to sovereignty over Gibraltar.
- D.2 As regards the current Regulation, the European Parliament's opinion on first reading proposed that Art.13 of the (then draft) Regulation be amended such that EU Member States would be obliged to ensure the availability and enforceability of third-party recovery rights for air carriers, including against States and authorities with sovereign powers. The Council's Common Position of 18 March 2003 rejected that language, with the Parliament subsequently proposing language in its opinion on second reading, which omitted the reference to States and entities with sovereign powers. The Parliament's revised language was nevertheless rejected by a subsequent Commission opinion on the basis that such express rights of redress fell outside the scope of the proposal and omitted from the Regulation as enacted. The Table below (Table E.1) provides further detail regarding the drafting history.

Table D.1: Right to redress – legislative history¹⁴³

Stage of ordinary legislative procedure	Proposed Art.13 wording
Adoption by European Commission (21/12/2001)	In cases where an air carrier or tour operator pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from a third party in accordingly with the law applicable.
EP Opinion on first reading (24/10/2002)	1. In cases where an air carrier or tour operator pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from a third party in accordance with the law applicable.

¹⁴² Proposal for a Regulation of The European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air: COM/2013/0130 final - 2013/0072 (COD)

¹⁴³ <https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:32004R0261>

Stage of ordinary legislative procedure	Proposed Art.13 wording
	2. Member States shall ensure that any claim for compensation under the principle that the agency responsible should pay can be made and enforced against any third party, i.e. even State or other authorities with sovereign powers, by the air carrier or tour operator.
Adoption of Common Position by Council (18/03/2003)	In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract.
EP Opinion on second reading (03/07/2003)	1. In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract. Similarly, any tour operator or third party who, under this Regulation, has incurred expenses or suffered losses because of actions by the operating air carrier may seek reimbursement or compensation. 2. Member States shall ensure that any claim for compensation under the principle that the agency responsible should pay may be made and enforced against any third party.
Adoption by Commission of opinion on EP amendments on 2 nd reading (11/08/2003)	<i>"Amendment 17 would allow air carriers to make claims against public agencies that would include air traffic management bodies and managing bodies of airports. This is outside the scope of this proposal. Part of the proposal concerned: Article 13 paragraph 1 (a) new."</i>

Source: Clyde & Co LLP

- D.3 The revised Art.13 text put forward by the Commission in its 2013 proposal expressly confirmed that no provision of national law may be interpreted as restricting an air carrier's right to seek recovery from third parties (rather than the current reference the Regulation's provisions alone). The 8 November 2013 opinion of the Committee for Internal Market and Consumer Protection then further expanded that text by confirming that no general contract terms may be interpreted as restricting a carrier's right to seek compensation, which would potentially have addressed some of the issues outlined above as regard the practical constraints on an air carrier's possibilities for redress.
- D.4 The subsequent 22 January 2014 report of the Committee on Transport and Tourism then removed references to national law and general contract terms and instead providing that the provisions of Art.13 were *"without prejudice to contracts of disclaimer with third parties in force at the time of the dispute."* In justifying that approach, the Committee noted that *"existing contracts for disclaimer (e.g. between airports and airlines) should remain unaffected by this provision"*. A first Council reading position has yet to materialise given the ongoing delay caused by the dispute over Gibraltar. Table E.2 provides further detail regarding the applicable drafting history.

Table D.2: Right to redress – The Commission's 2013 proposal¹⁴⁴

Stage of ordinary legislative procedure	Proposed Art.13 wording
Commission's proposal (13/03/2013)	In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation or of national law may be interpreted as restricting its right to seek compensation for the costs incurred under this Regulation from any third parties which contributed to the event triggering compensation or other obligations.
Opinion of the Committee on the Internal Market and Consumer Protection for the Committee on Transport and Tourism (08/11/2013)	In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation or of national law or general contract terms may be interpreted as restricting its right to receive compensation for the costs incurred under this Regulation from any third parties which contributed to the event triggering compensation or other obligations
Committee report tabled for plenary, 1st reading/single reading (Committee on Transport and Tourism) (22/01/2014)	In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, and without prejudice to contracts of disclaimer with third parties in force at the time of the dispute, no provision of this Regulation may be interpreted as restricting its right to seek compensation for, or to recover in their entirety, the costs incurred under this Regulation from any person, including any third parties, which contributed to the event triggering compensation or other obligations, in accordance with the applicable law. In particular, this Regulation shall in no way restrict the right of the operating air carrier to seek compensation or to recover its costs from an airport or other third party with whom the operating air carrier has a contract.
EP Opinion on first reading (05/02/2015)	In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, and without prejudice to contracts of disclaimer with third parties in force at the time of the dispute, no provision of this Regulation may be interpreted as restricting its right to seek compensation for, or to recover in their entirety, the costs incurred under this Regulation from any person, including any third parties, which contributed to the event triggering compensation or other obligations, in accordance with the applicable law. In particular, this Regulation shall in no way restrict the right of the operating air carrier to seek compensation or to recover its costs from an airport or other third party with whom the operating air carrier has a contract.
Commission response to text adopted in plenary (20/05/2014)	<i>"Amendment 104 with regard to the right to redress from third parties needs redrafting for clarification."</i>

Source: Clyde & Co LLP

Overview of Article 13

D.5 There are a number of stakeholders within the aviation industry that contribute (either directly or indirectly) to air carriers' ability to operate flights on time. Such stakeholders

¹⁴⁴[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0072\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0072(COD)&l=en)

include groundhandlers, airports, air navigation service providers, meteorological agencies, manufacturers and maintenance, repair & overhaul organisations (MROs). However, liability for compensation and care and assistance costs under the 261/2004 Regulation rests with operating air carriers¹⁴⁵, who in practice are unable to pass on any financial liability to third parties who may be responsible for (or have contributed to) the flight disruption.

- D.6 Art.13 of the Regulation addresses an air carrier's potential recovery from third parties in the following terms:

"In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a tour operator or a third party, other than a passenger, with whom an operating air carrier has a contract, to seek reimbursement or compensation from the operating air carrier in accordance with applicable relevant laws."

- D.7 Therefore, Art.13 does not grant air carriers a right of redress. Rather, it simply confirms that nothing in the Regulation operates to exclude a right of redress that the carrier may already have against a third party, whether under contract or at law. Given that the Regulation as drafted contains no express prohibition on an air carrier's right of redress, Art.13 simply confirms the status quo, and does not create any new rights.

- D.8 In its decisions in relation to Regulation 261/2004, the CJEU has referenced the right of redress under Art.13 on a number of occasions. For instance, delay in *Sturgeon*, seeking to support its decision that the Regulation should be interpreted as providing a remedy of compensation for flight the CJEU stated:

*"...the discharge of obligations pursuant to Regulation No 261/2004 is without prejudice to an air carrier's right to seek compensation from any person who causes the delay, including third parties, as Article 13 of the Regulation provides. Such compensation may accordingly reduce or even remove the financial burden borne by carriers in consequence of those obligations...."*¹⁴⁶

- D.9 The CJEU made a similar point in *van der Lans v KLM*¹⁴⁷, where the court considered the status of aircraft technical issues as 'extraordinary circumstances' (discussed further below). In *Krijgsman*¹⁴⁸, the CJEU held that an operating air carrier is required to pay compensation for flight cancellation even where it notifies a passenger's travel agent of such cancellation at least two weeks in advance and that travel agent in turn fails to inform the passenger accordingly. In doing so the CJEU stated that:

"...it should be noted that the discharge of obligations by the operating air carrier pursuant to Regulation No 261/004 is without prejudice to its rights to seek compensation, under the applicable national law, from any person who caused the air carrier to fail to fulfil its obligations, including third parties, as Article 13 of that regulation provides... That article

¹⁴⁵ Albeit recent CJEU jurisprudence has altered the usual interpretation of 'operating air carrier'

¹⁴⁶ Para 68, *Sturgeon*

¹⁴⁷ *van der Lans v Koninklijke Luchtvaart Maatschappij NV*. (Case C-257/14)

¹⁴⁸ *Bas Jacob Adriaan Krijgsman v Surinaamse Luchtvaart Maatschappij NV*, Case C-302/16

*provides, in particular, that Regulation No 261/2004 in no way restricts the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract.*¹⁴⁹

- D.10 However, the fact that recourse against third parties might reduce or remove an air carrier's financial burden is not borne out in practice; under the Regulation, air carriers can often be financially liable for disruption that third parties are responsible for (or have contributed to).

The right to redress in practice

- D.11 There are situations where an air carrier is financially liable under the Regulation as a result of circumstances beyond its control, but where there is no third party from whom to seek redress. For example, CJEU jurisprudence confirms bird strikes to be 'extraordinary circumstances'¹⁵⁰, with the result that the air carrier is relieved of compensation liability for any associated delay or cancellation (subject to demonstrating that all reasonable measures were taken to avoid the disruption). However, the air carrier is obliged to provide care and assistance in line with Art. 9 of the Regulation, with the CJEU case of *McDonagh v Ryanair*¹⁵¹. In such circumstances there would be little or no prospect of the air carrier recovering its outlay (except perhaps a claim against an airport operator in relation to any shortcomings in bird control measures). The same is true for adverse weather conditions and other extraordinary circumstances, where a carrier would still be liable for care and assistance costs without recourse against any third party.
- D.12 There will however be other situations where an air carrier's liability under the Regulation is engaged due to the acts or omissions of one or more identifiable third party. That said, as discussed below, for a variety of reasons recovery from them is often problematic.

Groundhandlers

- D.13 In the vast majority of cases, the contractual relationship between an air carrier and its third party groundhandlers will be based on the terms of the International Air Transport Association's Standard Ground Handling Agreement (IATA SGHA). The 2018 version of the IATA SGHA (Main Agreement) deals with issues of liability and indemnity in the following terms:

*"the Carrier cannot make any claim against the Handling Company, [its servants, employees, agents and subcontractors] and shall indemnify it in respect of [...] delay [...] of persons carried or to be carried by the Carrier, [...] damage to or loss of property owned or operated by, or on behalf of, the Carrier and any consequential loss or damage; arising from an act or omission [which shall include negligence] of the Handling Company in the performance of this Agreement unless done with intent to cause damage [...] or recklessly and with the knowledge that damage [...] would probably result."*¹⁵²

- D.14 As a consequence of the above provision, an act of negligence by a groundhandler is insufficient to give the air carrier a right of recovery. Instead, a groundhandler's liability will only engage where its act or omission was intentional, or otherwise reckless and done with the knowledge that damage would probably result. Such situations are rare in practice, with such conduct being difficult to prove. As a result, groundhandlers are, in the vast majority of

¹⁴⁹ *Krijgsman*, Paras 29-30

¹⁵⁰ *Marcela Pešková and Jiří Peška v Travel Service a.s.* (Case C-315/15)

¹⁵¹ *Denise McDonagh v Ryanair Ltd* (Case C-12/11)

¹⁵² The IATA SGHA contains a write-back for aircraft hull damage, but this is not relevant in this context.

cases, insulated from an air carrier's financial exposure under the Regulation, notwithstanding that they may have been responsible for any underlying flight delay or cancellation. Whilst air carriers could seek to re-balance the contractual apportionment of liability under groundhandling agreements, doing so often proves difficult in practice given the wider commercial implications of such an approach and the prevalence of the IATA SGHA as the industry standard form.

- D.15 Carriers are also often unable to classify disruption caused by groundhandling incidents as 'extraordinary circumstances'; this is because CJEU jurisprudence assesses such disruptive events as being part and parcel of an air carrier's general operations. A case in point was *Siewert v. Condor*¹⁵³, where the CJEU held that a collision between an aircraft and mobile boarding stairs cannot be categorised as 'extraordinary circumstances'. In reaching that determination the CJEU stated that:

*"...it should be pointed out that such mobile stairs or gangways are indispensable to air passenger transport... and, accordingly, air carriers are regularly faced with situations arising from their use. Therefore, a collision between an aircraft and any such set of mobile boarding stairs must be regarded as an event inherent in the normal exercise of the air carrier. Furthermore, there is nothing to suggest that the damage suffered by the aircraft which was due to operate the flight at issue was caused by an act outside the category of normal airport services (such as an act of sabotage or terrorism) and would thus... be covered by the term 'extraordinary circumstances'..."*¹⁵⁴

- D.16 In further seeking to justify its decision in *Siewert v Condor*, the CJEU again referred to the right of redress provision under Art.13 of the Regulation¹⁵⁵. However, as discussed above, in practice such rights of recourse are rarely available.

Airports

- D.17 There are occasions when events falling within an airport's responsibility can adversely impact air carrier operations and result in flights cancellations or delays. Examples include runway debris causing foreign object damage to aircraft and the unavailability of critical airport infrastructure (e.g. baggage handling systems). Where such events give rise to compensation liability or care and assistance costs under the Regulation, the affected air carrier might be anticipated to look to the responsible airport operator for recovery of such outlay per Art.13 of Regulation. However, as with recourse against groundhandlers, such action is rarely (if ever) pursued, or if it is, successful.
- D.18 An air carrier's access to and use of airport infrastructure is invariably subject to express conditions imposed by the airport, with such conditions either being established under a (signed) agreement between the airport and air carrier, or prescribed in regulations or 'conditions of use' which automatically apply to each and every air carrier making use of the airport infrastructure. For example, Clause 1.1 of Heathrow Airport's Conditions of Use provides that:

¹⁵³ *Siewert v. Condor Flugdienst GmbH* (Case C-394/14)

¹⁵⁴ Para 19, *Siewert v. Condor*

¹⁵⁵ Para 21, *Siewert v. Condor*

*"These are the terms and conditions under which you use our Facilities and Services at the Airport. If you use our Facilities and Services in any way (including taking off and landing) you agree to be bound by these Conditions."*¹⁵⁶

- D.19 Airport regulations often seek to exclude all liability of the airport operator to the fullest extent permitted by national law, including consequential (or similar) losses, save in relation to liability for death and personal injury arising out of the airport operator's negligence or liability that is proven to arise out of the airport operator's intent, gross negligence, wilful misconduct or subjective recklessness. Some regulations (e.g. Manchester Airport's Conditions of Use) also expressly exclude liability arising out of Regulation 261/2004 – further examples of relevant liability conditions are shown in Table E.3 below.
- D.20 Such provisions are usually drafted to ensure compliance with local statutory controls governing the exclusion or limitation of liability, which means it is usually not possible to circumnavigate them. For instance, in the English case of *Monarch v London Luton Airport*¹⁵⁷, which involved a claim for aircraft damage caused by loose paving blocks, the Commercial Court upheld a provision in Luton Airport's Conditions of Use which excluded the airport's liability unless caused intentionally or with knowledge that damage would probably result.
- D.21 Enquiries with aviation lawyers in the UK, Spain and the Netherlands suggest that there have been no reported cases in those jurisdictions of air carriers successfully recovering outlay under the Regulation from airport operators (or indeed even attempting to pursue such recovery via litigation).

Table D.3: Specimen liability exclusions

Airport(s)	Document	Provision excluding or limiting liability
Swedavia Airports ¹⁵⁸	Airport Charges & Conditions of Services	3.1 Subject to clause 3.2, to the extent permitted by law neither the Airport Company nor its respective subcontractors shall have any liability towards the Airport user or be obliged to indemnify the Airport user for loss or damage, arising or resulting directly or indirectly from any act, omission of act, neglect, or default on the part of the Airport company or its subcontractors, unless done with intent to cause damage, or through negligence. In any event neither Swedavia AB nor their respective subcontractors shall be under any liability whatever for any indirect or consequential loss and/ or expense (including loss of profit) suffered by the Airport user. 3.2 Nothing in clause 3.1 shall be construed as excluding or limiting liability for (i) death or personal injury arising from the negligence of the Airport Company, its employees, subcontractors or Affiliates; or (ii) fraud. ... 3.5 The Airport Company is released from its obligations and liability for damages, if the breach of obligations or failure to meet them was due to specific grounds for release. As sufficient grounds for release from liability (force majeure) are considered such unusual events affecting the operations, which the Airport Company could not have foreseen, which are beyond the Airport Company's

¹⁵⁶ https://www.heathrow.com/file_source/Company/Static/PDF/Partnersandsuppliers/Heathrow-Airport-Limited-Conditions-of-Use-2019.pdf

¹⁵⁷ *Monarch Airlines Ltd v London Luton Airport* (1998), Lloyd's Rep 403

¹⁵⁸ https://www.swedavia.se/globalassets/flygplatsavgifter/swedavia-airport-charges-and-conditions-of-services-2018_180112.pdf

Airport(s)	Document	Provision excluding or limiting liability
		control, or the impact of which could not have been reasonably avoided or overcome. Such an event can be e.g. war, riot, foreign exchange restrictions, legal provisions and orders from authorities, export prohibitions, natural catastrophe, severe weather conditions, interruption of general traffic, data communications or energy distribution, shortage of means of transport, general lack of material, limitations of power availability, labour dispute, fire, or other unusual event with similar effect beyond the Airport Company's control, including any error or delay in a subcontractor's delivery due to the above mentioned reasons. If the performance of the Airport Company's obligations is delayed for one of the reasons mentioned above, the time for meeting the obligations is extended as far as considered reasonable with regard to all circumstances affecting the case.
Heathrow Airport ¹⁵⁹	Conditions of Use	13.1 For the purposes of this condition, "liability" means any liability, whether pursuant to a claim for contribution or under statute, tort (including but not limited to liability for negligence), contract or otherwise (save that any exclusions or limitations of liability shall not apply in respect of fraud), and "liable" shall be construed accordingly. 13.2 Subject to condition 13.3, to the extent permitted by law neither we nor our employees, servants, agents or Affiliates shall have any liability to you or be obliged to indemnify you in respect of: indirect loss; consequential losses; loss of profits; loss of revenue; loss of goodwill; loss of opportunity; loss of business; increased costs or expenses; wasted expenditure; or any other injury, loss, damage, claim, cost or expense caused (or to the extent caused) by any act, omission, neglect or default of ours or our employees, servants, agents or Affiliates even if such loss was reasonably foreseeable or we had been advised of the possibility of you incurring the loss. 13.3 Nothing in this condition 13 shall be construed as excluding or limiting liability for (i) death or personal injury arising from the negligence of us, our employees, servants, agents or Affiliates; (ii) fraud; or (iii) aircraft damage resulting from our or our employees, servants, agents or Affiliates' act or omission done either with intent to cause damage or recklessly and with knowledge that damage would probably result.
Manchester Airport ¹⁶⁰	Schedule of Charges and Terms & Conditions of Use	14.39.2. Subject to condition 14.39.3, to the extent permitted by law neither the Company, the Airport nor its employees, servants, agents or Affiliates shall have any liability to any Operator, Airline or Handling Agent or be obliged to indemnify any Operator, Airline or Handling Agent in respect of: (a) indirect loss; (b) consequential loss; (c) loss of profits; (d) loss of revenue; (e) loss of goodwill; (f) loss of opportunity; (g) loss of business; (h) increased costs or expenses; (i) wasted expenditure; or (j) any other injury, loss, damage, claim, cost or expense, caused (or to the extent caused) by any act, omission, neglect or default of the Company, Airport or its employees, servants, agents or Affiliates even if such loss was reasonably foreseeable or the Airport and/or Company had been advised of the possibility of the Operator incurring the loss. 14.39.3. Nothing in this condition 14.39 shall be construed as excluding or limiting liability for (i) death or personal injury arising from the negligence of the Airport, Company, its employees, servants, agents or Affiliates; (ii) fraud; or (iii) aircraft damage (or damage to any property contained in an Aircraft) resulting from any

¹⁵⁹ See footnote 157

¹⁶⁰ <https://live-webadmin-media.s3.amazonaws.com/media/5985/man-fees-and-charges-booklet-2019-20.pdf>

Airport(s)	Document	Provision excluding or limiting liability
		act or omission of the Airport, Company, its employees, servants, agents 39 or Affiliates done either with intent to cause damage or recklessly and with knowledge that damage would probably result. 14.39.4. Subject to condition 14.39.3, the Company and the Airport shall not be liable to any Operator or Handling Agent in respect of any Loss suffered by the Operator or Handling Agent by reason of any aerodrome service, assistance or facility not being available to them except where provided otherwise in any legally binding agreement made between the Company and any Operator or Handling Agent. 14.39.5. Subject to condition 14.39.3, the Company shall not be liable for any Loss suffered by the Operator or Airline as a result of or in connection with any Claim brought by or on behalf of any Passenger (i) pursuant to Regulation (EC) No 261/2004 (as amended, re-enacted or replaced from time to time) or (ii) otherwise arising from or in connection with denial of boarding, delay or cancellation of any flight.
Schiphol Airport	Charges and Conditions ¹⁶¹	Art.17, Section 1: The airport operator is not liable for damage and/or personal injury sustained as a result of or during a stay in the airport area. The previous sentence does not apply to damage and/or injury sustained as a result of a demonstrable intentional act or omission and/or demonstrable gross negligence on the part of the airport operator. ... Art.17, Section 3: Furthermore, with regard to liability, the Schiphol regulations are applicable (amongst which are articles 36 section 2 and article 37 and also article 3 and 4) (without prejudice), insofar as it regards aviation activities (as described in article 2 of the Amsterdam Airport Schiphol Operation Decree).
	Schiphol Regulations ¹⁶²	36.1. The airport operator is not liable for damage and/or personal injury sustained as a result of or during a stay in the airport area. The previous sentence does not apply to damage and/or injury sustained as a result of a demonstrable intentional act or omission and/or demonstrable gross negligence on the part of the airport operator.

Source: Clyde & Co LLP

Manufacturers and MROs

- D.22 In the CJEU case of *Wallentin-Hermann v Alitalia*¹⁶³ a defect was discovered in the aircraft engine during a scheduled maintenance check, resulting in a flight cancellation the following day. The CJEU held that technical problems with an aircraft leading to cancellation of a flight do not constitute ‘extraordinary circumstances’ unless the problem:
- "...stems from events which, by their nature and origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control".*

¹⁶¹<https://www.schiphol.nl/en/download/b2b/1540980593/3mbUt8i092KqwYgqIGeg8G.pdf>

¹⁶² <https://www.schiphol.nl/en/download/1554100874/43g9kGoE92CccmEeC6awa4.pdf>

¹⁶³ Wallentin-Hermann v. Alitalia – Linee Aeree Italiane SpA (Case C-549/07)

- D.23 The CJEU further held that the frequency of the technical problems experienced by an air carrier is not itself a factor from which the presence or absence of 'extraordinary circumstances' can be concluded. It further held that an air carrier's compliance with minimum aircraft maintenance rules cannot in itself suffice to establish that that carrier has taken 'all reasonable measures' to avoid the 'extraordinary circumstances'.
- D.24 Following *Wallentin*, air carriers generally accepted that classifying disruption as 'extraordinary circumstances' would no longer be possible for delays or cancellations arising out of technical issues discovered during routine maintenance checks. However, air carriers have argued that last minute technical issues – for instance those discovered unexpectedly during pre-flight checks or aircraft pushback – are not inherent in the normal exercise of an air carrier's activities, and should consequently be classified as 'extraordinary circumstances'.
- D.25 This gave rise to a series of further court cases across the EU, including the English Court of Appeal case of *Jet2.com Limited v Ronald Huzar*¹⁶⁴ and the CJEU case of *van der Lans v KLM*¹⁶⁵. The result of those judgments is that technical issues fall outside the scope of 'extraordinary circumstances', save for safety-critical defects identified by a manufacturer or competent authority which ground an aircraft fleet.
- D.26 As a result, air carriers are often faced with flight delays or cancellations caused by technical issues that they argue are beyond their control, but are not classified as 'extraordinary circumstances'. In some circumstances the air carrier may determine that the applicable manufacturer, parts supplier or MRO is responsible for the underlying technical issue, for instance on account of defective equipment having been supplied, or improper maintenance having been performed.
- D.27 However, as with groundhandlers and airport operators, recourse against such entities is problematic for air carriers, with aircraft purchase and maintenance agreements typically being robust and customarily offering warranties for aircraft equipment or maintenance work in lieu of all other remedies, with the recovery of consequential losses expressly excluded. Circumventing such contractual provisions for air carriers is very difficult in practice.
- D.28 For example, Lufthansa Technik AG's Standard Terms and Conditions for Maintenance Services¹⁶⁶ provide as follows:

"10. Limitation of Liability for Damages

10.1 LHT's liability for damages in case of slight negligence (so-called "leichte Fahrlässigkeit") of LHT, its statutory representatives and Vicarious Agents shall be excluded, provided such liability does not result from the violation of any material contractual obligations of particular significance for the purpose of the Customer Agreement which the Customer may rely on, damages arising from injury to life, limb or health or from violation of a guarantee. LHT's liability under the Product Liability Act shall remain unaffected.

10.2 To the extent LHT is liable in accordance with Article 10.1, LHT's liability shall be further limited as follows: LHT shall not be liable for non-foreseeable damages which are not typical for Maintenance Services of the kind constituting the Maintenance Service under the relevant Customer Agreement and which are neither based upon a violation of a guarantee, nor upon

¹⁶⁴ 2014 (EWCA) Civ 791

¹⁶⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62014CJ0257&from=EN>

¹⁶⁶ <https://www.lufthansa-technik.com/standard-conditions>

intentional acts (or upon intentional acts of LHT's statutory representatives or its Vicarious Agents), nor are caused by injury to life, limb or health, nor are damages to be compensated in accordance with the Product Liability Act."

Public service providers

- D.29 There are a range of other aviation stakeholders and regulatory bodies who perform important public functions and whose acts or omissions can directly result in air carrier liability engaging under the Regulation. Examples include air navigation service providers, meteorological service providers, national and EU regulators (e.g. EASA) and government departments.
- D.30 The 2014 volcanic ash crisis provides a good example of a situation where third-party decision-making had a direct impact on air carrier operations and their resulting liability exposure under the Regulation. On 14 April 2010, seismic activity at Eyjafjallajökull, Iceland, culminated in an eruption which generated large plumes of silica-based material, being potentially dangerous to aircraft operations¹⁶⁷. As a result, European airspace was closed for a week. Whilst the events were classified as 'extraordinary circumstances' (and therefore air carriers were not liable for compensation), air carriers were still liable for care and assistance costs, as confirmed in the CJEU case of *McDonagh v Ryanair*¹⁶⁸. Given the widespread travel disruption, the costs of such care and assistance was considerable: Ryanair and easyJet estimated their total exposure under the Regulation as a result of the eruption and associated airspace closure stood at £29m¹⁶⁹ and €23.7m¹⁷⁰ respectively. The Commission Staff Working Document (Impact Assessment)¹⁷¹ accompanying the Commission's 2013 proposal for revisions to the Regulation noted that:
- "[i]f the Regulation had been fully complied with during the crisis, it would have increased airlines' combined costs by an estimated €960 million (which is roughly 1.5 times the expenses for care and assistance in a "regular" year, and this within a period of less than a week)."*
- D.31 Various air carriers and IATA¹⁷² disputed the need for blanket airspace closures, noting that such decisions were not supported by suitable risk assessments and lacked the appropriate degree of cross-industry consultation and coordination. It was also suggested by some air carriers that data to which they had access indicated prevailing atmospheric concentrations of ash to fall within safe engine operating parameters. As a consequence, certain carriers reportedly approached EU agencies, EU institutions, local government and other providers of public services with requests for compensation¹⁷³; however, we are unaware of any reported

¹⁶⁷ Abeyratne, Ruwantissa. 'Responsibility and Liability Aspects of the Icelandic Volcanic Eruption'. *Air and Space Law* 35, no. 4/5 (2010): 281-292.

¹⁶⁸ See footnote 135

¹⁶⁹ http://corporate.easyjet.com/~media/Files/E/Easyjet-Plc-V2/prd/media/latest-news/2010/IMS_Q3_2010_Final.pdf

¹⁷⁰ [http://www.ryanair.com/doc/investor/2012/Q1_2012\)doc.pdf](http://www.ryanair.com/doc/investor/2012/Q1_2012)doc.pdf)

¹⁷¹ COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delays of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air, p 17: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0062:FIN:EN:PDF>

¹⁷² <https://www.iata.org/pressroom/pr/Pages/2010-04-19-01.aspx>

¹⁷³ <http://news.bbc.co.uk/1/hi/business/8629674.stm>

cases of such compensation having been paid or litigation having been pursued against such entities in respect of the 2014 Eyjafjallajökull eruption. Recovery claims against such parties, whether successful or not, very rarely (or never) occur, largely due to the practical difficulties faced in bringing such claims for air carriers. Such difficulties include:

- In most cases air carriers have no direct contractual relationship with such third parties, meaning that claims founded in breach of contract are not an option;
- Any private law claims founded in tortious principles (e.g. negligence) will usually require the establishment of a duty of care on the part of the relevant third party. Issues of causation, remoteness and mitigation may also arise. Public policy reasons may operate to protect bodies performing public functions from such tortious exposure;
- Tortious claims may be also hampered by a general rule against the recovery of pure economic losses, as is the case in the UK. Both compensation and care and assistance costs arising out of the Regulation would typically fall within the classification of consequential or pure economic losses, making their recovery potentially unlikely;
- Whilst the decisions of bodies performing public functions may be subject to judicial review or similar administrative re-evaluation, such processes may not provide a right to damages;
- Such entities may benefit from general immunity from prosecution on a statutory basis.

E EU+3 NEB fiches

The fiches are presented according to the protocol order of the Member States, based on the Roman alphabetical order of their geographical names in the original language(s).

- Belgium
- Bulgaria
- Czech Republic
- Denmark
- Germany
- Estonia
- Ireland
- Greece
- Spain
- France
- Croatia
- Italy
- Cyprus
- Latvia
- Lithuania
- Luxembourg
- Hungary
- Malta
- Netherlands
- Austria
- Poland
- Portugal
- Romania
- Slovenia
- Slovakia
- Finland
- Sweden
- United Kingdom
- Iceland
- Norway
- Switzerland

Belgium

	Description
National Enforcement Body/Bodies	SPF Mobilité & Transport; Direction Générale Transport Aérien
Type of organisation	Civil Aviation Authority within Government Transport Agency
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	-
Resources available	4 FTEs spending 60% of their time on Air Passenger Rights
	Government-funded
Regulation 261/2004	
National legal basis	The legal basis for enforcement of Regulation 261/2004 is the Aviation Law of 27 June 1937, amending the Law of 16 November 1919, on the regulation of air transport. This allows for both criminal and administrative penalties to be imposed. Article 32, which was added by Article 18(1) of the amendment of 15 May 2006, defines that except where there are other specific provisions, infringement of European Regulations in relation to air transport is punishable with a fine of 200 EUR to 4 million EUR, and/or imprisonment for between eight days and one year. Article 38 defines the process that must be followed to impose a criminal sanction. A further amendment, defined in the Law of 22 December 2008, adds provisions to allow administrative sanctions to be imposed. This took effect in August 2009. The process is defined in Chapter III (Articles 45-52) of the amended Law. In particular: - Article 45 defines that, if the public prosecutor does not start a prosecution under Article 38, the offence may be punished by an administrative fine; - Article 46 defines the process to be followed to impose a sanction; and Article 48 defines that the minimum and maximum fines under the administrative process are equivalent to those under the criminal process.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	SPF Mobilité & Transport is able to handle individual claims from passengers.
Is NEB a first or second order body?	The NEB is a second order body, meaning that passengers must have contacted the airline first.
Enforcement power of NEB	The ruling of the NEB, based on the evidence received, is communicated to the passenger and airline. The NEB's decision is non-binding. If the NEB finds non-compliance or a lack of response from an airline, it will organise a meeting to discuss the obligations and necessary measures. On a case-by-case basis, the NEB may decide to pass the case to the inspection department for possible sanctions or prosecutions. The general criminal and administrative procedure is applied, however no formal policy has been established for deciding to prosecute or impose sanctions on carriers. Limitations can arise from the criminal and administrative procedure applicable to a passenger rights case file. Cases will be submitted for criminal prosecution in the first instance. A territorial competency rule applies

	whereby the criminal offence has to have been committed on the Belgian territory – airspace included – except where the Law is saying otherwise. The prohibited behaviours listed in Chapter II of the Aviation Law are punishable with a criminal fee and prison sanctions. Criminal sanctions can vary from one day to one-year imprisonment and monetary fines. The case will be passed to the General Prosecutor as the first competent authority. If no action is taken after three months, the file gets returned to the agency's inspection service who will begin the administrative sanction procedure according to Chapter III of the Law. Infringements on EU regulations are punishable with prison sanctions from eight days to one year and/or a fine between 200 Euros to 4 million Euros. The General Prosecutor or The Chief Inspector of the agency (for administrative fines only) determines the value of the sanction according to the circumstances of the individual case.
Annual report or activity report	Annual report on NEB's activities on all modes published on website in French.
Services to passengers	
Communication with passengers	Passengers can send a complaint to the NEB and will receive an acknowledgement of receipt automatically. Within two weeks, the NEB scans the case and, if relevant, will submit it to the airline requiring a reply within six weeks. If no reply is received, a first reminder is sent to allow for an additional two weeks followed by a second reminder allowing for an additional 8 days. The NEB will then assess the case either based on the evidence received by the carrier or based on the passenger complaint in cases where the airline does not respond.
Length of complaint processing	The complaint handling procedure takes a maximum of four months for straightforward cases, six months for complex cases and longer for cases that involve legal proceedings.
261/2004 NEB cooperation	Complaints for which the NEB is not competent are forwarded to the appropriate NEB. Alternatively, the NEB will provide the passenger with the contact information of the competent NEB. If the problem is of commercial nature or legal advice is required, the NEB will provide the passenger with contact information of the ECC.
Activity level for claims under 261/2004	
Number of complaints received	2018: 3,887 complaints received 2017: 2,734 complaints received 2016: 3,032 complaints received 2015: 2,491 complaints received The NEB states that proportionally in terms of compliance they notice more issues with smaller airlines.
Nature of complaints received	The NEB notes that it is in the process of setting up the system to gather more detailed statistics on complaints
Outcome of complaints	The NEB notes that it is in the process of setting up the system to gather more detailed statistics on complaints
Investigation of extraordinary	For extraordinary circumstances, the carrier provides various documents to support its claim, including NOTAM, METAR, logbook data and flight reports. The NEB also liaises with experts from the CAA to support the interpretation of

circumstances by the NEB	the information received. No statistics are available on the number of extraordinary circumstances investigated.
Sanctions	No sanctions have been issued yet.
Inspections and other relevant activities	The inspectorate within the CAA undertakes regular inspections, covering all major Belgian airports.
Changes in activity levels since 2011	NEB feels that passengers are better aware of their rights and expect these to be respected. Airports within Belgium have worked to improve the information provided, additionally there has been increased press reports on the issues and positive experience with the NEB process is communicated between passengers.
Regulation 1107/2006	
National legal basis	Same as legal basis for Regulation 261/2004.
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	The situation in Belgium is complex due to the three existing regions, Brussels-Capital, the Flemish region and the Walloon region. SPF Mobilité et Transports works at a federal level with its scope technically covering Brussels airport only. However, to facilitate the situation for passengers and avoid confusion, SPF does accept claims that concern a PRM issue that occurred at an airport in one of the other regions. It will forward complaints to the relevant region, if necessary, and is thus also listed as the only 1107 NEB for Belgium on the European Commission's NEB list. The PRM complaints are sent to the same e-mail address as air passenger rights complaints under Regulation 261/2004. The Safety Unit within the CAA was historically the responsible unit with the SPF Mobilité et Transports. However, an accessibility department has been established which due to its experience primarily deals with complaints. The accessibility department coordinates with the safety unit in case of any clarification issues or further investigations, as well as for any corrective measures that are needed from the airport operators.
Is NEB a first or second order body?	The NEB is a second order body as passengers are asked to contact the airport operator or airline first.
Enforcement power of NEB	When a complaint is received and it is confirmed that the concerns a PRM issue, the accessibility department within SPF Mobilité et Transports handles the complaint. The department may coordinate with the safety unit, especially if corrective measures have to be taken. The SPF has the ability to write a report to the prosecutor who may issue a criminal or administrative fine. However, the NEB informs us that fines are seen as a last resort option. The NEB undertakes inspections, usually once a year. These are mostly unannounced, unless they require data to be requested in advance. The outcome of the inspections is only reported if any issues are identified. Informal regular communication exists between the accessibility department and the safety unit, so that knowledge exchange exists between both teams. In the past, this has led to information sessions on the importance of notification which were open to the public and associations, as well as a working hubs.
Activity levels for claims under 1107/2006	
Claims received	The number of complaints received is low.
Nature of claims received	The reasons for complaints are diverse, including length of time for assistance, however the NEB has identified some issues with passenger's needs not being

	properly communicated during notification either with the airline, travel agent or airport.
Alternative/Online Dispute Resolution	
Overview	The Consumer Mediation Service (CMS) mediates in residual consumer disputes, including disputes regarding air passenger rights, covering: • Regulation 261/2004 • Cases related to the Montreal Convention and Regulation 889/2002 • Cases under the unfair terms in consumer contracts Directive (93/13/EEC) or Directive 2005/29/EC on unfair business-to-consumer commercial practices The participation of airlines is voluntary, and the CMS is only competent for companies (including airlines) registered in Belgium. There is no minimum or maximum claim value for a consumer to use the ADR, however the passenger has to fit the definition of the term consumer as stated in the European regulation and the Belgian Economic Law Code.
Details	The CMS cannot ask for additional damages or compensation beyond what is specified in the Regulation. Belgian Law does not foresee extra compensation or damages on the violation of passenger rights. The CMS can only rely on legally defined damages or compensations when it suggests a solution or writes a recommendation. It is important to stress that the CMS does not sanction companies, it only refers to the law. The CMS is therefore a mediator and not supervisory body. In its rulings the CMS refers to legal texts as well as to case law. The CMS is of the opinion that it is necessary to use case law as an additional instrument since it provides interpretation to the Regulation. The CMS can be contacted in Dutch, French, German and English. The same languages apply for communication throughout the mediation procedure. Decisions are only communicated to the parties involved due to privacy reasons. In 2018, it took 102 days on average to decide on passenger rights related complaints.
Contact	https://consumerombudsman.be/en
Legally binding	The decisions of the CMS are non-binding and therefore non-enforceable. If an airline does not respect the amicable settlement, the consumer can take the matter to court. If the recommendation is in favour of the consumer an airline has 30 days to write a motivated response. In absence of a motivated response an airline can be fined with an administrative fine of up to 25,000 Euro. It is the Economic Inspection that collects the fines and not the CMS itself. Fines go to the treasury and not the funding of the CMS.
Costs incurred in ADR by passengers	No cost.
Costs incurred in ADR by airlines	Airlines don't have to pay to use CMS services. However, airlines can be fined when there are at least 5 decisions (recommendation or amicable settlement) registered annually on their name. Airlines have to pay €100 per decision starting from the fifth decision. When an airline has 20 (or more) decisions registered on its name the fine is €200 per decision.
National small claims procedure (individual procedure)	
Small claims court procedure	There is no small claims procedure in Belgium. Citizens can make use of the European Small Claims Procedure.

Claim agencies (individual procedure)	
	Between 10-15% of complaints the NEB receives are submitted by claim agencies.

Bulgaria

	Description
National Enforcement Body/Bodies	Ministry of Transport, Information Technologies and Communications
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	-
Resources available	2 FTEs
	Government-funded
Regulation 261/2004	
National legal basis	Art. 16b. (new, SG 52/04) of the Civil Aviation Act defines the CAA as the responsible body to enforce Regulation 261/2004. Civil Aviation Act. The legal limits for sanctioning are defined in Chapter Thirteen “Administrative and Penal Provisions”
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers must have contacted the airline initially for the NEB to handle their complaint.
Enforcement power of NEB	When the NEB receives a complaint, it is logged in the internal database. For legitimate cases the NEB will then contact the airline and ask for a statement and evidence. The timescales differ between the national carrier Bulgaria Air (2 weeks) and foreign carrier (3 weeks). Both CJEU judgements and case law from other Member States is taken into account during the investigation phase. Following the conclusion of the investigation, the NEB issues a non-binding recommendation to the passenger. Airlines are requested to send proof of compensation payment. If an airline refuses to pay compensation or the passenger is not content with the NEB’s recommendation, the passenger has to go to the courts to get redress enforced. The approach that the NEB uses in cases of non-compliance with Regulation 261/2004 includes soft measures, such as letters, meetings and close monitoring of the airline activities in the first instance. The NEB can issue prescriptions, which define improvement measures for the airline but do not include a financial penalty. If the NEB finds that no action to improve the level of compliance have been taken, it is able to issue sanctions. However, the NEB notes that its policy is to only use sanction as a final measure and it has not yet issued any sanction yet. The NEB is also able to undertake system-level enforcement on the basis of wider or consistent levels of non-compliance. The maximum legal limits for sanctions are set at 10,000 Bulgarian Lev (approx. 5,000 EUR).
Annual report or activity report	No information provided.
Services to passengers	
Communication with passengers	Passengers can submit their complaint online via a form available in English and Bulgarian on the CAA’s website.

Length of complaint processing	<3 months
261/2004 NEB cooperation	For cases which it is not competent, the Bulgarian NEB advises the passenger to contact the appropriate NEB and transfers cases with short summary of the case in English. The NEB also works closely with ECC and holds regular meetings.
Activity level for claims under 261/2004	
Number of complaints received	2018: 1,193 complaints handled 2017: 2,448 complaints handled 2016: 1,249 complaints handled 2015: 1,137 complaints handled 2014: 983 complaints handled Around half of the complaints that the NEB receives are legitimate.
Nature of complaints received	Most complaints are due to delays (79%), followed by cancellations (11%), denied boarding (6%) and baggage problems (4%).
Outcome of complaints	No information provided
Investigation of extraordinary circumstances by the NEB	The Bulgarian NEB investigates extraordinary circumstances by asking for evidence from airlines, including METAR/TAF reports, information from their internal software and documentation like TLBs and journey logs. The NEB uses METAR/TAF and NOTAM databases and the Eurocontrol NOP in assessing this evidence.
Sanctions	No sanctions have been issued yet. One prescription was issued in 2017.
Inspections and other relevant activities	The CAA and dedicated inspectors undertake regular inspections between three to four times a year. These inspections are announced and scheduled around the busy periods, including summer and Christmas.
Changes in activity levels since 2011	The NEB notes that passengers still not fully aware of process for submitting complaints. However, overall awareness is improving due to the availability of mobile apps and information campaigns.
Regulation 1107/2006	
National legal basis	Art. 16b. (new, SG 52/04) of the Civil Aviation Act defines the CAA as the responsible body to enforce Regulation 1107/2006. Civil Aviation Act. The legal limits for sanctioning are defined in Chapter Thirteen "Administrative and Penal Provisions"
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	The NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers must have contacted the airline initially for the NEB to handle their complaint.
Enforcement power of NEB	No complaints yet but process would be the same as for Regulation 261/2004.
Activity levels for claims under 1107/2006	
Claims received	The NEB has not received any complaints relating to Regulation 261/2006.
Nature of claims received	-
Alternative/Online Dispute Resolution	

Overview	The ADR body falls under the jurisdiction of the Commission for Consumer Protection in Bulgaria.
Details	Process takes between 30 and 90 days and the statutory time limit for handling complaints is one month.
Contact	https://kzp.bg/podavane-na-zhalba
Legally binding	The ADR's decision is not legally binding.
Costs incurred in ADR by passengers	No costs
Costs incurred in ADR by airlines	No information provided
National small claims procedure (individual procedure)	
Small claims court procedure	The Bulgarian Civil Procedure Code does not provide for a special small claims procedure, but this was implemented in 2009 following Regulation (EC) No 861/2007. Proceedings are heard in the regional courts, whereas for issues not specifically dealt with in Regulation (EC) No 861/2007 the general rules of the Civil Procedure Code are applicable
Claim agencies (individual procedure)	
	In the month of February 2019, 480 out of the 510 claims received were submitted by claim agencies (94%).

Czech Republic

	Description
National Enforcement Body/Bodies	Czech Civil Aviation Authority
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	Consumer Protection Cooperation (CPC) network
Resources available	1 FTE for Regulation 261/2004 and a specialist for PRM issues alongside support from legal team
	Government-funded
Regulation 261/2004	
National legal basis	The CAA's powers as aviation regulator are defined in the Civil Aviation Act (Act No. 49/1997). The legal basis for enforcement of Regulation 261/2004 is defined in the Civil Aviation Act and the Administrative Code (Act No. 500/2004). The provisions of Regulation 261/2004 were addressed through specific articles in the Civil Aviation Act, including potential discrepancies of air carriers (Article 93, paragraph 2) and the maximum sanction limit (Article 93, paragraph 8).
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers have to contact the airline first and wait for two months for a response before the NEB handles their complaint.
Enforcement power of NEB	When a complaint is received it is logged in the electronic database. Once the CZ CAA has confirmed that the complaint is legitimate, a statement is requested from the airline within six weeks. The evidence from the carrier is investigated and a non-binding decision of the NEB is then issued to the passenger. In cases where the CAA finds that compensation is due, it will forward the passenger's bank details upon the airlines' request, if needed. The passenger is encouraged to file a lawsuit if he not content with the NEBs decision. The NEB can initiate penal proceedings. Penal proceedings can be started for cases where the airline is reluctant to respond to both the passenger and CAA's request, the airline is reluctant to provide sufficient evidence to support extraordinary circumstances, or compensation payment is not made in duly manner. Because of limited resources with the NEB, enforcement is only done on a case-by-case basis and not at a system-level. In case of multiple cases concerning the same flight, a collective higher sanction is issued for the flight. As the number of complaints against the national carrier outnumbers the complaints received against foreign carriers, a higher volume of penal proceedings has been initiated against Czech carriers. The NEB notes that it experiences a problem with delivering legal correspondence to airlines registered outside of the EU. As such they are unable to legally commence an administrative process and subsequently impose legally-binding sanctions which may be appealed. As a result, the level of enforceability in such cases is

	extremely low. The maximum legal limit for sanctions is 1 million CZK (approx. 39,000 EUR).
Annual report or activity report	No information provided
Services to passengers	
Communication with passengers	Passenger can submit a complaint via the electronic form, which is available to download on the NEBs website in either Czech or English. The NEB notes that passengers are generally aware of their rights to be compensated but less aware how to exercise these rights with the correct enforcement body. Passengers are often under the impression that complaints are handled by the state of the operating carrier or the state of passenger's residence. Additionally, there is a lack of awareness of the thresholds for compensation which can lead to disappointment when complaints are found to be extraordinary circumstances or not within the scope of the regulation.
Length of complaint processing	3 – 6 months
261/2004 NEB cooperation	The CAA usually only provides passengers with contact details of the competent NEB. However, if a passenger insists then the CAA will forward the complaint if it is already translated to English.
Activity level for claims under 261/2004	
Number of complaints received	2018: 1,455 complaints handled out of 3,150 received 2017: 946 complaints handled 2016: 672 complaints handled 2015: 370 complaints handled 2014: 286 complaints handled 2013: 287 complaints handled 2012: 197 complaints handled A large proportion of complaints or requests received by the NEB are not legitimate (46% in 2018), as they either fall outside the scope of the Regulation or are not within the Czech jurisdiction.
Nature of complaints received	Most complaints relate to cancellations and delays.
Outcome of complaints	No information provided.
Investigation of extraordinary circumstances by the NEB	The CAA requires airlines to provide evidence to support a claim of extraordinary circumstance, including METARs, screenshots from internal systems (including codes and lengths of the delays), and NOTAMs. If necessary, the CAA will liaise with internal experts however the NEB notes that the It may be further noted that the accuracy of documents provided by the airlines is often questionable and the CAA is not always able to verify the authenticity of such documents.
Sanctions	The CAA commenced 27 administrative processes last year, which is significantly more than in the previous years (around 5 administrative processes per year). Five of the penal proceedings concluded in a sanction and ten have not been concluded yet. All of the issued sanctions have been paid by airlines.
Inspections and other relevant activities	The NEB undertakes period audits.

Changes in activity levels since 2011	While awareness for compensation rights generally exists, there is less awareness about the rights for provision of care.
Regulation 1107/2006	
National legal basis	The CAA's powers as aviation regulator are defined in the Civil Aviation Act (Act No. 49/1997).
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	NEB can handle individual complaints.
Is NEB a first or second order body?	PRM passengers can contact the NEB directly.
Enforcement power of NEB	See enforcement process for 261/2004. No sanctions have been issued for PRM Regulation.
Activity levels for claims under 1107/2006	
Claims received	Approximately one claim annually.
Nature of claims received	Complaints have been submitted for fees for a guide dog, waiting time for assistance and missed connections, and denied boarding. Out of the total number of complaints received since 2011, around half were not in scope of Regulation 1107/2006.
Alternative/Online Dispute Resolution	
Overview	The NEB has informed us that although ADRs bodies exists in the Czech Republic they only deal with passenger rights relating to baggage and not disputes relating to Regulation 261/2004. According to the NEB, it is currently not possible for airlines to sign up due to the legal context in which the ADR has been set up. Nevertheless, the Czech Trade Inspection Authority is listed as a competent ADR body for airline transport services on the European Commission's website.
Details	-
Contact	http://www.coi.cz
Legally binding	Not legally-binding
Costs incurred in ADR by passengers	No costs
Costs incurred in ADR by airlines	No information
National small claims procedure (individual procedure)	
Small claims court procedure	A small claims court procedure does not exist in the Czech Republic.
Claim agencies (individual procedure)	
	In 2018, 28% of all of the complaints were submitted through claim agencies.

Denmark

	Description
National Enforcement Body/Bodies	The Danish Transport, Construction and Housing Authority's Centre for Civil Aviation
Type of organisation	Civil aviation authority
Remit of NEB	Regulation 261/2004, Regulation 1107/2006 and ADR body
Other competencies within remit	Alternative Dispute Resolution (ADR)/Online Dispute Resolution (ODR) body
Resources available	FTEs: 2 legal advisors and 3 case handlers
	Budget: Governmentally-funded
Regulation 261/2004	
National legal basis	The Danish Air Navigation Act provides the framework of the regulation of civil aviation in Denmark. §153b. of the Air Navigation Act nominates the Danish Transport, Construction and Housing Agency as the National Enforcement Body responsible for Regulation 261/2004
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The NEB accepts and handles enquiries and complaints from individuals that are submitted through an online complaint form.
Is NEB a first or second order body?	The NEB can only cover claims where the consumer has reached out to the airline and did not hear back within 4 weeks or could not find a solution with the carrier.
Enforcement power of NEB	When a complaint is received, the NEB starts an investigation by contacting the airline. The threshold for responding is four weeks, followed by two additional weeks for additional evidence. Because the NEB is also an ADR body, the decision issued by the NEB upon concluding its investigation (called BL) is binding. Although enforcement of the regulation is primarily done on a case-by-case basis, the NEB is looking to also undertake more system-level enforcement. The Transport, Construction and Housing Authority can impose sanctions for both EU-carriers and non-EU carriers, however only through public prosecution. Sanctions will be issued in cases where carriers are not complying with the decision made by the authority and compensation is not paid to the passenger within a set deadline. The NEB will then contact the public prosecutor to ask for the case to be taken forward. If it is taken forward and the court finds that the air carrier has failed to comply with the decision of the NEB, a fine will be imposed. The penalty for non-compliance is either 10,000 DKK or 20,000 DKK (approx. EUR 1,350 or 2,700) depending on the size of the of the amount due to the passenger. The NEB notes that most airlines comply with its decisions as airlines want to avoid paying a sanction in addition to the individual compensation.
Annual report or activity report	No information provided.
Services to passengers	

Communication with passengers	The NEB accepts complaints online via specific forms (https://klage.flypassager.dk/en) available on its website. The forms are designed in Danish and English and can be completed in either language. Following receipt of the complaint and all its relevant documentation, it is forwarded to the carrier for comment. Any documentation received from the carrier which can result in a ruling in favour of the carrier, will be sent to the passenger for comment. Approximately 75% of all cases are closed within 3 months.
Length of complaint processing	< 3 months
261/2004 NEB cooperation	When the NEB receives a complaint for which it is not competent, it will provide the passenger with contact information of the competent NEB in accordance with the revised NEB-NEB agreement. The NEB holds bi-annual meetings with the ECC.
Activity level for claims under 261/2004	
Number of complaints received	2018: 3,115 complaints received 2017: 3,113 complaints received 2016: 2,370 complaints received 2015: 2,333 complaints received 2014: 1,637 complaints received 2013: 976 complaints received 2012: 127 complaints received *The NEB notes that roughly 6,000-7,000 complaints are brought to the Danish courts so that the total number of passenger complaints is closer to 10,000. In 2018, approximately 25% of complaints received by the NEB were not legitimate.
Nature of complaints received	Most complaints are due to long delays (71%), followed by cancellations (27%) and denied boarding (2%).
Outcome of complaints	In 2018, the NEB made decisions in 1,951 cases out of 3,115 received. In 2017 it was 2,105 out of 3,113. In 2017, 54% of cases were settled between the parties, 16% of cases were ruled in favour of the passenger(s), 1% of cases were ruled in partial favour of the passenger(s) and 28% of cases were ruled in favour of the air carrier.
Investigation of extraordinary circumstances by the NEB	NEB requests that the carrier provides sufficient evidence if extraordinary circumstances are cited as the cause of the delay/cancellation. The NEB receives a wide variety of documentation to support claims of extraordinary circumstances. In cases of adverse weather, only METAR and TAF reports are accepted. Internal logs or movement reports that document aircraft movement and delays and provide reasons for them are also often received. Furthermore, the NEB may also receive Eurocontrol notifications, which can prove that the aircraft was affected by ATC-restrictions among other things. In relation to bird strikes and lightning strikes, the NEB will require technical reports to document such incidents. The NEB also receives internal documents from air carriers, from which it is difficult to credibly evaluate the extraordinary circumstances. If the NEB does not find that the carrier has provided sufficient evidence to assess whether the incident was caused by extraordinary circumstances, further information is requested from the airline.

Sanctions	In 2018, the NEB has forwarded 52 of its 1,792 legitimate claims to the public prosecutor. We did not receive information on number of sanctions imposed.
Inspections and other relevant activities	The NEB has launched a pilot inspection programme for the two biggest airports with announced audits happening before the summer period.
Changes in activity levels since 2011	The NEB has witnessed an increased awareness from passengers on their rights when travelling, as well as seen an increase in the number of complaints received.
Regulation 1107/2006	
National legal basis	The Danish Air Navigation Act provides the framework of the regulation of civil aviation in Denmark.
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	The NEB deals with individual claims from passengers.
Is NEB a first or second order body?	Unlike for Regulation 261/2004, passengers can submit complaints under Regulation 1107/2006 to the NEB without having contacted the airline/airport first.
Enforcement power of NEB	Compliance with the Regulation is monitored through audits and inspections. When claims are received, the NEB goes into dialogue with the airline/airport in question to assess if the airline/airport has acted in accordance with the Regulation. Due to the low number of complaints, the NEB does not make any administrative decisions. A written statement on the outcome of the complaint is issued to the PRM, usually within 3 months of receiving the complaint. Sanctions can be imposed under the Danish Civil Act on Aviation and the Executive Order, but no sanctions have been applied.
Activity levels for claims under 1107/2006	
Claims received	Approximately 3-5 complaints annually.
Nature of claims received	Most of the complaints relate to situations where an infringement of the situation almost happened and therefore reflect the passenger's frustration instead of an actual infringement. The nature of complaints varies but primary concern is insufficient support at the airport.
Alternative/Online Dispute Resolution	
Overview	The Danish ADR is part of the competent NEB in Denmark, the Transport, Construction and Housing Authority. ODR is not used in Denmark.
Details	Participation in the ADR procedure is mandatory for airlines. If the air carriers do not want to participate in the procedure, case handlers make administrative decisions on the basis of available information/presented evidence. The ADR has the same geographic area of competency as the NEB (i.e. flights departing from Danish airports and flights arriving from third countries if the carrier is an EU-carrier) and is not limited to airlines registered in Denmark. The passenger must have complained directly to the air carrier before they send in a complaint to the Danish NEB/ADR. In rulings, the ADR refers both to

	Regulation 261/2004 and CJEU-rulings, as well as rulings from the Danish Supreme Court and High Courts. Procedures are done both in Danish and English.
Contact	https://klage.flypassager.dk/en
Legally binding	The decisions of the NEB/ADR are administratively binding. If airlines do not comply with decision of the NEB/ADR, the case will be brought to a public prosecutor which can initiate prosecution against the carrier.
Costs incurred in ADR by passengers	The costs are covered by the air carriers and thus ADR procedures are free for the consumer. There is also no minimum or maximum claim value for consumers to use ADR.
Costs incurred in ADR by airlines	The costs for ADR procedures is covered by a tax paid by the air carriers flying into/out of Denmark. The ADR awards the compensation as set out in Regulation 261/2004, as well as refunds depending on expenses held by passengers. Additional damages or compensation beyond what is specified in the regulation are not awarded.
National small claims procedure (individual procedure)	
Small claims court procedure	A small claims court procedure exists in Denmark. Cases are filed digitally to the relevant district court. When the defendant has responded to the case, the court will assist in handling the case. Participation in this is subject to a fee of 500 DKK (approx. EUR 70). The timescale varies from case to case, but procedural rules are simplified to shorten the duration of the process. The amount concerned must not exceed 50000 DKK (approx. EUR 6700).
Claim agencies (individual procedure)	
	Approximately 1/3 of complaints registered with the NEB are from claim agencies. The quality of documentation submitted by claim agencies varies, with approximately 50% of submissions lacking basic documentation. The quality of documentation has been improving as a result of a NEB policy on claim agency submissions. Additionally, the NEB holds dialogue meetings with claim agencies twice a year, which offer room for discussion to address any problematic patterns with complaints submitted by claim agencies.

Germany

	Description
National Enforcement Body/Bodies	Luftfahrt-Bundesamt (LBA)
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004, Regulation 1107/2006
Other competencies within remit	Consumer Protection Cooperation (CPC) network
Resources available	7 FTEs to cover complaints under regulation 261/2004 and 1107/2006
	Government-funded
Regulation 261/2004	
National legal basis	The Air Traffic Licensing Regulation (Luftverkehrszulassungsordnung) defines the LBA as the NEB and that non-compliance is a misdemeanour (minor offence): Paragraph 63(d) defines LBA as the NEB, responsible for complaint handling and enforcement and able to undertake inspections. Paragraph 108(2) defines the offences for breaches of the Regulation. The Air Traffic Law (Luftverkehrsgesetz), paragraph 58(1)(13), defines that breach of EU Regulations relating to air traffic is an offence. Paragraph 58(2) defines the fines applying for breach of these Regulations. The Law on Administrative Offences (Gesetz über Ordnungswidrigkeiten) defines the administrative process that must be followed in order to impose sanctions. It defines that the responsible authority, in this case LBA, can decide whether to impose penalties.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The LBA accepts individual complaints from passengers but is not competent to enforce civil claims of individual passengers. Instead it performs administrative offence proceedings based on individual passenger complaints. It is responsible for the monitoring and enforcement of the Regulation and accepts and handles enquiries and complaints. For compensation, passengers get directed to the relevant ADR body in Germany.
Is NEB a first or second order body?	Not applicable as NEB does not enforce individual claims.
Enforcement power of NEB	As the German NEB, LBA supervises the compliance of air carriers and airports under Regulation 261/2004 with respect to the trade law. The aim of the enforcement process performed by the LBA is an improvement of company-side processes and to avoid future infringements, but not the enforcement of individual civil claims of passengers for compensation under civil law. For compensation claims, the passenger is referred to ADR entities. The LBA examines if incoming passenger complaints fall under the scope the regulation and identifies potential infringements. In case of infringements, the LBA is empowered to perform administrative offence proceedings and to impose fines against the company involved on the legal basis of the national law of administrative offences. In this context the LBA has the discretionary power (§ 47 Administrative Offences Act) to open proceedings or to abstain from further handling and sanctioning.

	For the handling of complaints, data recording and drawing up of correspondence the LBA uses an IT-tool called DeBoarA (Denied Boarding Application). Additional to that the LBA launched electronic file management in 2019. LBA considers the discretionary powers principle and the principle of proportionality. As such, the LBA issues warnings as a first step to sensitize carriers and airports with regard to their particular obligations. If they still find (proven) infringements against Regulation 261/2004 fines will be imposed that are calculated in the individual case considering the circumstances (i.e. severity of infringements and frequency of former infringements). The maximum penalty defined by Article 58(2) for non-compliance with these and other European Regulations in relation to air transport is €30,000. In addition, the law allows for imposition of an additional fine in order to recover the economic advantage that the airline has obtained through non-compliance with the Regulation. Sanctions can be imposed on carriers registered in EU member states as well as on those registered in third countries. If a sanction is imposed, then carriers have to pay the specified fine, but they are not required to pay compensation to the passenger the case is based on. Execution of fines and debt enforcement against companies from third countries can be difficult, with a higher administrative burden associated. The NEB refers to German court rulings, as well as those from the CJEU.
Annual report or activity report	Regular report since 1995. Latest publication in 2016. More up-to-date statistics published on website.
Services to passengers	
Communication with passengers	LBA accepts complaints only via specific forms which it makes available on its website. The forms are designed in German and English and can be completed in either language. LBA communicates with passengers in German or English and provides an individual response to each passenger. On average the complaint handling process takes over 18 months. Passengers will be informed about the final decision of the LBA for their case. On the LBA website, passengers are also informed about the fact that the LBA is not the competent body for the enforcement of civil claims. The website includes a referral link to the German ADR body which passengers can use for the enforcement of potential civil claims.
Length of complaint processing	> 18 months
261/2004 NEB cooperation	Where LBA receives complaints that are not covered by its competency, it forwards the complaint to the appropriate NEB. The competent NEB will be provided with a summary of the relevant circumstances of the case in English and the passenger concerned will be informed about the transmission. LBA has also used the NEB network for cross-border issues.
Activity level for claims under 261/2004	
Number of complaints received	2018: 5134 complaints received, incl. 4258 processed 2017: 3211 complaints received, incl. 2704 processed 2016: 3075 complaints received, incl. 2433 processed 2015: 2844 complaints received, incl. 2164 processed 2014: 2739 complaints received, incl. 2035 processed

	2013: 4582 complaints received, incl. 3490 processed 2012: 5105 complaints received, incl. 4480 processed 2011: 4442 complaints received, incl. 3749 processed Up until 2013, the NEB was also acting as an ADR body which explains the decrease in complaints in the following years. The increase in complaints in 2018 is a result of an increase in traffic as well as airline insolvencies.
Nature of complaints received	The main reasons for complaints are delays (56%) and cancellations (37-38%). There has been an increase in the number of complaints due to cancellations in the last few years. Denied boarding makes up 6% of complaints, downgrading only 1%. Generally, passengers complain about the refusal or delayed payment of compensation. With regard to cancellations, especially in the context of extensive situations (e.g. strike), a larger number of passengers also complain about not receiving assistance (meals and accommodation). With regard to certain airlines, passengers also complain about not being offered (suitable) re-routing. The majority of complaints in 2018 related to German carriers (51%), followed by European carriers (40%) and third-country carriers (9%).
Outcome of complaints	LBA considers its role as an enforcement body only, and it cannot become involved in deciding a dispute about a private contract between a passenger and a carrier. Therefore, it may consider imposing sanctions, but will not instruct an airline to pay compensation in an individual case. An airline may decide to pay when LBA becomes involved, but if it does not, the passenger would need to seek other means of redress (ADR or courts).
Investigation of extraordinary circumstances by the NEB	LBA considers extraordinary circumstances on a case-by-case basis within the scope of its administrative offence proceedings. Airlines are required to submit extracts from their flight documentation, including METAR data and, if necessary, technical documentation. Publicly available information, for instance publications on strikes or other incidents are used, as well as input from experts of the ANSP (Deutsche Flugsicherung) and the flight operations department of the LBA to verify information.
Sanctions	2018: 33 sanctions (avg. 2,621€) 2017: 336 sanctions (avg. 7,138€) 2016: 68 sanctions (avg. 2,257€) 2015: 99 sanctions (avg. 3,455€) 2014: 52 sanctions (avg. 1,577€) 2013: 12 sanctions (avg. 1,583€) 2012: 113 sanctions (average amount 1,602€) Overall, 85% of sanctions imposed by LBA were paid by carriers and only 15% were appealed. The NEB stated that airlines are quite reactive and ensure to change their practice in response to fines.
Inspections and other relevant activities	LBA also performs audits and implemented a regular annual exchange with airlines and also event-driven exchanges with single companies. Between 80 and 100 inspections are undertaken annually, both announced and unannounced.
Changes in activity levels since 2011	The highest number of complaints under Regulation 261/2004 was handled in 2012 (4,480 complaints). Since then, the number of handled complaints was lower but increased again to similar levels in 2018 (4,258 complaints).

	LBA noted that in recent years more passengers have become aware of Regulation 261/2004 and their rights. Due to the high amounts of compensation based on the Regulation 261/2004, the majority of passengers appealing to the LBA has strong and preferential interests in receiving compensation. LBA has also recently received more complaints from passengers based on insufficient offers of re-routing (no offer of re-routing but only reimbursement, or offer of re-routing on flights a couple of days after the scheduled time of departure).
Regulation 1107/2006	
National legal basis	The Air Traffic Licensing Regulation (Luftverkehrszulassungsordnung) defines the LBA as the relevant NEB for the Regulation (paragraph 46(a)) and non-compliance by airports or airlines as a misdemeanour (minor offence) (paragraph 108(4))
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	LBA accepts individual complaints from passengers but is not competent to enforce civil claims of individual passengers. Instead it performs administrative offence proceedings based on individual passenger complaints. It is responsible for the monitoring and enforcement of the Regulation and accepts and handles enquiries and complaints with the aim of improvement of company-side processes and to avoid future infringements.
Is NEB a first or second order body?	Not applicable as NEB does not enforce individual claims.
Enforcement power of NEB	Enforcement powers for Regulation 1107/2006 are as described for Regulation 261/2004 above.
Activity levels for claims under 1107/2006	
Claims received	From 2011 to 2018 the LBA received 129 complaints related to Regulation (EC) No 1107/2006. 15 of these complaints were transmitted to other NEBs by reasons of competence, 13 of these complaints were closed because they were not in scope of the Regulation. 101 complaints were handled by the LBA. The number of received PRM complaints remains small but an increase has been observed since 2011 (14%). The highest number of claims under Regulation 1107/2006 was observed in 2013.
Nature of claims received	Most frequent reasons for complaints have been: refusal of transport of medical equipment and mobility aids (free of charge), insufficient assistance in moving to toilet facilities on aircraft, refusal to arrange seating to meet the needs of passengers (free of charge), lacking information about restrictions on carriage of PRM and of mobility equipment due to aircraft size, delay of provision of assistance by airports, insufficient assistance to reach connecting flights in transit. LBA imposed fines in 4 cases: - One case of refusal of a reserved seat when boarding and insufficient information about seating restrictions by the air carrier; fine: 1,000€. - Two cases of insufficient assistance in moving to toilet facilities (no provision of an onboard-wheelchair), fine: 1,000€ per case. - One case of denied boarding and refusal of transport of a needed pre-notified oxygen apparatus, fine: 2,000€. In addition to the above, the LBA issued a caution (without a fine) in 6 cases. Reasons for warnings were refusals to transport mobility or / and medical

	equipment, lacking information about seating restrictions and safety regulations applicable, lacking assistance in moving to toilet facilities.
Alternative/Online Dispute Resolution	
Overview	On 1 November 2013, the Law on Conciliation in Air Traffic entered into force in Germany. This amendment of the law entitles passengers to appeal to designated ADR bodies with regard to the following issues: 1. denied boarding, delay and cancellation of flights 2. destruction, damage, loss or delayed transport of luggage 3. destruction, damage or loss of things that the passenger wears or carries 3. violations of duty in case of the transport of disabled passengers or passengers with reduced mobility. The legal basis for the conciliation is §§ 57 to 57 c German Civil Aviation Act (Luftverkehrsgesetz) as well as the Luftverkehrsschlichtungsverordnung (Regulation pursuant to § 57c of the German Civil Aviation Act). The conciliation organized under private law is at present carried out by the söp Schlichtungsstelle für den öffentlichen Personenverkehr e.V. (The German Conciliation Body for Public Transport).
Details	A conciliation for consumers is possible up to an amount of 5,000 EUR (or 30,000 if airlines agree) and the procedure is offered in German and English. A conciliation for claims of less than 10 EUR is not considered. For non-consumer business traveller complaints, the ADR notes that under the legal context, airlines are only required to participate in arbitration proceedings for privately arranged trips. In individual cases, airlines may voluntarily participate in an arbitration procedure for business-related air travel. The regulations of the German Civil Aviation Act provide a conciliation organized under private law and the official conciliation process. As far as an air carrier does not participate in a conciliation organized under private law, the Official Conciliation Body with the Federal Office of Justice is responsible. While participation in the ADR is voluntary, there is a legal obligation that all airlines flying from/to a German airport have to pay for ADR, either at a private scheme (söp) or otherwise at a public residual scheme (Schlichtungsstelle Luftverkehr at Federal Office for Justice). This encouraged the majority of relevant airlines to join söp. In order for the ADR body to consider a claim the passenger has to have contacted the carrier first. The official conciliation process only takes place, if an air carrier refuses the conciliation organized under private law. The conciliatory proposal must be submitted to the parties involved by the Conciliation Body within 90 days of receipt of the conciliation request or the presentation of the complete documentation on the conciliation request. The ADR body has to present the passenger with a mediation proposal within 90 days. In 2015, the ADR handled 28,104 cases. For 60-80% partial or full compensation was paid, on average 500 Euros.
Contact	https://soep-online.de/
Legally binding	Proposed ADR resolutions are not legally binding.
Costs incurred in ADR by passengers	The conciliation is free of charge for passengers. Passengers only have to pay their own costs, e.g. postage, copies or, if any, lawyer's charges.
Costs incurred in ADR by airlines	The ADR service is completely financed by the airlines through an annual fee and a case fee (depending on the time efforts for the individual case).
National small claims procedure (individual procedure)	
Small claims court procedure	There is no special procedure for small claims in the Code of Civil Procedure (Zivilprozessordnung). However, Section 495a of the Code does make provision

	for a simplified procedure, allowing the court to decide how to proceed in cases where the value in dispute is €600 or less.
Claim agencies (individual procedure)	
	The NEB has noted a significant increase in complaints received from claim agencies, which now account for 30% of all complaints. Issues with the completeness of information have been noted.

Estonia

	Description
National Enforcement Body/Bodies	Consumer Protection Body in the Consumer Protection and Technical Regulatory Authority (CPTRA)
Type of organisation	Consumer Protection Body
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	Alternative Dispute Resolution (ADR); and Consumer Protection Corporation (CPC) network
Resources available	1 FTE
	Government-funded
Regulation 261/2004	
National legal basis	Aviation Act
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The NEB cannot enforce individual complaints but will assist complainants to identify the competent enforcement body (either the Estonian ADR or and NEB in another Member State).
Is NEB a first or second order body?	Passengers have to contact the airline first.
Enforcement power of NEB	The NEB acts as a support body for passengers but does not enforce compensation for individual complaints. The practices were changed at the beginning of 2018, before which all individual complaints were handled by the NEB. Since 2018, the NEB provides passengers with information on the competent enforcement bodies or transfers complaints. For complaints that fall within its competence, i.e. involving carriers not-registered in Estonia, the NEB requests information from the airline, investigates the case and provides a non-binding recommendation. The NEB will advise the airline to compensation in cases where it finds that redress is due. The airline is also informed that if compensation is not granted the passenger is advised to turn to court. Since 2018, the ADR body (the Consumer Complaints Committee) handles the enforcement of individual compensation for cases where the airline is registered in Estonia. For complaints against other airlines where the incident did not occur in Estonia are directly forwarded to the competent NEB. The NEB's current role only allows the monitoring and enforcement of general compliance with air passenger rights and the provision of information to passengers under the aspect of misleading commercial practices. The NEB notes that they are currently in the process of amending the civil aviation code to give them the more specific powers for system-level enforcement with regards to Regulation 261/2004. The update of the code should come into force from 2020. Estonian domestic legislation (Aviation Act) gives the NEB authority to issue a precept or guideline to the airline which states whether the NEB finds the passenger eligible for compensation. Beyond that, the NEB has no competence to issue sanctions to the carrier if it fails to comply with its recommendation or non-compliance with Regulation 261/2004. The proposed amendment of the Aviation Act will allow the NEB to issue precept where it finds non-compliance

	with the regulation. The NEB will still not be able to issue binding decisions related to the payment of compensation for individual passengers.
Annual report or activity report	No information provided.
Services to passengers	
Communication with passengers	The NEB provides passengers with information about their rights and assists to find the competent NEB or refers cases to the ADR body when possible. Complaints against other airlines where the incident did not occur in Estonia are directly forwarded to competent NEB.
Length of complaint processing	3 – 6 months
261/2004 NEB cooperation	The NEB cooperates with the ADR, to which it transfers cases regarding carriers registered in Estonia.
Activity level for claims under 261/2004	
Number of complaints received	2018: 475 complaints 2017: 276 complaints 2016: 91 complaints 2015: 67 complaints 2014: 63 complaints In 2018, the proportion of legitimate complaints was 70% which is higher than in previous years (33% in 2017 and 53% in 2016).
Nature of complaints received	No information provided
Outcome of complaints	No information provided
Investigation of extraordinary circumstances by the NEB	The NEB requests evidence from the airline and liaises with experts from the Estonian Civil Aviation Authority to interpret the documentation if required. In 2017 and 2018 a total of 49 cases where air carriers proved the existence of extraordinary circumstances.
Sanctions	There have been 11 cases in total where the NEB had to issue a precept to the airline regarding compensation. No penalty payments were issued because air carrier implemented the precept.
Inspections and other relevant activities	No information provided
Changes in activity levels since 2011	The number of passengers claiming for compensation is increasing every year due to an increased level of awareness. The NEB also notes that an increasing number of airlines are reluctant to pay redress to passengers as a result of the rise in complaints.
Regulation 1107/2006	
National legal basis	Aviation Act
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	No information provided
Is NEB a first or second order body?	No information provided

Enforcement power of NEB	No information provided
Activity levels for claims under 1107/2006	
Claims received	No complaints under Regulation 1107/2006. In 2018, there were 6,179 PRMs carried by airlines. The number has increased steadily since 2011 when it was only 1,078 PRMs.
Nature of claims received	-
Alternative/Online Dispute Resolution	
Overview	The Consumer Complaints Committee is the Estonian ADR body and is part of CPTRA. The ADR handles all cases where the airline is registered in Estonia and the value of the claim is higher than 30 EUR.
Details	Participation in the Committee's work is mandatory for all traders established in Estonia. The committee consists of a chairman and members, including both representatives of businesses or professional associations and consumer representation organisations. A dispute can be concluded either through withdrawal by the passenger, the agreement between both parties at the committee sitting or the decision-making process of the committee. The process takes up to 60 days. The ADR uses both CJEU judgements and case law from other Member States. Approximately two-thirds of the traders comply with the Committees decisions. A list of the organisations who have failed to comply with the decisions of the Committee is published as a "black list" on the website of the CPTRA. The process handling language is Estonian only and while the consumer can choose between a written and oral procedure, the ADR may require the physical presence of the parties and/or their representative in some cases.
Contact	https://komisjon.ee/et
Legally binding	Not legally-binding
Costs incurred in ADR by passengers	No costs.
Costs incurred in ADR by airlines	No costs.
National small claims procedure (individual procedure)	
Small claims court procedure	A small claims court procedure is available.
Claim agencies (individual procedure)	
	There are four Estonian claim agencies that have been set up recently. The NEB also receives complaints from claim agencies from the UK, Denmark and Lithuania.

Ireland

	Description
National Enforcement Body/Bodies	Commission for Aviation Regulation (CAR)
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	Consumer Protection Cooperation (CPC) network
Resources available	5 FTEs covering Regulation 261/2004 and 1107/2006
	Government-funded
Regulation 261/2004	
National legal basis	CAR's powers as aviation regulator were defined in the Aviation Act 2001. Regulation 261/2004 was transposed into Irish law by means of Statutory Instrument 274 of 2005, and the power to impose sanctions for non-compliance with the Regulation are defined in section 45(a) of the Aviation Regulation Act 2001 as inserted by the Aviation Act 2006. The Statutory Instrument entitles CAR to issue a Direction instructing it to comply. The Direction might be a requirement to pay compensation to an individual passenger or a group of passengers, or to change a policy or practice. Under the amended Aviation Regulation Act, non-compliance with a Direction would be a criminal offence and subject to prosecution.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The NEB is able to handle individual complaints from passengers.
Is NEB a first or second order body?	Passengers can contact the NEB without having contacted the airline initially. However, the NEB strongly encourages passengers to contact the airline first. The NEB does not require that passengers contact the airline first, as it sees that there is no legal requirement for them to do so and it cannot refuse to process their complaint on this basis.
Enforcement power of NEB	If the complaint is complete, the case is initiated with the airline by setting out the details of the case in an email and asking the airline to either provide the passenger with redress in line with the Regulation or to provide evidence to support any counterargument it may have. The airline has 6 weeks to respond. Responses are examined and any evidence assessed. It may be necessary to obtain further information from the passenger, the airline or other sources. Based on all evidence, the NEB makes a decision whether the evidence upholds the complaint or not, which is communicated to the airline. If the airline agrees to abide by the NEB's decision, then the case is closed. If the airline either refuses to assist in an investigation of a case or to abide by the NEB's decision in a case, CAR has the power to issue a direction under the Aviation Act 2001, instructing the airline to compensate the passenger. A direction is a legal enforcement tool of the Aviation Act. Directions are made on a case-by-case basis, however if the NEB observes a consistent infringement they might issue a direction that is not based on a specific individual case. Furthermore, the NEB is also responsible for the monitoring and oversight of compliance with the Regulation and will monitor if airlines are providing sufficient information to passengers on their rights and

	re-routing options in major weather events that do not fall under extraordinary circumstances. The NEB does not have the power to apply sanctions directly but would have to initiate a process in the courts. If a court finds that an airline failed to comply with a direction issued by the NEB, the court has the power to fine the airline. In theory, the maximum fine is 250,000 EUR which would require the involvement of a jury. The NEB noted that this is unlikely for such a court process to be used, hence the maximum fine in practice is 5,000 EUR in a local district court. This process is found to not be very effective when the airline is located outside of the Republic of Ireland. The NEB noted that enforcement is generally more difficult when dealing with airlines located in other EU/EEA/CH states. Some airlines do not engage fully, or at all, with CAR. Some Non-EU airlines clearly disregard the regulations and any directions issued.
Annual report or activity report	CAR publishes an annual report: http://www.aviationreg.ie/about-the-commission-for-aviation-regulation/annual-report.107.html
Services to passengers	
Communication with passengers	All complaints are entered into an online complaint system. The complaint form is available on www.flightrights.ie. Following receipt of a complaint, CAR acknowledges the complaint. If the complaint is incomplete the passenger is given 6 weeks to provide the necessary evidence to support their case (booking confirmation, boarding passes, receipts etc). Regardless of the outcome of an investigation a final letter setting out the facts of the case and the outcome is sent to passengers before the case is closed.
Length of complaint processing	3 – 6 months
261/2004 NEB cooperation	CAR directs complainants to the relevant NEB if it is not competent.
Activity level for claims under 261/2004	
Number of complaints received	The CAR system uses complaint validation to ensure, as much as possible, that only complaints that fall within the NEB's remit can be submitted. Complaints in remit are those that fall within the responsibility of the Irish NEB instead of that of another Member State's NEB. Not including initial communication, phone calls or emails, officially submitted complaints: 2018: 2319, of which 2218 were within remit 2017: 1483, of which 981 were within remit 2016: 944, of which 846 were within remit 2015: 1003, of which 719 were within remit 2014: 1153, of which 727 were within remit 2013: 1235, of which 789 were within remit 2012: 807, of which 509 were within remit 2011: 967, of which 545 were within remit NEB rarely receives more than three or four complaints connected to any single flight disruption.
Nature of complaints received	No statistics available but only few complaints related to denied boarding, with the majority not being upheld.

	The NEB has noted a number of cases where passengers log a complaint with the NEB because the airline has denied them compensation but has compensated other passengers on the same flight.
Outcome of complaints	2018: compensation payable in 22% of cases 2017: compensation payable in 16% of cases 2016: compensation payable in 46% of cases 2015: compensation payable in 46% of cases 2014: compensation payable in 24% of cases 2013: compensation payable in 15% of cases 2012: compensation payable in 11% of cases 2011: compensation payable in 7% of cases Of the cases submitted in 2018: 25% of the cases were ongoing in April 2019, 32% were withdrawn or not upheld, and in 16% the airline proved extraordinary circumstances.
Investigation of extraordinary circumstances by the NEB	When extraordinary circumstances are cited as grounds for not paying compensation, CAR initiates and investigates the case as usual. The airline is required to provide evidence, for example Ops Reports, METAR data, NOTAMs, to support extraordinary circumstances and to explain what reasonable measures were taken, or why there were no reasonable measures available, to avoid the disruption. The evidence supplied by the airline is verified by independent research or third parties where necessary.
Sanctions	No sanctions have been issued.
Inspections and other relevant activities	No information.
Changes in activity levels since 2011	The NEB stated that many passengers appear to assume that they are always entitled to compensation, and that the NEB's role is that of passenger advocate, rather than an adjudicatory one. The main trend observed is an ever-increasing case load, and a consistently high level of cases that ultimately are not upholdable. The NEB stated that the increase is linked with increased awareness of rights under Regulation 261/2004 and of the role of CAR in enforcing those rights, and not due to a decrease in compliance with the regulation by airlines. Airline compliance has been observed by the NEB to have improved.
Regulation 1107/2006	
National legal basis	EC Regulation 1107/ 2006 was transposed in Ireland via Statutory Instrument No. 299 of 2008
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	CAR is able to handle individual complaints from passengers.
Is NEB a first or second order body?	Passengers can contact CAR without having contacted the airline/airport first.
Enforcement power of NEB	Passengers can log a complaint online using the online form (www.flihtights.ie) which feeds directly into CAR's database. The NEB makes a decision which is issued as a final letter to the passenger. In case of the airport or airline not abiding with the NEB's decision or if a systematic infringement is noted, the NEB can issue a direction against the airline/airport

	to remedy the situation. If it refuses to do so then CAR can seek to have it prosecuted for failure to comply with a direction, which is an offence under the Aviation Act 2001. Since 2011, only 4 infringements of Regulation 1107/2006 have been recorded (1 in 2011 and 3 in 2012). All were subsequently rectified without the need to take further action. The NEB has attended PRM tender meetings at Dublin and Shannon airports and is responsible for the Economic Regulation of Dublin airport (including PRM charges) Inspections for Regulation 1107/2006 are carried out at all airports annually.
Activity levels for claims under 1107/2006	
Claims received	2018: 70, of which 19 were valid with no infringements 2017: 8, of which 5 were valid with no infringements 2016: 18, of which 8 were valid with no infringements 2015: 16, of which 9 were valid with no infringements 2014: 17, of which 8 were valid with no infringements 2013: 16, of which 11 were valid and 3 infringements 2012: 16, of which 9 were valid with no infringements 2011: 21, of which 5 were valid and 1 an infringement A valid complaint relates to an individual case whereas an infringement is a systematic non-compliance issue. These figures include some complaints that do not relate to PRM issues as a result of the way the complaint form is set up. However, the NEB has observed a notable increase in PRM complaints.
Nature of claims received	The complaints related to access to onboard toilet facilities and inability to use the facilities due to insufficient space, and airline policies on assigned seats. The NEB has noted that airports in Ireland are taking active measures to ensure that PRMs are adequately cared for. Assistance policies are in place to ensure that those passengers with hidden disabilities are provided with assistance.
Alternative/Online Dispute Resolution	
Overview	There is no ADR body in Ireland that covers Air Passenger Rights.
Details	-
Contact	-
Legally binding	-
Costs incurred in ADR by passengers	-
Costs incurred in ADR by airlines	-
National small claims procedure (individual procedure)	
Small claims court procedure	The Small Claims procedure in Ireland is provided under the District Court (Small Claims Procedure) Rules, 1997 & 1999 as amended by Statutory Instrument No. 519 of 2009, Order 53A. The District Court Clerk, called the Small Claims Registrar, processes small claims.
Claim agencies (individual procedure)	
	Approximately 5% of claims received are submitted by claim agencies. According to the NEB, complaints submitted by claim agencies often lack the

	correct legal documentation. The NEB has had cases where the claim agency communicates to the passenger that no compensation is received. Passengers then file an individual complaint and when the NEB contacts the airline it is informed that compensation was paid. The NEB currently asks claim agencies to provide documentation to prove that they have informed the passenger that the NEB will handle individual complaints for free and the claim agency will collect part of the compensation received. Many agencies cannot provide such information. The NEB is also considering adopting procedures where it will reject complaints coming from claim agencies.

Greece

	Description
National Enforcement Body/Bodies	Hellenic Civil Aviation Authority (HCAA)
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	Montreal Convention/Regulation 889/2002
Resources available	4 employees, of which 3 are FTEs looking after Regulation 261/2004
	Government-funded
Regulation 261/2004	
National legal basis	Aviation Law 1815/1988. Under the state authority, each of the 39 airports has a passenger rights team which is responsible for the supervision of Regulation 261/2004 and 1107/2006. The passenger rights teams have the ability to impose necessary sanctions.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	NEB accepts individual complaints from passengers.
Is NEB a first or second order body?	Passengers have to contact the airline first as the NEB is a second order body only.
Enforcement power of NEB	The NEB handles complaints on a case-by-case basis. Passengers can fill out a standardised complaint form online. When a complaint is received, the NEB will send all supporting documents to the airline for it to respond within 6 weeks. Two reminders will be sent if no response is received, allowing for two more weeks and 5 working days, respectively. The decision issued by the NEB is legally-binding. The case is sent to the State Authority of each airport for penalty imposition if either no response is received, or the airline fails to comply with the decision of the NEB that it has to compensate the passenger. The penalties range from 500 EUR if the airline does not provide the assistance/care outlined in Article 9 of the Regulation, and 1,000 to 3,000 EUR per passenger for not compensating according to Article 7 of the Regulation.
Annual report or activity report	No information provided
Services to passengers	
Communication with passengers	The passenger is notified about all correspondence between the Authority and the airline.
	The NEB will give contact details of the competent NEB to passengers or forward the complaint directly if it is not the correct authority.
Activity level for claims under 261/2004	

Number of complaints received	2018: 2456 complaints 2017: 1854 complaints 2016: 1367 complaints 2015: 993 complaints 2014: 930 complaints 2013: 798 complaints 2012: 505 complaints 2011: 556 complaints According to the NEB, the increase in the number of complaints received is a reflection of the growth in traffic.
Nature of complaints received	In 2018, the majority of complaints relates to delays (82%), followed by cancellations (14%), baggage/other (2%) and denied boarding (2%).
Outcome of complaints	95% of received complaints are resolved.
Investigation of extraordinary circumstances by the NEB	The HCAA asks airlines for proof of extraordinary circumstances, including METAR data for weather, log book for technical reasons, Eurocontrol documents for ATC restrictions, and reports from airports in case of closures. Additionally, the HCAA will also ask its airport-based teams to provide information about the reason for delays, re-routing, and/or cancellations, as records are also kept at each airport.
Sanctions	2018: 12 sanctions 2017: 16 sanctions 2016: 27 sanctions 2015: 16 sanctions 2014: 35 sanctions 2013: 15 sanctions 2012: 8 sanctions 2011: 0 sanctions The NEB notes that most airlines compensate passengers, so sanctions are rarely required. Most sanctions relate to complaints related to delays.
Inspections and other relevant activities	HCAA maintains a presence at airports, with airport-based teams able to formally and informally observe and record information on disruptions.
Changes in activity levels since 2011	The NEB noted that passengers are increasingly aware of their rights, particularly with respect to compensation, which is driving the increase in the number of complaints received each year.
Regulation 1107/2006	
National legal basis	Aviation Law 1815/1988
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	NEB accepts individual complaints from passengers.
Is NEB a first or second order body?	Passengers have to contact airline/airport first as the NEB is a second order body only.
Enforcement power of NEB	When a complaint is received, the NEB will send all supporting documents to the airline or the airport for it to respond within 6 weeks. Two reminders will be sent if no response is received, allowing for two more weeks and 5 working days respectively. If no response is provided or the airline or airport does not

	meet its obligation under Regulation 1107/2006, the NEB will send the case to its airport-based teams for the imposition of a penalty. According to Aviation Law 1815/1988, the sanctions can vary between 500 and 250,000 EUR. So far, no fines have been imposed on either airlines or airports as the NEB has not received any complaints that were not satisfactorily addressed.
Activity levels for claims under 1107/2006	
Claims received	The number of PRM passengers in Greece has increased from 156,000 in 2013 to 267,000 in 2018. The number of received claims is low, with two claims per year between 2011 and 2014 and in 2016. Three claims were logged in 2017 and four claims in 2015 and 2018. 80% of the received complaints were assessed to be legitimate. The NEB notes that the airport infrastructure has been improved as well as the service provided to PRMs.
Nature of claims received	The complaints relate to medical and non-PRM issues. The nature of complaints also relates to service not being provided properly.
Alternative/Online Dispute Resolution	
Overview	ADR point Greece is an independent, public body.
Details	The ADR has power to impose sanctions and has been handling Air Passenger Rights issues as of last year. It is authorised to receive complaints from passengers against airlines which are established in Greece, which is four in total. The ADR is funded through a mixture of private funding and fees from the ADR services. ADR point does not issue a decision, but only mediates the case and occasionally monitors if the agreement is honoured. Services are offered in six languages (Greek, English, French, Italian, German, Spanish). The ADR has received less than 50 complaints relating to Air Passenger Rights so far and takes on average 25 days to reach a solution. In most cases, the passenger was awarded full compensation.
Contact	https://www.adrpoint.gr/en/consumers/contact
Legally binding	Not legally-binding
Costs incurred in ADR by passengers	No costs
Costs incurred in ADR by airlines	Fees that range between 50-120€ per case.
National small claims procedure (individual procedure)	
Small claims court procedure	There is no small claims court procedure in Greece.
Claim agencies (individual procedure)	
	According to the NEB, complaints from claim agencies have significantly increased in the last few years, as has the number of claim agencies operating. 35% of complaints received by the NEB are submitted by claim agencies.

Spain

	Description
National Enforcement Body/Bodies	Agencia Estatal de Seguridad Aérea - AESA (Spanish Aviation Safety & Security Agency)
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	ADR body (from late 2019) & Consumer Protection Cooperation (CPC) network
Resources available	40 FTEs working in complaint management, including 4 managers Government-funded
Regulation 261/2004	
National legal basis	Enforcement is undertaken on the basis of Article 37 of the Aviation Security Law (Law 21/2003), as amended by the Law Establishing the State Programme for Operational Safety in Civil Aviation and modifying Law 21/2003 (Law 1/2011), in particular: Article 37(2)(1) requires airlines to comply with Regulations 261/2004 and 1107/2006; and Article 37(2)(2) requires airlines to provide immediate and accurate information on delays, cancellations and passengers' rights.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	AESA is able to handle individual complaints from passengers.
Is NEB a first or second order body?	As a result of Spanish consumer law, passengers must have contacted the airline initially. If an unsatisfactory response or no response is received within 30 days, passengers can contact AESA as a second order body.
Enforcement power of NEB	When AESA receives a claim, it asks the airline for a report on the incident. All documentation is assessed and AESA issues a report to the airline and passenger. Decisions are currently not legally binding. AESA is currently (2019) being designated an ADR, once the ADR procedure is fully implemented, it will be able to issue legally binding decisions. The NEB undertakes system-level enforcement and is able to impose fines to airlines that do not comply with the Regulation. The legal limits for sanctions are defined in Spanish law as between 4,500 EUR and 70,000 EUR per infringement. AESA is able to also fine foreign carriers although enforcement is more difficult for smaller non-EU carriers. The NEB's decision can be appealed in court. The decision is overturned in less than 3% of cases.
Annual report or activity report	The agency publishes three-year action plans.
Services to passengers	
Communication with passengers	The majority of complaints (90%) is submitted online. Passengers will receive the final report issued by AESA.

Length of complaint processing	<3 months
261/2004 NEB cooperation	AESA forwards complaints if it is not the relevant NEB, with a translation in English. Although AESA is part of the CPC network, the NEB stated that it has not used it to enforce or manage complaints (it did receive one case through the CPC once). It also noted that albeit useful for passengers, NEB-NEB cooperation requires extensive resources.
Activity level for claims under 261/2004	
Number of complaints received	2018: 34,279 complaints received, of which 54% were handled 2017: 16,384 complaints received, of which 17% were handled 2016: 17,645 complaints received, of which 16% were handled 2015: 11,342 complaints received, of which 28% were handled 2014: 9,208 complaints received, of which 29% were handled 2013: 9,318 complaints received, of which 30% were handled 2012: 10,882 complaints received, of which 50% were handled 2011: 8,926 complaints received, of which 40% were handled A complaint form was introduced on the AESA website in 2018 which explains part of the increase in complaints received. Previously complaints were accepted by post or via email. Additionally, a high number of passengers in Spain were affected by strikes in 2018.
Nature of complaints received	Delays and cancellations are the main reasons for complaints.
Outcome of complaints	A small number of complaints are solved without AESA's intervention. Of the complaints handled by AESA, the majority was solved in favour of the passenger.
Investigation of extraordinary circumstances by the NEB	The NEB investigates all evidence and documents that airlines provide when claiming for extraordinary circumstances. Examples also include evidence obtained from official organisations. Technical issues are only accepted by the NEB if the whole fleet is affected. Information is requested on a case-by-case basis and the NEB has noted circumstances where different justifications for extraordinary were received relating to the same incident. The NEB clarified that it is working with airlines to improve the quality of documentation provided for extraordinary circumstances. The NEB is also changing its internal process to only accept the first submission from an airline on a given incident.
Sanctions	Fines can be imposed if AESA finds that carriers do not comply with the Regulation under its annual inspection plan. 30% of the inspections result in a fine, which could be as high as 5,000 EUR per flight per non-compliance.
Inspections and other relevant activities	A key task of the NEB's is the provision of information in case of mass disruption. This is supplemented by an inspection program to ensure airlines comply with the Regulation, including the inspection of evidence such as airlines' costs for the provision of care and assistance. Monthly inspections are undertaken at Madrid, Barcelona and other Spanish airports. Audits are also undertaken for Regulation 1107/2006. They are announced to airports but not airlines.

Changes in activity levels since 2011	AESA states that they feel that passengers still have limited knowledge of their rights under Regulation 261 but are becoming more aware through the internet and mass media news.
Regulation 1107/2006	
National legal basis	Enforcement is undertaken on the basis of Article 37 of the Aviation Security Law (Law 21/2003), as amended by the Law Establishing the State Programme for Operational Safety in Civil Aviation and modifying Law 21/2003 (Law 1/2011).
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	AESA is able to handle individual complaints from passengers.
Is NEB a first or second order body?	Passengers with reduced mobility must have contacted the airport/airline initially, as AESA is a second order body only.
Enforcement power of NEB	When AESA receives a complaint, it asks the airport/airline for a report about the incident. After assessing all the relevant documentation, AESA then issues a report which is sent to both the airport/airline and the passenger. AESA is currently (2019) being designated an ADR, once the ADR procedure is fully implemented, it will be able to issue legally binding decisions. The NEB undertakes system-level enforcement and is able to impose fines to airports/airlines that do not comply with the Regulation. The legal limits for sanctions are defined in Spanish law as between 4,500 EUR and 70,000 EUR per infringement.
Activity levels for claims under 1107/2006	
Claims received	AENA airports handled 1.7m passengers with reduced mobility in 2018. The number of complaints received by AESA relating to Regulation 1007/2006 has been very low: 2018: 26 complaints received 2017: 44 complaints received 2016: 38 complaints received 2015: 27 complaints received 2014: 18 complaints received 2013: 22 complaints received 2012: 18 complaints received 2011: 15 complaints received
Nature of claims received	Most complaints relate to delays associated with the transfer through the airport as a result of no pre-notification. Most claims were decided in favour of the airport/airline.
Alternative/Online Dispute Resolution	
Overview	AESA will also act as an ADR body by the end of 2019. The agency is currently in the accreditation process.
Details	Participation in the ADR will be mandatory for all airlines operating in Spain and voluntary for airport operators. Refusal to collaborate with the ADR will result in a penalty. The process will be available both in English and Spanish and passengers will be able to use the ADR's decision in court.
Contact	https://www.seguridadarea.gob.es/lang_en/particulares/derechos_pax/default.aspx
Legally binding	The ADR's decisions will be legally binding. Compensation payments will have to be made within one month and airlines will have to provide evidence for the payment.

Costs incurred in ADR by passengers	No costs
Costs incurred in ADR by airlines	No costs
National small claims procedure (individual procedure)	
Small claims court procedure	Spain has a free abbreviated verbal court procedure for any claims lower than 6,000 EUR.
Claim agencies (individual procedure)	
	The NEB noted an increase in the number of complaints it receives from claim agencies. Claim agencies have also been observed to target passengers who may have been subject to a flight disruption with marketing materials at airports. The NEB noted that whereas the claim agencies have been helping to improve the general public awareness they add a burden to the complaint handling procedure of the NEB. Many claims received from claim agencies are forwarded to the NEB without checking if all relevant information is included.

France

	Description
National Enforcement Body/Bodies	Direction générale de l'aviation civile (DGAC)
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004, Regulation 1107/2006
Other competencies within remit	European Consumer Centre (ECC) & ISA for airport charges DGAC is an expert in the PRM subgroup of the European Civil Aviation Conference.
Resources available	
Regulation 261/2004	
National legal basis	DGAC has been appointed as the French NEB since the entry into force of the Regulation, but sufficient legal basis for enforcement was only provided in May 2007 with a decree amending the French Civil Aviation Code. Article 330-20 of the Civil Aviation Code, as amended by this decree, entitles the Minister of Civil Aviation to impose sanction on carriers for non-compliance with the Regulation, further to consultation with the Civil Aviation Administrative Commission (CAAC).
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers must have contacted the airline initially and wait eight weeks for a response in order for the NEB to handle their complaint.
Enforcement power of NEB	When the French NEB receives a complaint via the online form, it is logged as a case in the internal database. The complaint is reviewed to establish if it falls within the scope of the Regulation 261/2004. If a complaint is found to be outside the scope DGAC closes the case and informs and refers the passenger to other available options, including ADR and court. In a case where an infringement of the regulation is suspected, DGAC contacts the operator to gather all necessary information. The airline has around two months to respond to the NEB and provide evidence that supports their position. DGAC may also collect data from other sources, including statistical data and meteorological data. When the investigation is concluded, DGAC informs the passenger of its non-binding decision. The NEB will also inform the passenger of alternative options to obtain redress, including ADR and the courts. Where the NEB finds non-compliance with Regulation 261/2004, it prepares a report and notifies the relevant airline by mail. The airline is given a month to respond. Additionally, DCAG reminds the airline that in the absence of a response or a response which is not in accordance with the applicable legal framework, the case will get referred to the French Administrative Commission of Civil Aviation (<i>Saisine Commission administrative de l'Aviation Civile</i> (CAAC)). The maximum level of administrative fines is 7,500 EUR per non-compliance per passenger. The statute of limitation for issuing a fine is five years after the

	incident which has to have occurred on French territory. The Minister of Transport can decide to sanction the airline depending on the opinion of the CAAC. Sanctions may become publicly available at the end of the appeal period.
Annual report or activity report	
Services to passengers	
Communication with passengers	Passengers can complete the online form, which is only available in French.
Length of complaint processing	< 3 months
261/2004 NEB cooperation	The French NEB uses the NEB-NEB network. Passengers are informed how to contact the correct NEB if DGAC is not competent.
Activity level for claims under 261/2004	
Number of complaints received	2018: 7,717 complaints handled 2017: 5,124 complaints handled 2016: 4,963 complaints handled 2015: 5,777 complaints handled 2014: 5,122 complaints handled 2013: 3,891 complaints handled 2012: 3,204 complaints handled 2011: 3,794 complaints handled Around 10% of complaints the NEB receives are not legitimate.
Nature of complaints received	Most complaints relate to delays (44%) and cancellations (42%), followed by denied boarding (6%) and strikes (3%)
Outcome of complaints	For most complaints, passengers are compensated before having to be referred to the CAAC for sanctioning.
Investigation of extraordinary circumstances by the NEB	DGAC uses different information sources to assess extraordinary circumstances, including NOTAM, incident reports, METAR, log books, internal mails, and Manex. The burden of proof lies with the airline and if it is not able to provide such convincing evidence, the NEB assesses that compensation is due. In certain cases, DGAC may validate information with other organisations, including air navigation services and civil aviation safety services) or publicly available weather data (Wunderground.com).
Sanctions	The Minister of Transport issues between four to seven sanctions per year. All fines are paid. DGAC uses the resources of the French Treasury to recover the amounts that are due.
Inspections and other relevant activities	
Changes in activity levels since 2011	
Regulation 1107/2006	
National legal basis	DGAC has been appointed as the French NEB since the entry into force of the Regulation, but sufficient legal basis for enforcement was only provided in May 2007 with a decree amending the French Civil Aviation Code. Article 330-20 of the Civil Aviation Code, as amended by this decree, entitles the Minister of Civil Aviation to impose sanction on carriers for non-compliance with the

	Regulation, further to consultation with the Civil Aviation Administrative Commission (CAAC).
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	The NEB can handle individual complaints.
Is NEB a first or second order body?	DGAC acts as a first order body for PRM passengers who can contact the airline directly.
Enforcement power of NEB	See section for Regulation 261/2004. For PRM cases, one sanction has been issued for refusal to transport and lack of re-routing a PRM passenger under Regulation 1107/2006 and non-compliance with the right to compensation for denied boarding under regulation 261/2004. The fine totalled 22,500 EUR.
Activity levels for claims under 1107/2006	
Claims received	2018: 26 2017: 14 2016: 3 2015: 11 2014: 16 2013: 12 2012: 8 2011: 1
Nature of claims received	Most claims are due to a lack of assistance at airports, followed by denied boarding.
Alternative/Online Dispute Resolution	
Overview	Tourism and Travel Mediation (Médiation Tourisme et Voyage (MTV))
Details	MTV gives non-binding recommendations on disputes between consumers and operators for travel, tourism, accommodation, recreation, and transportation. Its airline members include all French airlines, easyJet, Ryanair, Royal Air Maroc, Norwegian, KLM, Air Madagascar and Level. Decisions can be used in court, as long as both parties agree. In 2018, MTV has received 4,493 complaints (increased from 2,714 complaints in 2017) related to air passenger rights and has made decisions in 1,203 cases. It takes on average 60 days for MTV to issue a decision and 94% of those are accepted.
Contact	https://www.mtv.travel/en/
Legally binding	Decisions are non-binding, but the ADR body monitors the response of their recommendations.
Costs incurred in ADR by passengers	No costs.
Costs incurred in ADR by airlines	The operators signed up to the ADR/ODR body fund its services. The average cost per case is 75 EUR.
National small claims procedure (individual procedure)	
Small claims court procedure	There is a small claims court procedure in France. Claimants are obligated to have initiated a conciliation attempt or mediation procedures before initiating a case at the district court. There is a statute of limitations of five years.
Claim agencies (individual procedure)	

Croatia

	Description
National Enforcement Body/Bodies	Croatian Civil Aviation Agency
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	-
Resources available	4 FTEs for Regulation 261/2004 and 1107/2006.
	Governmentally-funded
Regulation 261/2004	
National legal basis	According to Article 87 of the Act on Obligatory and Proprietary Rights in Air Traffic (OG 132/98, 63/08, 134/09 i 94/13), the Croatian Civil Aviation Agency is the competent national enforcement body for air passengers' rights in line with Regulation (EC) 261/2004.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The NEB does handle individual complaints from passengers.
Is NEB a first or second order body?	The Croatian NEB is a second order body. Passengers must first have contacted the airline in order for their complaints to be handled by the NEB. According to Croatian law, airlines have to respond to the passenger within 30 days. Passengers can then contact the NEB if no response or an unsatisfactory response is received from the airline.
Enforcement power of NEB	Once a complaint has been submitted, the NEB will then contact the airline to ask for proof relating to the alleged disruption. The airline has six weeks, and an additional 2 weeks following a reminder by the NEB, to respond with documentation. The airline may agree to pay financial compensation or provide documents to dispute the claim. In the latter case, the documentation is checked by the NEB which will then write a final non-binding opinion. According to Act on Obligatory and Proprietary Rights in Air Traffic (OG 132/98, 63/08, 134/09 i 94/13) and Air Traffic Act (OG 69/09, 84/11, 54/13, 127/13, 92/14) the NEB can impose sanctions on air carriers. The fines for the air carrier range from 20,000 to 50,000 HRK (approx. from 2,700 to 6,700 EUR). The NEB has not prosecuted or imposed any sanctions on airlines.
Annual report or activity report	No information provided.
Services to passengers	
Communication with passengers	Passengers can submit a compensation request through a form available on the NEB's website or by post or e-mail. If the carrier agrees to pay compensation, the passenger will be informed. Alternatively, if the carrier does not agree to pay compensation, the final opinion that the NEB reaches is communicated to the passenger.

Length of complaint processing	3 – 12 months
261/2004 NEB cooperation	Passengers are directed towards the competent NEB in cases where the Croatian CAA is not the appropriate NEB to handle a complaint. Complaints can also be forwarded directly from the Croatian CAA to other NEBs upon a passenger's request. The NEB does not use the ECC and CPC Networks. The NEB has received few complaints in the past three years that were forwarded from the ECC.
Activity level for claims under 261/2004	
Number of complaints received	2013: 39 / 2014: 48 / 2015: 160 / 2016: 169 / 2017: 238 / 2018: 437 The NEB notes that these numbers do not include calls and e-mails received. The majority of complaints are because passengers do not receive a response from the carrier within 30 days, rather than cases where the airline disagrees to pay compensation.
Nature of complaints received	The majority of claims relate to delays or cancellations. Only a few are from passengers who were denied boarding.
Outcome of complaints	Approximately half of the compensation requests were compensated, mostly through financial compensation for delay or cancellation without the NEB issuing a final notice. For the other half of complaints, airlines claimed extraordinary circumstances for around 90% of cases. The NEB notes that for many complaints, it has been contacted because airlines have not responded to the initial passenger request within 30 days, as airlines struggle to handle the high number of claims they receive due to limited resources. Compensation is then paid directly/straightforwardly when the NEB contacts the carrier.
Investigation of extraordinary circumstances by the NEB	The NEB investigates different circumstances, such as bad weather conditions, ATC restrictions, bird strikes, strikes of airline personnel etc. Airlines are required to provide the NEB with proof of disruption, for example technical logs, METAR data, and MVT messages. The NEB notes that it will ask carriers to pay compensation if technical issues are claimed.
Sanctions	No sanctions have been imposed by the NEB yet. The NEB notes that carriers are generally compliant in paying compensation for a high number of cases.
Inspections and other relevant activities	-
Changes in activity levels since 2011	The NEB observed that the number of complaints has been growing rapidly in recent years. Passengers' awareness of their rights has increased as a result of information displayed at airports, on websites of airlines and campaigns organised at state-level.
Regulation 1107/2006	
National legal basis	According to Article 87 of the Act on Obligatory and Proprietary Rights in Air Traffic (OG 132/98, 63/08, 134/09 i 94/13), Croatian Civil Aviation Agency is the competent national enforcement body for the rights of disabled persons and persons with reduced mobility when travelling by air in line with Regulation (EC) 1107/2006.
Role of the 1107/2006 National Enforcement Body	

Able to handle individual complaints?	The NEB can handle individual claims.
Is NEB a first or second order body?	The Croatian NEB is a second order body. Passengers must first have contacted the airline in order for their complaints to be handled by the NEB.
Enforcement power of NEB	Once a complaint has been submitted, the NEB will then contact the airline or airport to ask for proof relating to the alleged incident. The documentation is checked by the NEB which will then write a final opinion. According to Act on Obligatory and Proprietary Rights in Air Traffic (OG 132/98, 63/08, 134/09 i 94/13) and Air Traffic Act (OG 69/09, 84/11, 54/13, 127/13, 92/14) CCAA can impose sanctions on air carriers. The fines for the air carrier range from 20,000 to 50,000 HRK (approx. from 2,700 to 6,700 euros). The NEB undertakes announced and unannounced audits for Regulation 1107/2006 to monitor if the PRM standards are met.
Activity levels for claims under 1107/2006	
Claims received	Usually only one claim received annually in relation to Regulation 1107/2006.
Nature of claims received	The main reason for complaints is refunds for extra costs incurred by passengers.
Alternative/Online Dispute Resolution	
Overview	There are eight notified ADR bodies which may handle consumer disputes in Croatia. Several have the general competence to handle consumer disputes involving airlines (Court of Honour of the Croatian Chamber of Economy, Mediation Centre of the Croatian Chamber of Economy, Croatian Mediation Association, Mediation Centre of the Croatian Employers' Association and Mediation Centre "Medijator").
Details	The process for the Court of Honour is a two-stage pre-conciliation procedure. In case the conciliation fails, the case is brought in front of the tribunal which consists of three members and results in a binding decision. In contrast, Mediation Centres function on voluntary basis where both parties have to agree to mediate. Where a settlement is reached, this presents an enforceable decision which may be presented in Court in case of non-compliance with the settlement. There are no strict time scales, but in general, the procedure in front of Mediation Centres lasts for a maximum two months, however, the procedure in front of the Courts of Honour is longer (sometimes longer than three months).
Contact	https://www.hgk.hr/
Legally binding	Decisions of the Court of Honour are legally binding. Settlements agree by Mediation Centres are legally enforceable by the courts.
Costs incurred in ADR by passengers	The costs in front of Mediation Centres vary, but the procedure for the consumers in front of the Court of Honour is free.
Costs incurred in ADR by airlines	No information provided.
National small claims procedure (individual procedure)	
Small claims court procedure	A small claims court procedure exists in Croatia. The timescales are the same as for an ordinary court procedure and costs depend on the value of the claim. The value of the disputed amount may not exceed HRK 10,000.

Claim agencies (individual procedure)	
	The NEB notes that around half of the claims received are from claim agencies. Problems relating to the correct documentation of evidence have been noted. As a result, the NEB asks claim agencies to provide a copy of the passenger's passport, power of attorney, a copy of the boarding pass and proof of contact with the airline.

Italy

	Description
National Enforcement Body/Bodies	L'Ente Nazionale per l'Aviazione Civile (ENAC)
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	-
Resources available	5 FTEs who spend around 40% of their time on Regulation 261/2004 & 1107/2006 in addition to on average 2 quality inspectors at each of the 34 airports
	Government-funded
Regulation 261/2004	
National legal basis	ENAC's powers in relation to complaint handling and enforcement were granted through Legislative Decree 69/2006 of 27 th January 2006, which came into force on 21 st March 2006. The Decree sets out the process that needs to be followed by ENAC and the fines that have to be imposed.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The NEB uses the complaints it receives from individuals to assess if a carrier infringes on the Regulation but does not look to obtain compensation for individual passengers.
Is NEB a first or second order body?	The NEB does not enforce individual complaints.
Enforcement power of NEB	Passengers can lodge their complaint with the NEB via an online form on the ENAC website. The complaint then gets logged in the NEB's database and is processed by the Passenger's Rights & Airport Quality Services Unit. The complaint will get transferred to the airport where the disruption occurred. An airport inspector, located at each Italian airport, carries out an investigation to assess if the regulation was breached by the airline and, if necessary, launch sanctions. The NEB allows an initial two weeks and then ten additional days for the airline to respond. In most cases, the airport inspector confirms extraordinary circumstances. For all other cases, different sources and documentation are used to come to a decision, for example the daily path of the relevant aircraft affected by cancellation or long delay. Where the investigation finds that the airline wrongfully refused the passenger compensation, or a trend of non-compliance is observed, ENAC asks for a meeting with the respective airline. ENAC aims to issue a warning to the airline in the first place to urge them to improve their compliance. In case the inspectors find that the airline fails to improve its behaviour, a sanction process is started. The sanctioning process is defined in the AGA10 internal procedure and the Legislative Decree n. 69/2006 "Sanctioning provisions for the violation of Regulation (EC) n. 261/2004". Sanctions can only be issued to cases where the flight departs from an Italian airport or the flight arrives at an Italian airport (as its first stop in the EU) and is a European airline. The maximum value is EUR 50,000.

	To ensure transparency, ENAC informs the passenger whether a violation of the regulation has been found and proceedings will be initiated once a decision has been made.
Annual report or activity report	ENAC publishes annual reports and traffic data: https://www.enac.gov.it/en/publications
Services to passengers	
Communication with passengers	The complaint form on the ENAC website is available in both Italian and English. A separate dedicated contact address exists for NEBs and other official institutions (cartadiritti@enac.gov.it).
Length of complaint processing	6 – 12 months
261/2004 NEB cooperation	Passengers are provided with the relevant NEB's details if the ENAC is not competent. Upon request, ENAC will also forward the complaint alongside a brief summary in English. The NEB has noted some difficulties in the past with passenger complaints being forwarded by another NEB when the passenger also separately logs the complaint with the Italian NEB which leads to additional work and lack of translation for forwarded passenger complaints from one NEB. Reference to the ECC Network is provided in all official ENAC documentation (website, airport posters and leaflets). The NEB has also asked Italian airlines to reference the ECC network in their Services Charter.
Activity level for claims under 261/2004	
Number of complaints received	2018: 6,033 complaints received, of which 1,642 were found to be legitimate 2017: 4,251 complaints received, of which 1,012 were found to be legitimate 2016: 6,048 complaints received, of which 633 were found to be legitimate 2015: 6,102 complaints received, of which 567 were found to be legitimate 2014: 4,653 complaints received, of which 397 were found to be legitimate 2013: 3,163 complaints received, of which 491 were found to be legitimate 2012: 3,727 complaints received, of which 254 were found to be legitimate The NEB notes that based on the complaints received it assesses that only 1% of those eligible to complaint actually do so with ENAC. The majority of complaints received concern LCCs, with numbers increasing over the last years. Italian carriers publish complaint figures on their website.
Nature of complaints received	Most complaints relate to delayed flights (55%), followed by cancellations (41%), denied boarding (4%) and the lack of information (1%).
Outcome of complaints	In most cases, the airport inspector confirms extraordinary circumstances. Airlines will generally pay redress to the passenger when the NEB issues a fine.
Investigation of extraordinary circumstances by the NEB	Documentation used to assess the legitimacy of airlines claiming extraordinary circumstances include airport operative logs and daily reports, ATC reports and strike communication.
Sanctions	81 sanctions were issued in 2018, totalling to around 262,900 EUR. The number of sanctions issued in 2018 has increased significantly from the previous year (23 in 2017). About 60% of issued sanctions are paid by airlines. The remaining cases go to court but then also result mostly in payment of the fines. No additional sanction is issued by the court.

Inspections and other relevant activities	ENAC airport quality inspectors check data related to delayed or cancelled flights which is drawn up by the airport managing body. ENAC is also responsible for the quality of service and PRMs at Italian airports and undertakes inspections and audits (both announced and unannounced).
Changes in activity levels since 2011	Passenger expectations regarding compensation are high as passengers are increasingly aware about their rights, especially monetary compensation. Increased awareness is a result of information campaigns promoted by the European Commission, and the activities carried out by ENAC. The NEB has specifically noted an increased number of complaints for monetary compensation after the Sturgeon Case ruling by the CJEU.
Regulation 1107/2006	
National legal basis	ENAC's powers in relation to complaint handling and enforcement were granted through Legislative Decree 69/2006 of 27 th January 2006, which came into force on 21 st March 2006. The Decree sets out the process that needs to be followed by ENAC and the fines that have to be imposed. Legislative Decree n. 24 from 2009 sets out the rights of PRMs in air transport.
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	The NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers must have contacted the airline initially in order for the NEB to handle their complaint.
Enforcement power of NEB	PRM passengers can lodge a complaint with ENAC through a dedicated e-mail address (pax.disabili@enac.gov.it) or by using the general online form on the ENAC website. The enforcement procedure is carried out by ENAC, including airport quality inspectors and the central unit and follows the same procedure as for Regulation 261/2004, bearing in mind sensitivities relating to PRM issues. The outcome of an investigation may lead to actions for operators, passengers and their organisations regarding information and awareness. The maximum sanction that can be imposed according to the legislation (Legislative Decree 24 febbraio 2009 n. 24) for denied boarding is 120,000 EUR. Only one sanction for 10.000 EUR has been applied in 2011 against an airport managing body The airport managing bodies have mandatory quality standards for PRM assistance in their annual Service Charters, which are monitored by ENAC. The cooperation with PRM and user representatives in place at Italian airports is working well.
Activity levels for claims under 1107/2006	
Claims received	2018: 5 complaints received 2017: 10 complaints received 2016: 20 complaints received 2015: 21 complaints received 2014: 29 complaints received 2013: 41 complaints received 2012: 6 complaints received The total number of PRMs carried by airlines in 2018 was 1,2 million. The number of complaints received is extremely low in comparison, however the NEB believes that only a small proportion of PRM passengers who have faced issues submit a complaint.

Nature of claims received	Reasons for complaints include a lack of ground assistance, denied boarding, malfunction of arrival and departure points, and a lack of assistance on board.
Alternative/Online Dispute Resolution	
Overview	RisolviOnline provides online mediation and online evaluation for commercial disputes.
Details	RisolviOnline is only the ODR. ADR is offered by the Milan Chamber of Arbitration - the operator of RisolviOnline. The ODR is funded partly by the Milan Chamber of Commerce (20%). Participation in the procedure is voluntary. The process is only done remotely in either Italian or English. Since 2002, there have been 108 complaints related to air passenger rights but none of the airlines in question entered into the proceedings.
Contact	https://www.risolvionline.com/index.php?lng_id=14
Legally binding	The outcome of the ODR is a new contract between the parties which is binding. RisolviOnline does not monitor compliance.
Costs incurred in ADR by passengers	The consumer will pay online 30 Euros to cover all expenses up to 60,000 Euros.
Costs incurred in ADR by airlines	If the airline accepts to participate in the procedure, they have to pay a fee which depends on the economic value of the case.
National small claims procedure (individual procedure)	
Small claims court procedure	The Justice of the Peace offers a general small claims court procedure for civil disputes of up to 5,000 EUR. Passengers need to instruct a lawyer to initiate the procedure. Costs depend on the value of the claim, for instance for claim up to 1,100 EUR, the legal fee is 43 EUR. The value of the claim is very significantly lower than the necessary cost for legal expenses, which can discourage passengers from starting legal procedures.
Claim agencies (individual procedure)	
	The NEB has noted an increase in the number of passengers seeking redress through claim agencies.

Cyprus

	Description
National Enforcement Body/Bodies	Department of Civil Aviation (DCA)
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	Consumer Protection Cooperation (CPC) network
Resources available	5 FTEs responsible for Air Passenger Rights, not all working full time
	Governmentally-funded
Regulation 261/2004	
National legal basis	Judicial Instrument 287/2008. The Cyprus Law, L. 213(I)/2002 and Decree 283/2005 allow for administrative penalties.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers must have contacted the airline initially and waited six weeks for a response for the NEB to handle their complaint.
Enforcement power of NEB	When a complaint is received it is logged and the NEB starts an investigation where it contacts the airline. Passengers are provided with a final decision which is non-binding. If the airline does not pay compensation, the passenger has the opportunity to go to court. The NEB can issue a sanction where it finds an airline to be consistently non-compliant with Regulation 261/2004. For cases against EU-carriers, the NEB can inform the Ministry of Commerce and the EU country licensing authority.
Annual report or activity report	No information provided
Services to passengers	
Communication with passengers	Communication with passengers is mostly through email and complaints can be submitted via e-mail.
Length of complaint processing	3 – 6 months
261/2004 NEB cooperation	The NEB forwards complaints to other NEB in case it is not competent to handle a complaint.
Activity level for claims under 261/2004	
Number of complaints received	An average of 350 complaints are received per year, with the majority of those in scope of Regulation 261/2004 (98%).
Nature of complaints received	Most complaints relate to delays and cancellations.
Outcome of complaints	No information provided
Investigation of extraordinary	The NEB requests airlines to provide evidence when claiming extraordinary circumstances, including METARs, NOTAMs, journey logs, flight logs,

circumstances by the NEB	operational logs, station reports, flight activity plans, cabin crew flight reports, aircraft allocation plans, and airport operator flight data.
Sanctions	No sanctions have been issued.
Inspections and other relevant activities	The airports are required to present PRM statistics. In addition, the NEB conducts audits at airports to ensure compliance with the regulations.
Changes in activity levels since 2011	No information provided
Regulation 1107/2006	
National legal basis	No information provided
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	The NEB can handle individual complaints.
Is NEB a first or second order body?	PRM passengers can contact the NEB directly.
Enforcement power of NEB	The DCA initiates an investigation for all PRM complaints where it contacts all relevant parties. The NEB can impose an administrative fine and can revoke or suspend a licence as per Article 245 of 213/2002 Civil Aviation Law. The Minister of Communications and Works may also impose a fine of around 8,000 Euros or a sum equal to 10% of the company's annual turnover. No sanctions have been imposed yet.
Activity levels for claims under 1107/2006	
Claims received	Two complaints received in 2018.
Nature of claims received	No information provided
Alternative/Online Dispute Resolution	
Overview	ADR bodies exist in Cyprus, such as the Cyprus Consumer Centre for Alternative Dispute Resolution. However, there is no specific ADR body for air passenger rights disputes.
Details	-
Contact	https://adrcyprus.com/en/
Legally binding	Decision of ADR body is legally binding
Costs incurred in ADR by passengers	A small filing fee of EUR 20 plus an arbitration fee which depends on the value of the claim.
Costs incurred in ADR by airlines	No information.
National small claims procedure (individual procedure)	
Small claims court procedure	There is no specific small claims procedure under the legal system of Cyprus.
Claim agencies (individual procedure)	
	The proportion of complaints received from claim agencies has been around 25% in recent years, however has now decreased to around 10% due to the NEB asking for more evidence.

Latvia

	Description
National Enforcement Body/Bodies	Consumer Rights Protection Centre (CRPC) & Latvian Civil Aviation Authority (CAA)
Type of organisation	Consumer Protection Body & Civil Aviation Authority
Remit of NEB	CRPC: Regulation 261/2004 CAA: Regulation 1107/2006
Other competencies within remit	CRPC: Alternative Dispute Resolution (ADR)/Online Dispute Resolution (ODR); Consumer Protection Centre (CPC) network; and European Consumer Centre
Resources available	5 FTEs responsible for Air Passenger Rights and other consumer complaints Government-funded
Regulation 261/2004	
National legal basis	Section 88 on the Protection of Passenger Rights in the Aviation Law (1994) defines the Consumer Rights Protection Centre as the competent authority to enforce Regulation 261/2004. ¹⁷⁴ The enforcement of the regime is defined in the Latvian Administrations Violations Code, which establishes fines for failure to provide air passengers with information and failure to respect air passengers' rights. The NEB is also granted power to fine for failure to comply with a request for information made in the course of investigating a complaint.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers have to contact airline first and wait for two months before the NEB can handle their complaint.
Enforcement power of NEB	When a complaint is received by the NEB, it is logged in the internal database. Information is requested from the airline alongside evidence to support claims of extraordinary circumstances. During the investigation, the NEB may request additional information from the airline and/or the passenger and liaise with the Latvian Civil Aviation Agency and airports for clarification and interpretation purposes. The NEB considers only CJEU judgements, not case law from other Member States. Once all the information is gathered the NEB issues a non-binding recommendation to the passenger. If the airline disagrees with the NEB's decision, the passenger has the opportunity to start an ADR procedure. However, the ADR can only handle cases where the ticket is bought through the registered representative of the airline in Latvia. The ADR body also publishes a blacklist of non-compliant airlines on its website. The NEB can start an administrative case against an airline in order to issue sanctions. Fines can only be imposed to those airlines or their representatives that are registered in Latvia. Maximum limits differ between up to 3,000 EUR for a lack of information and up to 7,000 for other breaches of the Regulation. The fine for unfair commercial practices can be as high as 100,000 EUR. System-

¹⁷⁴ https://www.vvc.gov.lv/export/sites/default/docs/LRTA/MK_Noteikumi/On_Aviation.doc

	level enforcement is also undertaken, however the NEB notes that it generally operates through warnings to airlines instead of issuing sanctions. Yes, there are limitations on the imposition of sanctions - the amount depends on the infringement.
Annual report or activity report	No information provided
Services to passengers	
Communication with passengers	Passengers can submit a complaint via a form available in English on the NEBs website.
Length of complaint processing	< 3 months
261/2004 NEB cooperation	The CRPC forwards complaint to competent NEB when applicable but does not provide a full translation only a summary in English. The NEB is planning to set up joint meetings with the CAA and airlines in the future to strengthen cooperation.
Activity level for claims under 261/2004	
Number of complaints received	2018: 1,527 complaints received 2017: 1,104 complaints received 2016: 264 complaints received 2015: 193 complaints received 2014: 203 complaints received 2013: 233 complaints received 2012: 133 complaints received Approximately 60% of claims received are legitimate. The number of claims has increased significantly since 2011. The NEB notes that passengers are more aware but that a growing number of complaints are due to the high volume of connecting flights through Riga airport.
Nature of complaints received	No information provided
Outcome of complaints	No information provided
Investigation of extraordinary circumstances by the NEB	Airline are asked to provide evidence to support extraordinary circumstance claims, including information from METAR, EUROCONTROL, and airports. The NEB may also request information from the Civil Aviation authority, other NEBs and publicly available information on strikes. Some of airlines provide information from aircraft manufacturers and flight logs.
Sanctions	One administrative penalty was issued in 2017 against SIA Smartlynx Airlines for a total amount of 2,500 EUR. The sanction was issued because of a lack of explanation in response to passenger complaints. The fine was paid.
Inspections and other relevant activities	The NEB undertakes unannounced inspections.
Changes in activity levels since 2011	The NEB notes that passengers are increasingly aware of their rights, but there are still knowledge gaps. A rise in claims from claim agencies has been observed over recent years.
Regulation 1107/2006	
National legal basis	Section 88 on the Protection of Passenger Rights in the Aviation Law (1994) defines the CAA as the competent authority to enforce Regulation 1107/2006. The enforcement of the regime is defined in the Latvian Administrations

	Violations Code, which establishes fines for failure to provide air passengers with information and failure to respect air passengers' rights. The NEB is also granted power to fine for failure to comply with a request for information made in the course of investigating a complaint.
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	The NEB can handle individual complaints.
Is NEB a first or second order body?	NEB is a second order body only. PRMs that cannot obtain an agreement with the airport can make a complaint to the CAA by filling in a "Disabled Person and Person with Reduced Mobility Complaint/Comment Form" available on the CAA's website and emailing it.
Enforcement power of NEB	No information provided.
Activity levels for claims under 1107/2006	
Claims received	No information provided
Nature of claims received	No information provided
Alternative/Online Dispute Resolution	
Overview	NEB also acts as ADR body and handles complaints that could not be resolved through the NEB procedure.
Details	The ADR can only handle cases where the ticket is bought through the registered representative of the airline in Latvia. The minimum and maximum claim values are 20 EUR and 14,000 EUR respectively. Participation in the ADR procedure is mandatory for all Latvian carriers (AirBaltic and Smartlynx Airlines) or those with a representation in Latvia, including Aeroflot, Finnair, LOT, Lufthansa, SAS, Turkish Airlines and WizzAir. The ADR body publishes a blacklist of non-compliant airlines on its website and can impose an administrative penalty for non-cooperation. There were 58 ADR cases since 2016, with the process taking on average between two and three months. In total, 46 decisions were made by the ADR body, all in favour of the passenger and all were respected by the airlines. The ADR communicates in Latvian and English.
Contact	http://www.ptac.gov.lv/en/content/air-passenger-rights
Legally binding	Not binding but the decision can be used by the passenger in a court process.
Costs incurred in ADR by passengers	No cost
Costs incurred in ADR by airlines	No cost
National small claims procedure (individual procedure)	
Small claims court procedure	A small claims court procedure exists in Latvia. The passenger must complete and submit a form to court. Small claim procedure can be used only if passenger is a resident in Latvia, the airline or its representatives are registered in Latvia, and the claim does not exceed 2,500 EUR.
Claim agencies (individual procedure)	
	There are currently two registered claim agencies in Latvia.

Lithuania

	Description
National Enforcement Body/Bodies	Lithuanian Transport Safety Administration (LTSA)
Type of organisation	Transport administration
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	Consumer Protection Cooperation (CPC) network
Resources available	3 lawyers and 2 supervisors (80%) work on Air Passenger Rights within LTSA
	Government-funded
Regulation 261/2004	
National legal basis	No information provided
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers have to contact the airline first and wait for two months for a response before the NEB handles their complaint.
Enforcement power of NEB	The NEB registers a complete and legitimate complaint on the internal database and instigates an investigation. An inquiry is sent to the airline as well as any other relevant entities, including the ANSP and groundhandling if necessary to cross-check information. The data is investigated which may require the involvement of other CAA specialists. When the investigation is finished, the NEB issues a non-binding conclusion. The NEB will inform the passenger of the option to go to court if they are not content with the decision. The NEB may consider prosecuting an airline or impose a sanction in a number of cases. Either upon the passenger request on the basis of a violation of their rights, or in cases where the airline is found non-compliant with respecting the air passenger rights of a large group of passengers thus causing wider repercussions in society, or where the NEB notes non-compliance with the requirements of the regulation. According to the Code of Administrative Offences of The Republic of Lithuania, sanctions are applied to the head of the company or the individual responsible for the passenger rights within the company. Sanctions for an infringement of the Regulation 261/2004 can be as high as 850 EUR. For repeated non-compliance within a year, the NEB can issue a penalty as high as 8,300 EUR. LTSA furthermore has the authority to restrict or refuse an airline's permits to operate flights in case of non-compliance with the Regulation 261/2004, according to Paragraph 36.7 of the Rules of Organization of the Air Space of the Republic of Lithuania. However, the NEB notes that the sanctioning process is complicated because according to the Lithuanian administrative procedures only an individual within the airline, instead of the company itself is fined and required to travel to Lithuania for the process. Sanctions in Lithuania are therefore not believed to be effective, proportionate or discouraging.
Annual report or activity report	No information provided

Services to passengers	
Communication with passengers	Passengers can send a complaint form, which is available for download in English and Lithuanian on the LTSA's website.
Length of complaint processing	< 6 months
261/2004 NEB cooperation	For complaints received in English, the NEB forwards the case to the competent NEB. If the complaint is in Lithuanian, the passenger is advised to complain directly to the competent NEB and given the correct contact details. Passengers are informed that the Lithuanian NEB does not provide a translation service.
Activity level for claims under 261/2004	
Number of complaints received	2018: 421 complaints received, of which 222 were legitimate 2017: 244 complaints received, of which 156 were legitimate 2016: 266 complaints received, of which 157 were legitimate 2015: 115 complaints received, of which 67 were legitimate 2014: 139 complaints received, of which 49 were legitimate 2013: 95 complaints received, of which 32 were legitimate 2012: 88 complaints received, of which 44 were legitimate 2011: 65 complaints received
Nature of complaints received	Most complaints are due to delays or cancelled flights, with very few complaints for denied boarding.
Outcome of complaints	Out of all conclusions issued in favour of the passenger, the majority (94% in 2018 and 96% in 2017) were accepted by air carriers.
Investigation of extraordinary circumstances by the NEB	The NEB investigates all extraordinary circumstances with requesting supporting documents, for instance technical logs, technical reports, orders for maintenance, flight logs, flight plans, METARs, and/or ANSP statements. For cases where the airline cannot provide any proof of extraordinary circumstances, the NEB concludes that these have not been proven.
Sanctions	Only one sanction over 300 EUR was issued in 2017 which was paid in full.
Inspections and other relevant activities	The NEB undertakes audits to ensure compliance with PRM rights which are announced in advance.
Changes in activity levels since 2011	The Lithuanian CAA previously acted as the NEB, but all functions have since been transferred to the LTSA. The NEB notes that most passengers are still not familiar with their rights before the travel, even though awareness has increased since 2011. The NEB has noticed strong compliance of traditional airlines and some more limited compliance of LCCs.
Regulation 1107/2006	
National legal basis	No information provided
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	NEB can handle individual complaints.
Is NEB a first or second order body?	PRM passengers can contact NEB directly.
Enforcement power of NEB	The NEB uses an administrative handling of complaints and will contact the airport and/or airline to receive clarification information on the issue. Following the investigation, the passenger is informed on the outcome and any measures that will be taken to improve the situation in the future. Sanctions can be issues

	following the same process as for Regulation 261/2004. No sanctions have been issued for Regulation 1107/2006 yet.
Activity levels for claims under 1107/2006	
Claims received	The number of complaints from PRMs is very low, with only one complaint received annually in 2013, 2017 and 2018.
Nature of claims received	PRM complaints are due to a lack of assistance provided to the passenger at the airport. The NEB notes that over the last years the quality of service have been improved with new equipment and improved PRM infrastructure. Airports are required to report on the assistance to PRM under the approved standards every quarter.
Alternative/Online Dispute Resolution	
Overview	The ADR process is applied by the State Consumer Rights Protection Authority
Details	The procedure takes on average 22 days and does not require the presence of the parties and/or their representatives. Participation in the ADR procedure is not mandatory for airlines and only one airline which is registered in Lithuania takes part. The minimum claim value is 10 EUR. In 2017, 24 complaints related to air passenger rights were received in 2017. This increased to 32 complaints in 2018. The ADR made decisions for six and ten disputes during those two years respectively and all passengers were awarded full compensation in all cases.
Contact	http://www.vvtat.lt
Legally binding	The decision is binding but can be appealed within 30 days to the court of general competence.
Costs incurred in ADR by passengers	No costs
Costs incurred in ADR by airlines	No costs
National small claims procedure (individual procedure)	
Small claims court procedure	There is small claims court procedure in Lithuania. The passenger can submit their claim to the court.
Claim agencies (individual procedure)	
	The NEB notes that claim agencies are active in Lithuania, especially in recent years where they have represented an increasing proportion of all complaints received by LTSA (13.4% in 2017 and 21.6% in 2018).

Luxembourg

	Description
National Enforcement Body/Bodies	Ministry of Economy & Direction de l'Aviation Civile (CAA)
Type of organisation	Ministerial body & Civil Aviation Authority
Remit of NEB	Ministry of Economy: Regulation 261/2004 Civil Aviation Authority: Regulation 1107/2006
Other competencies within remit	Ministry of Economy: Consumer Protection Cooperation (CPC) network & European Consumer Centre (ECC)
Resources available	No information provided. Government-funded.
Regulation 261/2004	
National legal basis	The Consumer Code (Code de la Consommation) incorporates the existing legal provisions in consumer law. The Code, introduced by a law of 8 April 2011, has been the subject of several reforms. Article L. 311-4 defines the authority looking after consumer protection as the competent enforcement body for Regulation 261/2004.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers must have contacted the airline initially.
Enforcement power of NEB	The NEB logs the complaint on its internal database and starts an investigation. Once completed, the NEB will issue its decision to the passenger and informs him of the possibility to appeal in court. The NEB has informed us that the existing legislation in Luxembourg does not define a sanction process for non-compliance with Regulation 261/2004. This contradicts what is stated in Article L. 311-9 of the Consumption Code. The article suggests that as the competent authority, the NEB has the power to order an air carrier to compensate/reimburse the passenger within one month in accordance with Article 7, Article 8, and Article 9, and to enforce compliance with Articles 10, 11 and 14 of the Regulation. Non-compliance with the final decision of the NEB can be punished with a fine ranging from 251 EUR to 50,000 EUR.
Annual report or activity report	No information provided.
Services to passengers	
Communication with passengers	No information provided.
Length of complaint processing	3 – 12 months
261/2004 NEB cooperation	Complaints are not transferred, instead the passengers is provided with the contact details for the competent NEB.
Activity level for claims under 261/2004	

Number of complaints received	2018: 543 complaints received 2017: 242 complaints received 2016: 147 complaints received 2015: 128 complaints received 2014: 99 complaints received 2013: 97 complaints received 2012: 58 complaints received 2011: 52 complaints received Around 25% of complaints are not legitimate.
Nature of complaints received	Most complaints are due to delays and cancellations.
Outcome of complaints	No information provided.
Investigation of extraordinary circumstances by the NEB	The NEB investigates extraordinary circumstances on the basis of requested evidence, including flight report, log station, METAR. Depending on the specific situation, the NEB can also contact the airport or the weather service of the air navigation administration.
Sanctions	-
Inspections and other relevant activities	No information provided.
Changes in activity levels since 2011	The NEB notes that it believes passengers are more aware and better informed of their rights. It also describes a difference in the level of compliance, as some airlines are well organised and quick to respond to passengers whereas others either do not respond to inquiries or always cite extraordinary circumstances.
Regulation 1107/2006	
National legal basis	No information provided.
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	According to the list of National Enforcement Bodies under Regulation EC 1007/2006, published by the European Commission, the Civil Aviation Authority is the responsible enforcement body for the PRM regulation. Despite multiple contact attempts, we have not had any engagement with the CAA.
Is NEB a first or second order body?	No information provided.
Enforcement power of NEB	No information provided.
Activity levels for claims under 1107/2006	
Claims received	No information provided.
Nature of claims received	No information provided.
Alternative/Online Dispute Resolution	
Overview	The National Service of the Consumer Ombudsman is a qualified entity competent to receive out-of-court claims for consumer disputes. (https://mec.gouvernement.lu/fr/legislation/consommation.html)

Details	The Ministry of the Economy additionally publishes a list of qualified entities for out-of-court settlement on their website ¹⁷⁵ . The Ombudsman receives all applications for ADR of consumer disputes and, if another entity entered on the list kept by the Ministry of the Economy is competent to deal with the dispute, forwards the application to that entity without delay. If no other entity is competent to deal with the dispute, the Ombudsman helps the parties find an amicable solution to the dispute. Participation is voluntary.
Contact	https://www.mediateurconsommation.lu/
Legally binding	Not legally-binding unless both parties agree.
Costs incurred in ADR by passengers	No costs
Costs incurred in ADR by airlines	No costs
National small claims procedure (individual procedure)	
Small claims court procedure	There is a simplified procedure for the recovery of claims up to a threshold of 10,000 EUR under Luxembourg law, known as the 'order for payment' (ordonnance de paiement). An alternative is to apply for a summons (citation) to appear before a justice of the peace. The differences between the order for payment procedure before a justice of the peace and the application to the District Court for a provisional payment order is that the proceedings before the justice of the peace may culminate in a full judgment, whereas proceedings before a District Court can lead only to a court order.
Claim agencies (individual procedure)	
	There is only one claim agency which is based in Luxembourg, called Trafundo S.A.

¹⁷⁵ <https://meco.gouvernement.lu/dam-assets/l%C3%A9gislation/legislation/consommation/Liste-des-entites-qualifiees-au-25062018.pdf>

Hungary

	Description
National Enforcement Body/Bodies	Hungarian Aviation Authority (CAA) within the Ministry for Innovation and Technology (ITM), the Consumer Protection Bodies (CPBs), and The Equal Treatment Authority
Type of organisation	Civil Aviation Authority, Consumer Protection Body and Equal Treatment authority
Remit of NEB	ITM & CPBs: Regulation 261/2004 The Equal Treatment Authority: Regulation 1107/2006
Other competencies within remit	CAA: Montreal Convention/Regulation 889/2002 CPB: Consumer Protection Cooperation (CPC) network
Resources available	The ITM employs 2.5 FTEs handling Air Passenger Rights, between the three CPBs there are around 40 FTEs who handle Air Passenger Rights as part of their wider competencies. Government-funded
Regulation 261/2004	
National legal basis	Aviation Act XCVII/1995. On the basis of the 166/2007(VI.28.) Gov. Decree, the National Transport Authority became the successor of the Military Aviation Office from July 2007.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The Consumer Protection Bodies are the enforcement body for individual complaints. Because the ITM is listed as the Hungarian NEB on the list published by the European Commission it also receives complaints which are then forwarded to the relevant CPB.
Is NEB a first or second order body?	The ITM does not undertake individual enforcement The Consumer Protection Bodies are the NEB of the first instance. Passengers are advised to contact the airline first but are not obliged to.
Enforcement power of NEB	The Ministry does not have enforcement powers for individual complaints and compensation. The CAA within the Ministry provides oversight and monitors for any wide-spread, systemic infringements of the regulation. In cases where it does observe system-level non-compliance, it can ask a Consumer Protection Body to investigate. The Ministry conducts meetings with the Consumer Protection Body to discuss the behaviour of airlines. The CAA is also responsible for approval of the general rules of carriage for the airlines operating in Hungary, which contain aspects on air passenger rights. Even though the Ministry does not handle individual enforcement, it is listed as the Hungarian NEB on the list published by the European Commission. The ILT has informed us that this is done to avoid confusion about which Consumer Protection Body to turn to, especially for international passengers. There are 20 government offices in Hungary, representing the 20 regions in the country. The local National Enforcement Bodies are embedded within the Consumer Protection Body of each office. There are three CPBs that are responsible for Air Passenger Rights, determined by the territory of the airports. Passengers can contact the relevant CPB directly with their complaint or alternatively contact the ITM which will forward the complaint to the competent NEB. When it receives a complaint, the CPB starts an investigation of the complaint. The CPB can turn to the CAA within the Ministry for an assessment of a claim of

	extraordinary circumstances. The CPB issues a binding decision upon conclusion of its investigation. In cases where airlines do not comply with the CPB's decision, a sanction can be issued. The maximum limit for a fine is 500 million Forints (approx. 1.5 million EUR). The administrative procedure is difficult to enforce with foreign carriers and thus all cases have been against Hungarian LCCS. Airlines can appeal the decision. The Ministry has also noted that the administrative procedure is complex, and they use communication with the airline as an initial step towards compliance.
Annual report or activity report	No information provided.
Services to passengers	
Communication with passengers	The ITM notes that when it receives individual complaints related to regulation, it will generally forward them to the Consumer Protection Body or the competent Member State. However, for simple cases where the airline has already agreed that a passenger is entitled to compensation but has not paid, the NEB will mediate the cases directly instead of forwarding the complaint to the CPB.
Length of complaint processing	3 – 6 months
261/2004 NEB cooperation	The CAA and CPB have regular meetings to discuss the compliance and behaviour of airlines. The CAA forwards around 60% of complaints it receives to either the CPB or other competent NEBs in different Member States.
Activity level for claims under 261/2004	
Number of complaints received	CAA: 600 complaints received in 2018, of which 60% are forwarded to the competent CPB. The NEB notes that complaints are very seasonal and have gone up by 10% since 2017. Only a few cases are related to air safety and the majority is driven by compensation requests. CPBs: 370 complaints received in 2018 of which 70% fall within the scope of the regulation.
Nature of complaints received	Most complaints that the CPBs receives are due to delay (65%), followed by cancellations (25%) and denied boarding (5%).
Outcome of complaints	50% of complaints are decided in favour of the passenger.
Investigation of extraordinary circumstances by the NEB	The Consumer Protection Bodies contact the Hungarian Aviation Authority for the evaluation and establishment of extraordinary circumstances. Documentation to be provided by the airlines includes METAR data and technical flight logs
Sanctions	150 sanctions have been issued by the Consumer Protection Bodies.
Inspections and other relevant activities	The CPBs undertake inspections for the airports that fall within their territory.
Changes in activity levels since 2011	Passengers are more aware of their rights, but still some details are still not known such as exemptions and thresholds.
Regulation 1107/2006	
National legal basis	No information provided.
Role of the 1107/2006 National Enforcement Body	

Able to handle individual complaints?	The PRM NEB can handle individual complaints from passengers. If the NEB is not relevant, it will forward the complaint to the relevant NEB and inform the passenger of the action in English, as well as German and French, if required.
Is NEB a first or second order body?	Passengers do not have to contact the airline first before being able to submit a complaint with the NEB.
Enforcement power of NEB	The investigation of complaints which is carried out by the Authority runs in the course of a public administration procedure under Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities and Act CL of 2016 on General Public Administration Procedures. According to the anti-discrimination law, the Authority has the obligation to investigate a complaint where a passenger states that they suffered a disadvantage due to one or more of they protected characteristics (disability or health condition). The Authority establishes the relevant facts of the case, defines the means and extent of the evidentiary procedure, and assesses the evidence available at its own discretion. Evidences may include client statements, relevant documents, testimonies of witnesses, results of inspections and expert opinions. If the Authority establishes that the complainant has been discriminated against, it makes a legally binding decision as a quasi-judicial body and it can impose sanctions. If it is proved in the course of the procedure that the person or organization placed under the procedure violated the principle of equal treatment, the Authority may order that the state of infringement be terminated, may forbid the continuation of the violation, may order that its final decision declaring the infringement be made public, may impose fine from HUF 50 thousand (approx. EUR 160) to HUF 6 million (approx. EUR 20,000), as well as may decide on the procedural cost in a way that it must be covered by the offending party.
Activity levels for claims under 1107/2006	
Claims received	The Authority receives approximately ten to fifteen requests concerning air passenger rights per year.
Nature of claims received	Even though it is only responsible for Regulation 1107/2006, the Equal Treatment Authority receives a relatively large number of complaints concerning flight delays and cancellations, i.e. on issues under Regulation No. 261/2004. For the majority of requests concerning rights of PRMs apart from some requests via e-mail the Authority - in the absence of a concrete complaint to that effect - has not conducted any proceedings in connection with rights of passengers with reduced mobility so far. The Authority has not had to investigate a case investigating whether a person with reduced mobility was discriminated against in the course of his or her stay at the airport or as a consequence of the action or the omission of the airport or the air carrier.
Alternative/Online Dispute Resolution	
Overview	Alternative Dispute Resolution and Online Dispute Resolution is offered by the twenty ADR bodies, each covering a different region within Hungary. They are not aviation specific but cover all aspects of consumer protection.
Details	The Conciliatory body of Budapest covers disputes relating to Budapest airport. The procedure is done in Hungarian only and takes an average length of 45 days.
Contact	http://www.bekeltet.hu/

Legally binding	Not legally binding
Costs incurred in ADR by passengers	No costs
Costs incurred in ADR by airlines	No costs
National small claims procedure (individual procedure)	
Small claims court procedure	Hungarian law has not had a special small claims procedure since 1 January 2018. Before, small claims had been governed by Act III of 1952 on the Code of Civil Procedure which was repealed by Act CXXX of 2016 on the Code of Civil Procedure, with effect from 1 January 2018.
Claim agencies (individual procedure)	
	No information provided

Malta

	Description
National Enforcement Body/Bodies	Malta Competition and Consumer Affairs Authority (MCCAA) & Civil Aviation Authority (CAA)
Type of organisation	Competition authority & Civil Aviation Authority
Remit of NEB	MCCAA: Regulation 261/2004 CAA: Regulation 1107/2006
Other competencies within remit	MCCAA: The Complaints and Conciliation Directorate within the MCCAA acts as the residual ADR/ODR entity. The MCCAA is also part of the Consumer Protection Cooperation (CPC) framework and the European Consumer Centre (ECC).
Resources available	MCCAA: 1 FTE responsible for complaint handling under Regulation 261/2004 CAA: No information provided
	Government-funded
Regulation 261/2004	
National legal basis	Civil Aviation Act (Chapter 232) which regulates aviation in Malta, in combination with the European Union Act (Chapter 460) through which all EC Regulations relating to air transport become legal in Malta, and any provision of any other legislation incompatible with such EC Regulations is without effect and unenforceable.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	NEB accepts individual complaints from passengers.
Is NEB a first or second order body?	Passengers have to contact airline first as NEB is a second order body only.
Enforcement power of NEB	Complaints are handled through the Authority's Complaint Handling System (CHS). The NEB will investigate each case and issue a non-binding recommendation. If the airline does not pay the compensation following the NEB's recommendation, passengers will get referred to the ADR body. MCCAA is in the process of getting the ADR procedure set up within the NEB's structure. The NEB is not undertaking enforcement at a system-wide level but instead deals with individual cases only. Both CJEU judgements and case law from other Member States is taken into account during the investigation. MCCAA notes that it has attempted to cooperate with airports through proactively requesting delay information, however this is not taken up largely. The NEB can issue a sanction in case of a breach of the Regulation as per Subsidiary Legislation 378.14. However, to date these were never applied against airlines. Limitations apply as sanctions can only be issued to airlines who are registered in Malta (for instance Air Malta, Lufthansa and Turkish Airlines). For cases where the airline only operates a ticket office, such as Vueling, the infringement case would have to be referred to the competent NEB in which the airline is registered. The maximum fine that can be issued under a civil proceeding is 47,000 EUR.
Annual report or activity report	No information provided

Services to passengers	
Communication with passengers	Passengers can submit a complaint on the MCAA's website using a complaint form which is available in English and Maltese.
Length of complaint processing	3 – 6 months
261/2004 NEB cooperation	The Maltese NEB cooperates with other NEBs under the NEB-NEB procedure. Cross-border cases are transferred to the ECC.
Activity level for claims under 261/2004	
Number of complaints received	2018: 102 complaints received 2017: 93 complaints received 2016: 87 complaints received 2015: 137 complaints received 2014: 174 complaints received 2013: 159 complaints received 2012: 80 complaints received 2011: 132 complaints received
Nature of complaints received	The majority of complaints is due to delays or cancellations (98% in 2018). There are only a few complaints related to denied boarding. The NEB noted an increase of claims that are not legitimate where they have received unclear or inaccurate information related on eligibility of compensation from advisory websites or claim agencies. Increasingly, airlines will require passengers to claim their expenses retrospectively following disruption instead of handing out vouchers.
Outcome of complaints	In 2017, around 5,000 EUR of compensation was paid.
Investigation of extraordinary circumstances by the NEB	Evidence to support an extraordinary circumstance claim is requested from the airline. The official technical reported provided by the Civil Aviation Department is the main source used to justify the legitimacy of extraordinary circumstances.
Sanctions	No sanctions have been issued yet.
Inspections and other relevant activities	The NEB has tried to work with the national airport and carrier to obtain delay information directly to allow for a more proactive approach to complaint handling. Whereas this exchange of information has been successful with the airline, it has proven more difficult with the airport.
Changes in activity levels since 2011	The NEB notes that consumer awareness has led to higher expectations from passengers, since they are more aware of their rights and how to exercise them. The number of yearly complaints has remained fairly constant which shows a commitment on the part of airlines to comply with their obligations.
Regulation 1107/2006	
National legal basis	Civil Aviation Act (Chapter 232) which regulates aviation in Malta, in combination with the European Union Act (Chapter 460) through which all EC Regulations relating to air transport become legal in Malta, and any provision of any other legislation incompatible with such EC Regulations is without effect and unenforceable.
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	NEB accepts individual complaints from passengers.

Is NEB a first or second order body?	Passengers have to contact airline first as NEB is a second order body only.
Enforcement power of NEB	The NEB will impose sanctions when it has evidence that an airline/operator is not complying with what is required under the Regulation 1107/2006 after it has been warned about non-compliance by the NEB. According to subsidiary legislation 499.50 Civil Aviation (Rights of Disabled Persons and Persons with Reduced Mobility), sanctions can be issued. The fines range from 232.94 EUR to a maximum of 2,329.37 EUR. No sanction have been issued yet.
Activity levels for claims under 1107/2006	
Claims received	None
Nature of claims received	-
Alternative/Online Dispute Resolution	
Overview	The Complaints and Conciliation Directorate within the Office for Consumer Affairs
Details	The Complaints and Conciliation Directorate within the Office for Consumer Affairs is a public entity designated to perform the function of a residual ADR body. The procedure has an average length of 30 days and is conducted orally and in writing and the physical presence of the parties or their representative may be required.
Contact	https://mccaa.org.mt/Section/Content?contentId=3214
Legally binding	It is binding upon agreement by one or both parties
Costs incurred in ADR by passengers	No cost
Costs incurred in ADR by airlines	No cost
National small claims procedure (individual procedure)	
Small claims court procedure	The Small Claims Tribunal where individuals can submit a claim through an application at the Registrar of the Civil Courts. The Small Claims Court has jurisdiction to hear monetary claims of up to 5,000 EUR.
Claim agencies (individual procedure)	
	The majority of complaints (70%) that the NEB receives are submitted by claim agencies.

Netherlands

	Description
National Enforcement Body/Bodies	Human Environment and Transport Inspectorate (Inspectie Leefomgeving en Transport (ILT))
Type of organisation	Inspectorate within the Ministry of Infrastructure and Water Management
Remit of NEB	Regulation 261/2004, Regulation 1107/2006
Other competencies within remit	Consumer Protection Cooperation (CPC) network
Resources available	7 FTEs who spend around 40% of their time on Air Passenger Rights
	Government-funded
Regulation 261/2004	
National legal basis	The enforcement in the Netherlands is defined by the following legislation: • Instellingsbesluit <i>Inspectie Verkeer en Waterstaat</i> (Resolution to set up the Transport and Water Management Inspectorate), Article 2, paragraph 1, item d; • <i>Wet luchtvaart</i> (Civil Aviation Act), section 11.2.1 (administrative enforcement by the Ministry of Transport): • Article 11.15(b)(1) defines the right to take action in respect to reparable breaches; • Article 11.16(1)(e)(1) defines the right to impose administrative fines for irreparable breaches; and • Article 11.16(1)(3)(e) defines the maximum level of penalties for irreparable breaches. • <i>Algemene wet bestuursrecht</i> (General Administrative Law Act), Chapters 4 (process) and 5 (level of fines) in respect to penalties for reparable breaches. Beleidsregel passagiersrechten en boetecatalogus (Dutch policy/penalty procedure): defines approach to sanctions and administrative fines which will be imposed¹⁷⁶
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The Dutch NEB can handle individual complaints but as a result of a procedural change can no longer enforce individual compensation. The procedure was re-evaluated following the Ruijsenaars judgement of the CJEU in 2016.
Is NEB a first or second order body?	Passengers must have contacted the airline initially and wait six weeks for a response.
Enforcement power of NEB	The enforcement powers of the Dutch NEB have changed since 2012, due to several judgements which differentiate between regular complaints and enforcement requests. Regular complaints result in a non-binding decision, whereas enforcement requests result in a binding decision which can be appealed. Until 2012, the NEB handled all complaints as “enforcement requests”. Between 2012 and 2016, complaints could be handled as either a “regular complaint” or an “enforcement request”, depending on the passenger’s preference. Since 2016, all complaints are assessed as “regular complaint” resulting in a non-binding recommendation. Therefore, the number of

¹⁷⁶ Order issued 7 September 2011

	complaints has reduced over the years. A reason for the change in procedure is that for “enforcement requests”, the NEB was obligated to pay a fine to the claimant or representative, including claim agencies, if it did not respond within indicated timeframes. Once a complaint is received, the NEB assesses it to confirm it falls within the scope of Regulation 261/2004 and then starts an investigation. The NEB uses case law from other Member States in addition to judgements from the CJEU during its investigation. The ILT has noted a lack of compliance from certain airlines that are aware of the limited enforcement power of the NEB. In those cases where the airline does not follow the NEB’s recommendation, the only option for passengers to obtain compensation is to turn to the civil courts. There are two types of sanctions, reparatory and punitive sanctions that can be applied on the basis of non-compensation or on the basis of a lack of care, information or assistance. Reparatory sanctions are more forward-looking as they are aimed to improve the wider behaviour and encourage compliance going forward. A reparatory sanction consists of an order or warning, backed up by a penalty. Punitive sanctions act like a fine for individual cases and can therefore be seen as reactive for a specific case of non-compliance. The NEB notes that sanctioning is difficult as a result of the way the Regulation is written in the context of the Dutch legal system where the burden of proof lies with the NEB. Especially for reparatory sanction it is generally difficult to retrospectively obtain evidence for aspects such as the requirement to ask for volunteers before denying boarding. There is no maximum amount for reparatory sanctions, but the value of the financial penalty is set at a level to discourage continued non-compliance. For punitive sanctions the maximum amount is between 83,000 EUR.
Annual report or activity report	No information provided.
Services to passengers	
Communication with passengers	The Dutch NEB operates an information centre, comparable to a hotline that passengers can call in the first instance to obtain information on necessary steps, for instance contacting the airline. Passengers can submit their complaint via an interactive online form. Before March 2019, paper forms had to be submitted instead.
Length of complaint processing	3 – 6 months
261/2004 NEB cooperation	Complaints for which the NEB is not competent are forwarded to the relevant NEB with a short summary. Passengers are also provided with the contact information of the national enforcement body of each the Member State.
Activity level for claims under 261/2004	
Number of complaints received	2018: 1,529 complaints received 2017: 1,194 complaints received 2016: 1,362 complaints received 2015: 1,736 complaints received 2014: 2,038 complaints received 2013: 2,424 complaints received 2012: 2,600 complaints received 2011: 2,923 complaints received

	2010: 5,833 complaints received The decrease in the complaint numbers is due to a change in the complaint handling procedures which is explained in further detail in the enforcement section. The NEB notes that there were some issues with double counting complaints in earlier years that have now been addressed. Only around 27% of the complaints received are found to be legitimate.
Nature of complaints received	The main reasons for complaints are delays and cancellations. Complaints have become more complex, especially in relation to connecting flights.
Outcome of complaints	The NEB notes that there is generally good compliance from KLM, TUI and Corendon Dutch Airlines who respond to the NEB's recommendations and pay compensation. Other airlines do not follow the Dutch NEB's recommendation as they know that they have limited enforcement power.
Investigation of extraordinary circumstances by the NEB	In the case of an airline claiming extraordinary circumstances, the NEB requests evidence in the form of weather and/or meteorological conditions, en-route ATC restrictions, deviation delays, IATA delay codes, aircraft registration number, METAR, NOTAM or ACARS messages, and/or media announcements.
Sanctions	There were two punitive sanctions in 2017, six in 2018, and five in 2019. Not all sanctions are final yet as some are still open for appeal. Sanctioning on the basis of systematic non-compliance with the Regulation is possible through reparatory sanctions and has been enforced once against Vueling in 2016 but has subsequently been dropped following the judgement of the Council of State in 2018. All issued sanctions have been paid by airlines.
Inspections and other relevant activities	The NEB undertakes around ten inspections annually, mostly focusing on Schiphol airport in Amsterdam. However, the NEB is planning to do fewer inspections going forwards. Inspections at Schiphol are unannounced whereas audits at smaller airports are usually announced.
Changes in activity levels since 2011	The Dutch NEB notes that passengers seem to be more aware of their rights and most airlines have put good processes in place for passenger complaints via specifically designed forms on their websites. A change in compliance has been observed following the TUI/Nelson judgement in 2012 and the van der Lans judgement in 2015 for airlines that were previously reluctant to pay compensation in case of a delay or technical problems.
Regulation 1107/2006	
National legal basis	Sanctions can be imposed based on the Act on Aviation (Articles 11.15 and 11.16) and the General Administrative Law Act (Title 5 'Enforcement').
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	The NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers must have contacted the airline initially.
Enforcement power of NEB	All PRM complaints are registered on the internal database. The NEB will respond to each complainant and additionally ask for a statement from the airline and/or airport. The NEB has instructed a number of airports and airlines to improve their compliance and issued a fine of 9,000 EUR against one airline in 2018 for non-compliance with Article 11 of Regulation 1107/2006. The NEB is also working to develop an administrative fine catalogue for Regulation 1107/2006.

Activity levels for claims under 1107/2006	
Claims received	In the period from 2011 to 2018, the Dutch NEB has received 28 complaints regarding PRM issues. Of those, eight were found to be legitimate, eleven were found to be outside of the scope of the Regulation and the remaining complaints were forwarded to other NEBs.
Nature of claims received	Complaints have related mainly to seating arrangements on the plane and damage to medical equipment and wheelchairs.
Alternative/Online Dispute Resolution	
Overview	There is no specific ADR body for air passenger complaints in the Netherlands. Although general consumer ADRs exists, airlines are not obliged to accept passenger complaints coming via the ADR body.
Details	-
Contact	-
Legally binding	-
Costs incurred in ADR by passengers	-
Costs incurred in ADR by airlines	-
National small claims procedure (individual procedure)	
Small claims court procedure	For general claims in civil court there are sub-district courts for claims up to €25,000 where legal representation is not obligatory. Passengers have to subpoena the airline via a County Court bailiff (costs are around 80 EUR) and pay court fees (between 80 and 230 EUR). 95% of the cases in the sub-district courts are handled within 1 year.
Claim agencies (individual procedure)	
	In the period from 2010 until 2019, around 34% of the complaints that were filed with the Dutch NEB were submitted by claim agencies. There is a trend of an increased number of smaller claim agency start-ups since 2015.

Austria

	Description
National Enforcement Body/Bodies	Agentur für Passagier- und Fahrgastrechte (APF)
Type of organisation	Statutory arbitration and enforcement body
Remit of NEB	Regulation 261/2004, Regulation 1107/2006
Other competencies within remit	ADR and ODR body, Consumer Protection Cooperation (CPC) network
Resources available	5 FTEs to cover complaints under Regulation 261/2004 and 1107/2006 Funded pro rata (€78 per claim) by contribution from the companies involved in the arbitration procedure in addition to the Federation
Regulation 261/2004	
National legal basis	Defined in §139a of the Luftfahrtgesetz (LFG). The other relevant legislation is the Alternative-Streitbeteiligung-Gesetz 2015/105 (AStG).
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers must have contacted the airline initially and wait six weeks for a response in order for the NEB to handle their complaint. APF can only handle complaints concerning airline registered in Austria or flights from/to an Austrian airport.
Enforcement power of NEB	Passengers can submit a complaint via the online complaint form on the NEB's website. Once received, the NEB will start by liaising with the complainant on any open questions and collecting missing before starting the arbitration procedure and contacting the company. When the NEB receives a statement from the airline, it can either contact the airline again in case of unclarities or make its decision. The NEB considers both legal texts and rulings from the CJEU and case law from other member states within the EU, especially Germany. The outcome of the arbitration solution is communicated to the complainant and the case is closed. In case of possible infringements concerning both Regulation 261/2004 and 1107/2006, APF will send a formal report to the responsible authorities and inform the supervisory authorities. In 2018, 14 cases were sent to the responsible authorities. According to Austrian law, the complaint is then filed with the local panel authority against the CEO of the relevant airline. Because most airlines want to avoid panel proceedings and court procedures the number of sanctions is low. Additionally, the NEB informed us that according to the Austrian Flight Act, people lose their pilot's license through a panel proceeding. As a number of CEOs do possess a license, they will avoid starting such a proceeding. The APF can also investigate and file a complaint with the local authority based on more general system-wide level of non-compliance. However, the NEB has informed us that in most cases complaints are based on individual cases.
Annual report or activity report	Annual report on passenger APF's activities across all modes is published here: https://www.apf.gv.at/de/publikationen.html
Services to passengers	

Communication with passengers	APF accepts complaints via an online form available on its website. The forms are designed in German and English and can be completed in either language. APF communicates with passengers in German or English.
Length of complaint processing	< 3 months
261/2004 NEB cooperation	The Austrian NEB will inform passengers of the competent NEB and relevant contact details or, upon request, forward the complaint directly with a short summary in English. The NEB notes however that it has become increasingly difficult for passengers to find the correct entity to handle their complaint which can cause frustration, especially on ADR.
Activity level for claims under 261/2004	
Number of complaints received	2018: 5,462 complaints handled, of which 2,770 led to a closed arbitration procedure* 2017: 2,977 complaints handled, of which 1,719 led to a closed arbitration procedure 2016: 2,404 complaints handled, of which 1,482 led to a closed arbitration procedure *The NEB has informed us that a high number of cases were not closed by the end of 2018 and will therefore fall into the 2019 figures of closed procedures. Of all complaints received, 63% could not be handled by the NEB as it was either non the competent NEB, it was found that the passenger had not yet contacted the airline or there was missing documentation. The increase in the number of complaints received in 2018 is due to the high level of disruption observed across the European airspace in the summer. Another factor for the increase is a higher level of passenger awareness due to the media.
Nature of complaints received	The dominant reasons for complaints in 2018 have been cancellations (49,5 %), followed by delays (45,6 %), denied boarding (4,5 %) and other reasons such as PRMs or downgrading (0,4 %).
Outcome of complaints	Only 4% of airlines did not agree with the APF's decision in 2018. 79% of handled complaints led to an agreement between passenger and airline. The remaining 17% of cases were closed without agreement, mainly due to extraordinary circumstances. The amount of compensation obtained for passengers by the NEB in 2018 totalled 1,12 Million Euros. In case of non-agreement, passengers can use the NEB's decision in court proceedings to support a potential court case against the airline.
Investigation of extraordinary circumstances by the NEB	APF has a so-called "Formblatt" which it asks airlines to complete in addition to providing supporting document for proving extraordinary circumstances. The NEB has built up some internal guidelines on what they do and do not understand to be extraordinary circumstances, for example strikes or debris on the runway (before the CJEU made a judgement on this).
Sanctions	The NEB cannot impose fines directly as this can be only done through the responsible authorities. The maximum fine defined for an individual complaint is 22,000 EUR. For cases with aggravated circumstances, the court can also sentence a prison sentence of up to six weeks.
Inspections and other relevant activities	The NEB does undertake announced inspections, mostly at Vienna airport. However, due to the high case load in 2018, no inspection took place, and this will instead be done in 2019.

Changes in activity levels since 2011	In 2018, the Supreme Court of Austria issued a decision - OGH 1 Ob 133/18t – concerning the re-routing of passengers ¹⁷⁷ . The ruling states that airlines are required to re-route passengers on competing airlines.
Regulation 1107/2006	
National legal basis	The Luftfahrtgesetz (LFG) defines APF as the NEB in charge for non-compliance with the PRM Regulation 1107/2006.
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	The NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers must have contacted the airline initially in order for the NEB to handle their complaint.
Enforcement power of NEB	See section on enforcement power for Regulation 261/2004.
Activity levels for claims under 1107/2006	
Claims received	In total the NEB only receives a small number of complaints concerning PRMs. In the last three years this was around 25 cases.
Nature of claims received	No information provided.
Alternative/Online Dispute Resolution	
Overview	The Austrian NEB, the Agentur für Passagier- und Fahrgastrechte, is also the relevant ADR/ODR body.
Details	There is no minimum claim value for passengers to be able to use ADR, complaints have to regard flights either to/from an airport in Austria or flights with an Austrian carrier. Airlines are legally bound to take part in the ADR/ODR procedures, which causes the relatively low numbers of cases passed on for sanctioning. The decision of the ADR body is communicated to both parties involved in the arbitration process. If one party does not accept the APF's proposed solution, the case will be terminated by a conclusive, non-binding and non-contestable recommendation. Passengers are then able to use the ADR's decisions in court proceedings if they wish to. Typically, German is the main processing language, but the ADR has also processed complaints in English, French and Spanish in the past.
Contact	https://www.apf.gv.at/de/kontakt-apf.html
Legally binding	Not legally binding, unless both parties agree to the proposed solution in which case it is deemed as an effective extrajudicial settlement.
Costs incurred in ADR by passengers	No costs for passengers
Costs incurred in ADR by airlines	Airlines contribute to every formally opened arbitration procedure with a fee of €78. This accounts for about 40% of the cost of the ADR body, the other 60% being governmentally-funded.
National small claims procedure (individual procedure)	

¹⁷⁷https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20180829_OGH0002_00100B00133_18T0000_000

Small claims court procedure	There is no small claims court procedure in Austria; the Austrian Code of Civil Procedure only provides for a simplified procedure for small claims before District Courts.
Claim agencies (individual procedure)	
	In 2018, just over 5% of the complaints received were submitted by claim agencies. In 2019 this number has increased to 10.3% so far. The NEB asks claim agencies to provide a document signed by the passenger which also specifies that the service is offered by the NEB at no cost.

Poland

	Description
National Enforcement Body/Bodies	Commission on Passengers' Rights, Passengers' Rights Ombudsman & Civil Aviation Authority
Type of organisation	Consumer Protection Body (sitting within the CAA) & Civil Aviation Authority
Remit of NEB	Commission on Passengers' Rights & Passengers' Rights Ombudsman: Regulation 261/2004 Civil Aviation Office: Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	Alternative Dispute Resolution, Online Dispute Resolution
Resources available	No information provided
	Government-funded
Regulation 261/2004	
National legal basis	The procedure for dealing with complaints is based on the Polish law: the Aviation Act (Articles 205a, 205b, 205c, 209a, 209b) and the Administrative Procedure Code. The procedure has changed from 1 April 2019 so that currently all the complaints received by the CAA are dealt with by the Ombudsman. According to Article 209b (1) and (2) of the Aviation Law, the President of the CAA is required to impose fines on airlines for each infringement.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The NEB used to handle individual complaints, now they are proceeded through the ADR procedure.
Is NEB a first or second order body?	Passengers have to complain to the airline first before the NEB can handle their complaint.
Enforcement power of NEB	The Commission on Passengers' Rights (CPR) was designated by the President of the Civil Aviation Authority as its unit to enforce the Regulation. CPR, acting in the name of the President of the CAA, undertakes duties specified in Article 16 of the Regulation. In particular it checks air carriers' compliance with the principles of the Regulation and handles passengers' complaints. Alongside the CPR works the Passengers' Rights Ombudsman, who is responsible for handling cases of possible infringements in the Alternative Dispute Resolution (mediation) procedure. CPR makes an investigation regarding the alleged infringement of the Regulation, informs the parties about the commencement of the investigation, requests evidence and explanation from the carrier, and informs the parties about the opportunity to participate in each stage of proceedings. Until 1 April 2019, the President of the CAA issued a decision for each case to state whether there was an infringement of the Regulation or not. In case of an infringement, the President would request the airline to address it within 14 days and impose fines on the airlines for each infringement. Airlines could appeal against the decision within 14 days with the second decision (the first if there is no appeal) then becoming binding. According to Polish law a fine must be imposed for every infringement which is recorded, even a minor, technical infringement. Although the procedure has changed, all complaints sent to the CAA before 1 April 2019 are still proceeded in this manner.

	Since 1 April 2019 the complaint handling procedure has been transferred to the Ombudsman, the ADR body appointed by the President of the Civil Aviation Authority which is based in the Civil Aviation Authority. The procedure of the Ombudsman is described further in the ADR section below. In contrast to the CAA's complaint handling procedure, the Ombudsman does not issue binding decisions.
Annual report or activity report	Statistic information is gathered for internal use only.
Services to passengers	
Communication with passengers	Passengers can submit a complaint via an online form available in English and Polish on the Passengers' Rights Ombudsman website.
Length of complaint processing	6 – 12 months
261/2004 NEB cooperation	The CRP used to forward complaints that were within the jurisdiction of other NEBs using the rules as prescribed in the Administrative Procedure Code. The Ombudsman does not have this power.
Activity level for claims under 261/2004	
Number of complaints received	2018: 10,281 complaints received 2017: 7,124 complaints received 2016: 5,980 complaints received 2015: 5,402 complaints received 2014: 4,640 complaints received 2013: 3,540 complaints received 2012: 4,021 complaints received
Nature of complaints received	In 2018, the majority of complaints (77%) were due to delayed flights, followed by cancellations (18%). The number of cases relating to denied boarding (1%) and other reasons (4%) was substantially lower.
Outcome of complaints	In the years 2012-2019, approximately 70% of valid complaints resulted in a positive outcome for the passenger, including those where agreement was reached with the airline before CPR issued a decision. Until 2019 the NEB issued a binding decision which could be appealed by the airlines. In case of an appeal, a second instance decision was issued by the President of the CAA. 2018: 618 second instance decisions issued 2017: 861 second instance decisions issued 2016: 418 second instance decisions issued 2015: 438 second instance decisions issued 2014: 589 second instance decisions issued 2013: 813 second instance decisions issued 2012: 416 second instance decisions issued
Investigation of extraordinary circumstances by the NEB	The main types of documentation that airlines are asked to provide are aircraft technical documentation and METAR documentation. In all cases where the carrier claims extraordinary circumstances, the claims are investigated by appropriate departments of the CAA such as the Technical Department (Airworthiness) or Operational Department depending on the reason of the cancellation (technical or meteorological). On the basis of their opinion, a ruling was made by the President of the CAA as to whether there was an infringement of the Regulation. The Ombudsman does not investigate extraordinary circumstances.

Sanctions	The President of the CAA imposed sanctions in any case where non-compliance with passenger rights were noted. Generally, a fine of 1,000 Polish zloty (PLN) was imposed (approx. 250 EUR) per passenger. Between 2012 and 2019, the total amount of fines issued were as follows: 2018: 3,066,650 PLN 2017: 2,416,600 PLN 2016: 499,200 PLN 2015: 800,500 PLN 2014: 1,252,150 PLN
Inspections and other relevant activities	For a previous study, the CPR informed us that it undertakes regular inspections at airports, approximately 10 each year, to verify compliance with Article 9 and 14.
Changes in activity levels since 2011	Since 2011 the complaint volume handled by the NEB has increased significantly. Complaints submitted before 1 April 2019 which are still handled under the old Administrative Procedure, take up all the time of the employees of the CPR. Each employee has approx. 1,300 to 1,500 cases to work on at any given time.
Regulation 1107/2006	
National legal basis	The procedure for dealing with complaints is based on the Polish law: the Aviation Act (Articles 205a, 205b, 205c 209a, 209b) and the Administrative Procedure Code. According to Article 209b (1) and (2) of the Aviation Law, the President of the CAA is required to impose fines on the airlines for each infringement.
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	The NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers have to complain to the airport or the operator first before the NEB can handle their complaint.
Enforcement power of NEB	The President of the CAA is a competent authority for the cases related to the Regulation. The Commission on Passengers' Rights (CPR) was designated by the President of the Civil Aviation Authority as its unit to enforce it, including carrying out inspections.
Activity levels for claims under 1107/2006	
Claims received	The number of complaints received is very small, especially in comparison to the number of complaints submitted under Reg. 261/2004. In the time period from 2016 to 2019 the CAA only received two complaints per year.
Alternative/Online Dispute Resolution	
Overview	Since April 2019 there is a special ADR body that handles with passenger complaints – the Passengers' Rights Ombudsman which is appointed by the President of the Civil Aviation Authority and is based within the Civil Aviation Authority.
Details	The Ombudsman aims to amicably resolve consumer disputes in an out-of-court proceeding. The ADR body will help both parties in reaching an agreement but does not issue decisions. As part of the ADR procedure, both parties have the right to participate in the proceedings, including presenting points of view, documents and evidence, to

	use third parties' assistance, and to withdraw from the proceedings at any of its stages.
Contact	https://pasazerlotniczy.ulc.gov.pl/en/amicable-proceedings-before-the-ombudsman
Legally binding	The Ombudsman's decision is not binding even if both parties agreed to the proposed solution. Passengers can still go to court if they are not content with the out-of-court resolution reached. The statement of claim which is lodged with the common court should contain information whether the parties undertook attempts of mediation or other out-of-court manner of dispute resolution and if such attempts were not undertaken, an indication of a reason for not doing so (Article 187 § 1 of the Code of Civil Procedure).
Costs incurred in ADR by passengers	No costs
Costs incurred in ADR by airlines	No costs
National small claims procedure (individual procedure)	
Small claims court procedure	A simplified procedure exists in the Polish law. It is governed by Articles 505 ¹ to 505 ¹⁴ of the Code of Civil Procedure.
Claim agencies (individual procedure)	
	No information is provided on the proportion of claims received from claim agencies.

Portugal

	Description
National Enforcement Body/Bodies	Autoridade Nacional da Aviação Civil (ANAC)
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	Consumer Protection Cooperation (CPC) network
Resources available	6 FTEs working on Air Passenger Rights issues
	Governmentally-funded but independent from the budget as funds received through security and licensing charges.
Regulation 261/2004	
National legal basis	Decree Law No. 209/2005 creates the penalty regime applicable to Regulation 261/2004 and defines ANAC as the responsible body to enforce compliance with the provisions of the Decree.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers have to contact the airline first before the NEB handles their complaint.
Enforcement power of NEB	When ANAC receives a complaint it first confirms that the passenger has already contacted the airline, all information is provided and that the complaint falls within the scope of the Regulation. The airline is then notified and asked to provide an explanation for the occurrence, including evidence for extraordinary circumstances. The NEB may refer to CJEU judgements and case law from other Member States during their investigation. Following the completion of the NEB's investigation, ANAC informs the passenger of their non-binding decision and will close the case. In cases where ANAC finds that the passenger is due compensation, ANAC asks the airline to provide a confirmation of the transfer but does not follow up. ANAC notes that passengers will normally contact the NEB again in case they do not receive compensation. In cases where an airline disagrees to pay compensation or the passenger is not content with the NEB's recommendation, the NEB will provide the passenger with information of potential options, such as ADR and the courts. When ANAC finds an airline to not comply with the regulation, for instance by not agree with the NEB decision, it cannot directly issue a sanction but is able to refer the case to the legal department which in turn can issue a sanction or take the airline to court. Sanctions can be as high as 150,000 EUR and are issued on a case-by-case basis. The NEB does not undertake system-level enforcement.
Annual report or activity report	ANAC publishes annual reports on their website: https://www.anac.pt/vPT/Generico/Paginas/Homepage00.aspx
Services to passengers	

Communication with passengers	Passengers can submit a complaint via an online form on the ANAC website. The NEB communicates with passengers in Portuguese, Spanish and English.
Length of complaint processing	3 – 6 months
261/2004 NEB cooperation	The NEB cooperates with the ADR body to improve passenger rights within Portugal as it notes a current lack of awareness. Complaints for which ANAC is not competent will be forwarded to the relevant NEB.
Activity level for claims under 261/2004	
Number of complaints received	2018: 13,885 2017: 10,907 2016: 8,032 2015: 7,355 2014: 9,881 2013: 7,264 2012: 6,165 2011: 6,454 Of the complaints received, around 60% are within the scope of Regulation 261/2004. Increased traffic and strike or weather conditions have contributed to a strong rise in passenger complaints. ANAC assumes that still only 0,2% of passengers submit complaints.
Nature of complaints received	Most complaints relate to delays, followed by flight cancellations, issues around luggage, and denied boarding. In 2017, the NEB assessed a number of cases related to the fuel disruptions at Lisbon airport. The NEB found that these cancellations to be not caused by extraordinary circumstances as airlines were informed about the problem.
Outcome of complaints	In the NEBs experience, airlines operate at meaningful national level generally do their best to comply with Regulation 261. In the specific aspects where the Regulation is not clear enough, or courts have contradictory decisions, interpretation issues arise.
Investigation of extraordinary circumstances by the NEB	Airlines are asked to provide evidence, for instance METAR data. For some cases, ANAC may refer to its internal experts to support interpretation of the data. The NEB notes that small airlines operating hopper-services between the Portuguese islands might often cite extraordinary circumstances due to fast-changing weather conditions. Technical failures are generally not considered to be extraordinary circumstances.
Sanctions	Cases that were sent to the legal department for possible sanctioning have increased in recent years. In 2016 it was only three cases, increasing to 178 in 2017 as a result of the Ryanair strikes. In 2018 there was 71 cases that were forwarded to the legal department. One airline was sanctioned in 2017 and other sanctions have been applied in previous years.
Inspections and other relevant activities	ANAC undertakes two unannounced inspections annually at the main airports and will communicate any issues to the airport management or groundhandling companies. In the past, the NEB has also made spontaneous airport visits in times of disruption, such as a high number of cancellations at Porto airport, to talk to passengers and airline representatives.

Changes in activity levels since 2011	The NEB believes that passengers know that they have rights but still lack information on the specific circumstances of those rights. Over the last three years the awareness has improved, indicated by the increase in the number of complaints received.
Regulation 1107/2006	
National legal basis	Decree Law No. 254/2012 states the conditions for implementing the legal regime of Regulation 1107/2006 and defines ANAC (previously known as INAC) as the responsible body for compliance and inspection, as well as the penalties applicable for non-compliance.
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	PRM complaints are handled by the ANAC. However, we have not received relevant inputs from the person responsible for Regulation 1107/2006 despite several attempts to establish contact.
Is NEB a first or second order body?	No information provided.
Enforcement power of NEB	No information provided.
Activity levels for claims under 1107/2006	
Claims received	No information provided.
Nature of claims received	No information provided.
Alternative/Online Dispute Resolution	
Overview	The Direção-Geral Consumidor website provides information on all ADR bodies in Portugal.
Details	There are 10 centres in Portugal, 7 of regional general competence (Lisbon, Porto, Coimbra, Guimarães, Braga / Viana do Castelo, Algarve and Madeira), 1 national centre (CNIACC) and 2 specialised for automotive and insurance disputes. Only a few airlines are enrolled in the ADR bodies and there is a general lack of awareness of the ADR services. Passengers tend to use the court system instead.
Contact	https://www.consumidor.gov.pt/
Legally binding	No information
Costs incurred in ADR by passengers	Either no or reduced costs.
Costs incurred in ADR by airlines	No information
National small claims procedure (individual procedure)	
Small claims court procedure	A small claims entity exists for cases with a monetary limit of 15,000 EUR; however, it is not formally a court. The costs for the procedure are relatively low, especially if compared to a regular court procedure. The timescale for the process is less than 6 months.
Claim agencies (individual procedure)	
	The NEB estimates that less than 25% of received complaints are submitted by claim agencies. However, a large proportion (80%) of complaints are found to be not legitimate.

Romania

	Description
National Enforcement Body/Bodies	National Authority for Consumer Protection (ANPC) & Ministry of Labor, Family and Social Protection National Authority for People with Disabilities (Autoritatea Națională Pentru Persoanele Cu Handicap (ANPD))
Type of organisation	ANPC: Consumer Authority ANPD: Equality Body
Remit of NEB	ANPC: Regulation 261/2004 & Montreal Convention/Regulation 889/2002 ANPD: Regulation 1107/2006
Other competencies within remit	ANPC: Alternative Dispute Resolution (ADR) body and Consumer Protection Cooperation (CPC) network
Resources available	No information provided
	No information provided
Regulation 261/2004	
National legal basis	Decision no. 1912/2006 lays down measures to ensure the application of Regulation 261/2004 and repeals Regulation 295/91.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers can contact the NEB as a first order body without having complained to the airline first.
Enforcement power of NEB	Once a complaint is received, it is verified by the commissioner to which the case has been assigned. A response is requested from the airline within 10 days, including supporting documents as evidence in case of extraordinary circumstances. A non-binding decision is issued to the passenger following the conclusion of the investigation. If the passenger is not content with the NEB's recommendation, they can turn to the court to solve the dispute with the airline. Under Romanian legislation, non-compliance with Regulation 261/2004 is considered a contravention. The NEB can issue a sanction, with the amount varying according to the number of affected passengers. ANPC notes communication problems with airlines that do not have a legal representative on Romanian territory which is also reflected in the way the regulation is implemented and the ability to sanction a carrier in the event of non-compliance.
Annual report or activity report	The NEB publishes annual activity reports on its website: http://www.anpc.gov.ro/categorie/22/rapoarte-de-activitate
Services to passengers	
Communication with passengers	The NEB only accepts complaints that are submitted in writing and sent to the headquarters of the County Commissariats for Consumer Protection or to the Bucharest Consumer Protection Commissariat. A template complaint form is available on the website in Romanian and English.
Length of complaint processing	< 3 months
261/2004 NEB cooperation	The ANPC forwards complaints for which it is not competent to the relevant NEB, alongside a brief summary of the case.

Activity level for claims under 261/2004	
Number of complaints received	Between 2011 and 2018, the NEB received 3,141 complaints in total, of which 1,948 were related to non-compliance with Regulation 261/2004. Approximately 60% of complaints were legitimate.
Nature of complaints received	No information provided.
Outcome of complaints	No information provided.
Investigation of extraordinary circumstances by the NEB	The airline is requested to provide evidence, including weather reports, aircraft movement documents to see the exact time of departure, flight reports, and/or proof of assistance.
Sanctions	In 2017 and 2018, the NEB issued 20 sanctions for non-compliance with Regulation 261/2004. All fines were paid by the airlines.
Inspections and other relevant activities	No information provided.
Changes in activity levels since 2011	The NEB notes that as a result of the information campaigns in the past 3 years, passengers have become more aware of the rights.
Regulation 1107/2006	
National legal basis	No information provided.
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	No information provided.
Is NEB a first or second order body?	No information provided.
Enforcement power of NEB	No information provided.
Activity levels for claims under 1107/2006	
Claims received	No information provided.
Nature of claims received	No information provided.
Alternative/Online Dispute Resolution	
Overview	The Alternative Dispute Resolution Directorate sits within the ANPC.
Details	-
Contact	http://www.anpc.ro/
Legally binding	Not legally binding
Costs incurred in ADR by passengers	No cost
Costs incurred in ADR by airlines	No information provided
National small claims procedure (individual procedure)	
Small claims court procedure	Articles 1025-1032 of the new Code of Civil Procedure, which entered into force in 2013, regulates the small claims procedure. The article states that the value of the claim must not exceed RON 10,000 (approx. 2,100 EUR).

Claim agencies (individual procedure)	
	The NEB notes an increase in claim agencies over the last years that are specifically well represented online.

Slovenia

	Description
National Enforcement Body/Bodies	Slovenian Civil Aviation Authority
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	Consumer Protection Cooperation (CPC) network & European Consumer Centre (ECC)
Resources available	1.5 FTEs working on Air Passenger Rights issues but looking to recruit more Government-funded
Regulation 261/2004	
National legal basis	Bylaw 2005-2411-0066 implements Regulation 261/2004, following its publication in the Official Gazette of the Republic of Slovenia, No. 51/17. According to Article 179.i of the Aviation Act, the CAA is responsible for regulatory tasks specified by aviation regulations, applicable for or used in the Republic of Slovenia.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	NEB can handle individual complaints.
Is NEB a first or second order body?	Passengers have to contact the airline first and wait for two months before the NEB can accept their complaint.
Enforcement power of NEB	When a complaint is received, the NEB logs it in its internal database (Lotus Notes program) and assesses if it is the competent authority. If not, the complaint is forwarded to the correct NEB. For all other cases the NEB starts a minor offence procedure against the airline. A statement is sent to the airline, including a request for a response and relevant evidence. The NEB investigates the information provided to assess whether an infringement with Regulation 261/2004 has taken place. In cases where no minor offence is found, the procedure is concluded. Where the NEB finds non-compliance, it will issue a binding decision which includes a fine or a warning to the airline. Fines can range from 500 to 20,000 EUR. The NEB does not have the power to enforce compensation for the individual passenger but undertakes enforcement with the aim to improve wider-level compliance with the Regulation. Nevertheless, enforcement can only be done on the basis of an individual complaint, and not for systematic non-compliance across a longer timeframe. The airline has the option to appeal the NEB's decision in court, but most airlines agree to pay the fine (80%). Once the decision becomes final and enforceable, the NEB refers the case to the tax authority for enforcement. When a case is closed in the Lotus Notes program, the decision is entered in the record of minor offences, which the NEB is obliged to keep in accordance with the Minor Offence Act. The NEB notes that the enforcement of sanctions is problematic for non-EU carriers and some EU carriers. This is because of difficulties with the delivery of documentation, making the process long, time-consuming and often unsuccessful. By law, the fine issued by the NEB goes to the airline's government instead of the airline itself. Procedures against EU carriers can also

	be ineffective where the airline does not respond. The NEB then has the possibility to enforce the sanction through the competent courts, but the process presents an administrative burden for the NEB which is seen as disproportionate to the amount of the fine.
Annual report or activity report	No information provided.
Services to passengers	
Communication with passengers	A link to a template complaint form from the European Commission is available on the NEB's website.
Length of complaint processing	3 – 6 months
261/2004 NEB cooperation	When the NEB receives complaints for which it is not competent, it forwards the complaint with a summary in English to the relevant NEB.
Activity level for claims under 261/2004	
Number of complaints received	2018: 337 complaints received 2017: 149 complaints received 2016: 146 complaints received The NEB estimates that around 70% of eligible passengers claim for compensation. The proportion of legitimate complaints from those received is estimated to be around 40%. More than half of the complaints the NEB receives are in other languages and have to be translated into Slovenian (the official language for proceedings).
Nature of complaints received	Most complaints are due to cancelled flights, delays, followed by denied boarding (4%), a lack of information about passenger rights, and/or a lack of response from the airline.
Outcome of complaints	No information provided.
Investigation of extraordinary circumstances by the NEB	For each case, the carrier is given the opportunity to make a statement and submit evidence to prove extraordinary circumstances. The NEB verifies the accuracy and credibility of the documents, including NOTAM, ATM SLOT, METAR, TAF, and technical log books.
Sanctions	Sanctions are issued in the majority of decisions. For a small number of decisions only had a warning issued to the airline. In 2018, the total amount of fines issued was 40,081 EUR and all fines were paid.
Inspections and other relevant activities	The NEB undertakes regular audits four to five times a year to check compliance with Regulation 1107/2006.
Changes in activity levels since 2011	According to the NEB, passengers are increasingly educated about their rights and more demanding for their complaints to be solved quickly. The number of complaints rises from year to year which is viewed as positive. Over the past two years, the NEB has however also observed a trend of increasing non-compliance of airlines with Regulation 261/2004, notably for compensation payment, passenger care, flight delays and cancellations. The NEB believes this to be a result of the enormous increase in air traffic volume and a growing rate of passenger claims to airlines (with an increase of 120% in the last year).
Regulation 1107/2006	

National legal basis	Bylaw 2010-2411-0002 implements Regulation 1107/2006, pursuant to the fourth paragraph of Article 134 of the Aviation Act. The official consolidated test was published in the Official Gazette of the Republic of Slovenia, No. 81/10.
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	NEB can handle individual complaints.
Is NEB a first or second order body?	PRMs have to contact the airline first before the NEB can accept their complaint.
Enforcement power of NEB	See enforcement for Regulation 261/2004. According to the Implementing Regulation no. 106/2010, the NEB can issue sanctions to carriers and airports. The maximum fine is 60,000 EUR. No cases have been assessed under this regulation yet.
Activity levels for claims under 1107/2006	
Claims received	No claims have been received under Regulation 1107/2006 yet.
Nature of claims received	-
Alternative/Online Dispute Resolution	
Overview	ADR bodies exist, but participation is not mandatory, and the ADR decisions are not binding.
Details	The complaint can be submitted in Slovenian and English language. As airlines have to pay a fee for the procedure, they usually do not participate in ADR processes.
Contact	-
Legally binding	Not legally binding
Costs incurred in ADR by passengers	No costs
Costs incurred in ADR by airlines	From 50 EUR per case
National small claims procedure (individual procedure)	
Small claims court procedure	A small claims court procedure exists in the Slovenian legal system, regulated in the thirtieth chapter of the Code of Civil Procedure (ZPP). The claim may not exceed a value of 2,000 EUR and the procedure is conducted before a district court. Consumers can apply for free legal aid if they fulfil the conditions set out in the Free Legal Aid Act (ZBPP). The judgment of the small claims procedure is announced immediately after the end of the main hearing. The judge can make a written judgment with a long explanation or only a summary explanation. The cost of the procedure is dependent on the success of the procedure.
Claim agencies (individual procedure)	
	Two claim agencies operate in Slovenia which account for around 40% of complaints received by the NEB.

Slovakia

	Description
National Enforcement Body/Bodies	Slovak Trade Inspectorate
Type of organisation	Consumer and Competition Authority
Remit of NEB	Regulation 261/2004, Regulation 1107/2006 & Montreal Convention / Regulation 889/2002
Other competencies within remit	Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR), Consumer Protection Cooperation (CPC) network, and national market surveillance
Resources available	2 FTEs for the NEB & 2-3 FTEs within the ADR dealing partly with Air Passenger Rights
	Government-funded
Regulation 261/2004	
National legal basis	Amendment to the Civil Aviation Act no. 143/1998
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	NEB is able to handle individual complaints.
Is NEB a first or second order body?	Passengers have to submit a complaint to the airline first before the NEB accepts their complaint.
Enforcement power of NEB	Once a complaint is received, it is registered in the NEB's database. During the investigation phase, the airline is contacted as well as the passenger if any information is missing. Upon concluding the investigation, the NEB will inform the passenger of its non-binding decision. Compliance with the NEB's recommendation is dependent on the airline. Passengers can take their case to court if the airline does not comply. The NEB is also the competent ADR body, but cases can only get transferred if the airline is registered in Slovakia. All other cases, for instance Wizzair or Ryanair cases, will always only be handled by the NEB. If the airline does not provide the NEB with sufficient evidence of extraordinary circumstances and/or non-compliance with passenger rights is found, the NEB can impose a sanction. Sanctioning is done on a case-to-case basis. The maximum value for a fine is 66,000 EUR, increasing to 166,000 for repeated non-compliance. The NEB can impose the sanctions to all airlines which operate in the Slovak market, however, as they are non-binding it can be problematic to enforce them.
Annual report or activity report	No information provided.
Services to passengers	
Communication with passengers	Passengers can submit a complaint via email to the NEB.
Length of complaint processing	< 3 months
261/2004 NEB cooperation	Complaints are forwarded if the Slovak Trade Inspectorate is not the competent NEB. A summary of the case in English is provided. The NEB also

	cooperates with the Slovakian Civil Aviation Authority through regular meetings.
Activity level for claims under 261/2004	
Number of complaints received	2018: 260 complaints received 2017: 230 complaints received 2016: 150 complaints received 2015: 130 complaints received 2014: 40 complaints received 2013: 80 complaints received The majority of complaints received (90%) is legitimate. The NEB estimates that only around 10% of passengers out of those eligible to claim actually do so.
Nature of complaints received	Most complaints relate to long delays.
Outcome of complaints	No information provided.
Investigation of extraordinary circumstances by the NEB	Extraordinary circumstances are investigated on a case-by-case basis. The NEB requests evidence from the carrier to support extraordinary circumstances, including METAR, AIMS reports, irregularity reports, TAF, weather report SHMU, and consults with experts to analyse the documentation.
Sanctions	One sanction has been issued by the NEB, which was paid by the airline.
Inspections and other relevant activities	The NEB undertakes airport inspections every other year.
Changes in activity levels since 2011	The NEB has noted a growing awareness of passenger rights over the last two years, also as a result of awareness campaign at airports set up by the Slovakian ECC in the summer periods.
Regulation 1107/2006	
National legal basis	Amendment to the Civil Aviation Act from no. 143/1998
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	NEB is able to handle individual complaints.
Is NEB a first or second order body?	Passengers have to submit a complaint to the airline first before the NEB accepts their complaint.
Enforcement power of NEB	See enforcement power under Regulation 261/2004.
Activity levels for claims under 1107/2006	
Claims received	The NEB has not received any complaints relating to Regulation 1107/2006 yet. Around 2,500 PRMs request assistance at the airports in Slovakia annually.
Nature of claims received	-
Alternative/Online Dispute Resolution	
Overview	The NEB also acts as the ADR/ODR body.
Details	The number of ADR cases is low as the ADR's competence is restricted to airlines which are based in Slovakia, of which there is only one. The minimum claim value is 20 EUR and passengers can contact the ADR in English and Slovak. Although theoretically possible, the ADR has not yet commissioned expert

	support due to budget issues. The ADR can compel airlines to submit evidence and, upon non-cooperation, can refer the file to the Inspectorate which can impose a fine between 500 to 10,000 EUR. Passengers are able to use the ADR decision in court. Since 2015, the ADR has handled around 30 cases related to air passenger rights and has made 28 decisions of which 47.5% were decided in favour of the passenger. On average, the ADR process takes 60 days and passengers are awarded 300 EUR.
Contact	https://www.soi.sk/en/Contact.soi
Legally binding	The decisions of the ADR body are not binding unless both parties agree.
Costs incurred in ADR by passengers	No costs
Costs incurred in ADR by airlines	No costs
National small claims procedure (individual procedure)	
Small claims court procedure	No small claims court procedure in Slovakia.
Claim agencies (individual procedure)	
	The NEB receives a significant proportion of complaints (30%) from claim agencies.

Finland

	Description
National Enforcement Body/Bodies	Finnish Competition and Consumer Authority (FCCA)/Ombudsman, Traficom, and Consumer Disputes Board (CDB)
Type of organisation	FCCA: Consumer Ombudsman Traficom: Civil Aviation Authority CDB: ADR body
Remit of NEB	FCCA: Regulation 261/2004 and Montreal Convention/Regulation 889/2002 Traficom: Regulation 261/2004 (for non-consumer (business) passengers) and Regulation 1107/2006 CDB: Regulation 261/2004, Regulation 1107/2006, Montreal Convention/Regulation 889/2002
Other competencies within remit	FCCA: Consumer Protection Cooperation (CPC) network Traficom: Transport and communications agency CDB: ADR/ODR body
Resources available	15 FTEs working across all services at FCCA, 2.5 FTEs at Traficom and 4 FTEs working at the CDB with passenger rights taking up around 1/6 of their time. Budget: Government-funded
Regulation 261/2004	
National legal basis	The nomination of the Consumer Ombudsman (38/1978, several subsequent amendments) as one of Finland's three NEBs did not require any specific legal provisions. The Consumer Protection Act already defines the Ombudsman's role as encompassing contract terms, marketing and general conduct in consumer relationships; and the wide general competence of the Ombudsman was already well established, allowing it to address a wide range of issues. The powers of the Consumer Disputes Board are established by the Act on the Consumer Disputes Board (8/2007). The members of the Board are nominated by the Ministry of Justice for a five-year term. The Act states that the Board can only handle complaints brought by private consumers, and that the Board cannot handle complaints from business travellers whose employer has paid for their flights; therefore such cases are transferred to Traficom. Traficom is responsible for the regulation and supervision of the entire transport system. Its aviation sector supervises flight safety and administrative aviation issues. The Finnish Civil Aviation Act (1194/2009) allows Traficom to impose conditional fines or orders of execution or suspension for actions or operations which infringe the Regulation. The Finnish Conditional Fine Act defines the process by which such fines can be applied.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	FCCA is responsible for the supervision of passenger rights under Regulation 261/2004 and the Montreal Convention but does not handle individual complaints. CDB is responsible for individual complaints from private consumer passengers under Regulation 261/2004. The complainant must also have a clearly defined compensation claim - for example complaints of poor customer service will not be accepted. The Board cannot impose sanctions.

	Traficom is responsible for handling individual complaints under Regulation 261/2004 from non-consumer (business) passengers only.
Is NEB a first or second order body?	Both Traficom and the CDB are second order bodies, meaning that passengers must have contacted the airline in question first. The FCCA can be contacted directly by passengers to report non-compliance but does not deal with individual complaints.
Enforcement power of NEB	Traficom can issue non-binding recommendations. In most cases it states whether the passenger has a right to standard compensation or not. For some cases, a recommendation on the reimbursement of ticket costs is also stated, however the NEB is not clear on the extent to which its competence extends to issuing such recommendations on reimbursement. Reasons for the issued recommendation are given to passengers and are not subject to appeal. Traficom focuses on case-by-case enforcement and has no standard policy for issuing sanctions. Occasionally Traficom may contact Finnish carriers if there are clear issues of non-compliance, for example wrong information on the website. For cases handled by the Consumer Disputes Board, the secretariat of the Board, called Consumer Advice which sits within the FCCA, can provide advice and try to reach an amicable settlement, where possible. If a settlement cannot be reached, the case will be taken to a meeting of the Consumer Dispute Board which will then issue a decision. Decisions issued by the Consumer Disputes Board are non-binding but are often considered binding de facto. The CDB does not issue sanctions. FCCA does not handle individual complaints but looks at system-level enforcement for clear, repeated, systematic or grave breaches. Where FCCA observes systemic non-compliance with decisions of the ADR, they will consider imposing sanctions to uphold the credibility of the ADR-body and compliance with its decisions. However, the NEB has a statutory duty to negotiate with the carrier first before going to general court or the CDB for a group complaint. The principles that apply are the general prioritisation principles of the Consumer Ombudsman of the FCCA. There are no limits in place for sanctions. However, the process for imposing fines means taking the carrier to court which is time and resource consuming and thus may be prohibiting.
Annual report or activity report	No information provided.
Services to passengers	
Communication with passengers	The complaint procedure is free of charge for passengers. Non-consumer (business) passengers can use the Traficom website to launch a complaint (https://www.traficom.fi/en/services/business-traveller-make-complaint-about-delayed-or-cancelled-flight) where the complaint is logged on the registration system and given an individual case number. The maximum time for the complaint handling process is 12 to 18 months. The Consumer Disputes Board, which handles private consumer passenger complaints can be registered by filling an online form, by e-mail or by mail. Both parties may introduce written evidence and pictures during the correspondence phase. After this phase is concluded, a decision is given. The

	Board cannot accept oral testimony. If a case cannot be resolved without hearing witnesses, the Board may decide to refrain from issuing a recommendation. On average, the complaint handling process takes between 6 to 12 months.
Length of complaint processing	6 – 12 months for CDB, 12 – 18 months for Traficom
261/2004 NEB cooperation	The three Finnish NEBs exist as three distinct, independent bodies with a clear division of (inter-locking) tasks. Although the NEBs are in close cooperation with each other (and the ECC), information has to be requested individually by each NEB body. For example, the Consumer Disputes Board does not have access to information that Traficom might have requested for the same flight. Generally, the NEBs will forward complaints to the competent NEB where relevant. The FCCA and CBD note that although complaints are forwarded, a translation is not provided. Traficom further noted that sometimes the passenger or claim agency will be asked to contact the competent NEB directly. Traficom will provide an unofficial translation summarising the main points of the case. The Finnish ECC sits within the FCCA and thus good cooperation exists between both. Traficom highlighted that it is difficult for them to use the ECC network as it does not handle business passenger complaints which are defined as non-consumers under Finish legislation. The ECC does however handle lost luggage complaints of non-consumers/business passengers and a good an open communication exists between the two bodies. CDB noted that complaints are occasionally transferred to it by the ECC Network.
Activity level for claims under 261/2004	
Number of complaints received	FCCA: not applicable Traficom: 2018: 285 complaints received of which 140 were legitimate 2017: 228 complaints received of which 105 were legitimate 2016: 203 complaints received 2015: 126 complaints received 2014: 124 complaints received 2013: 115 complaints received 2012: 79 complaints received 2011: 62 complaints received Consumer Disputes Board: 2018: 1,481 complaints received 2017: 1,312 complaints received 2016: 1,354 complaints received 2015: 857 complaints received 2014: 731 complaints received 2013: 718 complaints received 2012: 314 complaints received 2011: 298 complaints received These figures include some overlap where a given claim may have been referred to another body and thus might be double counted. A single complaint may also relate to more than one passenger at a time.

Nature of complaints received	FCCA: Mostly delays and non-compliance with paying standard compensation. Technical faults were a prominent cause of complaints in 2016 and 2017.
Outcome of complaints	FCCA: not applicable Traficom: No statistics but roughly half reach a decision. Consumer Disputes Board concluded cases (i.e. board decisions, settlement between carrier and passenger or passengers waiving their rights): 2018: 1,213 concluded, including 365 decisions 2017: 1,507 concluded, including 242 decisions 2016: 1,152 concluded, including 289 decisions 2015: 796 concluded, including 210 decisions 2014: 638 concluded 2013: 546 concluded 2012: 329 concluded 2011: 260 concluded Concluded cases and complaints registered in a given year may not correspond due to the time elapsed for the cases to be concluded.
Investigation of extraordinary circumstances by the NEB	In case extraordinary circumstances are claimed, Traficom sends an inquiry to the carrier asking for clarification. Carriers will provide delay and weather reports, as well as technical reports about the specific case. For some cases, internal experts and publicly available decisions of the Consumer Disputes Board are used for guidance. The Consumer Disputes Board investigates every claim of extraordinary circumstances individually on a case-by-case basis but if there is another ruling by the Board concerning the same flight which was ruled as extraordinary circumstances, the Board may refer to the said decision instead. The NEBs noted that they do not understand technical defects to classify as extraordinary circumstances, unless, for example EASA EADA issues a notice, as in the case of the Boeing 737 Max. In such a case, technical issues would be understood to count as extraordinary circumstances. The FCCA currently has a case in front of the Supreme Court relating to compliance with respect to technical issues due to fleet introductions. The FCCA is also providing legal assistance to individual consumers in their own cases before the courts, where decisions of the CDB have not been followed.
Sanctions	The FCCA is currently engaged in a court procedure towards obtaining sanctions.
Inspections and other relevant activities	Traficom concentrates on case-by-case complaint handling and does undertake proactive inspections to assess compliance with the Regulation. This is due to limited resources. The FCCA monitors complaints data from the Consumer Advice service, the CDB and from other NEBs.
Changes in activity levels since 2011	The NEBs observed that passengers have become more aware of their rights, with compensation-related issues making headlines regularly in Finland. The CDB noted that the number of complaints remains marginal in relation to the total number of passengers.

	On average, the number of complaints between 2011 and 2018 at Traficom has grown by 24% each year while the average rate of growth of complaints during the same time period was slightly higher at CDB, with 26%.
Regulation 1107/2006	
National legal basis	The Finnish Civil Aviation Act (1194/2009) allows Traficom to impose conditional fines or orders of execution or suspension for actions or operations which infringe the Regulation. The Finnish Conditional Fine Act defines the process by which such fines can be applied.
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	Traficom can handle complaints from individual passengers on PRM-related issues under Regulation 1107/2006.
Is NEB a first or second order body?	Passengers must have contacted the airline/airport initially. Passengers can make a complaint by email or by mail. An electronic form is not used. Further information is provided (in Finnish only) on the Traficom website (https://www.traficom.fi/fi/asioi-kanssamme/tee-valitus-liikuntarajoitteisen-ja-vammaisen-henkilon-oikeudet-lentomatkalla).
Enforcement power of NEB	After receiving the complaint, Traficom sends an enquiry to the airline/airport and allows eight weeks for an answer. Upon receipt of the answer, the case is assessed, and a recommendation is given. A decision is also made on whether there is need for any further enforcement actions. The recommendations Traficom makes are non-binding and cannot be appealed (Act on Transport Services (320/2017) Part IV Chapter 1 Section 9). Sanctions can be imposed in accordance with the Act on Transport Services (320/2017) Part VI Chapter 1 Section 4 <i>Notice of a conditional fine, notice of enforced compliance and notice of enforced suspension</i>. No sanctions have been imposed.
Activity levels for claims under 1107/2006	
Claims received	2011: 0 / 2012: 1 / 2013: 2 / 2014: 5 / 2015: 3 / 2016: 3 / 2017: 5 / 2018: 6 The proportion of PRM passengers in Finland is very low. At Helsinki airport they only represent 0.2% of passengers. The NEB notes that in general, passengers are not fully aware of their rights.
Nature of claims received	Usually the reasons for complaints are connected to seating in the aircraft, transportation of wheelchairs and assistance at the airport.
Alternative/Online Dispute Resolution	
Overview	The Consumer Disputes Board acts as the ADR body responsible for air passenger rights.
Details	Participation in the ADR process is mandatory, however the Board may give a ruling even if an airline chooses not to participate or respond. The ADR refers to both CJEU judgements and case law for their ADR rulings. The Board may acquire expert statements, but does so rarely. On average, the decisions are issued after 10 months on cases concerning air travel. Passengers are able to use ADR decisions in court. In general, the Board only accepts complaints and other documentation in Finnish or Swedish. However, passenger rights complaints based on EU Regulation 261/2004 can also be handled in English.

Contact	https://www.kuluttajariita.fi/en/index/valituksenteko.html
Legally binding	Decisions issued by the Consumer Disputes Board are non-binding but are often considered binding de facto. The compliance with decisions is monitored by the Board (current rate is 72%).
Costs incurred in ADR by passengers	No costs.
Costs incurred in ADR by airlines	No costs.
National small claims procedure (individual procedure)	
Small claims court procedure	There is no small claims procedure in Finland. Passengers can use the European small claims procedure for cross-border cases.
Claim agencies (individual procedure)	
	The NEBs note that there has been increased activity from claim agencies and that the quality of those complaints is sometimes not high.

Sweden

	Description
National Enforcement Body/Bodies	Swedish Consumer Agency/Konsumentverket (SCA); and Allmänna reklamationsnämnden (ARN)
Type of organisation	SCA: Consumer Authority ARN: National Board for Consumer Disputes
Remit of NEB	SCA: Regulation 261/2004 and Regulation 1107/2006. The Consumer Ombudsman sits within SCA but only has limited involvement with the enforcement of the Regulation. ARN: Regulation 261/2004 and Montreal Convention/Regulation 889/2002
Other competencies within remit	SCA: The SCA is represented on the arbitration board of the Swedish ADR and is part of the Consumer Protection Cooperation (CPC) network. SCA also offers an information service for consumers in the form of an advice hotline for passengers. ARN: ADR/ODR body
Resources available	SCA has 4 (FTE) legal advisors working on Regulation 261/2004 who also work on other Consumer Protection Regulation and employees providing support on the advice hotline. ARN has 13 members of staff covering air passenger rights. Both NEBs are government-funded
Regulation 261/2004	
National legal basis	Chapter 9, Section 11 of the Swedish Aviation Act designates the SCA as the NEB competent to enforce Article 14 of the Regulation. The Aviation Act refers to the Marketing Practices Act, which sets out the fines and the process to be followed to impose them. The Consumer Contract Act (1994:1512) provides the SCA with a right (in simple cases when there is a relevant precedent set by the Market Court) to prohibit traders from using unfair contract terms when entering into a contract with a consumer. The SCA may also, in complex situations, have the terms prohibited through the Market Court. If the trader uses misleading information when advertising his products or services, the SCA can prohibit such advertising through the use of the Marketing Act (2008:486).
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	SCA is responsible for protecting the collective interest of Swedish consumers, and for the enforcement of the Marketing Practices Act. ARN can handle complaints from individual passengers. However, it will only accept and respond to claims which have a minimum value of 500kr (50 EUR) per passenger and which are submitted within 1 year of an airline's first rejection of a claim.
Is NEB a first or second order body?	Passengers can contact SCA but will get referred to the ADR body for compensation requests. ARN is a second order body. Passengers have to contact the airline first with a timely notice when claiming compensation according to article 7 in EC Regulation 261/2004. According to the Swedish Supreme Court, contact with the airline within 2 months from the delay, cancellation or the denied boarding accounts for a timely notice.
Enforcement power of NEB	The work of the SCA includes monitoring for unreasonable contract terms, undertaking research into consumer issues and providing information to

	consumers. Its role is therefore to undertake system-level enforcement to improve the situation for air passengers within Sweden. The SCA is part of the arbitration board of the ADR and therefore is part of the decision-making process on issuing non-binding recommendations for individual cases. It uses the ADR decisions as well as results from independent audits to monitor the compliance with the Regulation. The SCA can impose fines on carriers where it observes repeated non-compliance. The NEB stated that it will generally issue a warning to the airline first with a conditional financial penalty. If the airline does not amend its behaviour to comply, it will then be asked to pay the issued fine. ARN handles individual complaints and is the ADR body. ARN accepts only written evidence and conducts its procedures without the presence of the parties. ARN issues non-binding recommendations to passengers. Decisions are made internally either after a report or in a session. Cases which are assessed to be sufficiently simple or where precedent exists are decided after a report. The remaining complex cases require a session where a chairperson (a professional judge with experience of court proceedings), two representatives of consumer organisations (including SCA) and two (independent) representatives from trade organisations are present. There is no possibility of appeal, although a 'retrial' may be requested on procedural grounds, within 2 months of the decision; although such 'retrials' are rare. Passengers are able to use the NEB-findings as evidence should they decide to take the airline to court. Both judgements from CJEU, as well as case law from other Member States can be used to reach a decision. ARN cannot impose sanctions, but if one of its decisions is not complied with, the name of the offending airline is published in a blacklist in a magazine, Råd & Rön, and other media outlets. ARN observed that that this approach works better for Swedish and Scandinavian airlines, compared with airlines in other parts of Europe
Annual report or activity report	ARN publishes an annual report.
Services to passengers	
Communication with passengers	SCA offers an information service for consumers in the form of an advice hotline for passengers. Passengers can either call or chat online to discuss issues or questions. Beyond offering clarification on the relevant body to contact, passengers can also use the service to submit a complaint. Passengers can submit a complaint to ARN via the online form or via email. ARN accepts complaints in English and other Scandinavian languages.
Length of complaint processing	< 3 months for SCA, 3 – 6 months for ARN
261/2004 NEB cooperation	The ECC is funded by SCA and sits in the same building. Both bodies are cooperating closely as the ECC will mediate with EU-carriers on behalf of SCA. SCA is also part of the CPC network which it uses regularly. ARN follows the NEB-NEB agreement but can also try cases concerning damaged baggage under the Montreal Convention, even if the damage occurred on a flight outside of Sweden.

	Good communication exists between the two NEBs. Both NEBs will forward complaints to another competent NEB if needed, as well as provide a translation into English. The Swedish NEBs have a close relationship with the Finnish NEBs, whose organisation is similar.
Activity level for claims under 261/2004	
Number of complaints received	Although SCA does not handle complaints, it is, together with ARN, listed as the NEB in the list of contact details published by the Commission, and hence receives complaints. SCA received the following number of complaints in recent years which it either refers to ARN if the incident occurred in Sweden or to the responsible NEB if the incident took place in another Member State. 2018: 442 complaints of which 295 were transferred to ARN 2017: 271 complaints of which 184 were transferred to ARN 2016: 344 complaints of which 118 were transferred to ARN 2015: 300 complaints of which 110 were transferred to ARN 2014: 176 complaints of which 135 were transferred to ARN 2013: 130 complaints of which 111 were transferred to ARN 2012: 116 complaints of which 96 were transferred to ARN In 2018, ARN received 3,212 complaints in total, some of which are the complaints transferred from SCA.
Nature of complaints received	No information provided
Outcome of complaints	In 2018, 31% of cases were dismissed because they could not be tried by the ARN, 24% were dismissed because the parties reached a settlement, or the consumer withdrew the complaint. 34% of cases were decided after a session and the remaining 11% of cases were decided after a report as they were sufficiently simple. Of the closed cases, 53% of ARN recommendations were found to be in favour of the passenger (either partial or full compensation). All of ARN's decisions are made publicly accessible upon request, including the recommendation and supporting documentation. Even though the recommendation issued by ARN is non-binding, airlines comply in 80% of cases. ARN notes that most (and particularly Swedish) companies regard it as good business practice to adhere to ARN's decisions.
Investigation of extraordinary circumstances by the NEB	ARN bases its decision on the evidence provided by the parties. The NEB's role is to assess the airline's evidence instead of conducting its own investigation. Evidence provided by carriers includes METAR data and technical reports. The NEB notes that the burden of proof falls onto the parties and cases have been decided in favour of the passenger because airlines have not been able to sufficiently prove extraordinary circumstances.
Sanctions	SCA stated that there has been one case against an airline where an order was issued on the treatment of extraordinary circumstances. The airline amended its treatment of extraordinary circumstances and hence no fine was issued.
Inspections and other relevant activities	No information provided
Changes in activity levels since 2011	SCA has observed an increased number of complaints regarding delayed or cancelled flights. The NEB stated that compliance with the regulation tends to depend on the financial performance of an airline.

Regulation 1107/2006	
National legal basis	Sanctions can be imposed on airports or airlines according to the Swedish Aviation Act (2010:510).
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	SCA is able to use individual complaints for wider system-level enforcement of the Regulation.
Is NEB a first or second order body?	Passengers can contact SCA directly.
Enforcement power of NEB	According to the NEB, the Swedish Transport Agency is responsible for training and inspections at airports. SCA can handle PRM complaints s. The NEB can open a case and also fine an airport/airline when it fails to comply with an enforcement action. Similarly, to Regulation 261/2004, the role of the NEB is to ensure system-level enforcement with the Regulation. For instance, SCA may issue a warning to a carrier who has denied boarding to a PRM to ensure transportation in the future. CJEU decisions as well as case law from other Member States are taken into account.
Activity levels for claims under 1107/2006	
Claims received	In total the NEB has only received 12 complaints since 2011.
Nature of claims received	No information provided.
Alternative/Online Dispute Resolution	
Overview	ARN acts as the ADR body responsible for air passenger rights.
Details	ARN can handle complaints relating to Regulation 261/2004, the Montreal Convention and Regulation 889/2002, cases under the unfair terms in consumer contracts Directive or Directive 2005/29/EC on unfair business-to-consumer commercial practices, flight-only travel and package travel and any other specific cases. Claims have to be received within one year of initial contact with the business itself. The ADR is government-funded. Both CJEU and case law are considered for the ADR rulings. Participation is voluntary for airlines. Cases are handled in Swedish, Norwegian, Danish and English. In 2018, the ADR handled 3,212 cases (including 873 on PRM issues). Complaints are handled within 90 to 180 days on average. 5% of cases were rewarded full or partial compensation.
Contact	https://www.arn.se/om-arn/Languages/english-what-is-arn/
Legally binding	Decisions issued by ARN are final but non-binding. ARN monitors compliance with its decisions. Passengers can use the ADR's recommendation as evidence in court.
Costs incurred in ADR by passengers	No costs
Costs incurred in ADR by airlines	No costs

National small claims procedure (individual procedure)	
Small claims court procedure	There is small claims court procedure available for claims under 23,250kr (2,470 EUR) at the municipal courts. There is a fee of 900kr (90 EUR) and the claimant has to pay for their own legal representation.
Claim agencies (individual procedure)	
	Around 25% of complaints received by ARN are submitted via claim agencies. The NEB has noted issues where contract terms of claim agencies are not in compliance with the law and has successfully taken several of cases to court.

United Kingdom

	Description
National Enforcement Body/Bodies	Civil Aviation Authority (CAA)
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	Montreal Convention / Regulation 889/2002; and Consumer Protection Cooperation (CPC) network
Resources available	3 FTEs with 3 further FTEs currently being trained to cover complaint handling
	Government-funded
Regulation 261/2004	
National legal basis	The CAA is the designated enforcer of Consumer Protection under Part 8 of the Enterprise Act 2002 and the European legislation providing rights to air passengers.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	NEB can handle individual complaints from passengers. The CAA only accepts complaints about airlines who are not signed up with an ADR entity in the UK.
Is NEB a first or second order body?	The CAA is a second order body. Passengers must have contacted the airline initially and wait for a response for eight weeks.
Enforcement power of NEB	If the CAA receives a complaint about an airline which is signed up to a UK ADR body, it will direct the passenger to the ADR-body instead. When the NEB is competent to handle a complaint, it contacts the airline and allows 28 days for a response. Following the investigation of a case, the CAA issues an opinion, which is not legally binding on either party. The NEB makes use of a balance of formal and informal approaches, depending on what is appropriate in the circumstances. The range of enforcement tools is as follows: advice and guidance; self- and co-regulation; inspections and information requests; warning letters; legal undertakings; enforcement orders; and criminal sanctions. The choice of approach is guided by the seriousness of the issue, the type of action the business might respond best to and general knowledge of past behaviour. The NEB does not have the power to fine airlines directly. The CAA has civil powers to take enforcement action in relation to a range of passenger rights legislation and general consumer law. According to Part 8 of the Enterprise Act 2002, the CAA can seek undertakings from businesses that require them to comply with the law. If undertakings are not provided, or are breached, the CAA can seek an Enforcement Order from the Court which can then issue a fine. Whilst enforcement through the Courts may be the appropriate response to the most serious breaches of consumer protection legislation, it is considered the exception rather than the rule. Enforcement can be done on a system level relating to policy issues and does not have to be based on a specific individual case. The NEB publishes a list of businesses it has taken enforcement action against, which includes UK, EU and non-EU carriers.

	The CAA has no statutory power to enforce complaints related to luggage, however the government has asked the NEB to take on cases for UK citizens.
Annual report or activity report	The NEB issues a number of reports, including an annual Accessibility Report.
Services to passengers	
Communication with passengers	Passengers can submit complaints on the CAA website. The system uses a database called Icasework. The CAA also maintains an advice phone-line three days a week.
Length of complaint processing	< 3 months
261/2004 NEB cooperation	The NEB forwards complaints to the relevant NEBs. The CAA does not work with the ECC Network on complaint handling or enforcement. Requests are referred and accepted over the CPC network, however the NEB noted this to be a slow process with no response in some cases. The CAA has a close ongoing relationship with the UK ADR bodies and participates in quarterly meetings.
Activity level for claims under 261/2004	
Number of complaints received	2018: 4,929 complaints 2017: 5,067 complaints 2016: 13,548 complaints 2015: 16,538 complaints 2014: 13,717 complaints 2013: 4,247 complaints 86% of cases received were for claims which fall under EC Regulation 261/2004. The significant increase in complaint numbers between 2014 and 2016 follows the Sturgeon ruling. The ADR started operation in June 2016, which explains the decrease in numbers from 2017.
Nature of complaints received	The majority of complaints relate to flight delays (55%), followed by cancellations (15%). Other reasons include missed connections (6%), baggage claims (6%), refunds (4%), and denied boarding (3%). The NEB noted that the nature of complaints has changed from assistance towards compensation.
Outcome of complaints	No statistics available.
Investigation of extraordinary circumstances by the NEB	In its initial communication, the CAA asks the airline to provide evidence if it considers the disruption to have been due to extraordinary circumstances. Evidence includes general information on the flight, as well as METAR data, technical logs, evidence for strikes, and crew schedule. The NEB notes that carriers often do not provide sufficient information in their communication with passengers, for instance only quoting “extraordinary circumstances” instead of “ATC strike”. This may be related to the available resources and organisation of the customer management of some carriers. Data on agreed cancellations between airlines and airports in bad weather events get forwarded to the CAA which will issue statements to say that extraordinary circumstances apply.

Sanctions	The CAA has civil powers to take enforcement action in relation to a range of passenger rights legislation and general consumer law and can seek an Enforcement Order from the Court which can then issue a fine. The NEB publishes a list of businesses it has taken enforcement action against, which includes UK, EU and non-EU carriers.
Inspections and other relevant activities	The CAA undertakes audits and inspections, including accessibility inspections of airports.
Changes in activity levels since 2011	The NEB has reviewed the compensation policies of the top 15 airlines operating in the UK that cover around 80% of the UK market. The vast majority of these airlines are respecting the court's decision in regard to technical problems and are paying compensation. With regards to the provision of information, the NEB has found examples of very good practice as well as airlines it is concerned about. Some airlines, for example easyJet, Ryanair and Wizz Air, have very clear processes in place to provide passengers with proactive and accurate information about their rights. The NEB has used its powers under Part 8 of the Enterprise Act against airlines not complying with the regulation.
Regulation 1107/2006	
National legal basis	The CAA is the designated enforcer of Consumer Protection under Part 8 of the Enterprise Act 2002.
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	NEB can handle individual complaints from passengers.
Is NEB a first or second order body?	The CAA is a first order body for Regulation 1107/2006. Passengers can contact the NEB directly.
Enforcement power of NEB	Passengers are able to submit complaints online on the CAA website where they get logged on a database tool called Icasework. Complaints additionally receives e-mail queries from businesses and consumers. All passenger complaints are handled by airlines and airports themselves in the first instance. If no solution is found, the responsibility lies with the ADR bodies appointed to resolve the dispute. The CAA does handle PRM complaints which involve special cases, for example damaged wheelchairs. Furthermore, the CAA's complaints service handles complaints for all customers flying with airlines that have not agreed to participate in an approved ADR scheme. For complaints that the CAA is competent for, the airline/airport will either confirm or deny the allegations and issue a statement. The NEB either accepts their response and informs the passenger of the outcome or will ask the airport/airline to change their procedure. The NEB has powers to take enforcement actions in relation to European legislation under UK Access to Air Travel Regulation 2014. Actions may be advice to business, guidance, schemes, inspections, warning letters, formal information requests, legal undertakings, Enforcement Orders, or criminal prosecution. In the past the CAA has asked Heathrow and Manchester airports to sign 'legal undertakings' under the PRM Regulation but has not imposed sanctions.

	Instead, the annual Airport Accessibility report is used as an alternative way to influence airports and ensure compliance and performance improvements.
Activity levels for claims under 1107/2006	
Claims received	No statistics available but the numbers that are reported by the ADR are low (around 5 complaints in 5 months). According to data the NEB collects from airports, assistance was provided for 3.7 million PRMs at UK airports in 2018. The number of PRMs using air travel has increased over the years. The NEB notes that, perhaps due to cultural reasons, the provisions and services provided for PRMs in the UK is of a high standard and the increase is a result of this quality.
Nature of claims received	Complaints usually relate to broken equipment for which compensation is available.
Alternative/Online Dispute Resolution	
Overview	There are two ADR bodies responsible for ADR on Air Passenger Rights issues – the Centre for Effective Dispute Resolution (CEDR) and the Aviation ADR.
Details	The ADR issues binding decision. It is independent of the CAA and as such can take alternative decisions. However, the NEB notes that due to ongoing dialogue between both bodies, the ADR is aware of guidance issued by the CAA and takes similar approaches to complaint handling.
Contact	CEDR: aviation@cedr.com Aviation ADR: enquiries@aviationadr.org.uk
Legally binding	CEDR & Aviation ADR: Legally binding on the airport or airline if the passenger chooses to accept the ADR's decision.
Costs incurred in ADR by passengers	CEDR: If the ADR finds that the passenger is entitled to compensation, the process is free. Only if the claim is unsuccessful, the passenger is charged a nominal fee of £25. Aviation ADR: No costs for passengers.
Costs incurred in ADR by airlines	CEDR & Aviation ADR: No information provided
National small claims procedure (individual procedure)	
Small claims court procedure	Small claims court procedure exists in the UK but differs between for Scotland and Northern Ireland. In England & Wales, a claim can be made online and sent to the Country Court Money Claims Centre. In Scotland, a process called simple procedure where a claim is made in the sheriff court replaced the small claims procedure in 2016. For cases where the claim is higher than £5,000, the Ordinary cause procedure can be used instead. In Northern Ireland, claims where the value does not exceed £3,000 can be made online at the Courts and Tribunal Service website. In England and Wales, a court fee of has to be paid, which is based on the amount of the claim and ranges between £35 to £10,000. In Scotland, the fees are specified in the Sheriff Court Fee Order (accessible online). The fees for the small claims court procedure in Ireland are published on the Courts and Tribunal Service website. https://www.gov.uk/make-court-claim-for-money https://www.mygov.scot/court-claim-money/ https://www.justice-ni.gov.uk/articles/online-services

Claim agencies (individual procedure)	
	The NEB receives complaints that are submitted by claim agencies. Issues with the quality of those claims have been noted, especially with regards to the legitimacy of passengers' signatures and incorrect data, for example noting a cancellation if the flight was not actually cancelled.

Iceland

	Description
National Enforcement Body/Bodies	Icelandic Transport Authority (ICETRA) - Samgöngustofa
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	Montreal Convention / Regulation 889/2002
Resources available	2 FTEs
	Government-funded
Regulation 261/2004	
National legal basis	Article 106 of the Aviation Act No. 60/1998 sets out the responsibilities of carriers to compensate passengers for damages resulting from delays and cancellations and states the regulatory powers of ICETRA in case of non-compliance.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	NEB can handle individual complaints from passengers.
Is NEB a first or second order body?	NEB is a second order body, as passengers must have contacted the airline initially. The NEB accept complaints where the airline has not responded within 8 weeks or rejected the claim.
Enforcement power of NEB	Administrative law defines the enforcement process. After accepting a complaint, the NEB sends a request for a statement to the airline. The airline has two to three weeks to respond. The airline's response is sent to the complainant for comment. The NEB evaluates the information received and issues a binding decision. The decision can be appealed at the Ministry of Transport within 3 months of its publication. Decisions from CJEU can be used to inform the NEB's judgement Enforcement is done on a case-by-case basis. According to the Aviation Act, the NEB can impose sanctions if a carrier does not comply with an issued decision. These fines can be as high as ISK 10,000 (approx. 73 EUR) per day. The current policy of the NEB is to not issue sanctions.
Annual report or activity report	No information provided
Services to passengers	
Communication with passengers	All complaints and communication are registered in the NEB's records system. The NEB sends the air carrier's response to the complaint to the passenger for comments before issuing its decision.
Length of complaint processing	6 – 12 months
261/2004 NEB cooperation	The NEB forwards complaints for which it is not the competent body and will provide a summary translation if necessary.
Activity level for claims under 261/2004	

Number of complaints received	2018: 1,180 complaints received 2017: 1,121 complaints received 2016: 424 complaints received 2015: 213 complaints received 2014: 174 complaints received 2013: 81 complaints received 2012: 129 complaints received 2011: 250 complaints received 2010: 129 complaints received Almost all complaints are legitimate. The NEB notes that the increase of complaints in 2017 and 2018 was primarily related to two carrier, both of which have since declared insolvency. The NEB expects the number of complaints in 2019 to decrease.
Nature of complaints received	Complaints relate to delays, cancellations, denied boarding, luggage, downgrading, refund of costs and services bought that were not rendered. Due to the high number of connecting flights offered by Icelandic carriers, a number of complaints also relate to missed connections.
Outcome of complaints	The NEB estimates 60-70 complaints were settled in 2018 after they were received. A decision was issued for the remaining complaints.
Investigation of extraordinary circumstances by the NEB	The NEB investigates extraordinary circumstances on a case-by-case basis. It requests evidence from the carrier, including METAR/TAFOR data and details from handbooks on crew and aircraft. Additionally, information from airport authorities, flightstats and experts from the NEB's operation department is considered.
Sanctions	No sanctions have been imposed.
Inspections and other relevant activities	The NEB undertakes announced inspections to monitor compliance with PRM rights at airports.
Changes in activity levels since 2011	The NEB notes that while passengers are increasingly aware of their right to compensation, there is less awareness of the right to care and information. The NEB also notes a correlation between the performance of an airline and its complaint numbers. Some airlines lack infrastructure to handle passenger complaints, which is reflected in the number of complaints the NEB receives for these.
Regulation 1107/2006	
National legal basis	Article 126b of the Aviation Act No. 60/1998 sets out the rights of PRM passengers for travel and Article 126c nominates ICETRA as the relevant body to enforce these rights.
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	NEB can handle individual complaints from passengers.
Is NEB a first or second order body?	NEB is a first order body. Passengers can contact the NEB directly.
Enforcement power of NEB	The enforcement system is the same as for Regulation 261/2004. All complaints and communications are registered in the NEB's record system. The NEB communicates with the airline or airport and the decision is communicated to the passenger for comment.

	Unlike with Regulation 261/2004, the NEB does not issue binding decisions but instead provides advice on how to improve performance when applicable. The NEB notes that it might consider issuing a binding decision instead of a recommendation for cases where damage was incurred. However, the NEB has not yet encountered a relevant case. Sanctions could in theory be imposed, however the policy of the NEB is not to issue any fines.
Activity levels for claims under 1107/2006	
Claims received	Nine complaints received since 2011. Issues relate mostly to lack of communication between airlines and airports and training for handling mobility equipment. The NEB notes a high number of PRMs that arrive at the airport without pre-notification.
Nature of claims received	The complaints that the NEB has received relate mostly to service provisions and damage to mobility equipment such as wheelchairs.
Alternative/Online Dispute Resolution	
Overview	The Ruling Committee in Travel Industry matters is the Icelandic ADR responsible for air passenger rights and is housed by the Consumers' Association of Iceland.
Details	The ADR has not yet received cases regarding 261/2004 that we know about. Most air travel related cases are regarding package travel. Cases are handled in Icelandic and English. The ADR is funded by the Ministry and small administrative fees from the consumer. The ADR board consists of three members, one designated from The Consumers' Association, one from the travel industry association and one from the Ministry. The member from the Ministry is the chairman. Participation in the ADR procedure is voluntary. Decisions are published online (without the name of the consumer or trader). In 2016, the ADR handled one case regarding Regulation 261/2004 where the passenger received partial compensation. On average, the ADR procedure takes 136 days.
Contact	https://ns.is/
Legally binding	Decisions are not legally binding, but traders that are members of SAF have committed themselves to obey the rulings.
Costs incurred in ADR by passengers	The consumer pays a small fee of 3,500 ISK (approx. 26 EUR) which will get refunded if the ruling is decided in his favour.
Costs incurred in ADR by airlines	Traders must be a member of The Travel Industry Association (SAF) for which an annual fee applies.
National small claims procedure (individual procedure)	
Small claims court procedure	No small claims court procedure in Iceland.
Claim agencies (individual procedure)	
	No information provided.

Norway

	Description
National Enforcement Body/Bodies	Norwegian Civil Aviation Authority (CAA)
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	-
Resources available	Two employees looking after Air Passenger Rights (not full-time)
	Government-funded
Regulation 261/2004	
National legal basis	The regulation of rights of air passengers was established in BSL A 5-2 by the Ministry of Transport and Communications in 2005 pursuant to the Aviation Act from 1993. It defines the Civil Aviation Authority as the relevant body to supervise compliance with and enforcement of the Regulation through possible sanctioning. The BSL refers to infringement fees mentioned in section 13a-5 first paragraph no. 6 of the Aviation Act.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The Norwegian CAA does not handle individual complaints for compensation under Regulation 261/2004. Passengers are directed to the ADR body (Norsk reiselivsforum) for individual claims.
Is NEB a first or second order body?	Not applicable since the NEB does not handle individual complaints.
Enforcement power of NEB	The NEB is primarily responsible for system level monitoring and enforcement of Regulation 261/2004. As such it monitors the compliance of airlines and airports. Fines can be issued by the NEB if it observes systematic non-compliance of either an airline or an airport, however the NEB noted that it has not used the sanctioning process. Decisions on compensation for individual cases are made by the ADR body responsible for Air Passenger Rights - Norsk reiselivsforum. Details on the process are provided in the section on Alternative Dispute Resolution below. The CAA is not involved in this process but does maintain good communication with the ADR body to collect information on compliance by airlines.
Annual report or activity report	No information provided.
Services to passengers	
Communication with passengers	Passengers can contact the CAA either via email or phone.
Length of complaint processing	6 – 12 months
261/2004 NEB cooperation	The CAA does forward complaints to relevant NEBs in other Member States if necessary.
Activity level for claims under 261/2004	

Number of complaints received	2018: 4,141* 2017: 2,714 2016: 2,111 2015: 1,704 2014: 1,285 2013: 1,016 2012: 727 2011: 646 *Note that all statistics are from the ADR body
Nature of complaints received	In 2018, 41% of complaints were related to delays and 32% to cancellations. Other issues included luggage (6%), refunds (5%), denied boarding (4%), changes in schedule (3%)*. *Note that all statistics are from the ADR body
Outcome of complaints	In 2018, 30% of cases were decided in favour of the passenger (either partly or fully), 67% were decided in favour of the airline, and 3% were rejected*. *Note that all statistics are from the ADR body
Investigation of extraordinary circumstances by the NEB	The NEB specified that it does not issue public statements on whether particular incidents, such as strikes or fleet groundings count as extraordinary circumstances.
Sanctions	No sanctions have been issued.
Inspections and other relevant activities	The NEB undertakes inspections at airports to check compliance with the PRM regulation.
Changes in activity levels since 2011	The NEB noted that compliance with Regulation 261/2004 is believed to work well in general. Issues may arise in relation to ATC control problems or strikes. The increasing number of complaints may present a problem in the future.
Regulation 1107/2006	
National legal basis	No information provided
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	Passengers can contact the CAA with questions or issues. However, the NEB does not handle individual claims. Passengers will be directed to the ADR body – Norsk reiselivsforum.
Is NEB a first or second order body?	Not applicable since the NEB does not handle individual complaints.
Enforcement power of NEB	The NEB is primarily responsible for system level monitoring and enforcement of Regulation 1107/2006. As such it monitors the compliance of airports and airlines. Fines can be issued by the NEB if it observes systematic non-compliance of either an airport or an airline, however the NEB has noted that it has not used the sanctioning process. The CAA keeps good dialogue with PRM organisations to ensure pro-active enforcement of Regulation 1107/2006. A meeting with airports, airlines and representatives from PRM organisations is held four times a year. During those meetings, past cases and lessons learnt are discussed. The NEB noted that most airports are still in the process of building the necessary and required PRM-infrastructure.

Activity levels for claims under 1107/2006	
Claims received	2 PRM cases were handled in 2018*. *Note that all statistics are from the ADR body
Nature of claims received	No information provided
Alternative/Online Dispute Resolution	
Overview	Norsk reiselivsforum is the secretariat for the Passenger Complaint Handling Body, which oversees air, bus, tram, subway, train and boat transport, and the Package Travel Complaint Handling Body in Norway. Norsk reiselivsforum does not offer ODR.
Details	The ADR can only handle complaints, where the passenger has submitted a formal complaint to the airline and the airline has declined the compensation request or not responded within four weeks or has given a temporary response to the passenger but has then not responded within eight weeks. Complaints must be registered by filling out a complaint form on the ADR's website and attaching the necessary case documents. Passengers can track their complaint status by logging onto the website with their case number. When it receives a complaint, the Secretariat will contact the airline and request relevant information. If the airline contends that the case was caused by extraordinary circumstances, it is required to submit relevant evidence, including METAR data, and traffic and operational logs. In addition, the airline is requested to document what actions it took to avoid or reduce the consequences which arose from the extraordinary circumstances. The Air Passenger Complaint Handling Body consists of one neutral judge, two representatives from the Consumer Council of Norway and two representatives from the aviation/travel industry. For cases with precedent, the Secretariat may be able to issue a decision. For all other cases, the complaints are considered in a closed-door meeting. The parties do not have the right to appear in the meetings, and the handling body will only consider written documentation and photographic evidence. The decision of the handling body will be presented to both parties within a reasonable time. The average case handling time is around five to six months. Decisions are available online in Norwegian. If a complaint is submitted by a passenger who does not speak Norwegian, Danish or Swedish, the ADR will translate the decision into English. Participation in ADR is voluntary for airlines and air transport industry companies. Airlines that are signed up are SAS, Norwegian, and Widerøe.
Contact	https://reiselivsforum.no/web/klageinformasjon/fly/
Legally binding	Both the complainant and the airline receive a written decision. The decision is not legally binding, but advisory. It is very rare that decisions are not followed.
Costs incurred in ADR by passengers	The ADR service is free to passengers.
Costs incurred in ADR by airlines	The business is financed through the aviation fees system.
National small claims procedure (individual procedure)	
Small claims court procedure	Small claims procedure exists in Norway. Small claims are defined as those where the value of the claim does not exceed NOK 125,000 (approx. 12,900 EUR). Cases where the amount disputed is higher than NOK 125,000 can also be heard as small claims if both parties agree and the case is deemed reasonable by the court. Another possible exception are cases that do not concern money or financial assets, dependent on the agreement of both parties and the court.

	The case is first heard by the Conciliation Board of which there is one in every local authority. To limit the size of case costs, each party can only claim 20% of the disputed amount in case costs (minimum NOK 2,500 and maximum NOK 25,000).
Claim agencies (individual procedure)	
	A proportion of claims that is received is submitted by claim agencies. The CAA noted that it has found the quality of documentation for those claims to be low.

Switzerland

	Description
National Enforcement Body/Bodies	Federal Office of Civil Aviation (FOCA)
Type of organisation	Civil Aviation Authority
Remit of NEB	Regulation 261/2004 & Regulation 1107/2006
Other competencies within remit	-
Resources available	3.6 FTEs covering the complaint handling process 2.3 FTEs covering legal issues on enforcement
	Government-funded
Regulation 261/2004	
National legal basis	The 1999 bilateral air transport agreement between Switzerland and the European Community established the general principles of cooperation between the two entities in the field of air transport. The 2011 annex to the agreement sets out the specific items of European legislation which apply to Switzerland and includes Regulation 261/2004 within section 7 on passenger rights. The maximum sanction for infringements of the Regulation is established by Article 91(4) of the Swiss Air Law.
Role of the 261/2004 National Enforcement Body/Bodies	
Able to handle individual complaints?	The NEB can handle individual complaints from passengers.
Is NEB a first or second order body?	The NEB is a second order body as passengers must have contacted the airline initially.
Enforcement power of NEB	After receiving a passenger complaint form with the relevant evidence, including the initial correspondence with the airline, the booking confirmation and a copy of an ID or passport, the complaint is entered into the passenger management system (IT-tool). The NEB checks the completeness of the report and its competence to handle the case before requesting a statement from the airline to be provided within 6 weeks. FOCA additionally has the possibility to access internal data for a specific flight, for example delay out of or into ZHR, GVA or BSL airports. The NEB further uses flightstats and great circle mapper. When the evaluation of the case is complete, it can either be closed where the airline pays compensation or further processed and handed over to the enforcement team. The latter happens for cases where the NEB notes an infringement of the Regulation, including non-payment, late payment or reimbursement of ticket cost, no/insufficient care to passengers, or no/insufficient information. The complaint handling process is the first part of wider enforcement process. 90% of the cases can be closed after this sequence. In Switzerland, enforcement is based on penal law, as the Swiss NEB enforcement powers stem the Administrative Penal Law Act. As such, sanctioning of an airline is only possible based on a clear legal text, since the system does not allow for adjustments to interpretation due to lack of clarity. The NEB noted that it has strong enforcement for aspects of the Regulation where the wording is clear. However, for aspects which are not covered by the

	Regulation but have been developed by CJEU rulings, enforcement is difficult, for instance the (missing) link between Article 6 on delay and Article 7 on compensation. In order to enforce sanctions, the NEB needs to prove that an airline infringed the Regulation. Article 91.4 of the Swiss Air Aviation Act furthermore specifies that only in case of repeated or severe violation sanctions could be imposed. FOCA imposes sanctions in individual cases reported by a passenger and keeps an internal list of the number of fines for violation of each Article of the Regulation to guarantee equal treatment. The number of sanctions under the scheme is around 180 cases to date, of which all have been paid. The maximum fine is CHF 20,000 (approx. EUR 17,500). The incident leading to a sanction has to be related to the territory of Switzerland. Therefore, all airlines departing from an airport of Switzerland can be sanctioned, irrespective of whether they are registered CH/EU/third countries.
Annual report or activity report	No information provided.
Services to passengers	
Communication with passengers	Passengers can submit a complaint to the NEB via an online form found on FOCA's website. The passenger has to print the form, sign it and send a signed copy to FOCA via e-mail or mail. The NEB notes that this is due to data protection reasons. Passengers will receive an e-mail when a case is closed.
Length of complaint processing	6 – 12 months
261/2004 NEB cooperation	The NEB transfers complaints for which it is not competent to other NEBs and provides a passenger report form in English as well as a short summary of the case in either English or French. FOCA has not used the CPC or ECC networks.
Activity level for claims under 261/2004	
Number of complaints received	2018: 7,167 complaints 2017: 4,218 complaints 2016: 3,656 complaints 2015: 3,953 complaints 2014: 3,532 complaints 2013: 3,527 complaints 2012: 2,263 complaints 2011: 2,393 complaints
Nature of complaints received	The reason for complaints has been relatively constant over the years: 50% cancelled flights, 40% delays, 6% denied boarding, 4% miscellaneous.
Outcome of complaints	The NEB does not have specific data concerning legitimate compensation payments as FOCA does not further evaluate cases where airlines make payments.
Investigation of extraordinary circumstances by the NEB	FOCA requests evidence from airlines on a case-by-case basis, including general information on the flight and specific documents on reason of incident, such as METAR, ATC restriction statements, NOTAM, IATA delay codes, media publications, cabin crew reports, declaration of captain, airport or authorities reports, aircraft flight log, technical log, MEL-list, manufacturing report, maintenance statement or history, PNR, Passenger Care Reports from handling

	agents, documentation on strikes and strike actions, flight planning documents, spare aircrafts and any documentation which gives information relevant for the case. The NEB then evaluates the evidence received from the airline.
Sanctions	Sanctions entering into force in: 2018: 99 sanctions 2017: 11 sanctions 2016: 15 sanctions 2015: 13 sanctions 2014: 24 sanctions 2013: 14 sanctions Sanctions range between CHF 100 and CHF 5,000 (approx. 88 to 4,400 EUR).
Inspections and other relevant activities	FOCA does spot-checks on airports with regard to compliance of Article 14 relating to the provision of information. The NEB noted that there is high compliance.
Changes in activity levels since 2011	The NEB has found that passengers are more aware of their rights than in the past. Especially during the peak travel seasons, air passenger rights are discussed in the media. Airlines are also handing out leaflets with air passenger rights information in case of an incident. The NEB noted that the growth in the number of complaints received is proportional to the growth in total number of flights of airlines from and to Switzerland.
Regulation 1107/2006	
National legal basis	The 1999 bilateral air transport agreement between Switzerland and the European Community established the general principles of cooperation between the two entities in the field of air transport. The 2011 annex to the agreement sets out the specific items of European legislation which apply to Switzerland. The maximum sanction for infringements of the Regulation is established by Article 91(4) of the Swiss Air Law.
Role of the 1107/2006 National Enforcement Body	
Able to handle individual complaints?	The NEB can handle individual complaints from passengers.
Is NEB a first or second order body?	The NEB is a second order body as passengers must have contacted the airport/airline initially.
Enforcement power of NEB	Due to the low number of total cases relating to Regulation 1107/2006, most cases are handled on the basis of a passenger's e-mail or phone request during the booking process, before the flight instead of a specific completed report form. The NEB also handles requests from disability organisations. Based on the evaluation of the case, FOCA could issue sanctions or close the case without sanctioning. Most requests are usually handled successfully by the NEB without a formal proceeding. As with Regulation 261/2004, enforcement is based on the Administrative Penal Law Act which states that the NEB needs to prove that an airline/airport infringed the Regulation. Art. 91.4 of the Air Aviation Act furthermore specifies that only in case of repeated or severe violation sanctions could be imposed. The maximum amount of fine is CHF 20,000 per individual case (EUR 17,500). FOCA could also start proceedings under the Swiss Equal Treatment of Disabled Persons Act, which it has done for two cases of the total 27 assessed so far. In 2009, the NEB asked one airline to

	change its procedure based on the Swiss Equal Treatment of Disabled Persons Act. FOCA checks the procedures of airlines and airports in periodical audits and, if necessary, will request changes based on the outcome of these audits. No sanctions have been issued for Regulation 1107/2006.
Activity levels for claims under 1107/2006	
Claims received	Fewer than five complaints are received annually of which 70% relate to legitimate issues. In most cases, the NEB receives a request before a flight, which makes it possible to find a solution and thus avoid a formal complaint. The NEB notes a high level of quality of service for PRMs despite the growing number of PRM passengers. At Geneva and Zurich airports, the total number of PRM assistance requests in 2018 was 366,788, representing a 10% increase from the previous year. PRM requests at EuroAirport Basel Mulhouse Freiburg are not included in those figures as the airport is overseen by the French NEB for Regulation 1107/2006.
Nature of claims received	The nature of the complaints relates to transportation of mobility aids and wheelchairs, transportation of assistance dogs, wrong/incorrect coding and missing/incorrect notifications, assistance on airports, and quality of assistance. Usually problems such as non-transportation of wheelchairs are already addressed during booking process before the flight. Dangerous goods issues are usually the reason for denied transportation of wheelchairs.
Alternative/Online Dispute Resolution	
Overview	There is no specific ADR in place for air passenger rights. However, there is a general conciliation process applied in case the passenger addresses a civil court. In such a case, it is mandatory to have this conciliation process first, before the claim will be judged by the civil court. Addressing a civil court is not free of charge. Swiss International Air Lines is signed up to the German ADR body (söp), for flights departing from Germany only.
Details	-
Contact	-
Legally binding	-
Costs incurred in ADR by passengers	-
Costs incurred in ADR by airlines	-
National small claims procedure (individual procedure)	
Small claims court procedure	A small claims court procedure does not exist in Switzerland.
Claim agencies (individual procedure)	
	No statistics are available in relation to complaints submitted by claim agencies although an increase has been noted, specifically from non-Swiss agencies. The NEB noted that in the last year three claim agencies have started to operate in Switzerland. Issues relating to the quality of the complaints have been noted and as a result, the NEB has set out requirements for claim agencies which has reduced the number of complaints received. A number of claim agencies send

	complaints directly to the Swiss courts. The NEB also noted that claim agency activity in Switzerland may be limited by the fact that CJEU rulings do not apply.

F Non-EU air passenger rights country fiches

The fiches are presented in alphabetical order.

- Australia
- Brazil
- Canada
- China
- India
- Indonesia
- Israel
- Japan
- Malaysia
- Mexico
- Morocco
- New Zealand
- Nigeria
- Qatar
- Singapore
- South Africa
- Turkey
- United Arab Emirates
- United States

Australia

Australia	
General description	The total number of passengers carried on Australian domestic routes (including charter) was 63.6 million in 2018, an 1.8% increase from the previous year. International passenger traffic was 40.6 million in 2017-18 (an increase of 5.1%). Australia's busiest airports in 2018 were the following: • Sydney, which recorded 44.4 million passengers; • Melbourne, which recorded 36.7 million passengers; and • Brisbane, which recorded 23.4 million passengers. Qantas is the largest carrier in Australia. In 2018, Qantas carried 52.3 million passengers. In 2017-18, Low Cost Carriers AirAsia X, Cebu Pacific Air, Indonesia AirAsia, Jetstar, Jetstar Asia and Scoot/Scoot Tigerair together accounted for 15.9% of total international passenger traffic (1.8% decrease from previous year).
Air passenger rights data	CHOICE is an Australian consumer advocacy group. Research from CHOICE found that 22.6% of Australian travellers experienced flight delays or cancellations on international or domestic flights in 2015-16, with more than half of those being longer than two hours. Data published by the Bureau of Infrastructure, Transport, and Regional Economics shows that in 2018: • 105,630 flights were delayed, representing 19.2% of flights; and • 10,319 flights were cancelled, representing 1.9% of flights. According to the Airline Customer Advocate (ACA), 1,253 eligible complaints were received in 2017, representing a 17.15% increase from the previous years. For a complaint to be eligible to the ACA, it must fulfil two conditions: • The customer has already tried to resolve the complaint through the airline's procedures; and • The event occurred less than 12 months previously. Flight delays and cancellations, refund requests and fees and charges represent the biggest areas for customer dissatisfaction. Resolution rates for these claims increased to just over half (52%).
Air passenger rights framework	The Australian aviation sector is overseen through a combination of industry and regulatory bodies. The laws surrounding liability of carriers in Australia are administered under both international conventions and domestic legislation. The Department of Infrastructure and Regional Development is the responsible governmental body for aviation. The Department advises the Government on the policy and regulatory framework applicable to the wider aviation industry, including issues relating to consumer protection. Through the Civil Aviation (Carriers' Liability) Act 1959, Australia has implemented and given force to a number of international conventions, including the 1999 Montreal Convention and the Montreal No. 4 Convention. Part IV imposes liability on a carrier, with certain exceptions, for injury or death caused to a passenger, or for the loss or damage to a passenger's baggage.

Australia	
	Australia does not have any consumer legislation specific to aviation. Air passengers are protected by the Australian Consumer Law (ACL), in schedule 2 of the Competition and Consumer Act 2010 which came into force in 2011. The Australian Consumer Law provides more generalised consumer protection and guarantees, applying across many industries instead. The Law applies to domestic and international flights departing Australia, as well as international flights to Australia where they are booked through the Australian website of an airline. The Australian Competition and Consumer Commission (ACCC) was created in 1995 to enforce relevant legislation ensuring and maintaining competition while protecting the interests and safety of consumers. Timetables are not guaranteed by airlines, with the contract between passenger and airline only covering the transportation from one place to another. As such, airlines may not necessarily take responsibility if passengers are delayed and/or fail to reach a connecting flight.
Right to mobility	Under the Disability Discrimination Act 1992 (DDA) and the Disability Standards for Accessible Public Transport 2002 (DSAPT), service providers are obligated to not unlawfully discriminate passengers with disability in providing public transport services. The DDA applies to both domestic and foreign airlines, as well as Australian Airports. No direct provision for the rights of disabled or handicapped air passengers exists. However, the Civil Aviation Safety Authority (CASA) has made a number of Civil Aviation Orders (CAO) for processes and procedures around PRM mobility. CAO 20.16.3 specifies that the carriage of handicapped passengers must satisfy three requirements: - the operator shall establish procedures that identify as far as possible people who are handicapped; - the operator shall ensure that handicapped persons are not seated in an aircraft where they could in any way obstruct or hinder access to any emergency exit by other persons on the aircraft; and - the operator shall ensure that there are procedures in place to enable particular attention to be given to any disabled passenger in an emergency, as well as ensure that individual briefings on emergency procedures are given. The penalty for non-compliance with the Regulation is defined at 50 penalty units (currently listed as 210 AUD (132 EUR)).
Right to information before purchase and at the various stages of travel, notably in case of disruption	Information provided depends on the different airlines' conditions of carriage, as outlined below. Virgin Australia, Qantas, Jetstar and Tiger will make reasonable efforts to inform the passenger of any changes to the scheduled flight time using the contact details provided by the passenger. Additionally, Jetstar will inform a passenger with a least one month's notice of any changes to the fees or charges applied to a passenger's ticket.
Right to renounce travelling when trip not carried out as planned	Passenger rights to renounce travelling depends on the individual airline's Conditions of Carriage. As outlined below, in cases where the disruption is within airlines' control, an option for a refund or credit note/voucher is offered by all four carriers. In cases where disruption is outside of airlines' control, Virgin Australia and Qantas will offer the passenger a credit note/voucher or

Australia	
Right to fulfilment of the transport contract in case of disruption	refund, respectively. Jetstar and Tiger do not provide refunds if the disruption is outside their control Under the ACL, all services must be supplied within a reasonable time. Both domestic and international flights leaving Australia come under the ACL. Specific passenger rights with regards to fulfilment of the transport contract depends on the individual airline's Conditions of Carriage, outlined below. Note that none of these four airlines guarantees its flight times. If delay/cancellation is within the airlines control: Virgin Australia: passenger put on next available flight if delay >2hrs; no option for refund but credit notes valid for 12 months given; refreshment vouchers will be given at two-hour intervals and, depending on the length of the delay, hotel accommodation and transport to/from the hotel with up to 50 AUD (31 EUR) per person per night for meals. Qantas: passenger put on next available flight if Qantas makes significant change to original flight time; option for a refund is given; meal/refreshment vouchers will be given, or the reasonable cost reimbursed and, depending on the length of the delay, assistance will be provided to find overnight accommodation, or the reasonable cost reimbursed. Jetstar: passenger put on next available flight if Jetstar makes significant change to original flight time; option for a refund is given; meal vouchers will be given for delays >3hrs or the reasonable costs reimbursed if the delay is overnight; Jetstar offers up to 150 AUD (94 EUR) accommodation reimbursement per room. Tiger: passenger put on next available flight; option for a refund is given; passengers are offered up to 120 AUD (75 EUR) per person per night for accommodation if delay is overnight. If delay/cancellation is outside the airlines control: Virgin Australia: passenger put on next available flight if delay >2hrs; no option for refund but credit notes valid for 12 months given; the airline does not cover meal/refreshments or accommodation but will attempt to assist passengers in finding a hotel and transport. Qantas: airline will use "reasonable endeavours" to rebook passengers on next available flight; option for a refund exists if Qantas cannot rebook the passenger; no provision for meals/refreshments or accommodation. Jetstar: airline will "try to assist" passenger but option for a refund is not covered by the conditions of carriage; no provision for meals/refreshments or accommodation. Tiger: passenger put on next available flight; option for a refund is not given but instead passengers can get a credit note valid for booking for six months; no provision for meals/refreshments or accommodation. In the event that a flight is overbooked, and the airline has to deny you boarding, all 4 airlines will provide the passenger a seat on the next available

Australia	
	flight. If this is not satisfactory to the passenger, they may be entitled to compensation under the airline's denied boarding compensation policy or the ACL. Specific details on the terms of these policies with regards to compensation cannot be found.
Right to get assistance in case of long delays at departure or connecting points	No rights to assistance are stated in the ACL. Air passenger rights to assistance depends on the individual airline's Conditions of Carriage, as outlined above.
Right to compensation under certain circumstances	Standard compensation is not available under the airlines' conditions of carriage.
Rights to carrier liability towards passengers and baggage	For domestic flights, passenger rights to carrier liability are governed by the Civil Aviation Act 1959. The limit for bodily injury or death is 725,000 AUD (455,975 EUR). The limit for lost or damaged checked baggage is 1,600 AUD (1,006 EUR) and for carry-on baggage is 160 AUD (106 EUR). For international flights, passenger rights to carrier liability are governed by the Montreal Convention.
Right to a quick and accessible system of complaint handling	Passengers can contact the airline directly to make a compensation claim following delays or cancellations. If this proves unsuccessful, passengers can then take their complaint to the Airline Customer Advocate (ACA) after waiting a required number of days. ACA was set up in 2012 is funded by participating airlines in Australia (Qantas, Virgin Australia, Jetstar, Tiger and REX airlines all take part in the scheme) and provides a free and independent complaint resolution process. ACA will respond to passenger complaints within 20 business days, provided they have already launched a complaint with the airline directly and received either an unsatisfactory or no response. In 2017, 48% of received claims were not resolved. The report period for average complaint finalisation timeframes also increased from 14 to 16 calendar days.
Right to full application and enforcement of law	Air travellers can pursue their complaint with the Airline Customer Advocate, the Australian Competition and Consumer Commission, state/territory fair trading authorities or seek redress under the Australian Consumer Law through the legal system. Alternative dispute resolution systems also exist as the following three types: facilitative, advisory and determinative. CHOICE has previously raised various systemic concerns with the legal protections available to Australian air travellers. The enforcement of the Australian Consumer Law is the responsibility of the ACCC and state or territory fair trading authorities. The Australian Human Rights Commission is responsible for the enforcement of anti-discrimination legislation regarding access to air travel.

Brazil

Brazil	
General description	Air passenger traffic in Brazil reached over 103 million passengers carried in 2018. Brazil is the third largest domestic aviation market in the world and has six of the 10 busiest airports in Latin America. The largest airlines are LATAM Airlines, Gol Airlines, Avianca Airlines and Azul Linhas Aereas. The domestic market share split of the 4 major airlines are 25%, 29%, 11% and 31% respectively. The busiest airports in Brazil by annual passenger traffic in 2017 are listed below. • Guarulhos International Airport - São Paulo, 37.8 million • Congonhas Airport - São Paulo, 21.9 million • Brasilia International Airport, 16.9 million • Galeao International Airport - Rio de Janeiro, 16.2 million
Air passenger rights data	The following statistics have been provided by the National Civil Aviation of Brazil (ANAC). Cancelled flights: 2011 8.7%; 2012 7.0%; 2013 7.8%; 2014 10.3%; 2015 10.5%; 2016 7.4%; 2017 2.6% Consumidor.gov.br was developed by the National Consumer Bureau (Senacon) and is monitored in conjunction with consumer protection agency, regulatory agencies and other public agencies. Complaints registered with Consumidor.gov.br are used to improve consumer protection policies. In 2018, over 27,000 claims were registered on consumidor.gov.br. From 2019, all airlines operating in Brazil will be registered with consumidor.gov.br. Since the launch of the Consumidor.gov.br platform, the number of consumers filing complaints has significantly increased. As a result, ANAC has made it mandatory for airlines to engage in this platform. 2013: 12,555 complaints registered in ANAC. 2014: 16,730 complaints registered in ANAC. 2015: 18,850 complaints registered in ANAC. 2016: 17,613 complaints registered in ANAC. 2017: 16,923 complaints registered in ANAC. 2017: 11,249 complaints registered in Consumidor.gov.br. 2018: 27,119 complaints registered in Consumidor.gov.br. (In 2018, 1.2% of these complaints concerned PRM issues) In 2018, approximately 72% of complaints registered in Consumidor.gov.br were resolved. The most common complaints in 2018 were about; flight execution, values and contract rules, offer and buying process, contract changes by the airline, baggage, contract changes by passenger, reimbursement, check-in, and PRM.
Air passenger rights framework	Air passenger rights in Brazil are governed by Resolution No. 400 of 2016 established by the National Civil Aviation Agency of Brazil (ANAC). The Resolution is applicable to both domestic and international flights on all commercial airlines operating in Brazil.

Brazil	
Right to mobility	ANAC established Resolution No. 270 of 2013 to provide procedures concerning the accessibility of passengers requiring special assistance on air transport. Passengers in need of special assistance should notify the airline at least 48 hours before, and in cases when a travel companion is needed, an airline should be notified at least 72 hours before. The airline is responsible for assisting passengers who require special assistance from check-in until access to the public area after disembarkation. With regards to assistance provided in case of delayed flights, passengers needing special assistance and their companions will always be entitled to hotel accommodation, regardless of the requirement of an overnight stay at the airport. Technical aids used by passengers for mobility purposes must be carried by airlines free of charge. Any mobility equipment transported on behalf of the passenger must be made available immediately upon arrival. If any equipment is lost or damaged, the airline must provide an equivalent replacement immediately upon arrival. At all points of travel, passengers with reduced mobility must be given priority. Resolution No. 280 states that passengers requiring a travel companion will be provided one by the airline at no extra charge. Alternatively, the passenger will be able to bring their own travel companion, who will be able to sit next to them and pay a maximum of 20% of the fare paid by the passenger.
Right to information before purchase and at the various stages of travel, notably in case of disruption	Article 4 of Resolution No. 400 states that the carrier must provide the following information to the user: • Total price of the airline ticket to be paid in local currency, broken down by value of air transport services, airport charges and government taxes. • The rules in the case of no-show, rebooking and refunds. • Relevant connection times and possible interchanges within the airport. • Baggage rules. Resolution No. 400 specifies right to information during disruption to a flight. In the case of disruption, the airline must immediately inform the passenger that the flight will be delayed and must inform the passenger at least every 30 minutes on the new forecasted departure time. In the event of delay, cancellation or interruption of service, information about the reasons behind the disruption must be provided in writing by the carrier, whenever requested by the passenger.
Right to renounce travelling when trip not carried out as planned	The airline may change the time of the flight within 30 minutes for domestic flights and 1 hour for international flights, as long as the change is notified at least 72 hours before the original flight date. If these requirements are not met, the airline must offer a new flight option or full reimbursement.
Right to fulfilment of the transport contract in case of disruption	In the case of cancellation or delay of more than 4 hours, Resolution No. 400 states that a passenger is entitled to re-booking or refund options. A passenger is eligible to receive a full ticket refund or be provided with alternate means of transport chosen by them. In cases of denied boarding, the airline should look for volunteers who agree to board another flight by receiving benefits (money, extra tickets, miles, hotel accommodation, etc.) to be freely negotiated with the passengers. If a passenger accepts benefits, the airline is allowed to request the passenger to

Brazil	
	sign a receipt as a proof the proposal was accepted. As well as material assistance, compensation will be provided to all passengers denied boarding.
Right to get assistance in case of long delays at departure or connecting points	The airline must offer material assistance (means of communication, food and accommodation) in cases of delay, cancellation, interruption of flight and denied boarding, when the passenger is at the airport. The passenger will be eligible for the following assistance, starting from the time of the original time of departure. • 1 hour of delay: assistance for communication (internet, phone calls, etc.) • 2 hours of delay: assistance for food (voucher, snack, drinks, etc.); • 4 hours of delay or more: hotel booking (only in case of overnight stay at the airport) and transportation to and from the hotel.
Right to compensation under certain circumstances	In the cases of denied boarding, the airline must pay financial compensation to the passenger. For domestic flights, 250 SDR (310 EUR) must be paid and 500 SDR (620 EUR) must be paid for international flights. Compensation for cancellations or long-delays is not applicable.
Rights to carrier liability towards passengers and baggage	ANAC adopts the rules of the Montreal Convention with regards to lost, damaged or delayed baggage for both international and domestic flights ANAC states that in the case of baggage loss, the passenger shall receive a refund to cover expenses while away from their residence. The airline has up to 7 days to pay for refunds after the passenger presents the receipt. In the case of baggage damage, the passenger should register a formal claim with the airline, which must be registered within 7 days. The airline must repair the damage or replace the baggage. In the case of baggage violation, once the loss is proven, the airline must indemnify the passenger.
Right to a quick and accessible system of complaint handling	ANAC is the organization responsible for air passenger rights. ANAC does not handle passenger complaints on an individual basis but gathers information to identify reoccurring issues. If appropriate, ANAC will apply sanctions to the air carrier. Recently, the agency has adopted an official government channel for online dispute resolution (consumidor.gov.br). The consumer can register a complaint, and the airline has up to 10 days to directly respond to it. After the air carrier's response, the consumer can evaluate it and this response will then become public. If a passenger is not satisfied with the response, they can take this to a special civil court, where the process can take between 3 and 24 months. ANAC monitors and evaluates these complaints, and publishes public bulletins pointing out the performance of each airline, this information is made publicly available on the ANAC website.
Right to full application and enforcement of law	The National Civil Aviation Agency of Brazil (ANAC) is a regulatory agency which was established to regulate and inspect civil aviation activities as well as aeronautical and airport infrastructure in Brazil. The Agency is responsible for the regulation, inspection and certification of aircraft, companies, manufacturers, aircraft maintenance organizations, aerodromes, schools and civil aviation professionals. ANAC works to ensure civil aviation safety and security. ANAC also aims to ensure that good-quality air transportation services are provided. This includes regulating air passenger rights and monitors and inspects commercial companies that are not complying with the agency's regulations.

Brazil	
	Resolution No. 400 of 2016 governed by ANAC, establishes general conditions on air transport and focusses on air passenger rights. Failure to comply with this resolution can lead to sanctions of up to 50,000 BRL (11,260 EUR). Resolution No. 280 of 2013 governed by ANAC, aims to provide passengers with special assistance needs access to air transportation. Failure to comply with this resolution can lead to fines of up to 25,000 BRL (5,675 EUR) for either the airline or airport. The National Consumer Bureau (Senacon) is the coordinator of the National System of Consumer Protection and is responsible for formulating, promoting, supervising and coordinating the National Consumer Protection and Defense Policy. Senacon participates in public hearings at the National Congress, debates and meetings about the regulations made by ANAC.

Canada

Canada	
General description	In 2018, Canada's airports handled approximately 150 million passengers. The main Airports in Canada, and their annual passengers handled in 2018 are: • Toronto Pearson International Airport, 49.5 million • Vancouver International Airport, 25.9 million • Montreal – Pierre Elliott Trudeau International Airport, 19.4 million • Calgary International Airport, 17.3 million The main airlines are Air Canada and West Jet, with the domestic market share in 2018 being 46% and 34% respectively.
Air passenger rights data	Relevant data has not been found.
Air passenger rights framework	Air passenger rights in Canada are set out in the airline's "tariff." A tariff is an airline's contract with passengers and is equivalent to its Conditions of Carriage. It contains terms and conditions about how the airline will deal with issues like denied boarding, delays, cancellations, passenger re-routing, and lost or damaged baggage. Whilst these tariffs are established under the terms and conditions set out by the Air Transportation Regulations (ATR), the air carriers are permitted to set out their own policies in these areas. Air carriers must: • Set tariff terms and conditions that respect certain legal requirements, are reasonable and fair, and applied the same way for everyone, as much as possible; • Clearly display the tariff at their offices and on their websites; and • Apply the terms and conditions of carriage as stated in their tariff. By law, all carriers operating publicly-available air services to, from or within Canada are required to have tariffs for those services and make them available to the public at their business offices in Canada and on their websites when used for selling air transportation. Carriers must respect their tariffs at all times. In 2008, the Government of Canada introduced Flight Rights Canada (FRC), an air passenger rights initiative that included a voluntary code of conduct for airlines. In 2009, Canada's largest carriers – Air Canada, WestJet and Air Transat – agreed to the code and adjusted their tariffs to address flight and tarmac delays, cancellations, overbooking, and lost or damaged baggage. The Canadian Transport Act, which was amended in May 2018, requires the Canadian Transportation Agency (CTA) to create new air passenger protection regulations and set a framework for these regulations. This framework is in the process of being formally agreed and will be phased in over the second half of 2019. The proposed regulations were published in the Canada Gazette for a public consultation period in early 2019. These regulations would ensure clearer, more consistent passenger rights by establishing minimum requirements, standards of treatment, and in some situations minimum levels of compensation that all air carriers must provide to passengers. The regulations would also address other consumer-related issues such as the transportation of minors and a housekeeping change related to air services

	price advertising. The proposed regulations would apply to all flights to, from and within Canada, including connecting flights.
Right to mobility	For flights between Canada and the U.S, all carriers are subject to the U.S Department of Transportation's rule on 'Non-Discrimination on the Basis of Disability in Air Travel' (14 CFR Part 382). The terms of the tariff require the airline to not be unjust, unreasonable, unduly discriminatory or create undue obstacles to the mobility of persons with disabilities. Air Canada Tariff Rule 40: For certain medical conditions, for example severe allergies and epilepsy, the passenger must provide at least 48 hour's advance notice and obtain medical approval before travel. Passengers who cannot care for themselves without assistance must be accompanied at all times and must provide a medical certificate to fly with Air Canada. Passengers requiring a specific seating requirement must request this at least 24 hours prior to departure. Air Canada will carry necessary mobility requirement on behalf of the passenger and requires 48 hours' notice for this. Any passengers requiring wheelchair assistance at the airport, will upon request, be provided with wheelchair assistance to and from the door of the aircraft throughout the journey. West Jet's tariff provides the passenger with the same rights, and similarly requires the passenger to give at least 48 hours' notice to access assistance services. All Canadian carriers are required to provide, at no extra cost, any additional seating or floorspace necessary for service animals, support persons or disability accommodation on any domestic flights. This is currently not a requirement for international flights. For any flights between Canada and the U.S, air carriers are required to offer PRM passengers with accessible seating based on 14 CFR Part 382. Cases where the passengers requires 2 seats for example, can still be subject to additional costs.
Right to information before purchase and at the various stages of travel, notably in case of disruption	In cases of flight disruption, both Air Canada and WestJet aim to notify the passenger as soon as possible. Passengers will be contacted either via text message or email. WestJet will update its passengers every 10 minutes on the aircraft during flight disruption. The proposed regulation requires airlines to notify passengers as soon as possible and provide regular status updates. In addition, airlines would have to provide passengers with simple and clear information on their terms and conditions for flight delay or cancellation, denied boarding, lost or damaged baggage and the seating of children under 14 years of age. Airlines will also be required to ensure that official ticket resellers provide this information to customers. Have not found information on rules of displaying fare information.
Right to renounce travelling when trip not carried out as planned	Air Canada and WestJet state that if after the passenger has been denied boarding or their flight has been delayed/cancelled and they are not satisfied with the options provided, the passenger will be entitled to a full refund of the price of the ticket.
Right to fulfilment of the transport contract in case of disruption	All air carriers set out the rights to fulfilment of the transport contract in their tariff, these vary slightly between them. In the case of overbooked flights, both Air Canada and WestJet's tariffs state that they will make a public request for

	any volunteers willing to take a later flight. If not enough volunteers have come forward, the airline will have to involuntarily deny passengers boarding. Both voluntary and involuntary passengers denied boarding will be offered re-routing and refund options as stated in the air carriers' tariffs. In addition to communication, food and accommodation assistance provided, both air carriers will provide monetary compensation. In the case when the air carrier has suspended, delayed or cancelled the flight, the passenger will be given either the option for a complete refund or re-routing. Air Canada will offer the passenger the next available flight on its own services. West Jet will attempt to do the same, and if this is not possible will then rebook the passenger on the next available flight operated by another airline's services. The proposed regulation splits the obligations of air carriers in the case of a flight delay or cancellation into 3 categories: • Situation within the airline's control; • Situation within the airline's control but required for safety purposes; and • Situation outside airline control. The airlines will have to follow different rights depending on which definition the scenario fits into. In the case when airlines are in control and it is not a matter of safety, minimum levels of compensation have been set out based on the size of the airline. This differentiation is intended to support new entrants and small community carriers operating in remote regions. For all types of flight delays or cancellations, airlines would have to ensure that the passenger is able to get to their final destination. In cases when the delay or cancellation is within their control, airlines would have the following requirements: to: • Once the delay has exceeded 3 hours, an airline would need to rebook the passenger on its next available flight or on that of partner airline. • Airlines would need to rebook on the next available flight on a competing airline if their own next available flight exceeds 9 hours after original departure time. • Airlines would have to offer their passenger a refund, as well as compensation if travel is no longer needed or the rebooking does not meet the passenger's travel needs. All passengers should be rebooked in the same class of service. In the event of a flight disruption outside the airline's control, a large airline would be required to rebook using the services of a competing airline, if their own next available flights would not depart within 48 hours.
Right to get assistance in case of long delays at departure or connecting points	All air carriers set out the rights to assistance in their tariff, these vary slightly between them: • Air Canada: In the case of a delay within its control, the passenger will be offered a meal voucher after 4 hours, and after 8 hours the passenger may be entitled to hotel accommodation subject to availability. In the case of a major disruption, the passenger will be offered the option to travel via rail if available.

	WestJet: The airline will provide a meal voucher after 3 hours of delay, and a hotel voucher after 8 hours of delay. In the case of a tarmac delay, WestJet will provide drinks and snacks, and after 90 minutes will return the aircraft to the gate. The proposed regulation states that any delayed flight within the air carrier's control, regardless of if it is a tarmac delay or a delay at the airport must provide means of communication and refreshments after 2 hours. Once a delay extends overnight, airlines would have to additionally offer accommodation, as well as free transportation to the accommodation.
Right to compensation under certain circumstances	In the case of a flight delay, each airline has different amounts of compensation set out in its tariff. For a flight delay in WestJet's control, it will provide compensation in the form of travel credit using WestJet dollars (1 WestJet dollar = 1 CAD) for any delay longer than 3 hours. No details of compensation were found in Air Canada's tariff. The proposed regulation sets out minimum levels of compensation for delayed or cancelled flights within the air carrier's control. For delays on large airlines of 3-6 hours, 6-9 hours, and more than 9 hours, the passenger is entitled to 400 CAD (265 EUR), 700 CAD (465 EUR) and 1,000 CAD (665 EUR) respectively. Slightly lower levels of compensation are set for small airlines. In the case of involuntary denied boarding, each airline has different amounts of compensation set out in its tariff: - WestJet: The airline will provide a passenger 200% of the total price paid for the original flight, to a maximum of 675 CAD (450 EUR), for cases where the passenger will arrive between 1 to 2 hours after the original arrival time. For cases over 2 hours, the passenger will be paid 400% of the original air fare, to a maximum of 1,350 CAD (900 EUR). - Air Canada: The airline will offer 200 CAD (133 EUR), 400 CAD (266 EUR) and 800 CAD (533 EUR) in the event a passenger arrives 0 to 2 hours, 2 to 6 hours and over 6 hours after their original arrival time respectively. The proposed regulation states minimum levels of compensation for any passenger who is denied boarding. For passengers delayed 0-6 hours, 6-9 hours and more than 9 hours, the compensation is 900 CAD (600 EUR), 1,800 CAD (1,200 EUR) and 2,400 CAD (1,600 EUR) respectively. The compensation will have to be issued at the time the passenger is notified of the denied boarding.
Rights to carrier liability towards passengers and baggage	Every air carrier has limits on its liability outlined in their tariffs. The liability of the carrier with respect of the death or injury of a passenger is governed by the Carriage by Air Act and the Montreal Convention. Under the Montreal Convention, airlines can be held liable for baggage that is damaged or lost during international travel, up to 1,131 SDR (1,404 EUR). The proposed regulation would require airlines to follow this scheme for domestic travel in addition to international travel. Currently the liability of a carrier with respect to lost baggage for domestic travel varies between air carriers. Passengers on WestJet are entitled for the value of the delayed baggage, to the maximum of 1,131 SDR (1,400 EUR) of more than 21 days. Passengers on Air Canada are entitled to up to a maximum of 1,500 CAD (990 EUR) in the case of lost, damaged or delayed baggage.

	The proposed regulation states that passengers will have the right to transport their mobility aid used for travel as priority baggage free of charge in the cargo hold. Passengers have the right to replacement of their mobility aid after a delay of 96 hours. In the meantime, passengers have the right to a temporary replacement mobility aid.
Right to a quick and accessible system of complaint handling	The Canadian Transport Agency provides two methods of handling a passenger's complaints. Firstly, it offers an informal dispute resolution process. Passengers who are not satisfied with how the air carrier has dealt with their issue, can after 30 days file a complaint through the Agency via an online complaints form. Secondly, a court-like complaints process for cases when the passenger feels like the airline's tariff is unclear, unjust, unreasonable or discriminatory. In addition, travellers with a complaint related to a disability or health issue can submit an accessibility complaint. No change to this complaint process is mentioned in the proposed regulation by CTA. Additionally, passengers can make complaints via the Canadian Human Rights Commission (CHRC), provincial human rights bodies or with small claims courts.
Right to full application and enforcement of law	The Canadian Transportation Agency is the responsible body for air passenger rights. Under the current system, passengers can complain to the CTA via either the online complaints form or through the court-like complaint processes explained above. The proposed regulation would require airlines to follow the regulations set out in the Act, an airline would be subject to a penalty of 25,000 CAD (16,580 EUR) per incident for non-compliance.

China

China	
General description	The number of passengers handled at Chinese airports has increased by over 200% from 406 million in 2008 to 1.26 billion in 2018. The number of available seats was recorded as 624 million in 2017, with domestic seats still dominating the traffic capacity. The 4 largest Chinese airports and their passengers in 2018 are: • Beijing Capital International Airport, 100.9 million • Shanghai Pudong International Airport, 74.0 million • Guangzhou Baiyun International Airport, 69,7 million and • Chengdu Shuangliu International Airport, 53.0 million. The nation's three largest airlines are: • Air China • China Southern Airlines • China Eastern Airlines
Air passenger rights data	Delay is a key problem for Chinese airports, with punctuality statistics showing an average flight delay of 24 minutes in 2017 for all Chinese airports. At the 13 Chinese airports that rank among the world's top 100, the situation is even worse with flights being delayed 43 minutes on average. Weather is one of the top causes of delay, causing more than 50% of all delays in 2017. Furthermore, air pollution plays an important role restricting visibility and leading to cancellations in extreme cases. In 2017, the highest percentage of complaints for domestic airlines was due to flight problems (52%), followed by issues with reservations/ticketing/boarding (17%) and refunds (11%). For foreign airlines the reasons for claims were similar, with 33% of claims relating to flight problems, followed by reservations/ticketing/boarding (25%) and baggage (18%).
Air passenger rights framework	Air Passenger rights in China are governed by the Regulations on the Management of Flight Regularity, issued by the Chinese Ministry of Transport in 2016 and came into effect on 1st January 2017. The regulation applies to activities of domestic carriers as well as carriers from Hong Kong SAR and Taiwan, airports, and other air service providers. The regulation also applies to foreign carriers that depart or stop over within Chinese territories (excl. Hong Kong, Macao and Taiwan) in relation to the management of flight regularity, delays and passenger complaints. It sets out airlines obligations on maintaining flight regularity and providing services in case of delay and cancellation. The Regulation does not include information on denied boarding. Consumers are encouraged to take out their own insurance to compensate against delays and cancellations. For passenger rights which are not stated in the Regulation, passengers can rely on the individual airline's conditions of carriage.
Right to mobility	Persons with reduced mobility, and unaccompanied minors should be given priority in receiving the required care as soon as possible in the case of disruption. Carriers, airports and groundhandling service agents should provide mobile assistance services free of charge to PRMs. Carriers should guarantee the right of PRM to travel and, as such, should not deny boarding unless there is a clear legal or safety basis. The carrier can decide on a maximum number for transporting PRMs who are not accompanied but need assistance when evacuated. Service dogs are allowed to accompany disabled passengers during the flight.

China	
	PRMs are expected to submit information on specific requirements, for instance the need for medical oxygen on board or service dogs, to the carrier at the time of booking or no later than 48 hours before departure time. Airports are expected to have a comprehensive service counter at the main entrance of the terminal to provide flight information for PRMs and assist with communication with the carrier. PRMs should receive priority boarding and unaccompanied PRMs will be seated at the front of the plane.
Right to information before purchase and at the various stages of travel, notably in case of disruption	The Regulation requires carriers to disclose their General Conditions of Carriage during the ticket booking process. These should specify the relevant service levels/assistance in the event of cancellation or delay. For local carriers the General Conditions of Carriage additionally have to specify whether compensation will be payable in the event of delay, as well as outline the conditions, standards, and method of compensation. Passengers have the right to be informed about the reasons for cancellations within 30 minutes after the airline received information about the flight disruption. In the case of tarmac delay, where passengers wait on-board for longer than aircraft taxiing time limits as regulated by the airport after closing/before opening the cabin door, passengers have a right to get information about reason(s), estimated delay period, and other flight information from the airline every 30 minutes. For “large area flight delays”, where a large number of passengers have to be detained in an airport, the airport and all operation units need to establish a coordinating mechanism for sharing flight information, coordinating flight release and passenger services.
Right to renounce travelling when trip not carried out as planned	As stated below, for cancellations and delays (whether within or beyond the airline’s control) the passenger will be given the option to be reimbursed.
Right to fulfilment of the transport contract in case of disruption	For cancellations and delays (whether within or beyond the airline’s control), the airline has to either endorse the service or reimburse the passenger. The Regulation does not contain information on passenger rights in the event of denied boarding. For denied boarding passenger rights are governed by the airline’s Conditions of Carriage. In the event that that a passenger has been involuntarily denied boarding due to an overbooked flight, Air China will: • Try to arrange the passenger a seat on the next available flight; • Refund the passenger the cost of the ticket; • Re-route the passenger; and • Provide free accommodation for passengers who have an overnight stay.
Right to get assistance in case of long delays at departure or connecting points	Under the regulation, carriers are required to provide passengers depending on the circumstances: • If the delay is caused by the carrier itself, for example due to aircraft maintenance, flight deployment, crew or similar reasons, carriers are required to provide passengers with a meal and accommodation.

China	
	In the case of extraordinary circumstances such as weather, air traffic control, security issues or passengers, the carriers are obliged to assist the affected passengers in making arrangements but do not have to compensate (i.e. refund) passengers for those costs. Under Air China's policy, for delays less than two hours, passengers will be offered at least one beverage. For delays of two hours and above, passengers will be entitled to a meal. For domestic carriers on a stop-over or on a diverted flight operated by a domestic carrier the airline needs to prove services for the passenger irrespective of the cause of delay or cancellation. This also applies in the event of emergency landing, irrespective of the cause of the emergency situation. In case of tarmac delay, where passengers wait on-board for longer than aircraft taxiing time limits as regulated by the airport after closing/before opening the cabin door, passengers must have access to lavatory facilities. If tarmac delay exceeds two hours, food and water needs to be provided. In the case of a tarmac delay exceeding three hours and no definite take-off time, the airline needs to arrange for disembarkation. The obligations relating to tarmac delay are the same irrespective of whether the delay is within the airlines control or not. Under Air China's policy, in the case a flight is delayed for more than 3 hours, the aircraft will be brought back to the gate.
Right to compensation under certain circumstances	Obligations to provide compensation (i.e. reimbursement) for services such as meals and/or accommodation in case of delay or cancellation apply for all carriers if it is within the control of the airline and additionally to all domestic carriers at a stopover, or if passengers are on a diverted flight operated by a domestic carrier. Compensation includes an endorsement of the service or a reimbursement. In all other cases, the passenger has to bear the costs of services such as food and/or accommodation.
Rights to carrier liability towards passengers and baggage	In accordance with Article 126 of the CAL (the Civil Aviation Law of China), the carrier assumes liability for the losses to passengers, baggage or cargo caused by delays. Where it is evident that necessary measures were taken by the carrier or its agents to avoid losses or such measures were impossible (including bad weather or air traffic control), the carrier will not be liable. Additionally, China has signed the Warsaw and Montreal Convention.
Right to a quick and accessible system of complaint handling	The Regulation states that airlines need to make their contact information within China available to passengers, including an email address with which passengers can lodge a complaint. Foreign airlines should have capabilities to handle complaints in Mandarin. Passengers can submit a complaint with airport groundhandling agents, sales agents or CAAC. Alternatively, they can choose to file for arbitration or civil lawsuit. Passengers should receive an update on the status of their complaint within seven days and carriers are required to send a response within either 10 days (for local carriers) or 20 days (for foreign carriers) from date of receipt.

China	
Right to full application and enforcement of law	The National Enforcement body in China is the Civil Aviation Administration of China (CAAC). It is the aviation authority under the Ministry of Transport. Other protection agencies in place are; regional administrations, the Customer Affairs Centre and the Chinese Air Transport Association (CATA). Airlines that violate the Regulation are either given a warning and/or face a fine of up to ¥100,000 (12,950 EUR).

India

India	
General description	Airports Authority of India (AAI) operates 126 airports in India. The busiest airports in India in 2018 were: • Indira Gandhi International Airport, Delhi – 69 million passengers • Chhatrapati Shivaji Maharaj International Airport, Mumbai – 49 million passengers • Kempegowda International Airport, Bengaluru – 33 million passengers • Chennai International Airport, Chennai – 23 million passengers • Netaji Subhas Chandra Bose International Airport, Kolkata – 22 million passengers IndiGo is the largest airline in India and carried 52.1 million passengers in 2018. Other major airlines in India are; SpiceJet, Air India and Jet Airways. Jet Airways ceased operations in May 2019. The market share as of 2018 for domestic flights in India was: • IndiGo - 41.5% • Jet Airways - 13.8% • SpiceJet -12.3% • Go Air - 9.0%
Air passenger rights data	According to analysis undertaken by the Directorate General of Civil Aviation (DGCA), on-time performance based on 4 airports (Bangalore, Delhi, Hyderabad and Mumbai) for the month of December 2018 was reported as follows: • IndiGo - 72.3% • Jet Airways - 69.7% • SpiceJet - 77.9% • Go Air – 83.0%. During December 2018, the cancellation rate for domestic airlines was as follows: • IndiGo – 0.45% • Jet Airways – 0.26% • SpiceJet – 0.72% • Go Air - 0.04%. The main reasons for cancellation were for; weather, technical or operational related issues.
Air passenger rights framework	Passenger rights in India are governed by Civil Aviation Rules (CAR), Section 3-Series M Part IV. These regulations were issued in 2010. The DGCA released a revised version of these rules in early 2019. This regulation applies to both domestic and foreign airlines, and to both scheduled and non-scheduled operators. In the case of foreign airlines, the amount of compensation to be paid to passengers shall be decided by whichever is higher, either the regulation of the origin country or in the CAR.
Right to mobility	Rights to mobility are stated in CAR, Section 3 – Series M Part I. These rights are applicable to all Indian airlines, and all foreign airlines operating services to and from Indian territory. Passengers are required to give at least 48 hours of notice before the scheduled time of departure of any special assistance requirements.

	All airlines are required to have a detailed procedure on the carriage of passengers with reduced mobility published on their website. Airlines shall make arrangements for quick clearance and baggage delivery for passengers with reduced mobility. Checked-in baggage should be given 'Assistance Device' Tags to ensure easy identification.
Right to information before purchase and at the various stages of travel, notably in case of disruption	During the booking process, the airline/agent is required to provide neutral information on the different options available for a journey. Additionally, in the form of a computer print-out they must provide; the identity of the airline which will provide the service, changes to the aircraft during the journey, any stops en-route during the journey and any transfers between airports. Airlines are required to inform the passenger of any cancellation at least two weeks before the scheduled time of departure.
Right to renounce travelling when trip not carried out as planned	In the case of denied boarding due to overbooking, and the passenger chooses not to take the alternate flight, the passenger is entitled to the full value of the ticket and compensation equal to 400% of the original fare, up to a maximum of INR 20,000 (255 EUR).
Right to fulfilment of the transport contract in case of disruption	In the case of denied boarding due to overbooking, airlines are required to ask for volunteers to give up their seats, at their own discretion airlines may wish to offer the passenger with benefits/facilities. If airlines provide an alternate flight within one hour of the original departure time, they are not required to compensate. If they do not offer this, or the passenger is denied boarding involuntarily, airlines are required to provide compensation. In the case of flight cancellation, passengers informed 2 weeks prior to the scheduled departure time will be entitled to an alternate flight or a full refund. Passengers informed less than 2 weeks and up to 24 hours prior to the scheduled departure time will be given the option to either an alternate flight or a full refund (the requirement is the same as for informing passengers at least 2 weeks in advance). Passengers not informed in the time requirements stated above will be entitled to either an alternate flight as acceptable to the passenger or a full refund in addition to compensation. When a domestic flight is expected to be delayed for more than 6 hours after the original departure time, airlines are required to offer either an alternate flight within a period of 6 hours or a full refund of the ticket to the passenger. Due to the refund of tickets by airlines becoming a major issue for passengers, the DGCA has issued requirements of how refunds shall be made, these are stated in CAR Section 3-Series M Part II.
Right to get assistance in case of long delays at departure or connecting points	For the event of a cancelled flight, and the passenger has already reported for their original flight. Passengers are entitled to meals and refreshments in relation to waiting time, whilst they are waiting for the alternate flight. Similarly, for delayed flights, passengers are entitled to meals and refreshments once the revised departure time is: • 2 hours or more, in cases of flights having a block time of up to 2.5 hours; • 3 hours or more, in cases of flights having a block time of more than 2.5 hours and less than 5 hours; or • 4 hours or more in cases of flights having a block time of more than 5 hours.

	Additionally, when the total delay of a flight is expected to exceed 24 hours or more than 6 hours for flights scheduled to depart between 20:00 and 03:00 hours, passengers will be offered hotel accommodation when necessary, including any transfers. Airlines are not required to provide assistance in cases where the cancellations and delays have been caused by extraordinary circumstances and any other causes that are beyond the control of the airline.
Right to compensation under certain circumstances	For cases when a flight has been cancelled, passengers who were not notified within the specified time requirements, will be entitled to the following compensation as well as the refunded fare. For flights with a block time of less than 1 hour, the passenger is entitled to INR 5,000 (65 EUR) or the original fare, whichever is less. Similarly, for flights with a block time between 1 and 2 hours, the passenger is entitled to INR 7,500 (100 EUR) and with a block time of more than 2 hours are entitled to INR 10,000 (130 EUR). In cases where the passenger has not provided adequate contact information, no financial compensation shall be payable to the passenger. Airlines are not required to compensate in cases where the cancellation is beyond the control of the airlines. In the case of denied boarding due to overbooking, if the alternate flight is scheduled to depart within one hour of the original departure time no compensation shall be paid. In the case when the alternate flight is scheduled to depart from 1 to 24 hours after the original departure time, the compensation amount to be paid is equal to 200% of the one-way basic fair, up to a maximum of INR 10,000 (127 EUR). For alternate flights more than 24 hours after the original departure time, the compensation amount to be paid is equal to 400% up to a maximum of INR 20,000 (255 EUR).
Rights to carrier liability towards passengers and baggage	In the event of death or any other bodily injury suffered by a passenger, the airline's liability will be governed by the relevant provisions of the Indian Carriage by Air Act, 1972. The liability amount under this scenario shall not exceed INR 2,000,000 (EUR 25,430). Similarly, the airline's liability toward damaged or lost baggage is governed by the Indian Carriage by Air Act.
Right to a quick and accessible system of complaint handling	Passengers are able to complain to the individual airlines via an online feedback form. In 2014, DGCA set up a complaints portal where passengers could email in. If after 15 days no action has been taken by the relevant authority, DGCA will take action. No updated information on this was found.
Right to full application and enforcement of law	The National Enforcement Body in India is the DGCA. Its role is to promote safe and efficient air transportation through regulation.

Indonesia

Indonesia	
General description	According to the Indonesia Bureau of Statistics (BPS), The total number of passengers travelling through Indonesian airports in 2017 reached 219m passengers, up 9.6% from 199.8m passengers in 2016. This included: - Domestic passengers: 186.1m in 2017, up 9.1% from 170.5m in 2016; and - International passengers 32.9m in 2017, up 12.5% from 29.2m in 2016. As of 2017, Indonesia's largest airports were the following: - Jakarta – Soekarno Hatta Airport: 29.3m departing passengers; - Denpasar – Ngurah Rai Airport: 10.6m departing passengers; - Surabaya – Juanda Airport: 8.9m departing passengers; - Medan – Kualanamui Airport: 4.6m departing passengers; and - Makassar – Sultan Hasanuddin Airport: 4.2m departing passengers. After several rounds of consolidation over the past decade, Indonesia's domestic market was dominated by three groups in 2017: - Lion Group: Made up of low-cost carries Lion Air, Wings Air, and Batik Air, the Group accounted for 51% of the domestic market; - Garuda Group: Made up of legacy carrier Garuda Indonesia, and low-cost carrier Citilink, the Garuda Group accounted for 33% of domestic passengers carried; - Sriwijaya Group: Consisting of Sriwijaya Air, and Nam Air, the group accounted for 13% of Indonesia domestic aviation; and - The remaining 4% was held by Indonesia AirAsia and other carriers Note that in 2018, Garuda Group took over Sriwijaya Group airlines, further consolidating market shares around 2 dominant players.
Air passenger rights data	According to OAG, over the 12 months up to May 2018, on-time performance in Indonesia was poor: - Garuda Indonesia: From June 2017 to May 2018, 29.6% of the airlines' flights were delayed; and - Jakarta – Soekarno Hatta Airport: Over the same period, 41.5% of all flights were delayed.
Air passenger rights framework	Air passenger rights in Indonesia are specified by the Minister of Transportation Regulation regarding Delay Management on Scheduled Commercial Airline in Indonesia (Minister Regulation No. 89 Year 2015, SG No. 716 Year 2015) and the Ministerial Decree No. 77 of 2012 on Air Carrier Liability. The rules stipulated in the regulation only apply to domestic flights.
Right to mobility	Indonesia's Law No.8 of 1999 on Consumer Protection is applicable to all sectors in general, including the air transport sector. Pursuant this Law, consumers have the right to receive proper, honest, and non-discriminatory treatment or services. Lion Air and Garuda Indonesia lay out their rules with respect to transportation of a passengers with a disability in their respective conditions of carriage:

Indonesia	
	- Both carriers require the passengers to inform them about the special needs at the time of booking. After acceptance by the carriers, the passenger shall not subsequently be refused carriage based on its disability of special needs alone; - Garuda will only carry unaccompanied children or disabled people to the extent that they don't make up more than 10% of aircraft capacity, while Lion air will refuse transport to passengers who they deem unfit to care for themselves, and travel without their assistant. Note that in 2011, a Central Jakarta Court ruled against low cost airline Lion Air for discriminating against a disabled passenger, forcing him into signing a release before being allowed to fly, absolving the airline of any responsibility in connection with his flight and rendering the passenger liable to other passengers should his condition pose a threat to other passengers.
Right to information before purchase and at the various stages of travel, notably in case of disruption	As per Law No.8 of 1999 on Consumer Protection, passengers have right to obtain correct, clear, and honest information regarding the condition and warranty of the goods or services. Additionally, the law prohibits airlines from offering, promoting, advertising or providing incorrect or misleading statements regarding the price, conditions, rights, warranty, and compensation of certain goods or services. The Ministerial Decree No.77 of 2012 on Air Carrier Liability dictates certain rules with regards to information during disruption, that will determine the extent to which the airline must assist the passenger in such cases.
Right to renounce travelling when trip not carried out as planned	Under Regulation No. 89, passengers may renounce their trip if not carried as planned, under specific circumstances: - Cancellation: The passenger will be given the option to be reimbursed (and renounce the trip) or re-routed should the airline fail to inform about the cancellation at least 7 days before departure. - Delay of more than 1 hour: the passenger will only be given the option to be reimbursed (and renounce the trip) or re-routed on the next flight. - Denied boarding due to overbooking: equivalent to a delay, the passenger will only be given the option to be reimbursed (and renounce the trip) or re-routed on the next flight.
Right to fulfilment of the transport contract in case of disruption	As above Under Regulation No. 89, passengers will be offered the option to be rerouted for cancellations, delays of more than 1 hour or denied boarding. Airlines have to refund any difference in fare in the event of a passenger being downgraded.
Right to get assistance in case of long delays at departure or connecting points	Under Regulation No. 89, flight delay is classified into six categories. 30 to 60 minutes: passengers will be provided with refreshments 61 to 120 minutes: passengers will be provided with a snack box 121 to 180 minutes: passengers will be provided with a meal 181 to 240 minutes: passengers will be provided with a snack box and a meal - More than 240 minutes: passengers will be provided with accommodation (if necessary)
Right to compensation under certain circumstances	Under Regulation No. 89, passengers are entitled to compensation in case of delay within the control of airlines:

Indonesia	
	- For a delay of more than four hours, the airline shall pay the passenger Rp. 300,000 (€19) - Should there be no flight to the passenger's final destination, the airline will pay Rp 150,000 (€9.5) in addition to offering a flight to the closest airport next to the passenger's final destination.
Rights to carrier liability towards passengers and baggage	The Convention for the Unification of Certain Rules for International Carriage by Air, Montreal 1999, was ratified in Indonesia by Presidential Decree No. 95 of 2016. However, if international carriage is performed by a domestic carrier, the law that applies is the Indonesian Aviation Law, which is further regulated under the Ministry of Transportation No.77 of 2011 (MoTR No.77/2011) on the Liability of Air Carried, and states that an air carrier will be liable for damages for, among other things, death, permanent disabilities or injuries. The amounts to be paid under MoTR No.77/2011 are the following: - Passengers: - Death of passenger on air transportation: Rp 1.25 billion (€ 78,000) per passenger; - Death of passenger boarding or disembarking an aircraft at an airport: Rp 500 million (€32,000) per passenger; - Permanent injury: Rp 1.25 billion (€ 78,000) per passenger; - Injuries and hospitalisation: Rp 200 million (€ 12,500) per passenger - Cargo: - Missing, destroyed or damage luggage: From Rp 200,000 (€ 12.5) per kilogram per passenger, up to Rp 4 million (€ 250) - Missing or destroyed cargo: Rp 100,000 (€ 6.25) per kilogram - Partly destroyed cargo or cargo contents: Rp 50,000 (€ 3.125) per kilogram
Right to a quick and accessible system of complaint handling	The national consumer protection agency in Indonesia, established in accordance with Law No.8 of 1999 on Consumer Protection, is the Directorate of Consumer Empowerment under the Directorate General of Consumer Protection & Trade Compliance at the Ministry of Trade of Indonesia. The Directorate is responsible for receiving consumer complaints.
Right to full application and enforcement of law	As stated above, the national consumer protection agency in Indonesia, established in accordance with Law No.8 of 1999 on Consumer Protection, is the Directorate of Consumer Empowerment under the Directorate General of Consumer Protection & Trade Compliance at the Ministry of Trade of Indonesia. In addition to being responsible for receiving and processing consumer complaints, the Directorate is also responsible for the enforcement of Law No.8.

Israel

Israel	
General description	According to the Central Bureau of Statistics (CBS), international air transportation traffic in Israel reached 20.6m passengers in 2017, up 17.2% from 17.4m in 2018. In 2018, Israel Airports Authority (IAA) reported that 22.4m international passengers and 0.6 million domestic passengers travelled through Tel Aviv Ben Gurion Airport, the country's main airport. El Al Israel Airlines, is the country's largest and main airline, and handled 25% of traffic at Ben Gurion Airport in 2018.
Air passenger rights data	According to FlightStats, which tracked 66% of flights at Ben Gurion Airport in the 12 months up to May 2019, only 0.44% of flights were cancelled over that period, which equates to 303 flights. However, 29.5% of flights were delayed, which equates to 20,087 flights, while averaging 44.47 minutes of delay. The Consumer Protection and Fair Trade Authority, which handles consumer complaints related to a wide variety of industries, recorded 255 tourism-related complaints in 2017, of which 56 related to airlines. The Authority recorded a further 437 transport-related complaints, but it is not clear how many of these related to airlines.
Air passenger rights framework	Air Passenger rights in Israel are governed by the Aviation Services Law (Compensation and Assistance for Flight Cancellation of change conditions), 5772-2012. The Law applies to flights taking off from Israel or flying to Israel, including a flight with a stopover.
Right to mobility	The Third Chapter of the Equal Rights for People with Disabilities Regulations (Access to Public Transportation Services), 5763-2003, sets forth provisions in connection with the obligation to arrange equipment for the handicapped in air transportation, which impose various obligations on airport operators. Under this law, a person who is responsible for providing public service shall implement the accessibility accommodations for persons with disabilities. Airport operators fall under this description. Airlines are not mentioned specifically in the Law, and it is not clear the extent of their obligation with regards to disabled passengers. However, El Al Israel Airlines' conditions of carriage state the following: • Carriage of unaccompanied children, incapacitated persons, persons with limited mobility, pregnant women, persons with illness or other people requiring special assistance is subject to prior agreement with El Al; • If arrangements have not been made at least 48 hours before check-in, El Al may decide not to carry such persons requiring special assistance; • Passengers with disabilities or passengers requiring special assistance as aforesaid who have fully advised El Al or one of its authorized agents of any special requirements they may have at the time of ticketing, and

Israel	
	been accepted by El Al, shall not subsequently be refused carriage on the basis of such disability or special requirements. Passengers with disabilities flying with a wheelchair, will not be charged should the wheelchair need to be carried in the aircraft baggage hold.
Right to information before purchase and at the various stages of travel, notably in case of disruption	As per the Consumer Protection Law, all prices (including airfares) in Israel should be published as the total price (including charges, taxes, and levies) In case of flight disruption, the Aviation Services Law dictates that: - The flight operator or organiser will present, at the place at which it receives the public, a notice detailing the passenger's right in case of disruption – in a visible place and in clear legible script; - The Flight Operator, organiser and travel agency service provider offering flight tickets for sale will prominently publish passenger information on their website, if any; and - A license holder for the operating of an airport, will place at every airport operated by it, a sign presenting the Passenger Information in a visible location in clear and legible script. Furthermore, the Aviation Services Law prescribes direct interaction between the airlines and the individual passengers, dictating that: - A passenger who has been issued a flight ticket for a disrupted flight, is entitled to receive, from the flight operator or organiser, a document detailing his rights; and - A flight operator or organiser who has issued a passenger with a flight ticket, will provide the passenger with details regarding the location in the airport of someone who has been appointed to assist passengers in realising their rights in accordance with the provisions of the Law, and regarding ways of contacting him.
Right to renounce travelling when trip not carried out as planned	Under the Aviation Services Law, whether the passenger has the option to be re-routed or reimbursed depends on the type of flight disruption: - Under both cases of cancellation within and beyond the airline's control, the passenger will have the option to either be re-routed or reimbursed. - In case of delay within the airline's control, that lasts between five and eight hours, the passenger will have the option to be reimbursed or re-routed. That will not be the case if the delay is beyond the airline's control. - In case of denied boarding (excluding instances of denied boarding due to breach of conditions of carriage, and other special circumstances), the passenger will be given the option of being reimbursed or re-routed.
Right to fulfilment of the transport contract in case of disruption	As stated above, in most cases of disruption, the passenger will be given the option to be re-routed and reach their original destination
Right to get assistance in case of long delays at departure or connecting points	Under the Aviation Services Law, the level of assistance to be received will vary depending on the type of disruption, but will not change according the option chosen by the passenger: In cases of cancellation both within and beyond the control of the airline, or denied boarding (excluding special circumstances referred above), the passenger will be entitled to receive assistance services,

Israel	
	which shall include, food and drinks, accommodation if an overnight stay is required, and two telephone calls and fax/e-mails; • The same suite of services will be provided to the passengers in case of delay (both within and beyond airline's control) after at least two hours from the flight time stipulated by the ticket.
Right to compensation under certain circumstances	Under the Aviation Service Law, Compensation will only be provided in case of: • Cancellation that is within the control of airlines, and the airline has informed the passenger less than 2 weeks before departure date; and • Denied boarding due to overbooking. The amount of compensation the passenger is entitled to will vary according to the trip's length as follows: • Up to 2,000 kms: 1,250 NIS (€310) • Between 2,001 and 4,500 kms: 2,000 NIS (€500) • Above 4,500 kms: 3,000 NIS (€ 750) In the case of a compensation-eligible cancellation (or denied boarding due to overbooking), and if the passenger has accepted to be re-routed, the compensation may be reduced by half, when the delay in the landing time at the final destination of the passenger, compared with the original landing time at that destination, is as detailed below: • Up to two (four for denied boarding) hours – if the flight is at a distance which is no longer than 2,000 kms; • Up to three (five for denied boarding) hours – if the flight is at a distance which is longer than 2,000 km but no longer than 4,500 kms; • Up to four (six for denied boarding) hours – if the flight is at a distance which is longer than 4,500 kms;
Rights to carrier liability towards passengers and baggage	The Air Transport Law, 1980, adopts the Montreal Convention into Israeli Law.
Right to a quick and accessible system of complaint handling	As stated above, the Aviation Services Law states the rules and remedies for consumer complains regarding delay, flight cancellations and denied boarding. The punitive damages for non-compliance with the law are however, regulated by the Consumer Protection Law. Should an airline fail to comply with the Aviation Services Law, consumers may complain to the Consumer Protection and Fair Trade Authority.
Right to full application and enforcement of law	Following an amendment of the Consumer Protection Law in effect since January 2015, the Consumer Protection and Fair Trade Authority has seen its enforcement powers expanded: • The Authority can now enforce the law by invoking administrative procedures that enable straightforward and easily provable enforcement, while reducing the time that elapses between the violation and penalty; • The Authority can now enforce violations that were previously considered outside of its jurisdiction, in addition to those violations that were previously under its authority. These namely, include: - Transaction cancellations and refunds; - Requiring businesses to display prices per unit on various products; - Merchandise return policies;

Israel	
	- Notifying customers at the end of limited transaction periods; and - Waiting time limitations when requesting customer service from a representative. Some of which are very relevant to the air transportation sector. • In addition, the authority has also been extended the right the impose direct monetary sanctions for every violation of the law within its jurisdiction.

Japan

Japan	
General description	Air passenger traffic in Japan reached over 123 million passengers carried in 2017. The busiest Japanese airports and their annual passenger traffic in 2017 were: • Haneda Airport, 85.3 million • Narita International Airport, 38.6 million • Kansai International Airport, 27.9 million • Fukuoka Airport 23.8 million • New Chitose Airport, 22.7 million The market is dominated by All Nippon Airways (ANA) and Japan Airlines (JAL), in 2016 they had a 48% and 30% market share respectively. There has been a notable decrease in market share of both these airlines driven by the emergence of low-cost carriers – in 2006, ANA and JAL had a combined market share of 94%.
Air passenger rights data	Long delays and cancellations have each remained below 1% in 2018 according to stakeholder responses. The Civil Aviation Bureau of Japan has reported it receives approximately 600 complaints a year in relation to air passenger rights.
Air passenger rights framework	Japan has ratified the Montreal Convention. There is no specific legislation in Japan governing air passenger rights. Article 106 of the Civil Aeronautics Act (Act No. 231 of 1952) states that any domestic airline shall establish conditions of carriage and obtain approval of these from the Minister of Land, Infrastructure, Transport and Tourism. The conditions of carriage must have no possibility of adversely affecting the legitimate public interest and shall at least define the carrier's liability relating to fare and charge collection as well as transportation.
Right to mobility	In 2006 Japan passed the Barrier-Free Act (Act No. 91 of 2006), a law promoting easier movement for the elderly and disabled. The act standardized measures for developing barrier-free environments at public transportation hubs including train stations, airports, and passenger ship terminals, shopping centres, public buildings, and public spaces including roads, parks, and outdoor parking facilities. In addition to the development of physical infrastructure, the bill also promotes greater awareness and understanding of the needs of elderly and disabled people and encourages broader interaction and support from others in society.
Right to information before purchase and at the various stages of travel, notably in case of disruption	No specific mention identified from review of airlines' conditions of carriage.
Right to renounce travelling when trip not carried out as planned	No specific mention identified from review of airlines' conditions of carriage.
Right to fulfilment of the transport contract in case of disruption	JAL and ANA's Conditions of Carriage state that: If a passenger is prevented from travelling on the flight they have booked because of a cancelled flight, failure to operate according to schedule, denied boarding, a missed connection due to the fault of the airline or being

Japan	
	substituted for a lower class of service than booked, the passenger may choose to either receive a refund equivalent to the unused portion of the ticket (or the difference in fare between travel classes) or the airline will: • Provide the passenger with a seat on the next available service on its own services; or • Endorse to any other carrier the unused portion of the ticket and request that such carrier transport the passenger; or • Reroute the passenger on its own or another carrier's services.
Right to get assistance in case of long delays at departure or connecting points	No specific mention identified from review of airlines' conditions of carriage.
Right to compensation under certain circumstances	No specific mention identified from review of airlines' conditions of carriage.
Rights to carrier liability towards passengers and baggage	Carriage performed by JAL and ANA shall be subject to the rules and limitations relating to liability established by the Montreal Convention (including for domestic services)
Right to a quick and accessible system of complaint handling	Air passengers are able to complain through the Civil Aviation Bureau of Japan. There are two bodies in Japan that handle general consumer complaints. Firstly, the Consumer Affairs Agency in Japan (CAA) is a central administrative organization headed by Minister of State for Consumer Affairs and Food Safety under the authority of Prime Minister. The mission of the CAA is protecting and promoting consumer rights and interests by shaping consumer policy, requesting other government members to take appropriate actions, and preventing deceptive and unfair business practices through law enforcement. Secondly, the National Consumer Affairs Center of Japan (NCAC) established as an incorporated administrative agency, works as a core consumer advocate organization in accordance with the Basic Consumer Act. The NCAC provides information and conducts research and studies concerning consumer affairs from a comprehensive perspective to create stable and improved people's lives. NCAC also undertakes Alternative Dispute Resolution (ADR) procedures for important consumer conflict cases. NCAC handles consumer issues in collaboration with the government and local consumer centres located throughout Japan.
Right to full application and enforcement of law	The Japan Civil Aviation Bureau (JCAB) is the civil aviation authority of Japan and a division of the Ministry of Land, Infrastructure, Transport and Tourism. The Civil Aviation Bureau of Japan is responsible for each individual air carrier's conditions of carriage.

Malaysia

Malaysia	
General description	Malaysia's total air passenger traffic reached 102.4 million in 2018. Malaysia's continual economic growth has led to the establishment of several large international airports in the country. The busiest airport in Malaysia is Kuala Lumpur International Airport (KLIA). KLIA Airport had 59.9 million passengers pass through in 2018. The two other large airports in Malaysia are Kota Kinabalu International Airport and Penang International Airport, with 8.6 and 7.8 million passengers respectively in 2018. The three largest air carriers are • Malaysia Airlines • AirAsia • Malindo Air
Air passenger rights data	There appears to be a good awareness of air passenger rights. According to an air passenger rights survey conducted by the Malaysian Aviation Commission (MAVCOM), 55% of passengers are aware of their travel rights, with an increase to 66% in 2018. MAVCOM states that there has been a continual effort to increase awareness of air passenger rights. Since 2016, MAVCOM has received 4,506 complaints, of which 1,547 (34%) have been legitimate or justified complaints. Statistics (March 2016 to 2018) Complaints related to: Delayed flights - 576 Cancelled flights - 385 Passengers denied boarding - 54 Passengers offloaded - 241 Lost, damaged, delayed baggage – 821 MAVCOM has penalised two airlines for not complying with full disclosure of air fares, each airline being fined 160,000 MYR (34,610 EUR).
Air passenger rights framework	All carriers operating in Malaysia are required by law to comply with the Malaysian Aviation Consumer Protection Code (MACPC) 2016. The code applies to domestic and foreign airlines operating in and out of Malaysia, including connecting flights. The code includes minimum service levels and standards for meeting consumer requirements, handling complaints and providing compensation. Under the act, it is mandatory for disputing parties to resolve the dispute through mediation within a period of 3 months, failing which MAVCOM shall commence its involvement in the dispute. MAVCOM will impose penalties to airlines and airports if they do not comply with the Malaysian Aviation Commission Act 2015 and MACPC 2016. These penalties can be challenged in the High Courts of Malaysia by airlines or airports within 3 months of the decision.
Right to mobility	Under the code, airlines must provide assistance for passengers with disability from arrival at the airport until departure. Airports, on their part, must include accessible signage and points where any person with disability can request assistance. Passengers are expected to give at least 48 hours notice to the operating airline. Airlines are not allowed to deny boarding

Malaysia	
	based on PRM issues, unless they do not meet the safety requirements established by the Malaysian Director General of the Department of Civil Aviation. Airlines may request the passenger is accompanied in order to meet the applicable safety requirements.
Right to information before purchase and at the various stages of travel, notably in case of disruption	Under the code, passengers must be notified at the point of purchasing a ticket where the flight will be under a code-sharing agreement. The final air fare shown must include taxes and fees imposed by the government, fees and charges imposed by the Commission, passenger service charge, security charges, baggage fees, and fuel charges. In the case of additional services, the airlines must clearly state what these add-ons are and how much they cost at the start of the booking process. Airlines cannot increase the price of a ticket after passengers have paid for it, the only exception is when there has been an increase in Government imposed taxes, or fees imposed by the Commission. When there is a change in flight status, airlines must give information to passengers about the change as soon as practicable after the airline became aware of it.
Right to renounce travelling when trip not carried out as planned	Under the code, if passengers are denied boarding or their flight is cancelled, they are entitled to full reimbursement for the part or parts of the journey not completed, and the parts already made if the flight no longer serves any purpose in relation to the passenger's original travel plan. To confirm with MAVCOM whether passengers are entitled to a return flight to their point of departure if they choose to renounce their travel.
Right to fulfilment of the transport contract in case of disruption	The airline can only deny boarding if either a passenger volunteers (as defined in MACPC 2016) to give up their ticket or if there are not enough volunteers to meet the airline's circumstances. In line with the code, regardless of voluntary or involuntary denied boarding, the passenger shall be offered: • Free of charge meals; • Limited telephone calls and internet access; • Hotel accommodation where a stay of one or more nights becomes necessary; • Transport between the airport and place of accommodation (hotel or other); and • The choice between full reimbursement within thirty days, of the full cost of the ticket or re-routing, under comparable transport conditions, to their final destination at the earliest opportunity or at a later date at the passenger's convenience, subject to availability of seats, at no extra charge. For flight cancellations, passengers shall be offered the choice between full reimbursement within thirty days or re-routing, under comparable transport conditions, to their final destination at the earliest opportunity or at a later date at the passenger's convenience, subject to availability of seats, at no extra charge.
Right to get assistance in case of long delays at departure or connecting points	For flights delayed two hours or more, passengers shall be offered: • Free of charge meals; • Refreshments; • Limited telephone calls; and

Malaysia	
	Internet access. For flights delayed five hours or more, passengers in addition of the above requirements shall be offered free of charge hotel accommodation in cases where a stay of one or more nights becomes necessary or where the stay of additional to that intended by the passenger becomes necessary and transport between airport and place of accommodation.
Right to compensation under certain circumstances	The MACPC defines a right to reimbursement, but there is no right to standard (punitive) compensation in relation to flight disruptions. Airlines may not provide reimbursement to passengers when airlines can prove that the delay or cancellation has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Airlines may not provide assistance or reimbursement to passengers when the passengers are in clear breach of the terms and conditions of the airlines such as lack of travel documents, carrying valuables that are restricted etc.
Rights to carrier liability towards passengers and baggage	The MACPC states that if a passenger's baggage does not arrive on the same flight as the passenger, they are entitled to compensation for any losses caused by the delay. Similarly, if the passenger's baggage is lost whilst in custody of the operating airline, the passenger will be entitled to compensation. The maximum liability for baggage damaged, lost or delayed on a flight is limited to 1,131 Special Drawing Rights (SDR) (1,404 EUR) for each passenger. A passenger may benefit from a higher liability limit by making a special declaration at the latest at check-in and by paying a supplementary fee. Airlines are not liable to compensate for general wear and tear of the baggage, such as minor cuts and scratches. To claim compensation, the passenger must file a written complaint with the airline: - on arrival or within 7 days of arrival if the baggage is damaged; or - on arrival or within 21 days of arrival if the baggage is delayed. MACPC states that in cases of damaged mobility equipment, the passenger shall be compensated based on the prevailing market price.
Right to a quick and accessible system of complaint handling	The Malaysian Aviation Commission Act makes it mandatory for disputing parties to resolve the dispute through mediation within a period of 3 months, failing which the Commission shall commence to examine and rule on the dispute. The Commission plays a quasi-judiciary role in resolving disputes between the aviation industry players including airport operators. Currently, MAVCOM is in charge of handling the complaints. Passengers that are not satisfied with airlines' responses are able to register their complaints via a website, telephone call, walk-in to MAVCOM office and via the MAVCOM FlySmart mobile application. FlySmart is a consumer awareness platform, set up to educate people on their rights as air passengers.
Right to full application and enforcement of law	MAVCOM was formally established on 1 March 2016 under the Malaysian Aviation Commission Act 2015 as an independent entity to regulate economic and commercial matters related to civil aviation in Malaysia. MAVCOM is responsible for the enforcement and implementation of air passenger protection. The functions of MAVCOM are to:

Malaysia	
	• regulate economic matters relating to the civil aviation industry, • provide a mechanism for protection of consumers, • provide a mechanism for dispute resolution between aviation industry players, • administer and manage air traffic rights and advise the Government, and to • administer and manage routes under public service obligations. While the Commission is entrusted with the duties to oversee the economic and commercial aspects of the aviation industry, the technical, safety and security aspects of the industry remain under the scope of the Department of Civil Aviation ("DCA"). In this regard, the Act provides that the Commission shall consult the Director General of DCA on any technical, safety and security issue in the performance of its functions. The Act does not provide the avenue for appeal by any relevant body aggrieved by the Commission's decision in relation to the dispute resolution. Thus, the usual judicial review process should be applicable. There have been cases where a passenger is not satisfied with the intervention by MAVCOM and have contacted ADRs. In Malaysia, there is a small claims court for cases not exceeding 5,000 MYR (1,082 EUR). The Commission also has powers to inspect and investigate matters within its jurisdiction besides carrying out audits on any aspect of the aviation industry.

Mexico

Mexico	
General description	In 2017, the total number of air passenger in Mexico was 58.5 million, a 9.7% increase from the previous year. The largest airport in Mexico is Mexico City International Airport, which served 41.7 million passengers in 2016. Other major airports in Mexico and their annual passengers in 2016 were: • Cancun International Airport - 21.4 million passengers • Guadalajara International Airport - 11.4 million passengers • Monterrey International Airport - 9.2 million passengers Aeroméxico is Mexico's national airline, which transported 21.9 million passengers in 2018. Other major airlines are Volaris, Interjet and VivaAerobús. In 2018, airlines' market share of domestic air traffic in Mexico was: • Aeroméxico - 27.8% • Volaris - 28.4% • Interjet - 20.5% • VivaAerobús - 18.4%
Air passenger rights data	No data found on air passenger rights in Mexico.
Air passenger rights framework	Passenger rights in Mexico are governed by certain provisions of the Civil Aviation Law, the Regulations of the Civil Aviation Law and the Consumer Protection Law. Many of the rights are stated in the Civil Aviation Law, which was first published in 1995. The latest amendment was in April 2017. Article 3 of the Civil Aviation Law states that the events and acts carried out on board an aircraft with Mexican registration are subject to Mexican laws and authorities. Any events occurring on board a foreign airline are governed by the laws and authorities of the state where the aircraft is registered. This article does not specifically state the scope with regards to air passenger rights, therefore this article is not definite. Article 15 of the Civil Aviation Law states that airlines may have their permits revoked if they fail to comply with the payment of obligations of compensation for damages in the delivery of services.
Right to mobility	Article 42 of the Regulations of the Civil Aviation Law states that every airline must provide disabled passengers with facilities for mobilization and take the necessary steps for the care of pregnant passengers, as well as elderly passengers.
Right to information before purchase and at the various stages of travel, notably in case of disruption	The Civil Aviation Law states that all airlines are required to inform passengers of changes to a scheduled flight time at least 24 hours before the scheduled departure time. The Consumer Protection Law states that all airlines shall inform passengers of the causes or reasons for flight delays by electronic or physical means, at boarding areas or any information screen.
Right to renounce travelling when trip	Article 52 of the Civil Aviation Law states that in cases of denied boarding due to overbooking or cancellation, the passenger has the option to a full refund and compensation.

Mexico	
not carried out as planned	In the case of a delay more than four hours, the airline has the same obligations that it has in the case of cancellation. There is no provision for rights to renounce travelling in case of delayed flights less than four hours.
Right to fulfilment of the transport contract in case of disruption	Article 38 of the Regulations of Civil Aviation Law state that for the case when the aircraft is forced to land in a place not on the itinerary. All airlines have the obligation to re-route a passenger in the fastest way possible to their final destination, regardless of whether this has occurred by accident or force majeure. Article 52 of the Civil Aviation Law states that for cases of denied boarding due to overbooking or cancellation; the airline must either refund the passenger the price of the ticket, offer the service on a later date suitable to the passenger, or offer the passenger the first available flight with the assistance requirements stated below. In the case of a delay more than four hours, the airline has the same obligations that it has in the case of cancellation.
Right to get assistance in case of long delays at departure or connecting points	Article 52 of the Civil Aviation Law states assistance must be provided in cases of denied boarding due to overbooking and cancellation. Communication services (access to telephone calls and emails) and food will be provided in relation to length of delay. When the passenger is required to wait overnight, accommodation and any necessary transfers will also be provided. For flights delayed within the control of the airline, the passenger will be provided with access to communication services as above. In addition, for delay between one and four hours, the passenger will be entitled to discounts for subsequent flights to the contracted destination and foods/beverages as a minimum requirement. For delays over 4 hours, the assistance provided will be equal to the cancellation entitlements stated above.
Right to compensation under certain circumstances	Article 52 of the Civil Aviation Law states that in cases of denied boarding due to overbooking or cancellation and the passenger chooses either the refund or to fly on a later date option, they will be entitled to compensation in addition. The amount of compensation will be at least 20% of the original ticket price. For flights delayed within the control of the airline for more than two hours and less than four hours, passengers are entitled to a compensation amount of at least 7.5% of the ticket value. For flights delayed over 4 hours, the compensation provided will be equal to the cancellation entitlements stated above.
Rights to carrier liability towards passengers and baggage	Carrier liability towards baggage is stated in Article 62 of the Civil Aviation Law. If baggage is lost, damaged or destroyed the carrier must provide compensation of up to 40 'minimum wages' for hand baggage and up to 75 for checked in baggage. 'Minimum wage' is a unit of account by the Mexican government, based on the minimum daily wage on the date when the damage occurs. Mexico is a signatory to the Montreal and Warsaw Conventions.
Right to a quick and accessible system of complaint handling	Airlines offer customer service contact details for passengers to submit complaints or compensation requests. No information found on complaint handling via the National Enforcement Body.
Right to full application and enforcement of law	The National Enforcement Body in Mexico is Procuraduría Federal del Consumidor (PROFECO). PROFECO is an of organisation of the Mexican

Mexico	
	government. It is a consumer protection agency set up to defend consumer rights.

Morocco

Morocco	
General description	Morocco's airports served 22.53 million passengers in 2018, a 10.4% increase from the previous year. The majority of this traffic (66.6%) comes from Casablanca Airport and Marrakesh Airport. This is followed by Agadir, Fes – Sais and Tangier Ibn Battouta Airports. In 2018, the total passengers passing through were: • Casablanca Airport – 9.7 million • Marrakesh Airport – 5.3 million • Agadir Airport – 1.9 million • Fes-Sais Airport – 1.3 million • Tangier Ibn Battouta Airport – 1.1 million Royal Air Maroc is Morocco's national airline and carried 6.7 million passengers in 2016. Air Arabia Maroc is a Moroccan low-cost carrier, which as a group carried 11 million passengers in 2018. In 2008, low-cost carriers had a 20% market share of all seat-capacity in the Moroccan market, this has increased to 38% as of 2018. Since the Euro-Mediterranean Air Services Agreement in 2006, air traffic between Morocco and the EU has grown by 80%.
Air passenger rights data	No data found on air passenger rights in Morocco.
Air passenger rights framework	Morocco was the first non-European country to sign the Euro-Mediterranean Air Services Agreement, this has been effective from 12 December 2006. The Agreement stipulates that in Article 18 Morocco shall act in accordance with EU Regulation 261/2004.
Right to mobility	There is no specific legislation for passengers with reduced mobility in Morocco. Passengers rights will be governed by the individual airline's Conditions of Carriage. Royal Air Maroc requires passengers to inform them of any special assistance needs 48 hours prior to departure. They are able to provide wheelchairs, seats with removable armrests and priority check in for passengers with special assistance needs.
Right to information before purchase and at the various stages of travel, notably in case of disruption	As per EU Regulation 261/2004.
Right to renounce travelling when trip not carried out as planned	As per EU Regulation 261/2004.
Right to fulfilment of the transport contract in case of disruption	As per EU Regulation 261/2004.

Morocco	
Right to get assistance in case of long delays at departure or connecting points	As per EU Regulation 261/2004.
Right to compensation under certain circumstances	As per EU Regulation 261/2004.
Rights to carrier liability towards passengers and baggage	As per EU Regulation 261/2004.
Right to a quick and accessible system of complaint handling	Passengers are able to complain directly to the airline or through the Ministry's Consumer Protection Body.
Right to full application and enforcement of law	There is no body responsible for air passenger rights in Morocco. The Ministry of Industry, Trade and Investment and the Digital Economy in Morocco has a Consumer Protection Body, which offers consumer protection under Law No. 31-08. Law No. 31-08 completes the existing legal framework of consumer protection and sets up an enabling framework for the promotion of the role of consumer protection associations. Air passengers will have general consumer rights under this Law and are able to file any complaints via the Consumer Protection Body.

New Zealand

New Zealand	
General description	The main airports in New Zealand are and their total passenger movements in 2018 were: • Auckland Airport, 20.5 million • Christchurch Airport, 6.8 million • Wellington Airport, 6.1 million • Queenstown Airport, 22 million • Nelson Airport, 1.1 million • Dunedin Airport, 1.0 million Air New Zealand is the largest airline in New Zealand and carried 17 million passengers in 2018. Domestically, Air New Zealand have the majority market share at 82%. The remaining market share is mainly taken by Jetstar Airways, with 17% market share as of 2018. Internationally, other than Air New Zealand, the major airlines operating and their market share in 2018 are • Qantas Airways - 14% • Virgin Australia - 9% • Jetstar Airways - 6% • Emirates - 6%
Air passenger rights data	No information found on air passenger rights data.
Air passenger rights framework	Air Passenger Rights in New Zealand are governed by the New Zealand Civil Aviation Act 1990 and the Consumer Guarantees Act (CGA). The Civil Aviation Act is only applicable to domestic flights.
Right to mobility	Passenger rights to mobility are not stated in the Civil Aviation Act or the CGA. Air New Zealand's Conditions of Carriage state that: Passengers with special assistance needs are required to inform Air New Zealand in advance of any special requirements. In addition to the allocated baggage allowance, Air New Zealand will carry at no additional cost a fully collapsible wheelchair and a mobility aid if required. Passengers requiring special assistance such as supply of equipment or facilities (such as oxygen), may be charged for the provision of these services.
Right to information before purchase and at the various stages of travel, notably in case of disruption	Passenger rights to information during the stages of air travel are not stated in the Civil Aviation Act or the CGA. Air New Zealand's Conditions of Carriage state that: Customers who have provided contact information, will be notified of any change to the flight schedule of greater than 30 minutes at least 14 days in advance. Customers will then be able to make any necessary updates to their booking. Additionally, within 30 minutes of becoming aware of any flight delay, cancellation or diversion that exceeds a delay of 30 minutes, information will be provided on the website and at the boarding gate.
Right to renounce travelling when trip not carried out as planned	Passenger rights to renounce travelling after flight disruption are not stated in the Civil Aviation Act or the GCA. Air New Zealand's Conditions of Carriage state that:

New Zealand	
	In the event of a cancelled flight, if the passenger is not satisfied with the alternative flights offered, they are entitled to a full refund or credit.
Right to fulfilment of the transport contract in case of disruption	Airlines and ticket agents must comply with the service guarantees in the Consumer Guarantees Act. This means that they must use the reasonable skill and care of a competent and professional airline or ticket agent and that their services must be fit for the specified purpose. If these requirements are not met, the passenger may be entitled to a remedy under the CGA. Passenger rights to fulfilment of the transport contract in case of disruption (flight delay, cancellation and denied boarding) are not mentioned in the Civil Aviation Act. Air New Zealand's Conditions of Carriage state that: In the event of a cancelled flight, the passenger will have the option to be carried on the next available flight, either on Air New Zealand services or an alternate airline. In the case of re-routing and the fare and charges for the revised routing are lower than what the passenger has paid, the passenger will be refunded the difference. If the alternatives provided are not suitable to the passenger, they will be entitled to a full refund or credit. In the event of overbooked flights, Air New Zealand will first ask for volunteers before denying boarding involuntarily. Compensation will be provided as required by any applicable law or by its denied boarding compensation policy.
Right to get assistance in case of long delays at departure or connecting points	Passenger rights to get assistance in the case of flight disruption (flight delay, cancellation and denied boarding) are not mentioned in the Civil Aviation Act or the GCA. Air New Zealand's Conditions of Carriage state that: In cases when there has been a disruption to the flight within Air New Zealand's control resulting in an overnight delay, passengers will be provided with overnight accommodation, any necessary transfers, meals and a phone call.
Right to compensation under certain circumstances	Under the Civil Aviation Act, for domestic flights airlines are liable for damage caused by delay in the carriage of passengers. The amount of compensation to be paid will either be; the amount of damage proved to have occurred as a result of the delay or an amount representing 10 times the original ticket fair, whichever is the lesser amount. Airlines will not be liable to pay compensation if the delay is due to; a reason of meteorological conditions, force majeure or following directions given by lawful authority.
Rights to carrier liability towards passengers and baggage	Under the Civil Aviation Act airlines are liable for the damage sustained in the event of death or injury of a passenger, if the accident which caused the damage occurred on board the aircraft or during the operations of embarking or disembarking. The limit of liability for each passenger is limited to 8,300 SDR (10,237 EUR). The airline is also liable for damage sustained in the event of loss or damage of baggage. The limit of liability for baggage is 17 SDR (21 EUR) per kilogramme. The Montreal Convention was added into the Civil Aviation Act as Schedule 6 in 2003.
Right to a quick and accessible system of complaint handling	Passengers are able to complain directly to the airline for any complaints. If the passenger is unable to resolve the complaint via this method, they can go to

New Zealand	
	Consumer Protection New Zealand. This may involve going to the Dispute Tribunal or District Court.
Right to full application and enforcement of law	The Civil Aviation Authority of New Zealand exists to support safe and secure flying in New Zealand. It has no regulatory involvement with consumer matters or commercial dispute, only matters regarding safety or security of passengers. Consumer Protection New Zealand are part of the Ministry of Business Innovation and Employment. It is responsible for developing consumer policy, including consumer protection and administrating a range of consumer legislation.

Nigeria

Nigeria	
General description	According to the Nigerian National Bureau of Statistics (NBS), The total number of passengers travelling through Nigerian airports in 2017, was recorded to be 13.4m, down 8.03% from 14.6m in 2016. This includes: - Domestic passengers: 9.5m in 2017, down 8.40% from 2016 - International passengers 3.9m in 2017, down 7.5% from 2016 As of 2017, Nigeria's largest airports were the following: - Lagos – Murtala Muhammed Airport: 6.4m total passengers - Abuja – Nnamdi Awikiwe Airport: 3.6m total passengers - Port Harcourt Airport: 0.95m departing passengers - Owerri – Sam Mbakwe Airport: 0.43m departing passengers - Kano – Mallam Aminu Airport: 0.43m departing passengers After series of bankrupt airline takeovers by the government over the past five years, Nigeria's domestic market was dominated by three distinct groups in 2017: - Air Peace: accounted for 34% of the domestic market - Government seized airlines: Arik Air and AeroContractors accounted for 24% of domestic passengers carried The international passengers' market is highly dominated by foreign carriers.
Air passenger rights data	In 2018, On-time performance at Nigerian airports was reported to have been poor: - Domestic Flights: 61% of flights were delayed - International Flight: 35% of flights were delayed - Air Peace: Nigeria's largest domestic airline delayed 51% of its domestic flights - Arik Air: Formerly the country's largest airline, Arik had 60% of its domestic flights delayed
Air passenger rights framework	Air passenger rights in Nigeria are regulated by Part 19 of Nigeria Civil Aviation Regulations, 2015. The regulations apply to: - Passengers departing from an airport located within Nigeria to another airport within Nigeria - Passengers departing from an airport located in another country to an airport situated within Nigeria, unless they received benefits or compensation and were given assistance in that other country, if the operating air carrier of the flight concerned is a Nigerian carrier - Foreign air transportation with respect to non-stop flight segments originating in Nigeria
Right to mobility	Sub-part 19.12 of the Nigeria Civil Aviation Regulations deals with the rights of persons with reduced mobility and/or special needs. It established the following rules: - Operating airlines shall give priority to persons with reduced mobility and any persons accompanying them. - In cases of denied boarding, cancellation and delays, persons with reduced mobility and any persons accompanying them shall have the same rights to care (discussed below) as other passengers.

Nigeria	
Right to information before purchase and at the various stages of travel, notably in case of disruption	There no law laying down rights to information before purchase specific to air transportation. However, the Federal Competition and Consumer Protection Act, 2018 regulates these rights across all industries in general. Under the act, an undertaking shall not display any good or services for sale without adequately displaying to the consumer a price for those goods or services: • A price is deemed adequately displayed to a consumer if, in relation to any particular goods or services, a written indication of the price, expressed in the currency of the Federal Republic of Nigeria is: - Annexed to, written, printed, stamped; or - Located upon or otherwise applied to: • The goods or services; or • Any land, ticket, covering, label, package, reel, shelf; or • Other thing used in connection with: ▪ The goods or services; or ▪ On which the goods or services are mounted for display or exposed for sale or published in relation to the goods or services in a catalogue, brochure, newspaper, circular or similar publication available to the consumer, or the public generally. • An undertaking shall not require a consumer to pay a price for any goods or services: - Higher than the displayed price for those goods or services; and - Or if more than once price is concurrently displayed, higher than the lower of lowest of the prices so displayed. Under Part 19, the airline has different disclosure obligations under a range of scenarios: • Oversold flight: Under such case, the airline is required to solicit volunteers and has the obligation to (1) advise each passenger that he or she may be in danger of being involuntarily denied boarding and (2) disclose all material restrictions applicable to the alternative offer before the passenger decides whether to give its seal; • Delay: For domestic flights, the airline is required to provide passengers with reasons for the delay within 30 minutes after the scheduled departure time. There is no specific provision for international flights; • Cancellation: Domestic flights: the passengers' right to compensation may be waived if the airline informs them of the disruption at least 24 hours before the scheduled departure time. International flights: the passengers' right to compensation may be waived if: - The passenger is informed at least 7 days before schedule time of departure; - The passenger is informed between three and seven days before the scheduled time of departure and offered re-routing allowing them to depart not more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; - The passenger is informed between less than seven days before the scheduled time of departure and offered re-routing allowing them to depart not more than one hour before the scheduled time of

Nigeria	
	departure and to reach their final destination less two four hours after the scheduled time of arrival.
Right to renounce travelling when trip not carried out as planned & Right to fulfilment of the transport contract in case of disruption	Under Part 19, the airline is required to offer both reimbursement and re-routing, as a combination, rather than as a set of option, in cases of: • Denied boarding due to overbooking; • Cancellation, for both international and domestic flights, both within and beyond the airline's control; and • Domestic flights delay after more than three hours have elapsed since initially scheduled time of departure. It is not clear whether the passenger is free to accept reimbursement and renounce the trip altogether.
Right to get assistance in case of long delays at departure or connecting points	Under Part 19, passengers may be provided, free of charge, with: • Refreshments such as water, soft drinks, confectioneries and snacks; • A meal; • Hotel accommodation (in case of delay occurring at night, denied boarding and cancellation) • Transport between the airport and place of accommodation • Two telephone calls, SMS, or emails. Passengers will be entitled to this assistance under the following circumstances: • All cases of cancellation (international, domestic, within and beyond airline's control) • Denied boarding due to overbooking; • Delays both within and beyond airline's control: - Beyond 2 hours for refreshments, and communication services; - At a time beyond 10pm until 4am (domestic flights), or when expected time of departure is at least six hours after initially scheduled departure time (international flights) for hotel accommodation
Right to compensation under certain circumstances	Under Part 19, passengers may receive the following compensation: • 25% of the fares or passenger ticket price for domestic flights; and • 30% of the passenger ticket price for all international flights; However, this compensation may be reduced by 50% if passengers are offered re-routing to their final destination on an alternative flight the arrival time of which does not exceed the schedule arrival time of the flight originally booked by: • One hour for domestic flights; and • Three hours for international flights. Passengers will be entitled to the conditions above in the following circumstances: • Denied boarding due to overbooking; • International flight delays lasting at least two hours; and • All cases of cancellation unless they are notified at least 7 days before departure day (international, domestic, only within airline's control).
Rights to carrier liability towards	The Convention for the Unification of Certain Rules for International Carriage by Air, Montreal 1999, was ratified by Nigeria on 28/05/199., and section 48(1)

Nigeria	
passengers and baggage	of the Civil Aviation Act 2006 incorporated the Montreal Convention into Nigerian Law. The Montreal Convention is therefore effective in Nigeria.
Right to a quick and accessible system of complaint handling	The Federal Competition and Consumer Protection Commission is in charge of receiving complaints from consumers, investigating the cases, enforcing the law, as well as imposing sanctions. Where upon an investigation by the Commission of a complaint by a consumer, it is proved that the consumer's rights have been violated; the consumer is entitled to civil action for further compensation in a court of competent jurisdiction, in addition to the redress the Commission may impose.
Right to full application and enforcement of law	As stated above, the national consumer protection agency in Nigeria, established in accordance with Federal Competition and Consumer Protection Act, is the Federal Competition and Consumer Protection Commission. In addition to being responsible for receiving and processing consumer complaints, the Commission is also responsible for the enforcement of the law.

Qatar

Qatar	
General description	Hamad International Airport (HIA) is the sole international airport in Qatar. HIA replaced Doha International Airport in May 2014. In 2018, HIA had 34.21 million passengers pass through its airport. According to Qatar Airways, HIA is targeted to handle up to 50 million passengers. The sole air carrier in Qatar is Qatar Airways. Qatar Airways carried 29.16 million passengers in 2018, compared with 32.01 million passengers in 2017.
Air passenger rights data	No air passenger rights data found for Qatar.
Air passenger rights framework	There is no specific legislation in Qatar regarding air passenger rights. Air passengers would be protected as part of Qatar's national consumer protection framework.
Right to mobility	Qatar has not established a general framework for the protection of PRM. Qatar Airways has implemented a company policy regarding PRM. Qatar Airways advises passengers to inform them about any special assistance needs via a Medical Information Form (MEDIF) at least 48 hours before flight departure. Their Conditions of Carriage state that any passenger requiring special assistance, who has been accepted by Qatar Airways prior to the flight will not be refused boarding. Mobility assistance in the form of wheelchairs, seats with moveable arm rests and accessible toilets will all be available on board the flight, as well as wheelchairs being throughout the airport. Service dogs, emotional support or psychiatric service dogs can travel free of charge in the cabin on Qatar Airways flights to or from Australia, Brazil, Canada, the EU, Georgia, India, Norway, Switzerland and the USA. On all other flights service dogs may travel free of charge as checked baggage.
Right to information before purchase and at the various stages of travel, notably in case of disruption	Qatar Airways' air policy states that: At the time of purchasing the ticket, the passenger will be advised of taxes, fees and charges not included in the fare. In the event of an increase in tax, fee or charge after the ticket has been purchase, the passenger will be required to pay the additional amount.
Right to renounce travelling when trip not carried out as planned	As detailed below, in the event a flight is cancelled or delayed, the passenger is entitled to a full refund of the original fare price.
Right to fulfilment of the transport contract in case of disruption	Qatar Airways' air policy states that: in the event that they cancel or delay a flight, are unable to provide a previously confirmed space, fail to stop at a passenger stopover or cause you to miss a connecting flight, they will either; • Carry the passenger on another Qatar Airways service; or • Re-route the passenger to the destination shown on the ticket, on either a Qatar Airways service, another airline or via surface transportation. If the total value of the revised routing is less than the refund value, the passenger will be refunded the difference; or • Refund the passenger.

Qatar	
	If no portion of the ticket has been used, the passenger will be refunded the full amount. If a portion of the ticket has been used, the amount to be refunded will be the higher of: – The one-way fare from point of interruption to the destination or next stopover, or – The difference between the fare paid and the fair for the transportation used. If a passenger is denied boarding despite having a valid ticket and presenting themselves for check-in at the specified time, they will be entitled to compensation in accordance with the applicable regulation or Qatar Airway's denied boarding compensation scheme. The terms of this scheme have not been found.
Right to get assistance in case of long delays at departure or connecting points	Qatar Airways' air policy states that: does not mention any specific rights to assistance in the event of flight disruption, other than passenger rights in accordance with EU Regulation 261/2004.
Right to compensation under certain circumstances	Qatar Airways' air policy does not provide for any rights to compensation, other than for flights where passenger rights are covered by EU Regulation 261/2004.
Rights to carrier liability towards passengers and baggage	Qatar Airways' air policy states that: Flights under Qatar Airways are subject to the rules and limitations relating to liability established by the applicable Warsaw Convention or the Montreal Convention.
Right to a quick and accessible system of complaint handling	Passengers are able to complain through the Qatar Civil Aviation Authority, Civil Courts or directly to Qatar Airways.
Right to full application and enforcement of law	Qatar Civil Aviation Authority is the national enforcement body. They were established in 2001 in accordance with Law No. (16) of 2001. Their vision is to maintain a safe, effective and sustainable civil aviation system in Qatar through maintaining, monitoring and developing aviation policy. No specific responsibility is mentioned on their role within passenger rights.

Singapore

Singapore	
General description	According to the Department of Statistics Singapore, air passenger departures in Singapore reached 32.2 million in 2018, compared with 30.6 million in 2017. The largest and main airport in Singapore is Changi Airport, reporting 65.6 million passenger movements in 2018, compared with 62.2 million passenger movements in 2017. The national air carrier of Singapore is Singapore Airlines. They carried 19.5 million passengers in 2017, a 2.7% increase from the previous year. The group also owns regional airline SilkAir and low-cost airline Scoot Airlines. In 2017 SilkAir carried 4.7 million passengers, a 14.2% increase from the previous year and Scoot Airlines carried 9.5 million passengers in 2017, a 11.3% increase from the previous year. The other local low-cost carrier (LCC) of Singapore is Jetstar Asia, a subsidiary airline of Jetstar Airways. As of 2018, Jetstar Asia had a market share of 19.2% of the LCC market, whilst Scoot Airlines had a market share of 43.3%.
Air passenger rights data	Changi Airport and Singapore Airlines experienced more flight delays this year than last year. According to a study by OAG, 81.3% of flights at Changi Airport were on-time in 2017, compared with 83.5% the previous year. OAG defines an on-time flight for an airline as one that arrives within 15 minutes of the scheduled time. Jetstar Asia reported 86.4% on-time flights, whilst Singapore Airline was slightly less at 84.5%.
Air passenger rights framework	Singapore does not have an air passenger rights framework. Passenger rights are governed by the individual airline's conditions of carriage. Singapore Airlines states their policies in their conditions of carriage. Alongside this, they have developed a Customer Service plan, pursuant to the United States Department of Transportation Final Rule on Enhancing Airline Passenger Protections. This plan is only applicable to flights to and from the USA.
Right to mobility	For the care of passengers requiring special assistance, Singapore Airlines provides passengers with wheelchairs, before and during the flight. Information briefings can be tailored separately for any visually or hearing-impaired passengers. Singapore Airlines plans regarding special assistance, comply with both the US Department of Transport's Non-discrimination act (14 CFR Part 382) and with Australia's Department of Infrastructure, Regional Development and Cities Equal Access Plan. Similarly, Jetstar Asia offers passengers with reduced mobility wheelchair services through their journey and has a Disability Access Facilitation Plan for customers requiring special assistance at Australian Airports.
Right to information before purchase and at the various stages of travel, notably in case of disruption	Singapore Airlines' Customer Service plan states that: Passengers will be notified via the web site, telephone and at the boarding gate, within 30 minutes of discovering a flight delay, cancellation or diversion.

Singapore	
	• Upon request a passenger will be informed if whether the flight they are travelling on is overbooked. • All bookings made through their website will offer the lowest fare available, and passengers will be advised if a lower fare is available.
Right to renounce travelling when trip not carried out as planned	As detailed below, in the event a flight is cancelled or delayed, the passenger is entitled to a full refund in respect of the unused portion of the ticket.
Right to fulfilment of the transport contract in case of disruption	Singapore Airlines Conditions of Carriage state that: In the event that it cancels, terminates, diverts or fails to operate a flight according to schedule, it will either; • Carry the passenger on another Singapore Airlines service; or • Re-route the passenger to the destination shown on the ticket, on either a Singapore Airlines service, another airline or via surface transportation. If the total value of the revised routing is less than the refund value, the passenger will be refunded the difference; or • Refund the passenger, the amount of refund will be calculated in respect of the unused portion of the ticket.
Right to get assistance in case of long delays at departure or connecting points	Singapore Airlines Conditions of Carriage state that: In the event of a tarmac delay at a United States Airport or a Chinese Airport, the Contingency Plan for Length Tarmac Delays shall apply, giving passengers right to assistance after 2 hours. Singapore Airline's Customer Service plan states that in the event a service is cancelled, diverted or delayed, the passenger will be provided with meals, accommodation, and transfers as reasonable.
Right to compensation under certain circumstances	Singapore Airlines Conditions of Carriage state that: In the event that a passenger is involuntarily denied compensation, they will be entitled to compensation in accordance with applicable laws and regulations.
Rights to carrier liability towards passengers and baggage	Passenger rights to carrier liability towards passengers and baggage in Singapore are governed by Montreal Convention 1999.
Right to a quick and accessible system of complaint handling	Passengers are able to complain either directly to the airline or they could raise the complaint via CASE, the Consumers Association of Singapore. Singapore Airlines' Customer Service plan states that: It will acknowledge all consumer complaints within 30 days and provide a substantive response within 60 days.
Right to full application and enforcement of law	There is no national enforcement body of passenger rights in Singapore.

South Africa

South Africa	
General description	Airport Company South Africa owns and manages a network of nine airports in South Africa. In 2017, the airports collectively handled 41.5 million passengers, including arrivals and departures. This represents a 4.1% increase from the previous year. The three main international airports in South Africa are: • O. R. Tambo International Airport, handled 21.2 million passengers in 2017 • Cape Town International Airport, handled 10.8 million passengers in 2017 • King Shaka International Airport, handled 5.6 million passengers in 2017. The flag carrier of South Africa is South African Airways (SAA). SAA carried 6.5 million passengers in 2017, which is a slight decrease compared with 6.7 million passengers carried in 2016. Other South African based airlines are: • Low-cost airline Kulula.com, an operation of the Comair Group, which also offers scheduled flights under a British Airways franchise. As a Group, Comair carried 5.5 million passengers in 2016 • Mango Airlines, a low-cost airline (owned by South African Airways) which carried 3.0 million passengers in 2016 • SA Express, which carried 1.3 million passengers in 2015 • SA Airlink, a regional airline • FlySafair, a low-cost airline.
Air passenger rights data	Airports Company South Africa reports each airline's on-time performance. Based on IATA's standard benchmark, a flight is considered to be on-time if it is within 15 minutes of the original scheduled departure time. For O.R Tambo International Airport, the 15 minute on-time performance in June 2019 was reported as: • Airlink – 91.8% • FlySafair – 91.0% • British Airways Domestic – 87.9% • South African Airways – 83.7% • Kulula.com – 83.1% • SA Express – 67.7% • Mango Airlines – 67.0%
Air passenger rights framework	There is no specific air passenger rights legislation in South Africa. Passengers rights are governed by the individual airline's conditions of carriage. Below we consider the conditions of carriage for South African Airways (SAA) and kulula.com.
Right to mobility	Both airlines ask passengers with special assistance needs to inform them 48 hours prior to the flight. Any passenger who has disclosed their special requirement needs at the time of the booking and have been accepted by the airline will not be refused boarding due to their special requirements or disability.
Right to information before purchase and at the various stages of	Both airlines state that they will disclose the taxes and fees of the ticket separately. In the case of any increase of these fees after the ticket has been issued, the passenger will have to pay the increase.

South Africa	
travel, notably in case of disruption	SAA states that they will provide the following information: • The total amount paid in the national currency; • The rules of rebooking, refunds and no-show fees; • Information relating to connecting time and possible airport changes; and • The rules and values of the transport of baggage. Where the passenger has provided contact information, the airline will immediately inform the passenger or authorised agent, in the event of a flight delay, cancellation or disruption. SAA will provide information for the reason for the delay or cancellation in writing upon request.
Right to renounce travelling when trip not carried out as planned	SAA states that if it cancels a flight, fails to operate a flight reasonably according to schedule, fails to stop at the passenger's destination or causes them to miss a connecting flight, the passenger will be entitled to a full refund. Kulula.com states that if the flight is delayed by over 5 hours or the passenger has been involuntarily denied boarding, they will be entitled to a full refund.
Right to fulfilment of the transport contract in case of disruption	SAA states that if it cancels a flight, fails to operate a flight reasonably according to schedule, fails to stop at the passenger's destination or cause them to miss a connecting flight, the passenger will be given the option to either: • Be carried on the next available flight on an SAA service; or • Be re-routed to the destination shown on their ticket by either a SAA service or of another airline, without additional charge; or • Receive a full refund. Similarly, Kulula.com offers their passengers the same options in the event a flight has been delayed by 5 hours or more. In the event of involuntary denied boarding, other than Force Majeure, the passenger will be compensated as may be required by any law that applies.
Right to get assistance in case of long delays at departure or connecting points	Kulula.com states that it does not provide meal vouchers, or hotel accommodation in the event of flight cancellations. No rights to assistance are mentioned in SAA's Conditions of Carriage.
Right to compensation under certain circumstances	No rights to compensation are mentioned in the airlines' conditions of carriage.
Rights to carrier liability towards passengers and baggage	For domestic Kulula.com flights: • Liability for loss, delay or damage to baggage is limited to 17 SDR (21 EUR) per kilogram for checked baggage and 332 SDR (410 EUR) for unchecked baggage • Passenger liability is limited to 113,000 SDR (139,453 EUR) For SAA flights; • Liability for baggage loss for checked baggage is up to 19 SDR (24 EUR) per kilogram per passenger, where the Warsaw convention applies • Liability for baggage loss for checked baggage is 1,131 SDR (1,400 EUR) where the Montreal convention applies • Passenger liability for domestic SAA flights is limited to 1,000,000 ZAR (63,997 EUR)

South Africa	
	For both airlines liability for international flights is governed by the Montreal and Warsaw Convention.
Right to a quick and accessible system of complaint handling	Passengers are able to complain to the airline directly or via the National Consumer Commission (NCC) of South Africa. They are the primary regulator of consumer-business interaction in South Africa. Consumers are able to take a dispute to the NCC.
Right to full application and enforcement of law	There is no designated body for air passenger rights in South Africa. As mentioned above, the NCC regulate consumer-business interaction in South Africa. The NCC conducts investigations into any complaints it receives, including complaints received by air passengers.

Turkey

Turkey	
General description	Air passenger traffic at Turkey's airports reached 210 million passengers in 2018, an increase of 8.8% from the previous year. As of 2017, Turkey's largest airports were the following: • Atatürk International Airport – 61.1 million • Sabiha Gökçen International Airport – 31.3 million • Antalya Airport – 26.4 million • Esenboğa International Airport – 15.8 million • Adnan Menderes Airport – 12.8 million Ataturk Airport was replaced by the newly constructed Istanbul Airport, in order to meet Istanbul's growing air traffic. Both airports ran in parallel for 5 months from October 2018. The last flight left Ataturk Airport on 6 April 2019. The airport construction is due to be fully completed in 2027 and to be the largest airport in Europe, with 6 runways and a capacity of 200.0 million passengers per year. Turkish Airlines is the national airline of Turkey. In 2018, they carried a total of 75.2 million passengers, including 20.5 million domestic passengers and 42.2 million international passengers. The second largest airline in Turkey is Pegasus Airlines, which carried 30.0 million passengers in 2018, representing a 7.7% increase from the previous year. Following that the major airlines in Turkey and their seat capacity in 2017 were: • Atlasglobal – 4.3 million passengers • Onus Air – 3.5 million passengers • SunExpress – 3.0 million passengers
Air passenger rights data	No data found on air passenger rights.
Air passenger rights framework	Air Passenger Rights in Turkey are governed by SHY Passenger. SHY Passenger was implemented by the Directorate General of Civil Aviation (DGCA) of Turkey in January 2012 and was issued in parallel with EU Regulation 261/2004. It is applicable to all scheduled or non-scheduled flights for airlines of Turkish origin or for foreign airlines departing Turkish Airports.
Right to mobility	Article 12 of the Regulation states that airlines shall give priority to passengers with restricted mobility and their accompanying passenger. In cases of denied boarding, cancellation and all kinds of delay, passengers with restricted mobility shall be to be provided with the assistance detailed below as soon as possible.
Right to information before purchase and at the various stages of travel, notably in case of disruption	Article 15 of the Regulation states that all airlines upon request shall provide passengers with a legal notice in English and Turkish of their rights in cases of denied boarding, flight cancellation or delay of more than two hours. Specifically, in cases of denied boarding or flight cancellation, the airlines must provide written notification to each passenger of their right to compensation and assistance.

Turkey	
Right to renounce travelling when trip not carried out as planned	As per EU Regulation 261/2004.
Right to fulfilment of the transport contract in case of disruption	As per EU Regulation 261/2004.
Right to get assistance in case of long delays at departure or connecting points	Passengers are entitled to assistance as per EU Regulation 261/2004. In cases when assistance is required, passengers have the rights as follows: • Hot and cold beverages for delays between 2 and 3 hours; • Breakfast or lunch for delays between 3 and 5 hours, in addition to hot and cold beverages; • 2 phone calls, fax messages or email services or email services without any charges or time limits; and • Accommodation and any necessary transfers when an overnight stay is required.
Right to compensation under certain circumstances	The amount of compensation and passengers right to compensation is as per EU Regulation 261/2004. The airline will not be required to pay compensation in case of any extraordinary circumstances (meteorological conditions, natural disasters, security risks, unforeseen deficiencies in terms of flight safety, cases such as strike, and political unrest).
Rights to carrier liability towards passengers and baggage	Rights to carrier liability towards passengers and baggage are subject to the Montreal Convention 1999.
Right to a quick and accessible system of complaint handling	Passengers are required to first submit any complaints regarding denied boarding, delay or cancellation of flight, to the relevant airline. If the passenger does not receive a response from the airline or is not satisfied with the response, they can escalate the complaint to the DGCA. The passenger must submit all relevant information and documents, alongside a petition letter either via an electronic form or by mail.
Right to full application and enforcement of law	The Directorate General of Civil Aviation (DGCA) of Turkey is the responsible enforcement body for air passenger rights.

United Arab Emirates

United Arab Emirates	
General description	The largest airport in the United Arab Emirates (UAE) is Dubai International Airport, which reported 88.2 million passengers in 2017. Following this, the largest airports in the UAE are: - Abu Dhabi International Airport, with 24.5 million passengers in 2016 - Sharjah International Airport, with 11.4 million passengers in 2017. The largest airline in the UAE is Emirates Airlines, which carried 58.5 million passengers in 2017. Other major airlines in the UAE are: - Etihad Airways, which carried 18.6 million passengers in 2017 - FlyDubai, which carried 10.9 million passengers in 2017 - Air Arabia, which carried 10.2 million passengers in 2017
Air passenger rights data	No information was found across the UAE on air passenger rights. One airline reported that it received 3,230 passenger claims in 2018 relating to EU Regulation 261/2004, compared with 1,675 claims received in 2017. One airline reported a total of 74,767 baggage claims received from passengers from 2014 to 2018.
Air passenger rights framework	There is no specific legislation in the UAE regarding air passenger rights. Passenger rights in UAE are governed by individual airlines' conditions of carriages.
Right to mobility	Emirates Airlines, Air Arabia and Etihad Airways advise passengers to inform them at least 48 hours before the flight of any special assistance needs. Wheelchairs can be provided for passengers requiring assistance before, during and after the flight free of charge. Passengers travelling to Sharjah airport on an Air Arabia service will be charged 50 AED (12 EUR) for a wheelchair service. No information was found on wheel chair provision by FlyDubai. Passengers requiring additional special assistance services are required to fill out a MEDIC form. Emirates Airlines has complaint resolution officials (CROs) in designated airports. CROs are trained to handle special need requests and are aware of disability regulations for air travel, specifically for travel to and from the USA.
Right to information before purchase and at the various stages of travel, notably in case of disruption	Emirates Airlines, Air Arabia, FlyDubai and Etihad Airways (4 airlines of the UAE) state that they will disclose all taxes, fees and charges not included in the fare.
Right to renounce travelling when trip not carried out as planned	In the case of flight delay, cancellation or denied boarding and the passenger is not satisfied with the alternative option provided, the 4 airlines state that the passenger has the right to cancel their flight and is entitled to an involuntary refund. The amount of refund is equivalent to the unused portion of the ticket. Specifically, in the case of FlyDubai, the refund will be in the form of a voucher.
Right to fulfilment of the transport contract in case of disruption	In the case of a flight delay or cancellation, Emirates Airlines will; Offer the passenger a seat on the next available flight on an Emirates service; or

United Arab Emirates	
	• Re-route the passenger on an Emirates service or on the flight of another airline; or • If the passenger is not satisfied with the offer, they will be entitled to an involuntary refund. Similarly, Air Arabia and Etihad Airways make the same options available to the passenger. In the case of a flight cancellation, Fly Dubai will re-book you on the next available flight to the same destination. The passenger will also be entitled to change the date of their return flight. In the case that either of the 4 airlines has to involuntarily deny boarding to a passenger, the passenger will be offered a seat on the next available flight. Fly Dubai and Emirates Airlines additionally offers the passenger a complimentary ticket in the form of a voucher, amounting to the total fare for the portion of the flight they have been denied boarding. Fly Dubai passengers will also have the option to change the date of the return journey free of charge.
Right to get assistance in case of long delays at departure or connecting points	In the case of a flight delay of more than 3 hours, FlyDubai will offer passengers a refreshment voucher. Emirates Airlines, Air Arabia and Etihad airlines state no rights to assistance in the case of flight disruption.
Right to compensation under certain circumstances	In the case of denied boarding all 4 airlines state that the passenger will be entitled to compensation under the applicable law and the denied boarding compensation policy of the airline.
Rights to carrier liability towards passengers and baggage	All 4 airlines state that the rights to carrier liability towards passengers and baggage are governed by the Montreal and Warsaw Convention.
Right to a quick and accessible system of complaint handling	Passengers have the right to complain directly to the airline or via an ADR institution. The main ADR institutions in the UAE are; the DIFC-LCIA Arbitration Centre, Dubai International Arbitration Centre (DIAC), Abu Dhabi Arbitration Centre and the Sharjah Arbitration Centre.
Right to full application and enforcement of law	There is no national enforcement body of air passenger rights in the UAE.

United States

United States	
General description	US airlines and foreign airlines serving the United States carried 965 million passengers in 2017. The 4 largest US airlines in terms of annual passengers carried are: • American Airlines • Delta Air Lines • Southwest Airlines • United Airlines The busiest airports in the United States in 2017 were: • Hartsfield-Jackson International Airport with 103.9 million passengers • Los Angeles International Airport with 84.5 million passengers • O'Hare International Airport with 79.8 million passengers • Dallas/Fort Worth International Airport with 67.0 million passengers.
Air passenger rights data	The DoT received approximately 18,000 consumer complaints in 2018. 75% of these complaints related to four reasons: • Flight problems (cancellation, delay, missed connections) • Baggage • Customer service • Reservations, ticketing, booking Airlines are required to report accurate data on on-time performance, denied boarding, and mishandled baggage (although this requirement is general, not just under consumer protection rules). As reported by U.S DoT, 82.3% of all U.S flights were on time in October 2018. The main causes of delay were due to delay within the air carrier's control, delay due to late arrival of the aircraft and national aviation system delay, this includes delay relating to non-extreme weather, heavy traffic and airport operations. In October 2018, 5,202 (0.8%) of all flights at U.S Airports were cancelled, a very slight increase from October 2017, where 3303 (0.7%) of all flights were cancelled.
Air passenger rights framework	The United States adopted different rules implementing passenger rights which are codified in the Code of Federal Regulations in the Title 14 entitled Aeronautics and Space (14 CFR). The regulations apply to all air carriers based in the United States and to foreign carriers that depart from or arrive at U.S airports. Additionally, the regulations apply to all U.S airports and to commercial airlines only. Since 1999, the U.S DoT requires all airlines flying to, from and within the United States to have and publish a Customer Service Commitment. This is a requirement from the U.S DoT, but is not part of the contract of carriage, therefore airlines are not liable for any violation of their Commitment. The DoT rules for the commitment outline 12 elements, including compensation requirements for lost baggage and denied boarding, expanding tarmac delay rules to foreign carriers and full disclosure of fees at all points of sale.
Right to mobility	The Air Carrier Access Act of 1986 (ACAA) is Title 49, Section 41705 of the U.S. Code.

United States	
	An air carrier cannot require a passenger with a disability to provide notice of their intention to travel or their disability as a condition of receiving transportation or of receiving services or accommodation required by this part. However, in certain cases when the passenger requires specific requirements, for example, hook up to a respirator, medical oxygen or an onboard wheelchair, the carrier requires up to 48 hours of notice. The airline is obligated under the act to ensure assistance is provided in; moving the passenger from terminal entrance to the airport gate, guiding to a restroom entrance and boarding and deplaning. Under the act, certain airlines are required to provide certain seating accommodations to qualified passengers with disabilities who self-identify as needing as having specific seating requirements. Every airline is required to have at least one designated Complaint Resolution Officer (CRO) available either by telephone or in person during operating hours. A CRO is responsible for resolving disability – related issues that have escalated beyond an initial interaction with airline personnel.
Right to information before purchase and at the various stages of travel, notably in case of disruption	The DoT requires airlines and travel agencies that display ticket prices to advertise the total price that a consumer must pay to purchase a ticket. Whenever an airfare is advertised, the fare price must include all applicable government taxes and fees, and any mandatory carrier-imposed surcharges. Airlines and ticket agents are prohibited from automatically including optional services in the ticket price. After the ticket is fully purchased, the airline is prohibited from increasing the price of a ticket or requiring the passenger to pay additional money unless the airline provided notice to the consumer of the potential for an increase in a government-imposed tax. According to 14 CFR, all airlines are required to provide passengers with information about a change in the status of the flight if the flight is scheduled to depart within 7 days. Airlines are required to give these status updates 30 minutes (or sooner) after the airline becomes aware of a status change. The flight status information must, at a minimum, be provided on the airline's website and via the airline's telephone reservation system.
Right to renounce travelling when trip not carried out as planned	The Regulations state that in the instance a passenger's flight is cancelled and the passenger has chosen to cancel the trip as a result, the passenger will be entitled to a refund for unused transportation, including any baggage fee or additional seating costs.
Right to fulfilment of the transport contract in case of disruption	The Regulations states that in cases of overbooking, an airline must first ask passengers to give up their seats voluntarily, in exchange for compensation. DoT requires airlines to give all passengers denied boarding a written statement explaining their rights. Passengers denied boarding will be offered re-routing and compensation options, regardless of whether the passenger has been voluntarily or involuntarily denied boarding. For delayed flights, some airlines will offer a refund this depends on the individual air carrier's policy. DoT has not specifically defined 'significant delay', however they will determine on a case by case basis whether a passenger is entitled to a refund. As mentioned above, in the instance a passenger's flight is cancelled, and the passenger has chosen to cancel the trip as a result, the passenger will be entitled to a refund for unused transportation, including any baggage fee or

United States	
	additional seating costs. For all other cases of a cancelled flight, whether a passenger is entitled to compensation or a refund depends on the individual airline's policy. American Airlines states that in the case a flight is delayed or cancelled, it will rebook the passenger onto the next available flight or offer them a full refund. Delta Air Lines states that in the case of a flight delay, cancellation or diversion greater than 90 minutes it will offer the passenger either a seat on the next available flight on its services or offer the passenger a full refund of the unused portion of the ticket. Southwest Airlines states that if a passenger's scheduled flight is cancelled, terminated or delayed before the passenger has reached their final destination, the passenger will be offered to either be re-routed on another service, refunded the fare of the unused portion of ticket, or offered credit towards the purchase of future travel. United Airlines states that when a passenger's flight is affected by more than 30 minutes, the passenger will be offered a new ticket on a United Airlines service within 7 days of the original departure time. Alternatively, the passenger can use the value of their ticket towards future travel on United Airlines or be eligible for a refund upon request.
Right to get assistance in case of long delays at departure or connecting points	The only case where assistance provided is defined in the ACAA is in the instance of a tarmac delay. Every airline operating to and from the U.S with at least one aircraft with 30 or more passengers is required to follow tarmac delay contingency plans. The airline has the obligation to return the aircraft to the gate and give passengers the option to deplane if: • 3 hours of delay have passed for domestic flights • 4 hours of delay have elapsed for international flights After 2 hours of delay, the airline must provide food and refreshments to the passengers. When a flight is cancelled or delayed, each airline has its own policies about what whether it will provide assistance. In the case of denied boarding, airlines may offer incentives such as free meals, accommodation or transfers, however there is no requirement for the airline to provide this.
Right to compensation under certain circumstances	In cases of denied boarding, passengers are entitled to a compensation amount of 200% the original fare with a maximum of 675 USD (603 EUR) if: • They reach their destination more than 1 hour after the scheduled arrival time for domestic flights; or • They reach their destination between 1 to 4 hours after the scheduled arrival time for international flights. Passengers are entitled to a compensation amount of 400% of the original fare with a maximum of 1,350 USD (1,205 EUR) if:

United States	
	• They reach their destination more than 2 hours after the scheduled arrival time for domestic flights; • They reach their destination more than 4 hours after their scheduled arrival time for international flights. In the United States, airlines are not required to compensate passengers when flights are delayed or cancelled.
Rights to carrier liability towards passengers and baggage	Airlines are responsible for repairing or reimbursing a passenger for damaged baggage, including its contents, when the damage occurs while the bag is under the airline's control. This is subject to maximum liabilities; for domestic flights this is capped at 3,500 USD (3,126 EUR) and for international flights this is capped at 1,131 SDR (1,400 EUR) in line with the Montreal Convention. The United States follows the Montreal Convention for carrier liability towards passengers.
Right to a quick and accessible system of complaint handling	The U.S DoT requires all airlines to inform their consumers of how to submit a complaint to the airport or airline. Airlines have trouble-shooters at the airports, usually called Customer Service Representatives, who can deal with the problem on the spot. If a problem is not resolved at the airport, the passenger can submit a claim through the airline. Once a passenger submits a complaint to the airline, the airline is required to send an acknowledgment of the complaint within 3 months, and a written response addressing the complaint within 6 months. If the passenger is not satisfied with the response from the airline, they can then progress their complaint to the DoT. Additionally, a passenger may file a complaint with DoT if they feel that they have experienced unlawful discrimination by the airline's employees.
Right to full application and enforcement of law	The U.S DoT is responsible for enforcing the ACAA, which applies to all flights to, from, or within the United States. The U.S DoT has the power to regulate, monitor and enforce passenger rights, including the rights of passengers with reduced mobility. It does not have the direct authority to compensate passengers but can launch investigations with the airline where appropriate. The Aviation Consumer Protection Division (ACPD) is a body of the U.S DoT. The ACPD reviews and responds to consumer complaints and promotes awareness and understanding of consumer rights through online consumer information and education.

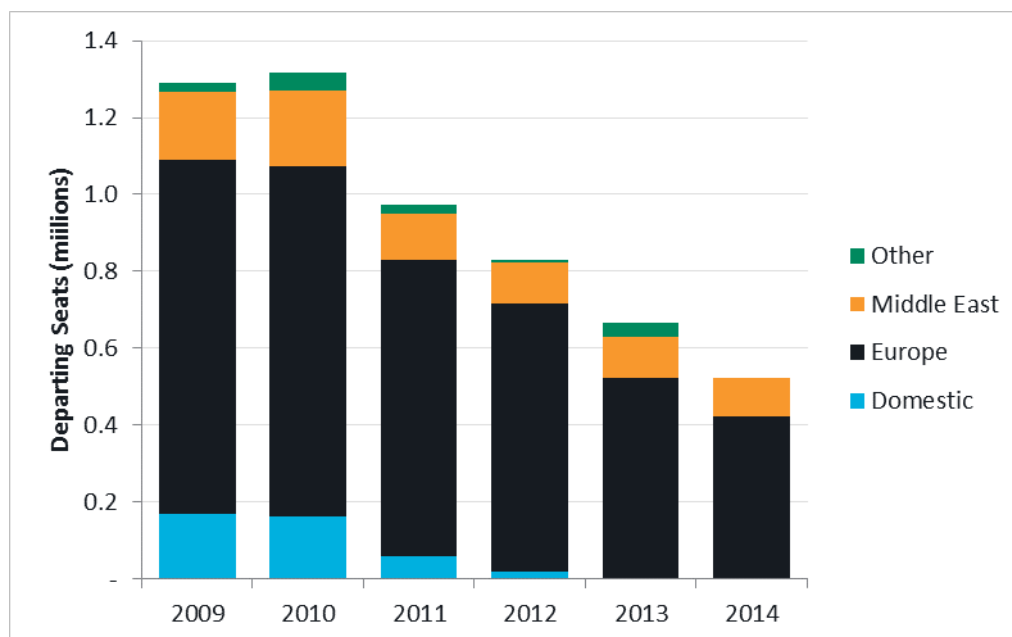
G Airline insolvency case studies

Cyprus Airways

Background

- G.1 Cyprus Airways was the Cypriot flag carrier and had been in operation since the 1940s. It flew predominately to destinations in Europe and the Middle East. Since Cypriot independence in 1960, the Cypriot government had been the majority shareholder in the airline, and although the size of its stake varied throughout the years, by September 2014 its stake was 93.7%.
- G.2 The figure below shows the number of Cyprus Airways' seats departing from Larnaca and Paphos airports between 2009 and 2014.

Figure G.1: Cyprus Airways departing seats (2009-2014)



Source: OAG

- G.3 Cyprus Airways' capacity declined significantly during this period, falling from over 1.3 million departing seats in 2010, to just over 0.5 million in 2014. Over the same period, the total number of passengers carried by Cyprus Airways fell from 1.6 million in 2009 to 1.3 million in 2012 – official passenger numbers are not available after 2012. At the end of 2014, Cyprus Airways had 560 employees and flew to 13 destinations on a fleet of six A320s.

Bankruptcy process

- G.4 Cyprus Airways had been struggling financially since 2006, due to increased competition from low-cost carriers, compounded by the fallout from the 2007-2008 financial crisis. After several years of the Cypriot government attempting to keep the airline in operation, through capital

injections, loans and attempted sales, the airline ceased operations in January 2015 as a result of a state aid ruling by the European Commission.

- G.5 The Commission declared some of the state aid paid to Cyprus Airways, by the Cypriot government, was illegal and had to be returned, which effectively caused the airline to be bankrupt. A timeline of the events leading up to the Commission's decision is shown in the table below.

Table G.1: Chronology of European Commission's state aid ruling

Date	
September 2007	Commission authorises restructuring aid package of €95 million for Cyprus Airways.
2010-2011	Cyprus Airways receives €269,000 training aid under the exemption regime for unproblematic support measures.
February 2012	The Commission starts a preliminary investigation after learning from press reports that a capital increase was planned for Cyprus Airways.
September-December 2012	The Cypriot government injects capital worth €31.3 million into the airline.
December 2012	The Cypriot government provides €73 million of rescue aid to the airline. Several tranches of this loan – €34.5 million in total – were paid out between January and July 2013, in breach of Cyprus' obligation to await the result of the Commission's state aid scrutiny.
March 2013	The Commission opens an in-depth investigation into the €73 million rescue aid package and the €31.3 million capital injection.
October 2013	The Cypriot government provides a €102.9 million aid package to restructure Cyprus Airways for state aid clearance. The package covered the €31.3 million capital injection already granted in 2012, a conversion of debts into equity amounting to €63 million and €8.6 million to cover the deficit of the company's employee benefit scheme.
February 2014	The Commission opens an in-depth investigation to assess the restructuring aid package.
January 2015	The Commission rules that that the restructuring aid package of over €100 million is in breach of EU state aid rules, ordering Cyprus Airways to pay back over €65 million to the Cypriot government.

Source: European Commission

Announcement of bankruptcy

- G.6 On Friday 9 January, the board of Cyprus Airways announced it was suspending all operations following the European Commission state aid ruling. At a press conference on the same date, that officially announced the end of the airline, Cypriot government ministers stated that (although it was not legally obliged to do so) "The Republic will undertake fully the cost of the alternative flights and therefore the passengers will not be burdened in any way". This meant that every passenger, with a flight booked on Cyprus Airways, would receive either a full reimbursement or an alternative route with a different airline.
- G.7 On the same day, Cyprus Airways issued a statement online with instructions on how passengers should seek reimbursement or alternative travel arrangements:

Dear Passengers,

Following the adverse decision of the European Commission for Competition, issued January 9, on the application of the Republic of Cyprus of a Restructuring Plan for Cyprus Airways (Public) Ltd submitted in October 2013, the Board of Directors of Cyprus Airways has decided to initiate the procedure for voluntary liquidation and to that effect all necessary measures will be taken.

In the context of the above decision all operations of the company will be suspended as of the close of business January 9.

[...]

The government of Cyprus announced that it has decided to offer alternative arrangements to all passengers who have Cyprus Airways tickets. The cost of all alternative arrangements will be undertaken by the Republic.

The affected passengers of Cyprus Airways, who have arranged their travel with departure days up to and until 9/2/2015, can immediately contact the travel agency Top Kinsis Travel Public at the national telephone number 77787878, or if they are calling from overseas at the telephone number +357 22869999, in order to arrange for the issuance of a new flight ticket. For the remaining passengers, with departure date from 10/2/2015 and onwards, a new announcement will be made in the coming days.

Additional information will be given for the arrangements that are made and/or other useful information for the passengers, on the website of the travel agency www.topkinisis.com.

- G.8 Although this statement was posted online and was widely reported in the press, it is not clear whether the ceasing of Cyprus Airways' operations, or instructions on who they should contact, were directly communicated to passengers.

Impact on passengers

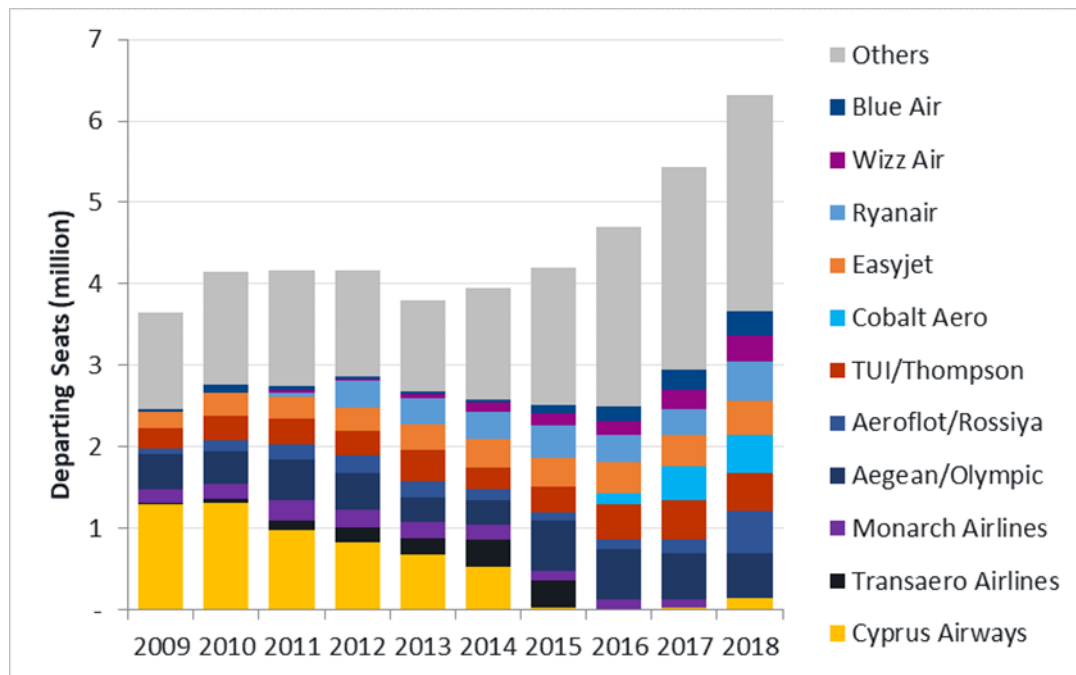
- G.9 Soon after the bankruptcy announcement, on Tuesday 12 January it was reported that on Saturday 9 (the day the bankruptcy was announced) and Sunday 10 January, Top Kinsis Travel assisted 4,000 people and took 18,000 calls from Cyprus and abroad. The head of Top Kinsis Travel, Akis Kelepesis, also stated that "the vast majority" of passengers flew close to their original departure times; three flights were chartered to Amsterdam, London and Moscow, although there had been some delays on flights to and from Greece. Kelepesis also stated that, based on its current contract with the Cypriot government valid until 9 February, Top Kinsis Travel expected to assist a further 7,000 passengers.
- G.10 For passengers who did not want to wait to be re-routed, some airlines, including Ryanair and British Airways, also offered temporary "rescue fares". Ryanair offered flights from Paphos to Stansted for £69.99, and to Athens and Thessaloniki for €49.99. British Airways offered flights from Larnaca to Heathrow or Gatwick for £75 until the end of January 2015.
- G.11 A subsequent announcement, made by the Cypriot government at the end of January stated that, up until 28 February, passengers with a booking from 10 February to 25 October (the date of the last booking) should contact any travel agent licensed by the Cyprus Tourism Organisation (CTO) to issue new tickets or reimbursement, and that any additional costs concerning re-ticketing would be undertaken by the Republic of Cyprus. However, the announcement also stated that, if passengers missed the February 28 deadline, they would

not be allowed to claim a replacement ticket and no further arrangements would be made by the government.

- G.12 In March 2016, it was reported that the total sum paid to Top Kinisis Travel by the Cypriot government for assisting passengers was €3.3 million. This included €3.2 million for “replacing the pre-paid Cyprus Airways tickets with those for other airlines” and a €100,000 administration fee (€10 per passenger) – it is not clear whether the €3.2 million also included the cost of ticket reimbursements.
- G.13 This administration fee implies approximately 10,000 passengers were re-routed with other airlines by Top Kinisis Travel; however, it should be noted that for bookings after 10 February 2015, passengers were instructed to seek assistance through any CTO licenced travel agent – not just Top Kinisis Travel, as had been the case for bookings prior to this. Therefore, it is likely that more than 10,000 passengers were affected in total, as many passengers would have dealt with other Cypriot travel agents.
- G.14 Based on Cyprus Airways’ weekly seats in December 2014, and the load factor, length of stay and booking profile assumptions set out in the section above, we estimate that approximately 16,500 passengers would have required alternative travel arrangements – which is consistent with the figures reported above – and a further 100,000 would have had the cost of their ticket reimbursed.
- G.15 Given the intervention by the Cypriot government, it is likely that very few passengers were left stranded or with unreimbursed cancelled bookings. However, although the Cypriot government covered the costs of reimbursements and re-routings, it is not clear whether it also covered the costs of care (such as food and accommodation), which passengers would normally be entitled to in the event of a flight cancellation. While the government announcements suggest it may have also paid passenger care costs, we have been unable to verify whether this was the case.

Aftermath

- G.16 The total number of seats departing from Cypriot airports (Larnaca and Paphos), between 2009 and 2018, is shown in the figure below. In the days following Cyprus Airways’ bankruptcy, Aegean Airlines (which took over Olympic Air’s operations in 2014) and Blue Air expanded their Cypriot operations substantially and, in the subsequent years, maintained and increased their share of capacity respectively.

Figure G.2: Evolution of capacity (departing seats) at Cypriot airports

Source: OAG

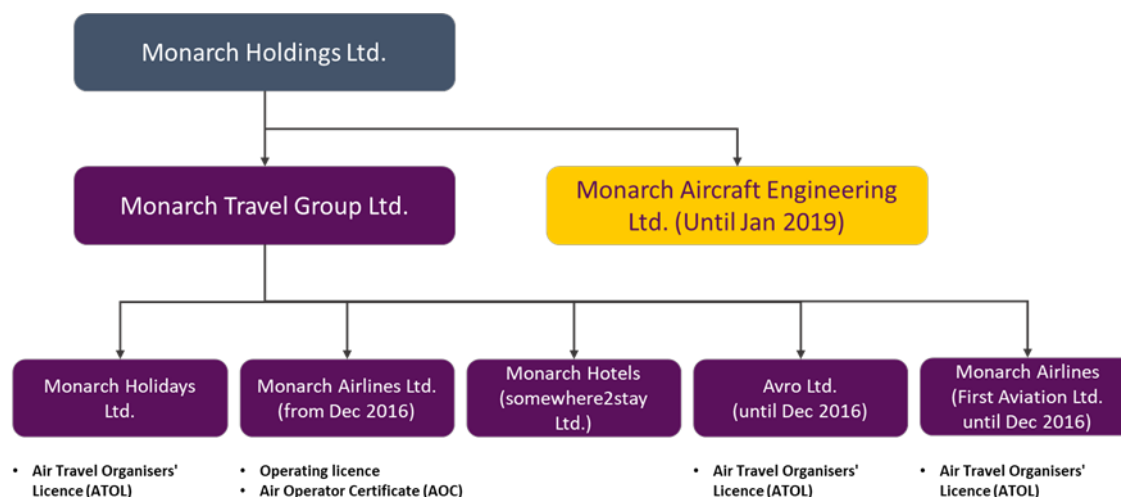
- G.17 In the years following Cyprus Airways' bankruptcy, overall capacity operating from Cypriot airports increased significantly and air connectivity (number of destinations) increased 15% in the first 6 months of 2016 compared to the equivalent period in 2015. As well as Aegean Airlines and Blue Air, the increase in overall capacity was driven by capacity growth from Wizz Air, easyJet and TUI Airways (formerly Thompson Airways). This increase in overall capacity was also in spite of the fact that several airlines operating from Cyprus also went bankrupt between 2015 and 2018, including Transaero (2015), Monarch (2017) and Cobalt (2018) – Ryanair and Aeroflot/Rossiya significantly increased their capacity in the aftermath of Cobalt's bankruptcy.
- G.18 In July 2015, it was reported that the Cypriot government was establishing whether it could negotiate an agreement that would allow a private investor to use the Cyprus Airways branding and logo, which it has bought in December 2014 for €1.2m. In July 2016, it was announced that Charlie Airlines (established by S7 Airlines and a consortium of private investors) had won the right to use Cyprus Airways trade mark rights, for €2 million, for a period of ten years. The airline has been operating flights from Cyprus from June 2017 as Cyprus Airways, although its share of overall capacity is significantly lower than that of Cyprus Airways prior to its bankruptcy in 2015.

Monarch

Background

- G.19 Monarch Airlines (Monarch), was founded in the 1960s and for most of its time, operated as a charter airline that carried passengers between the UK and Mediterranean holiday destinations. In 2004, Monarch adopted more of a low-cost airline model and later significantly scaled down its charter services. Monarch Airlines was part of the Monarch Group, owned by Monarch Holdings Ltd, which in turn was 90% owned by Greybull Capital. The structure of Monarch Holdings Ltd. and its subsidiaries is show in the figure below.

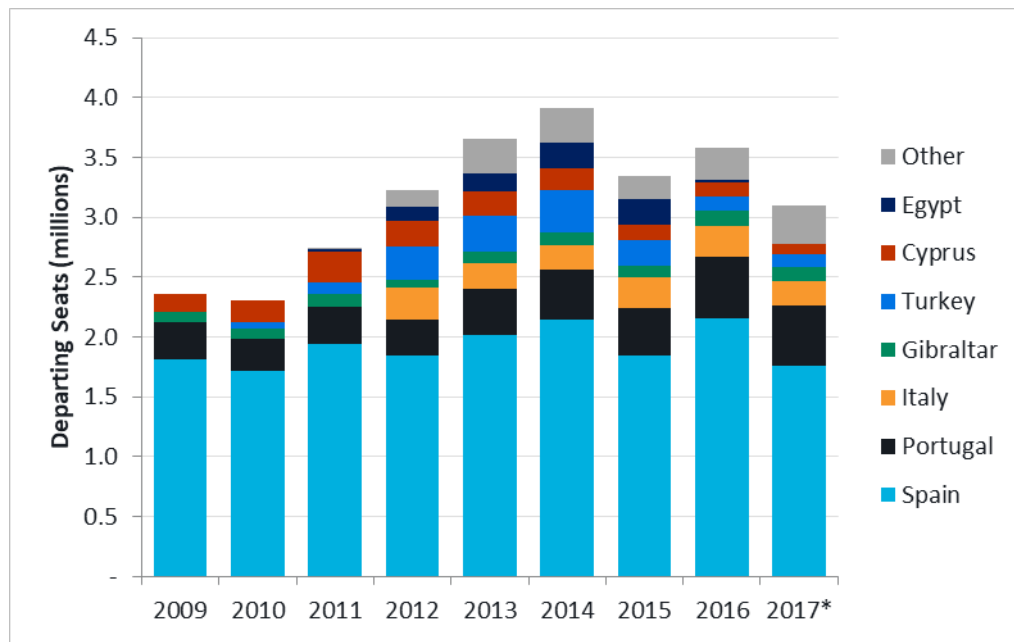
Figure G.3: Structure of Monarch Group of Companies



Source: Steer, ABTA, Financial Times, Companies House

- G.20 Monarch Holdings Ltd went into administration and ceased operations at the same time as the collapse of the airline. Monarch Aircraft Engineering continued to operate after October 2016, but also went into administration in January 2019.
- G.21 Monarch operated from a number of UK airports, with its headquarters at Luton and operating bases at Birmingham, Leeds/Bradford, Gatwick and Manchester. Monarch's departing seats from the UK, between 2009 and 2017, are shown in the figure below. Over half its seat capacity was on routes to Spain, with the remainder accounted for by other Mediterranean destinations. When it ceased operations in October 2017, Monarch flew to 43 destinations with a fleet of 35 aircraft and 2,300 employees.

Figure G.4: Monarch departing seats (2009-2017)

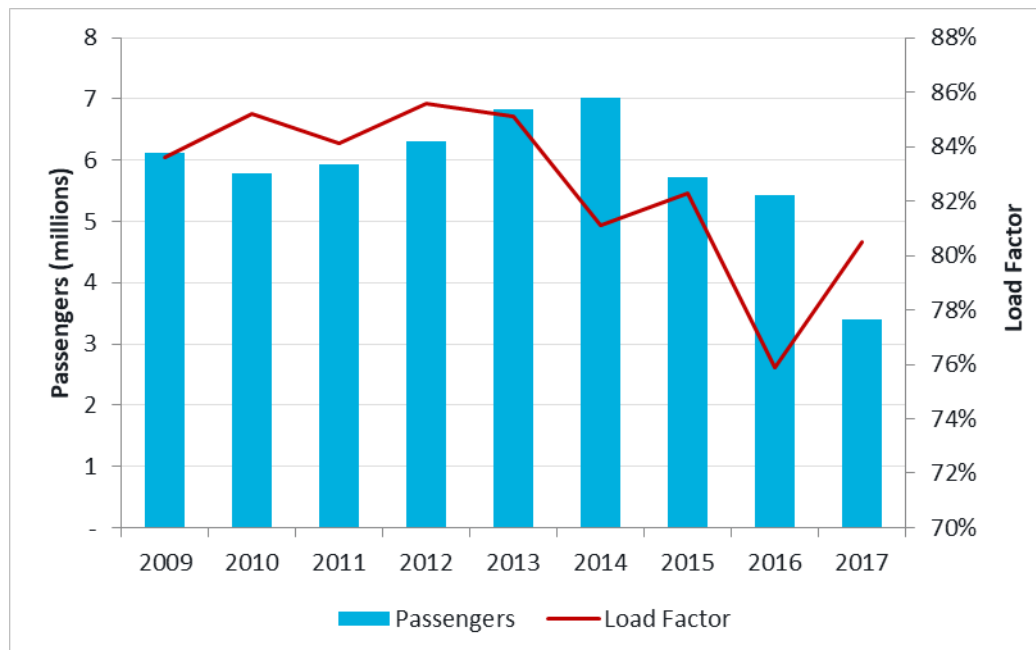


Source: OAG

*To October 2017

- G.22 Although Monarch's seat capacity grew strongly between 2010 and 2014, due to financial difficulties, in 2014 Monarch reduced the size of its operations and closed its East Midlands airport operating base.
- G.23 Monarch's total passengers and load factor over the same period are shown in the figure below.

Figure G.5: Monarch passengers and load factor (2009-2017)



Source: OAG

*To October 2017

- G.24 From 2014, Monarch's passengers declined significantly, and at a greater rate than seat capacity, which meant the passenger load factor also declined (although this did recover slightly in 2017). The fall in passenger demand was due in part to political instability in Egypt and Turkey, which had a negative impact on demand to these destinations. The fall in passenger demand was a major contributing factor in Monarch's bankruptcy.

ATOL

- G.25 Some passengers who travelled (or had bookings with Monarch) were protected under Air Travel Organisers' Licensing (ATOL), which is a UK consumer protection scheme administered by UK Civil Aviation Authority (CAA) that protects passengers who book a package holiday with most travel companies in the UK, to ensure they do not lose money or become stranded abroad if their travel company collapses.
- G.26 As ATOL was designed primarily as a package holiday protection scheme, it does not apply to flights booked directly with scheduled airlines or to flights booked with airline ticket agents. Therefore, Monarch passengers who had a booking as part of a package holiday were covered by the scheme. However, passengers who booked flights with Monarch Airlines were not covered, unless they booked their flight prior to 14 December 2016.
- G.27 This is because Avro Ltd. and First Aviation Ltd, which were both part of the Monarch travel group (shown in Figure C.3) and held ATOL licences, used to sell ATOL protected flights on the behalf of Monarch Airlines but ceased trading in December 2016. After these entities ceased trading, flight only bookings were made directly with Monarch Airlines Ltd. and were not covered by ATOL protection.

Bankruptcy process

- G.28 Monarch had been struggling financially for a number of years prior its bankruptcy; in August 2014 the airline scaled down its operations in an effort to reduce costs and in October 2014, Monarch was acquired by Greybull Capital shortly before its ATOL licence was due to expire with the CAA. The acquisition was followed by further reductions in operations and a decision to concentrate only on low-cost short-haul routes.
- G.29 In September 2016, with Monarch's ATOL licence due to expire at the end of the month, the airline was forced to respond to speculation that it was on the verge of bankruptcy, stating that it was "trading well" despite a difficult period for the industry. After talks with the CAA, Monarch's ATOL licence was temporarily extended to 12 October 2016, and was formally renewed for another year on 12 October, after a £165 million cash injection from Greybull Capital. It was later reported that the CAA spent approximately £26 million during this period, in preparation to repatriate passengers, in the event that Monarch had gone bankrupt and ceased operations.
- G.30 In September 2017 the following year, when Monarch's ATOL licence was due to expire, the airline was again with talks with the CAA over the renewal of the licence due to financial difficulties. After the CAA had extended the licence for a further 24 hours on 30 September, Monarch Airlines went into administration at 4am on the 2 October 2017 (Monarch Travel Group and Monarch Holdings also went into administration), after the required cash injection (similar to that provided in 2016) was not provided by Greybull Capital.
- G.31 Although Monarch only required an ATOL licence for its package holiday business, which represented approximately 5% of its flying operations, the CAA deputy director of consumer protection stated that it would not have been possible for Monarch Airlines to continue flying

without package holiday business, Monarch Travel Group, as the “two businesses were joined at the hip. They really were one business. Monarch had been trying to convert to a low-cost, short-haul carrier, but it was a leisure carrier. You cannot pull the two companies apart.”.

- G.32 As in 2016, the CAA had been preparing to repatriate passengers (for approximately four weeks) prior to the announcement.

Announcement of bankruptcy

- G.33 On the morning of the 2 October, Monarch announced, via twitter, that it had suspended all flights and directed passengers towards a CAA resource page. As well as also tweeting the announcement, instructions on who to contact, and advice that passengers with bookings should not travel to the airport, the CAA took over Monarch’s website and set up a 24-hour telephone helpline to advise passengers.

- G.34 On the day of the announcement, the CAA’s webpage stated that:

- Monarch customers in the UK and yet to travel: Do not go to the airport. There will be no more Monarch flights.
- Monarch customers abroad: everyone due to fly in the next fortnight will be brought back to the UK at no cost to them. There is no need to cut short your stay.
- All affected customers should check the new website monarch.caa.co.uk for more information.

- G.35 The CAA stated that passengers would be brought home on flights as close as possible to their original times, dates and destination, but some consolidation, disruption and delay was inevitable. Monarch also tweeted a link to a webpage, where passengers who were stranded abroad were able to check the details of their new flights a at least 48 hours in advance.

- G.36 Although the bankruptcy was widely reported in the press on the morning of the announcement (often with information and advice for passengers), as well as by Monarch’s administrators, it is not clear whether passengers with bookings were contacted directly with the news – it was reported that many passengers only found out once they arrived at the airport for their flight. On the other hand, some passengers reported being informed by text on the way to the airport.

- G.37 Posters were also put up at Monarch check in desks within airports, which stated the following:

All Monarch Airline flights form 2 October 2017 are cancelled as the airline has ceased trading.

The CAA and Government are organising flights back to the UK for the 110,00 Monarch customers due to return to the UK on or before 15 October 2017.

For more information, check:

Monarch.caa.co.uk

03003032800 (UK and Ireland)

+441753330330

Impact on passengers

- G.38 It was widely reported that Monarch's bankruptcy left 110,000 passengers stranded abroad with a further 300,000 outstanding bookings, reported to have had an impact on 750,000 to 860,000 passengers. Although passengers who had a flight booked with Monarch through a package holiday (or had booked a flight prior to 14 December 2016), were covered by ATOL, passengers who had booked a flight directly with Monarch were not. However, the decision was taken by the UK government and CAA to repatriate all stranded passengers, not only those with ATOL protection.
- G.39 It was later reported that passengers with ATOL protection accounted for only around 20% of all stranded passengers. This figure is higher than that implied by the size of Monarch's ATOL-protected-charter operations (5% of flying operations), which suggests some of those flying on Monarch's scheduled services were ATOL protected, because they booked the flight as part of a package or before 14 December 2016.
- G.40 The UK government stated this decision was taken because there was deemed to be too few seats available on other airlines (on the routes previously operated by Monarch), therefore it was likely many passengers would have had to have waited days or weeks to return home. The repatriation operation, at a cost of approximately £60 million, comprised of a total of 38 aircraft from 15 European, Middle Eastern, and Canadian operators, including Qatar Airways (10 aircraft), Titan Airways (5 aircraft), Air Transat (4 aircraft), Freebird Airlines and Wamos Air (3 aircraft each), and smaller numbers from other airlines and charter operators.
- G.41 Although some of the £60 million of costs was covered by the ATOL protection scheme, the UK government covered the majority of the cost. The government stated at the time that it intended to *"recover the money from other parties"*, but more recent reports suggest the government has ceased attempting to recover these costs.
- G.42 The repatriation operation was described by the UK government transport secretary as the *"biggest ever peacetime repatriation"*. Although the CAA initially believed it would need to repatriate 110,000 passengers, based on passenger information provided Monarch, the final total was approximately 85,000. Some passengers who had a flight back to the UK booked with Monarch after 2 October did not make their outbound trip due to the bankruptcy, while others made their own arrangements to get home.
- G.43 The CAA stated that ATOL protected customers would receive a refund within 28 days of making a claim and that the total cost of the refunds was expected to be approximately £21 million. At the time of the bankruptcy the CAA chief executive stated that (by its estimations) approximately 50% of passengers with outstanding bookings were thought to be covered by ATOL protection and were therefore eligible for refund. However, given it was later reported that only 20% of the stranded passengers were covered by ATOL, the 50% figure in relation to the number of passengers affected could have been an overestimate.
- G.44 The CAA chief executive also stated that other passengers should receive refunds from their credit or debit card providers through Section 75 and chargeback. Under Section 75 of the Consumer Credit Act, if the cardholder paid more than £100 (and under £30,000) for a good or service, the card company is equally liable as the good or service provider to pay compensation. Under chargeback, although it is not a legal requirement (only a customer service promise), card companies refund card holders for goods or services bought (for under £100) but not received. It was reported that some passengers received refunds through these protection mechanisms, but the overall number is not known.

- G.45 Although the UK government, through the CAA, covered the cost of return flights for stranded passengers, it was not reported whether they, or anyone else, covered the cost of stranded passengers' subsistence and/or accommodation costs while waiting for their return flight. Passengers with ATOL protection are entitled to reasonable accommodation and subsistence costs if they are delayed by more than four hours, so it is likely some passengers' subsistence and accommodation costs were also recovered through ATOL.
- G.46 Although the collapse of Monarch predominantly impacted passengers based in the UK, there were also passenger's resident in other countries that found themselves stranded in the UK and who were not accommodated by the UK CAA's repatriation. For example, over 100 passengers based in Portugal contacted the Portuguese CAA (ANAC) seeking assistance. ANAC issued a press release on its website as soon as Monarch ceased operations to advise passengers stranded outside Portugal to contact a specific email address and/or phone number at the authority. ANAC was in close contact with the UK CAA and also tried to negotiate rescue fares with several airlines, although easyJet was the only airline to agree to these with ANAC. Only about 40 passengers were rebooked on easyJet rescue fares with ANAC's support. The remaining passengers made their own alternative arrangements for returning to Portugal if the availability of rescue fare seats did not suit their plans.

Aftermath

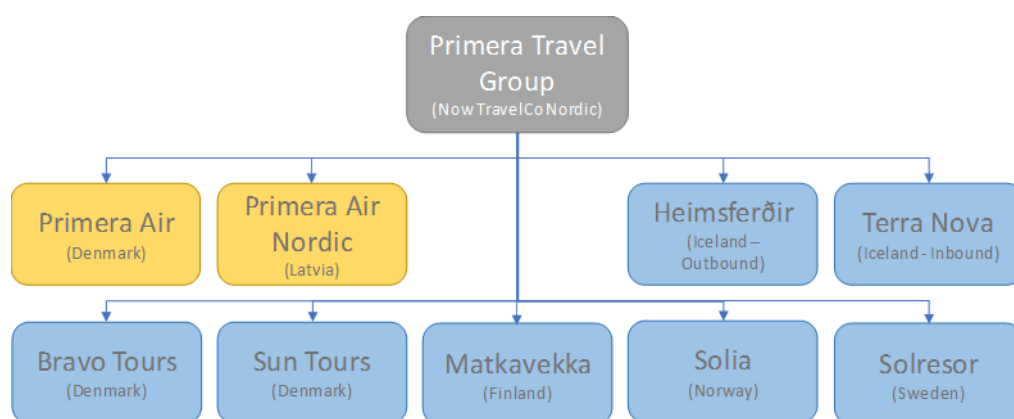
- G.47 In the wake of the collapse of Monarch, the UK government commissioned the airline insolvency review, which issued a number of recommendations aimed at improving the framework for mitigating the impact of airline bankruptcies. The day after Monarch's collapse, the Association of Independent Tour Operators (AITO) issued a statement, arguing that the CAA's ATOL scheme did not reflect the modern-day tourist industry, as passengers who booked flight directly with Monarch were not covered by the scheme.
- G.48 Alongside the core proposals for a new flight protection scheme, the review proposed changes to UK airline insolvency rules to allow an airline's planes to be used to repatriate passengers should the company fail (in the case of Monarch, the aircraft remained grounded). The review also recommended that customers with future bookings should also be told more about the risks and safeguards available and proposes a 50p air passenger levy to fund any future repatriations.

Primera Air

Background

- G.49 Primera Air was a Danish airline owned by the Primera Travel Group (PTG). At closure, Primera primarily operated scheduled flights from Northern Europe to the Mediterranean, but also ventured into the North American market shortly before its demise.
- G.50 Primera was founded in 2003 as Icelandic carrier 'JetX', before being acquired by PTG in 2009. In 2010 operations were transferred to a Danish operating certificate and in 2014 a sister-airline 'Primera Air Nordic' was founded in Latvia to reduce costs. Both airlines were run in unison and would not have been distinguishable to the average customer.

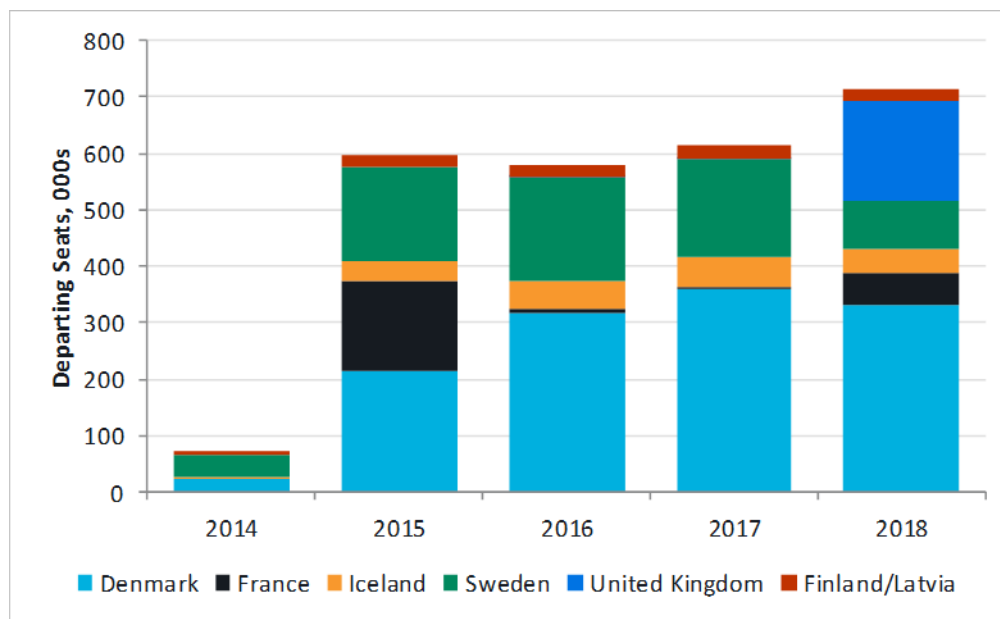
Figure G.6: Structure of Primera Travel Group of Companies



Source: TravelCo Nordic, Steer. Note: Yellow – Airlines, Blue – Travel Agencies

- G.51 Primera initially operated charter flights from bases in Denmark, Sweden and Iceland on behalf of Scandinavian tour operators but started selling spare seat capacity directly to the public from 2013. This change in strategy proved successful and Primera transitioned to a low-cost scheduled carrier in 2014. Whilst operating as a low-cost carrier Primera still provided capacity for passengers travelling through its partner travel agencies. The figure below shows seat capacity offered by base country. In all years Denmark holds the largest share, followed by Sweden from 2014 to 2017.
- G.52 Primera first attempted to expand outside of the Scandinavian market in 2015 when it operated a base at Paris CDG for the summer season; this was not a success and soon closed.
- G.53 Primera attempted to expand out of Scandinavia again when it announced its long-haul debut in July 2017. New A321neo aircraft would be based at London Stansted, Paris Charles-de-Gaulle and Birmingham and would operate to both New York Newark and Boston, commencing in the summer 2018 season. Toronto and Washington Dulles were later added to the offer and some short-haul leisure flights were also added at London and Birmingham. In 2018 the UK was Primera's second largest market.

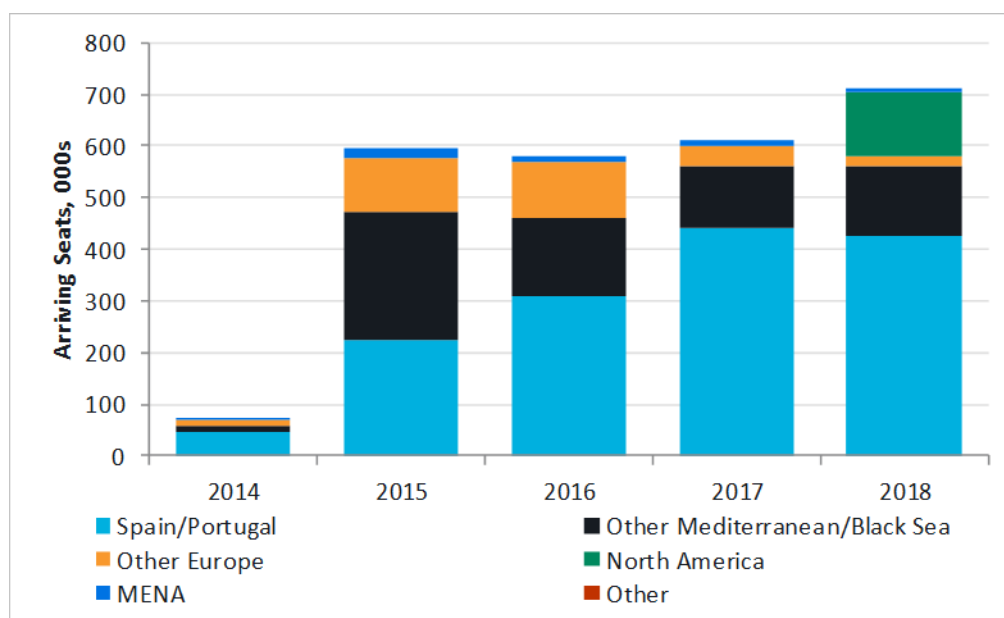
Figure G.7: Primera Air Scheduled departing seats by base country (2014-2018)



Source: OAG. Includes capacity operated by Primera Air (PF) and Primera Air Nordic (6F). Only scheduled seats are shown, but charter capacity was operated prior to 2014.

- G.54 The figure below shows Primera's share of capacity by destination. Until 2017 Primera was a predominantly short/medium haul airline. Capacity was primarily offered to sun-orientated destinations on the Mediterranean with some capacity to European ski markets in the winter. The addition of capacity to North America can clearly be seen in 2018.

Figure G.8: Primera Air Scheduled arriving seats by destination country (2014-2018)



Source: OAG. Includes capacity operated by Primera Air (PF) and Primera Air Nordic (6F). Only scheduled seats are shown, but charter capacity was operated prior to 2014.

- G.55 The long-haul operation was hindered from the outset due to the late arrival of the A321neo aircraft; initially capacity was wet-leased to cover for the delayed aircraft and soon after

capacity cuts were initiated with reductions on most routes and all long-haul operations from Birmingham being cancelled, first temporarily and subsequently permanently. The operation was beset by delays and cancellations throughout most of the summer season leading to mass customer dissatisfaction and a large compensation bill for Primera.

- G.56 Despite the difficulties in establishing the first tranche of routes, Primera announced further long-haul expansion for summer 2019 with new bases in Brussels, Berlin Tegel, Frankfurt and Madrid¹⁷⁸. All flights were to be operated with new 737MAX 9 aircraft.
- G.57 On 1st October 2018 Primera announced that it would be ceasing operations on October 2nd blaming 'several unforeseen misfortunate events.' At closure the fleet consisted of 5 A321neo, 2 B737-700s and 8 B737-800s and it employed 300 staff¹⁷⁹.

Bankruptcy process

- G.58 No information regarding historical transported passengers, load factors and profitability could be found, but it was reported that Primera was not profitable throughout most of its existence. Primera Air had €22m of negative equity in 2015 and this position remained unchanged in 2016¹⁸⁰. The airline posted a profit in 2017, however this was primarily caused by the sale of on-order B737 aircraft, which were due for delivery in 2019. This indicates that the airline had little financial resilience. Consequently, the airline was unable to cope with the financial burden when the following two unforeseen events arose:
1. Repairs to an aircraft with corrosion issues cost over €10m; and
 2. Delays to the new Airbus fleet necessitated wet leasing aircraft at a cost of €20m in addition to a further €20m for delay and cancellation compensation.
- G.59 On 1st October 2018, one aircraft was impounded at Stansted Airport for unpaid airport charges¹⁸¹.
- G.60 The owner had attempted to secure bridge financing to allow the airline to continue operating, but when this was not forthcoming the airline had no choice to declare bankruptcy.
- G.61 Whilst the above will have contributed to the airline's demise it is also worth noting that Primera faced heavy competition in all its operational markets. In the short-haul market, it faced heavy competition from more established carriers, Norwegian and Ryanair, whilst it entered the North American market when there was a glut of low-cost competition. In addition to competing against fellow LCCs Norwegian and WOWair, Primera also had to contend with network carriers who had cut fares to limit the impact of low-cost growth.

Announcement of bankruptcy

- G.62 Primera Air employees were first e-mailed regarding the impending bankruptcy on October 1st. Despite a request to keep the news confidential until a public announcement was made, the news was soon leaked into the public domain.

¹⁷⁸ <https://www.aviation24.be/forums/viewtopic.php?f=7&t=64215&p=373091#p373091>

¹⁷⁹ <https://www.aviation24.be/defunct-airlines/primera-air/breaking-primera-air-nordic-and-primera-air-scandinavia-will-file-for-bankruptcy-tomorrow/>

¹⁸⁰ <https://turisti.is/2018/10/primera-air-owner-makes-structural-changes-and-rebrands-his-company/>

¹⁸¹ <https://www.aviation24.be/defunct-airlines/primera-air/breaking-primera-air-nordic-and-primera-air-scandinavia-will-file-for-bankruptcy-tomorrow/>

- G.63 Primera Air soon issued a statement on its website confirming it will cease all operations as of 2nd October [Tomorrow]. The airline thanked all passengers for their loyalty and asked them to visit primeraair.com for further updates in next few days. A copy of the statement has been reproduced below.

Dear Passengers,

Airline Primera Air and IATA codes PF and 6F have been suspended as of October 2nd, 2018.

*On behalf of Primera Air team, we would like to thank you for your loyalty.
On this sad day we are saying Goodbye to all of you.*

Please visit primeraair.com for further updates in next few days. Tour Operator passengers are kindly suggested to address their Tour Operators and Agents for further information and actions.

Kindly understand that the usual options for contacts (via email or phone) can not be offered any longer.

Sincerely yours.

- G.64 Although the bankruptcy was widely reported in the press, there were many customers who complained that they were not contacted by the airline regarding the bankruptcy and in many cases only found out once they had arrived at the airport.
- G.65 The airline was also criticised for selling seats up until 5pm on the day of bankruptcy, despite staff being made aware of the bankruptcy at 3pm¹⁸².

Impact on passengers

- G.66 After the announcement on 1 October 2018 Primera began cancelling flights. The wave of flights to North America on the evening of 1 October 2018 were cancelled whilst many the passengers were waiting in the departure lounge. Passengers were issued with a letter stating that the airline had gone bankrupt and were then led out of the airport¹⁸³. Short-haul flights seem to have continued later into the day with the final flight from Malaga to Copenhagen landing just after midnight on 2 October 2018.
- G.67 The ECC network and the British CAA offered advice to passengers depending on their situation. All made it clear that:
1. If you had purchased your ticket directly with the airline you should attempt to contact them to obtain a refund.
 2. If your ticket was part of a package trip or was booked through a third-party agency you should contact your travel agency.
 3. You should also contact your credit/debit card provider to see if they can provide a refund/chargeback and your travel insurance provider (if any) in case any airline bankruptcy protection was part of the package.

¹⁸² <https://www.independent.co.uk/travel/news-and-advice/primera-air-collapse-suspended-passengers-stranded-travel-plans-repatriation-fares-a8564851.html>

¹⁸³

https://twitter.com/michellel/status/1046817354456473601?ref_src=twsrc%5Etfw%7Ctwcamp%5Etwetembed%7Ctwterm%5E1046817354456473601&ref_url=https%3A%2F%2Fwww.aviation24.be%2Fforums%2Fviewtopic.php%3Ft%3D64215%26start%3D60

- G.68 As Primera had closed communication channels, the advice for customers booking directly with the airline was of no use to these passengers. Details were later provided allowing affected passengers to put in a refund claim as part of the liquidation process. As most passengers would have been unaware of whether they were flying Primera Air or Primera Air Nordic, they were advised to lodge claims with both airlines. Ultimately it is highly unlikely that these claims were successful as they would not have been treated as a priority in the face of claims from other creditors, such as airports and aircraft leasing companies.
- G.69 Customers who had booked tickets originating in, or departing from, Denmark were eligible to use the Danish Travel Guarantee Fund (Rejsegaranti Fonden). The fund assists passengers on package holidays and those with a flight only ticket. Stranded passengers are provided with transport home, whilst customers who are yet to fly can claim compensation for their unusable ticket, minus a service fee of DKK1000 (€134, June 2019).
- G.70 The Swedish Consumer Agency (Konsument Europa) advised package holiday customers to engage with their tour operator in the first instance as they are 'required to rebook or the trip or refund it' and that should assistance not be forthcoming passengers were also able to contact the Legal, Financial and Administrative Services Agency (Kammarkollegiet) for compensation.
- G.71 Some customers departing from the United Kingdom, who were flying Primera as part of a package holiday, would have been protected by ATOL and these passengers were eligible to contact their travel firm to organise a refund or alternative flights.

Stranded Passengers

- G.72 It is unclear how many passengers were immediately affected by the bankruptcy, with news sources simply stating that "thousands" of passengers were stranded, however it has been estimated that approximately 22,000 passengers were stranded based on the capacity operated by Primera in its final month of operation.
- G.73 Of these passengers:
- 45% originated in Denmark, of which virtually all would have been covered by the Danish Travel Guarantee Fund. These passengers would have been provided with a replacement return flight at the expense of the fund regardless of whether they were travelling as part of a package or solely with a ticket.
 - 34% were affected on North Atlantic routes from France/UK to Canada/USA routes. Owing to the fact that Primera was primarily targeting the low-cost, point-to-point segment of this market, it is likely that most passengers would have been travelling on flight-only tickets and would have had to have arranged their own travel home.
 - The remaining 21% would have been stranded away from their homes in Sweden (11%), Finland (5%), Iceland (5%), Norway and Latvia. It is unknown how many of these passengers were travelling as part of a package deal, however this may represent a significant proportion of passengers owing to Primera's target market in these countries.
- G.74 The bankruptcy coincided with an off-peak travel period, thus excess capacity was available in the market to transport stranded passengers. British Airways, Norwegian, Virgin Atlantic, Delta and Ryanair offered affected passengers rescue fares to allow them to get home. United airlines later offered rescue fares as well.

- G.75 Virgin offered discounted fares to passengers stranded on either side of the Atlantic, whilst British Airways offered tickets to stranded passengers wanting to return to London¹⁸⁴. It is unclear how much of a discount was offered and many passengers will still have likely paid substantially more for their rescue ticket than they would have done for their Primera ticket in the first instance, as the cheapest Primera trans-Atlantic fares were sold for around £250 return, whilst passengers normally expect to pay in the realm of £500 return to fly on the same route with other airlines.
- G.76 Norwegian offered passengers a 50% discount on the standard economy fare (excluding taxes) for travel up until October 14th on selected routes¹⁸⁵.
- G.77 Ryanair offered a limited number of 'rescue fares' to Primera passengers with advance booking up to March 2019. These tickets were not solely limited to stranded passengers.

Affected Passengers

- G.78 The number of forward bookings is unknown but have been estimated to be roughly 142,000 based on forward booking profiles and capacity available.
- G.79 Flight-only customers, who had booked directly with the airline, were the most affected as they had no point of contact and a very small chance of receiving a refund. All these passengers would have had to have purchased new tickets or cancel their trip.
- G.80 Flight-only customers covered by the Danish Travel Guarantee Fund were able to claim a refund on their tickets, however the administration fee of DKK1000¹⁸⁶ would have negated most of the value of forward bookings from Denmark as only short-haul flights were being operated.
- G.81 Customers with bookings in the short term will have likely paid more than they would have done for their original ticket owing to the shorter booking window, however would have benefitted from the off-peak period not driving fares to peak summer levels.
- G.82 Customers with bookings in the longer term may have been able to find better-priced replacement fares, however customers who had obtained low fares on Primera for the Christmas holidays would likely not have found similar deals when trying to book tickets again in October.
- G.83 Customers on package deals originating in Denmark, Sweden and the UK would have been protected under the Package Travel Directive.

Staff

- G.84 Despite being reassured in their bankruptcy announcement that flights home would be offered to staff stranded at out-stations, many staff were left to make their own arrangements. In one instance a member of cabin crew resorted to tweeting other airlines to organise a transfer home, which was eventually offered by WOWAir.

¹⁸⁴ <https://www.independent.co.uk/travel/news-and-advice/primera-air-collapse-suspended-passengers-stranded-travel-plans-repatriation-fares-a8564851.html>

¹⁸⁵ <https://media.uk.norwegian.com/pressreleases/norwegian-offers-repatriation-fares-to-those-affected-by-primera-bankruptcy-2731659>

¹⁸⁶ <https://www.rejsegarantifonden.dk/english/> - How can the Travel Guarantee Fund assist you in case of a bankruptcy?

Aftermath

- G.85 Primera Travel Group rebranded and now trades as TravelCo Nordic.
- G.86 Primera was a relatively small player in all of its markets and no airports were severely affected by the loss of Primera passengers. Billund Airport was the most exposed to Primera, where it operated 7% of capacity in 2018. However, despite the collapse of Primera, capacity actually grew by 6% in 2019, mainly driven by Norwegian and Ryanair. Prior to Primera's collapse, capacity at Billund had stagnated for the previous two years.
- G.87 Primera's low-cost trans-Atlantic competitor WOWair has also declared bankruptcy, highlighting the high level of competition and overcapacity on trans-Atlantic routes. Primera's plans to utilise B737MAX from the new bases in Berlin, Brussels, Frankfurt and Madrid in 2019 would have been severely impacted by the grounding of the aircraft type and would have led to more passenger disruption and compensation claims.
- G.88 Many passengers had mounted claims against Primera before its bankruptcy owing to its operation performance over the summer 2018 season. The airline had a habit of cancelling flights last minute and reassuring customers that they would be reimbursed if they re-booked themselves, whilst many others claimed under Regulation 261/2004 against the large number of late and cancelled flights¹⁸⁷. Most of these claims were not paid before the airline went bankrupt, leaving many previous customers out of pocket in addition to those with future tickets.

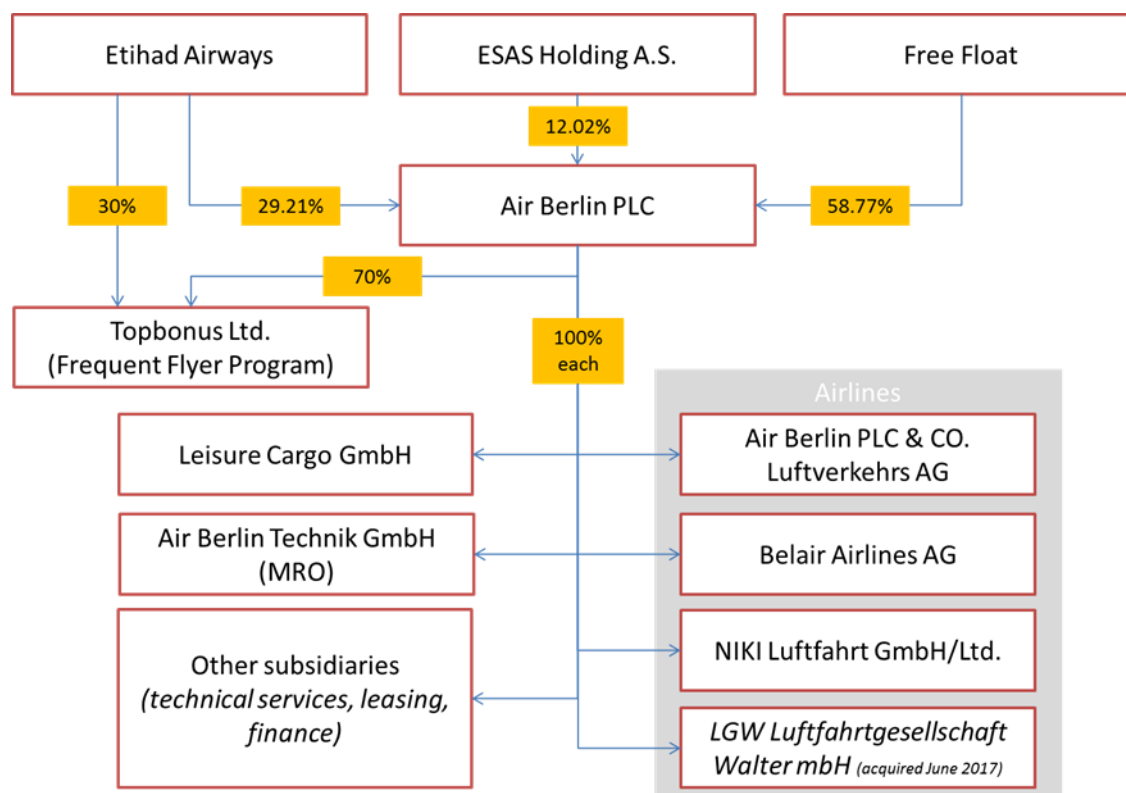
¹⁸⁷ <https://www.economist.com/gulliver/2018/10/03/primera-air-goes-bankrupt-after-a-catastrophic-summer>

Air Berlin

Background

- G.89 Air Berlin provides an example of an airline which was able to continue operations in administration, while the company was restructured and orderly wound down. The approach applied in the case of Air Berlin removed or reduced detrimental effects of airline insolvency, such as stranded passengers.
- G.90 Air Berlin was Germany's second biggest airline group at the time it went into administration in August 2017. At the time of its bankruptcy, the group was under co-ownership of Etihad Airways and consisted of four airlines, as shown in the figure below:
- German-based Air Berlin PLC & Co. Luftverkehrs AG;
 - Switzerland-based Belair Airlines AG;
 - Austria-based NIKI Luftfahrt GmbH and German-based regional carrier LGW; and
 - Luftfahrtgesellschaft Walter mbH, an airline which had been flying exclusively on behalf of Air Berlin from 2007 and which eventually became a subsidiary of Air Berlin just two months before the group's bankruptcy

Figure G.9: Structure of Air Berlin Group of Companies 2017



Source: DLR compilation based on information from Air Berlin (2017), Annual Report 2016, http://www.annualreports.com/HostedData/AnnualReports/PDF/OTC_AIBEF_2016.pdf

- G.91 The airline was founded in 1978 as Air Berlin USA and started to operate charters out of West Berlin to Mediterranean destinations on behalf of tour operators. Following German reunification and the subsequent ability for German-registered carriers to fly from Berlin, Air Berlin was restructured as the German company Air Berlin GmbH & Co. Luftverkehrs KG in 1991. Scheduled flights were introduced in 1999 in response to EU market deregulation, thus

offering direct bookings which circumvented tour operators. A low-cost “city-shuttle” concept was also introduced to offer flights to European capital cities from a number of smaller and underserved German regional airports.

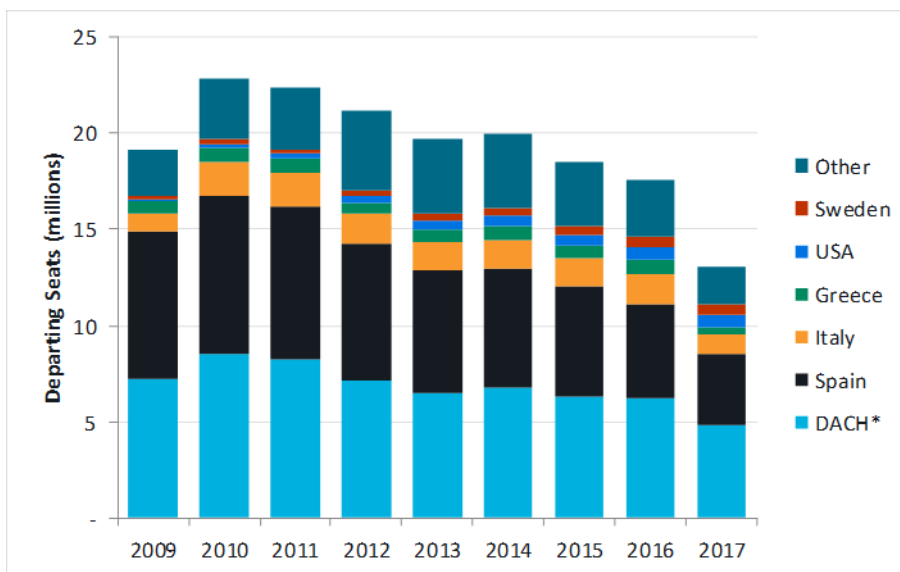
- G.92 Air Berlin grew rapidly in the 2000s with a number of milestones, including
- the part-takeover of Vienna-based NIKI in 2004;
 - the carrier’s restructuring as Air Berlin PLC (& Co. Luftverkehrs KG) and an IPO in 2005/2006;
 - acquisitions of German domestic airline dba in 2006¹⁸⁸ and of medium/long-haul leisure carriers LTU (Germany) and Belair (Switzerland) in 2007, respectively;
 - a US\$ 5.1bn order of 75 aircraft (2007); and
 - the start of a strategic partnership with TUI, which included the takeover of TUIFly’s domestic and Italian/Croatian/Austrian operations and a long-term wet-lease of several of TUIFly’s B737-700’s (2009).
- G.93 The airlines started to increase its losses towards the end of the 2000s, forcing a reduction of loss-making operations in 2008 in an attempt to increase profitability. In 2011, Air Berlin announced a major investment of almost 30% of Etihad Airways, along with the introduction of new routes to Etihad’s Abu Dhabi hub.¹⁸⁹ Etihad furthermore acquired a majority stake in Air Berlin’s frequent flyer programme Topbonus in December 2012, allegedly in an attempt to provide the carrier with new cash. Despite the strategic investment of a carrier not part of an airline alliance (Etihad), Air Berlin completed its Oneworld membership entry in March 2012, strengthening the carrier’s attractiveness for business and long-haul passengers. Code-share operations were agreed with several Oneworld partners, like American Airlines, Iberia, Finnair and Cathay Pacific. The airline also increased its own long-haul services from Berlin and Düsseldorf, especially to the US. Despite the actions, Air Berlin’s losses continued to increase.
- G.94 In December 2016, Air Berlin and Lufthansa announced a major wet-lease deal, according to which the airline would withdraw from most non-hub routes and operate 38 aircraft on behalf of the Lufthansa Group. Air Berlin further announced its intention to sell its subsidiary NIKI to Etihad.¹⁹⁰
- G.95 Air Berlin Group employed some 8,500 employees and operated approximately 140 aircraft flying to 135 destinations at the end of 2016.¹⁹¹ At the time of bankruptcy, Air Berlin had its main bases and long-haul hubs at Düsseldorf airport and Berlin-Tegel airport. Air Berlin had previously operated with hubs at Nuremberg airport and Palma airport (for Spanish-bound holiday services). In August 2017 when the airline declared bankruptcy, operations to 85 airports under its own code (wet-leases on behalf of Eurowings and destinations with less than 500 passengers per month counted) were run mainly out of Dusseldorf and Berlin.
- G.96 The airline’s capacity decreased continuously since 2010 where it recorded peak seat numbers, with the exception of the growing US market which remained a focus until the carrier’s bankruptcy, highlighted in the figure below.

¹⁸⁸ <https://www.manager-magazin.de/unternehmen/artikel/a-435546.html>

¹⁸⁹ On 19 December 2011, Air Berlin announced that Abu Dhabi based Etihad Airways had invested 73 million EUR to increased its share from 2.99% to 29.1%.

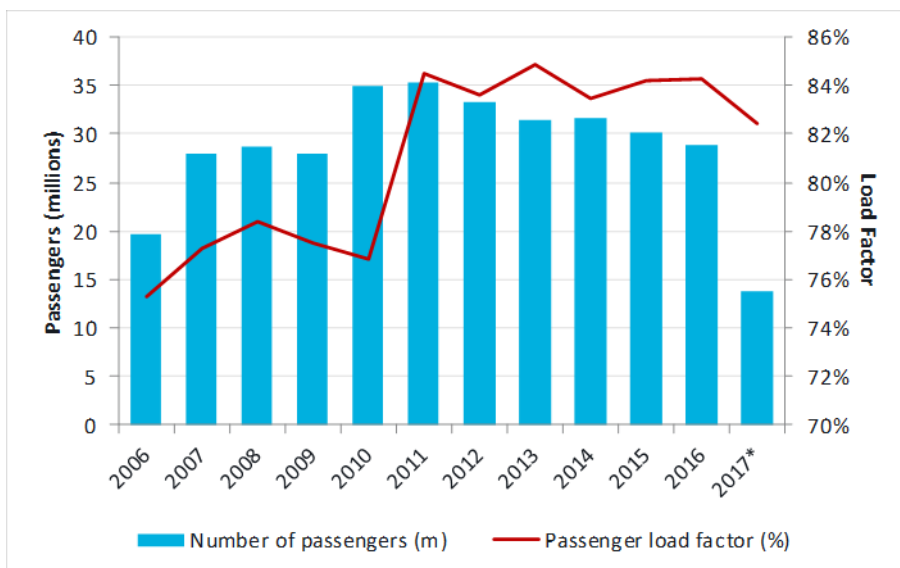
¹⁹⁰ <https://www.fvw.de/international/travel-news/air-berlin-etihad-pumps-in-300m-with-niki-takeover-166333>

¹⁹¹ http://www.annualreports.com/HostedData/AnnualReports/PDF/OTC_AIBEF_2016.pdf

Figure G.10: Air Berlin departing seats (2009-2017)

Source: OAG 2017 includes NIKI continuation. *DACH = Germany, Switzerland and Austria. Domestics reduced to one-way.

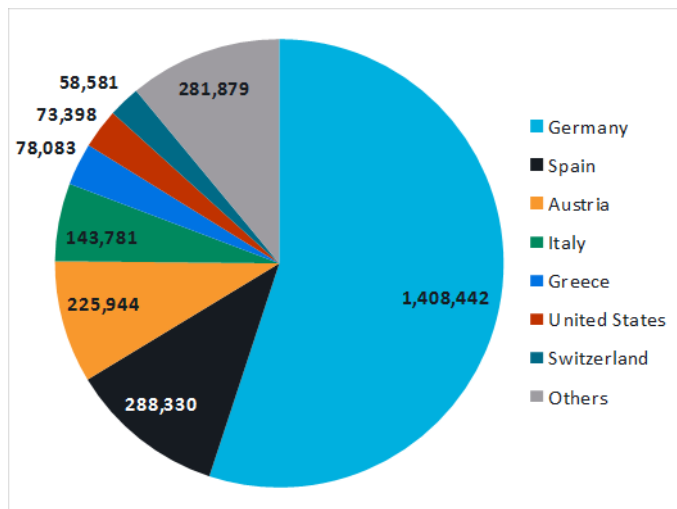
- G.97 Air Berlin's total passenger numbers and load factor over the period from 2006 to 2017 are shown in the figure below. Passenger numbers declined from 2011, reflecting the decrease in capacity described above. The load factor was significantly improved from the early 2010s onwards when the airlines transformed into a network carrier.

Figure G.11: Air Berlin passengers and load factor (2006-2017)

Source: Air Berlin. 2017* - to July 2017

- G.98 The key (summer) markets served by Air Berlin in August 2017 were Germany, Spain, Austria, Italy, Greece, the U.S. and Switzerland, as highlighted in the figure below which shows Air Berlin's departing passengers by country.

Figure G.12: Air Berlin departing passengers by country (Aug 2017)



Source: Sabre MI / DLR.

Bankruptcy process

- G.99 Etihad declared the discontinuation of financial support of Air Berlin on 11th August 2017, which contradicted an earlier statement from April 2018 in which it had promised to “continue to provide funding for the next 18 months”. Subsequently, Air Berlin declared insolvency on 15th August 2017. However, unlike many other insolvencies, operations continued until 27th October 2017 when the last Air Berlin flight landed.
- G.100 The continuation of operations despite the declaration of insolvency was made possible through a bridge loan provided through a credit facility from the German public credit institution Kreditanstalt für Wiederaufbau (KfW). The €150 million loan was provided to ensure operations for around three months, thus allowing for time to sell (parts of) Air Berlin to new investors. The airline was still able to sell tickets to consumers during the administration period, however the money raised from these sales was protected in an escrow account until the service was delivered.
- G.101 Air Berlin issued a statement to confirm that as a result of the loan
- all Air Berlin and NIKI flights would continue to operate;
 - the flight schedules would remain valid; and
 - all flights would continue to be bookable.
- G.102 Interested parties were invited to submit proposals for the takeover of Air Berlin assets until 15th September 2017. Lufthansa Group (LGH), which had been in negotiations with Air Berlin for months, announced it would bid for (parts of) the airline, alongside other carriers.¹⁹² The competitive implications of a possible (partial) takeover of Air Berlin by LHG were discussed extensively with some, including the former German Transport Minister Dobrindt arguing that

¹⁹² <http://www.bmwi.de/Redaktion/EN/Pressemitteilungen/2017/20170815-gemeinsame-pressemitteilung-zu-air-berlin.html>

Germany needed a “national champion” in international aviation¹⁹³, while the German Monopoly Commission feared a Lufthansa monopoly¹⁹⁴.

- G.103 On 9th October 2017, Air Berlin announced it would cease all remaining operations from 28 October 2017 under its own AB flight numbers due to its negative financial outlook. However, its subsidiary NIKI and Air Berlin’s wet-lease operations on behalf of Lufthansa Group would continue to operate after 27th October. On 12th October 2017, Lufthansa agreed to take over Air Berlin’s subsidiaries NIKI Luftfahrt, LGW, and 20 aircraft for €210 million.¹⁹⁵ A few days later on 27th October 2017, easyJet announced that it would offer jobs to 1,000 Air Berlin employees and lease 25 Airbus A320 aircraft for flights from Berlin Tegel for €40 million¹⁹⁶.
- G.104 The European Commission approved the offer of easyJet to take over 25 aircrafts but declared its objections for a take-over of NIKI by Lufthansa on 12th December 2017¹⁹⁷. The decision resulted in the immediate discontinuation of flights by NIKI on 13th December 2017. The Lufthansa take-over of Luftfahrtgesellschaft Walter (a turboprop operator) was approved subject to certain conditions.
- G.105 NIKI was sold to Lauda in early 2018, thus beating out a bit from IAG. Since then, Lauda has become Laudamotion which is now part of Ryanair¹⁹⁸. On 1st April 2019, Lufthansa sold Luftfahrtgesellschaft Walter to Zeitfracht, but LGW continues to fly as wet-lease operator for Lufthansa.

Impact on passengers

- G.106 As a result of the government’s bridge loan which prevented an immediate stop of operations, passengers were not stranded unlike observed for other insolvency cases. Between the end of September and 15th October 2017, Air Berlin gradually ceased its long-haul operations, as well as a number of short and medium haul routes. Air Berlin’s final revenue flight under its own code was operated from Munich to Berlin on 27th October 2017.
- G.107 The impact of the insolvency on passengers who bought tickets from Air Berlin Group is summarized in the table below.

Table G.2: Impact of insolvency on Air Berlin passengers

Travel	Flight Status	Original booking and payment	
		Before insolvency (14 th August 2017)	Between insolvency and end of operations
Before insolvency	According to plan	No issues	
	Delay or cancellation – entitlement for refund and/or compensation	No refunds from insolvency onward. Passengers may file for insolvency claims.	

¹⁹³ <https://www.reuters.com/article/us-air-berlin-lufthansa-talks/germanys-lufthansa-gets-first-say-on-air-berlin-asset-sale-union-idUSKCN1AX0EZ>

¹⁹⁴ <http://www.faz.net/aktuell/wirtschaft/unternehmen/chef-der-monopolkommission-es-droht-ein-monopol-der-lufthansa-15180765.html>

¹⁹⁵ http://europa.eu/rapid/press-release_IP-17-5244_en.htm

¹⁹⁶ <https://www.zeit.de/wirtschaft/unternehmen/2017-10/air-berlin-letzter-flug-insolvenz-joachim-hunold>

¹⁹⁷ http://europa.eu/rapid/press-release_IP-17-5244_en.htm

¹⁹⁸ <https://www.reuters.com/article/us-ryanair-laudamotion-approval/eu-unconditionally-approves-ryanair-purchase-of-laudamotion-idUSKBN1K22UF>

	according to Regulation 261/2004	No 261/2004 compensation payments from insolvency onwards. Passengers may file for insolvency claims.	
Between insolvency (15 th Aug) and end of operations (28 th Oct)	According to plan	No issues as result of bridge loan.	No issues as result of bridge loan.
	Delay or cancellation – entitlement for refund and/or compensation according to Regulation 261/2004	No refunds but passengers may file for insolvency claims. If booked as package tour: re-booking/refund offered by tour operator. No protection by 261/2004) If paid by credit card: intermediate chargeback of flight price possible; however, liquidator might re-claim money (no protection by 261/2004) No evidence for any compensation payments under Regulation 261/2004. Passengers had to file an insolvency claim.	Refund by liquidator. No evidence for any compensation payments under Regulation 261/2004. Passengers had to file an insolvency claim.
After end of operations (28 th Oct)	Cancellation	No refunds and 261/2004 compensation payments. Passengers may file insolvency claim.	Refund by liquidator. No evidence for any compensation payments under Regulation 261/2004. Passengers had to file an insolvency claim.

- G.108 The bridge loan that was provided by the German government allowed for a limited continuation of Air Berlin operations until 27th October 2017. Tickets which were booked before the filing for insolvency were honoured, except for mainly long-haul routes that were discontinued in the intermediate period from late September onwards.
- G.109 New bookings made after the announcement of insolvency were either honoured or refunded (where flights were cancelled). The sale of tickets for dates after 28th October were stopped on 9th October, which is when the end of operations was announced.
- G.110 When Air Berlin filed for insolvency on 15th August 2017, all claims from transactions that were concluded before the insolvency date became part of the insolvency assets. This included any compensation and refund claims. Passengers which had unpaid compensation claims from delayed or cancelled flights before 15th August 2017 had to re-file their claims with the insolvency administrator. As the assets available for distribution among the creditors cover only a small fraction of the amounts owed to creditors, it is expected that passengers will not receive compensation payments or refunds.
- G.111 Refunds in case of cancelled flights were guaranteed for passengers who had booked tickets after 15th August 2017 under the bridge loan granted by the German federal government. No official data is available on how many of the passenger compensation claims for a disruption (long delays, cancellation or denied boarding) after the insolvency (15th August) were

compensated by Air Berlin. Because compensation payments were likely a lesser priority than preserving cash and not key in maintaining the airline's operation, it is assumed that these payments are probably still not settled and it is doubtful if they will ever be. It is common practice by airlines to withhold compensation payments for as long as possible in order to preserve cash. This assumption is supported by the German insolvency law, which does not allow the administrator to make any payments which are not directly necessary to keep up the company's operations.

- G.112 Additionally, it was extremely difficult for passengers to reach Air Berlin customer service as staff was allegedly reduced while it would be expected that the number of claims was increasing at the same time. There was also a potential backlog of claims stemming from increased levels of disruption before the insolvency.
- G.113 The German claim agency Flightright observed massive service disruptions for Air Berlin in the period after the insolvency. Contrary to initial announcements made by the airline, no compensation payments were made. Flightright filed around 13,300 unpaid cases as insolvency claims, of which 7,440 referred to flight dates after the insolvency.
- G.114 In the process of the insolvency, an agreement between Flightright and the insolvency administrator was reached. Flightright was permitted to submit a collective claim for compensation payments of all passengers that had mandated Flightright to collect the claims. However, as described above, the quota of assets available for distribution compared to the number of claims will be negligible and almost all of the claimed compensation amounts will be lost for the passengers.¹⁹⁹

Stranded passengers

- G.115 As a result of the continuation of operations and the very controlled winding down of services facilitated by the loan, the number of stranded Air Berlin passengers was relatively small. The media reported only very few cases. For instance, on 19th October, the Icelandic airport operator denied Air Berlin to depart from Reykjavik on the grounds of unpaid airport charges. This case, however, was resolved within several hours.
- G.116 However, the insolvency of NIKI, Air Berlin's Austrian subsidiary on 13th December 2017 affected up to 40,000 passengers, which were on their return trips between the insolvency filing and the end of December, according to media reports. The total included an estimated 25,000 package tour travellers, for which the package tour operators had to find alternative means of travel and 15,000 passengers, which had directly booked their flights with NIKI.²⁰⁰
- G.117 While for the latter, no obligation for care, assistance and re-accommodation to other airlines existed, airlines offered various degrees of assistance. It is reported that Condor offered free return transport subject to seat availability²⁰¹ and TUIfly was reported to have offered tickets at 50% discount. The Lufthansa Group published a rescue fare plan on 21st October 2017, which stated that passengers who had booked international travel on Air Berlin before 15th

¹⁹⁹ <https://www.flightright.de/blog/air-berlin-niki-insolvenz>

²⁰⁰ <https://www.fvw.de/international/travel-news/airline-insolvency-german-airlines-fly-home-stranded-niki-passengers-181822>

²⁰¹ <https://www.ostsee-zeitung.de/Nachrichten/Wirtschaft/Tuifly-bringt-mit-Sonderfluegen-Niki-Kunden-zurueck>

August 2017 with a return flight taking place no later than 15th November would receive 50% discount on new bookings with Lufthansa Group airlines.²⁰²

- G.118 In addition to the roughly 40,000 stranded NIKI passengers in the immediate aftermath of the insolvency in December 2017, more than 410,000 passengers held tickets for travel on NIKI for 2018. Approximately 210,000 tickets of these were booked as part of package tours, for which the tour operators had to find alternative ways of travel. Approximately 200,000 tickets were booked directly. However, for all tickets booked after 15th August 2017, the guarantee for a refund applied; hence the actual number of passengers not receiving a refund (booking before 15th August 2017 for travel after 14th December 2017) can be considered as relatively small.²⁰³

Affected passengers

- G.119 The following figures were reported to be passengers affected by the Air Berlin insolvency:
- In September 2017, Air Berlin announced to discontinue its long-haul operations from end of September. By that time, approximately 100,000 passengers held tickets for long-haul flights, which were purchased **before** 15th August 2017 for flights after September 2017.²⁰⁴
 - Around 10th October 2017, Air Berlin announced that all flight operations would be discontinued by 28th October 2017. This allegedly affected a further 100,000 passengers.
 - Approximately 90,000 tickets were purchased before the insolvency date, with passengers not being able to claim for a refund.
 - Around 10,000 passengers which had purchased their tickets **after** 15th August 2017 for flights **after** 28th October 2017, a full refund was offered, covered by the bridge loan by the federal government. However, the passengers affected had to find alternative means of travel, which were likely to be more expensive.²⁰⁵
- G.120 The insolvency of NIKI resulted in an immediate cease of operations and therefore left more passengers stranded than in the case of Air Berlin. However, passengers travelling on behalf of the Lufthansa Group (i.e. Eurowings) on any of Air Berlin's wet-lease services were not at risk of the insolvency. They might have occurred some delays/cancellations, but as they had initially booked their journey and purchased their ticket with Eurowings, compensation or re-routing was guaranteed by Eurowings at all times.
- G.121 Under German and Austrian consumer protection law, only passengers who had booked air travel as part of an inclusive tour were protected. The inclusive tour operators were responsible to provide passengers with air transport according to the contract. Passengers which had booked their air tickets as flight-only bookings either directly with Air Berlin, with a travel agent or any other distribution channel were not protected. However, in the case of the Air Berlin insolvency, several aspects softened the impacts for the flight-only passengers:
- The bridge loan provided by the federal government allowed a continuation of most flight operations after the insolvency date; and

²⁰² <https://www.spiegel.de/reise/aktuell/lufthansa-bietet-gestrandeten-air-berlin-kunden-verguenstigte-tickets-an-a-1174053.html>

²⁰³ <https://kurier.at/wirtschaft/niki-pleite-40-000-passagiere-gestrandet/302.023.185>

²⁰⁴ <https://www.welt.de/wirtschaft/article169187083/Mehr-als-100-000-Air-Berlin-Tickets-verfallen.html>

²⁰⁵ https://rp-online.de/wirtschaft/unternehmen/abwicklung-von-air-berlin-100000-weitere-flugtickets-verfallen_aid-17703809

- The bridge loan provided by the federal government guaranteed full refund in case of cancellation for flights booked after 15th August 2017.

- G.122 Air Berlin was not based in the UK and thus was not part of the ATOL protection scheme. Only travellers having booked a package tour from an UK-based operator which included an Air Berlin flight segment would have been protected by ATOL. As Air Berlin was not intensively operating in the UK, the number of passengers that would fall in this category was almost non-existent.
- G.123 For flight-only bookings, where the payment was made with credit card, the protection that is available in the UK according to Section 75 of the Consumer Credit Act of 1974 does not exist in Germany. Whereas in the UK purchases over £100 are protected by the credit card providers, passengers who had purchased their Air Berlin tickets with German credit cards are reported to have filed claims for chargeback with their credit card companies. Typically, credit card companies allow a chargeback in case of insolvency, as shown in the case of the travel company insolvency Lowcostholidays/hoteling.com in 2016. In case a provider becomes insolvent, a chargeback will generally be granted within the first 8 weeks after payment.
- G.124 Protection via the credit card provider could be considered as a kind of private insolvency insurance, but this was shown not to be successful in all cases. In the aftermath of the Air Berlin insolvency, consumers who had successfully filed a chargeback claim for Air Berlin tickets booked via (online) travel agents were informed by their respective travel agents that the chargeback was done unlawfully. In such cases, the intermediary who collected the air fare from the consumers had already transferred the money to Air Berlin. Hence, the intermediary is directly affected by the chargeback and the non-fulfilment of the flight. German media reports that there are no precedents to this case.²⁰⁶
- G.125 In addition, reports have emerged on social media platforms such as Facebook which suggest that the insolvency administrator has objected chargebacks for flight-only bookings with Air Berlin in summer 2019. This corresponds with the ruling of the Federal Court of Justice (BGH) stating that the obligation to pay for a flight ticket well in advance of making the trip emerges at the time of booking, irrespectively if the service will actually happen or not and chargeback thus cannot be guaranteed.²⁰⁷

Aftermath

- G.126 In the immediate aftermath of the insolvency filing, Air Berlin stated that flight operations would continue as planned. However, it is worth noting that flight operations were already disrupted to various degrees before the insolvency filing which affected a substantial number of passengers. The media cited that lessors were demanding their aircrafts back. Air Berlin started to scale down operations, often with several days of notice to passengers, which then had the opportunity to find alternative means of travel. This, for instance, also affected passengers on domestic routes, which likely switched to train or car travel as a result.
- G.127 The news of the bridge loan which secured operations for at least three months was immediately communicated to ensure passengers that they were not affected by the insolvency in the short-term. The news was also widely covered in the Germany media. The insolvency administrator Flöther and Wissing set up a dedicated website (<https://airberlin->

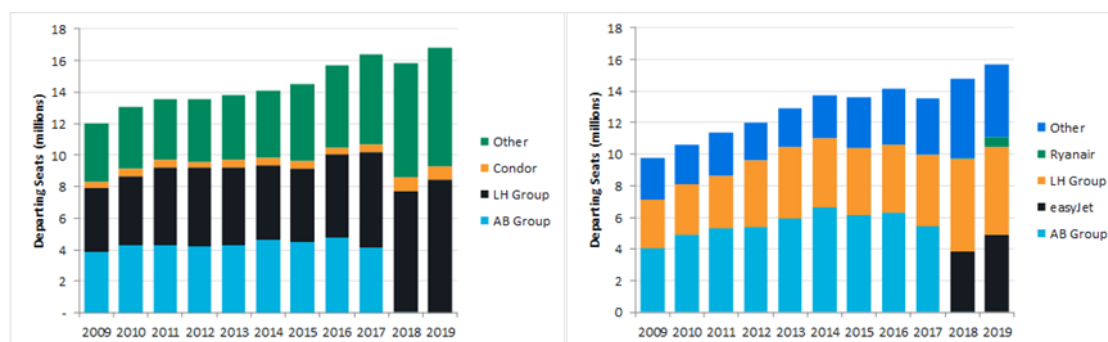
²⁰⁶ <https://www.finanztip.de/blog/air-berlin-rueckbuchung-klappt-dann-droht-der-reisevermittler/>

²⁰⁷ <https://www.lto.de/recht/nachrichten/n/bgh-urteil-x-zr-97-14-fluggastrechte-ticket-zahlung-faellig-vertragsabschluss-sofort/>

inso.de/start) with information on the process for refunds and insolvency claims in the aftermath.

- G.128 The bridge loan of the federal government resulted in an intense public discussion. While on the one hand, it allowed Air Berlin to continue operations after filing for insolvency, it was heavily criticized on the basis of regulatory policy issues. Several commentators claimed that the federal government had only granted the loan to avoid thousands of stranded passengers right ahead of the general election on 24th September 2017. Ultimately around half of the loan was repaid. In another recent insolvency of German airline Germania (34 aircraft), no state intervention occurred resulting in approximately 20,000 stranded passengers and 260,000 invalid tickets.
- G.129 The political support offered to Lufthansa was furthermore criticised, as both conservative (transport minister Dobrindt) and social democrat (minister for the economy Zypries) politicians supported the plan of creating/supporting a “national champion”.
- G.130 Air Berlin’s key assets included airport slots, aircraft and crews. However, the aircraft were actually not part of the insolvency assets, as Air Berlin had sold almost all aircraft to lessors over the past years to raise cash for on-going operations. There was broad consensus between the federal government, the slot coordinator, competitors, lessors and banks that slots, aircraft and crews could be transferred to new operators as a package.
- For former competitors like easyJet and Lufthansa therefore had the advantage to immediately capture market shares without delay.
 - For passengers, it resulted in a return of substantial seat capacity to the market immediately and decreasing fare levels.
 - For employees, it resulted in immediate continuation of employment, although in many cases at worsened conditions.
- G.131 The development of departing seats in the aftermath of the Air Berlin insolvency at Düsseldorf airport and Berlin Tegel airport is shown in the figure below.

Figure G.13: Departing seats at Düsseldorf airport (left) and Berlin Tegel airport (right) (2009-2019)



Sources: OAG, Steer Analysis

- G.132 The insolvency procedure deviated from the expected process through a re-distribution of slots in the regular EU/IATA procedure. Ryanair voiced the only substantial objection against the re-distribution of slots as part of the package deals, but the complaint was neither accepted by the European Commission nor the German cartel office.²⁰⁸

²⁰⁸ <https://de.reuters.com/article/ryanair-slots-idDEKBN1E12LM>

- G.133 At the time of the insolvency, Air Berlin operated around 100 aircraft, with roughly 38 already leased out under wet lease conditions to the Lufthansa Group since December 2016 and two leased out to Alitalia. At the end of October 2017, easyJet announced the intention to take over 25 Air Berlin aircraft including slots and crews for establishing a substantial operation at Berlin Tegel airport. In December 2017, the European Commission approved this transfer of assets. EasyJet subsequently became the largest carrier by seats offered at Tegel in 2018 and reached a market share of approximately one third.
- G.134 The Lufthansa Group took over a total of 77 aircraft formerly operated by Air Berlin and NIKI. The integration was completed by August 2018. 38 aircraft were already wet-leased from Air Berlin since December 2016. This deal was approved by the German cartel office in January 2017. It is reported that in the immediate aftermath of Air Berlin's insolvency, Lufthansa Group approached lessors with the intention to buy up to 81 aircraft formerly operated by Air Berlin.²⁰⁹ The governing board of LHG had approved to spend one billion Euros on aircrafts that were owned by lessors but operated by Air Berlin in September 2017 already.²¹⁰
- G.135 The move happened without any intervention by competition authorities. The decision by Lufthansa's management put the company in the pole position for re-shaping the German/Austrian air transport market in the aftermath of Air Berlin's insolvency. With the finalisation of the aircraft purchase, any future decision on Air Berlin's fate was only possible with the consent of LHG's management. The European Commission had initially ordered Lufthansa to lease out former NIKI/Air Berlin aircraft to Laudamotion²¹¹, but this contract finished at the end of 2018.
- G.136 In October 2018, the German cartel office concluded, that no formal investigation against the Lufthansa Group would be raised for abuse of significant market power: in the immediate aftermath of the insolvency, when Lufthansa Group found itself in a monopoly position on various high-demand routes, its fares rose steeply (25-30%)²¹² compared to previous circumstances, bearing no relationship to its true costs. However as soon as competitors (mostly easyJet, but also Ryanair and others) entered the market, fare levels reduced quickly to pre-insolvency levels.²¹³
- G.137 The case of Air Berlin's Austrian subsidiary proved to be more complicated. In October 2017, Lufthansa announced the intent to take over NIKI and the German turboprop operator LGW. Lufthansa allegedly gave NIKI a bridge loan to keep the airline operating. However, the European Commission objected the takeover in December, which led to an immediate discontinuation of Lufthansa's support and, in consequence the discontinuation of HG-coded flights on 13th December 2017. Between December 2017 and January 2018, IAG tried to take over NIKI's assets in order to integrate them into Vueling but no agreement was reached.

²⁰⁹ <https://www.handelsblatt.com/today/companies/airline-industry-why-losing-the-air-berlin-deal-makes-lufthansa-a-winner/23573426.html?ticket=ST-4402378-DSfRqpi2gQ371575hJc-ap5>

²¹⁰ <http://www.airliners.de/lufthansa-81-air-berlin-flugzeuge/42453>

²¹¹ <https://www.msn.com/de-de/finanzen/top-stories/streit-der-airlines-%E2%80%99Eddie-lufthansa-wollte-laudamotion-vernichten%E2%80%99C-%E2%80%9993-niki-lauda-kritisiert-carsten-spoehr/ar-BBRtL90>

²¹² https://www.bundeskartellamt.de/SharedDocs/Meldung/DE/Pressemitteilungen/2018/29_05_2018_Lufthansa.html

²¹³

https://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Diskussions_Hintergrundpapier/AK_Kartellrecht_2018_Hossenfelder.pdf?blob=publicationFile&v=4

- G.138 At the end of January 2018, the airline's former owner and founder Niki Lauda successfully bid for the assets of NIKI (slots and nine of 21 aircraft). The assets were integrated into Niki Lauda's business jet operation called Laudamotion. In March 2018, Ryanair took over 24.9% of shares in Laudamotion, which was subsequently increased to 75% and finally a full takeover took place at the end of 2018.

H List of insolvent airlines

Table H.1: Airlines ceasing operations (2011-October 2019) (ranked according to capacity)

Airline Name	State	Date of ceasing operations	Type of operation	Weekly seats (penultimate month)
Air Berlin	DE	2017	Scheduled mixed	284,672
Thomas Cook Airlines UK	UK	2019	Charter	276,582
Monarch Airlines	UK	2017	Charter/Low Cost	195,724
Spaniard	ES	2012	Scheduled short-haul only	152,634
MALEV Hungarian Airlines	HU	2012	Scheduled short-haul only	80,482
NIKI	AT	2018	Low cost	76,494
Wind Jet	IT	2012	Low cost	71,656
Germania	DE	2019	Charter	66,219
Aigle Azur	FR	2019	Scheduled mixed	51,447
Cimber Sterling	DK	2012	Scheduled short-haul only	48,650
Primera Air	DK	2018	Low cost	40,101
WOW Air	IS	2019	Low cost	38,894
Adria Airways	SI	2019	Scheduled short-haul only	34,732
Cobalt Aero	CY	2018	Low cost	25,369
Nextjet	SE	2018	Scheduled short-haul only	20,075
BMI Regional	UK	2019	Scheduled short-haul only	19,558
Skyways	SE	2012	Scheduled short-haul only	18,839
Estonian Air	EE	2015	Scheduled short-haul only	18,116
Small Planet Airlines GmbH	DE	2018	Charter	16,698
XL Airways France	FR	2019	Low cost	16,572
Cyprus Airways	CY	2015	Scheduled short-haul only	15,116
Islas Airways	ES	2012	Scheduled short-haul only	14,363
ItAli Airlines	IT	2012	Scheduled short-haul only	12,877
Athens Airways	GR	2011	Scheduled short-haul only	11,841
Intersky	AT	2015	Scheduled short-haul only	11,688
OLT Express Germany GmbH	DE	2013	Scheduled short-haul only	11,220
Air Mediterranee	FR	2016	Charter	11,167
Helitt Lineas Aereas	ES	2013	Charter	10,448
Hamburg International	DE	2011	Charter	10,416
Primera Air Nordic	LV	2018	Low cost	9,200
Small Planet Airlines	LT	2018	Charter	8,308
Belle Air Europe	IT	2014	Low cost	7,089
Sky Work Airlines	CH	2018	Scheduled short-haul only	6,808
Hello	CH	2013	Charter	6,477
Air Lituania	LT	2015	Scheduled short-haul only	6,365
Livingston	IT	2011	Charter	6,162
Cirrus Airlines	DE	2012	Scheduled short-haul only	5,909

Airline Name	State	Date of ceasing operations	Type of operation	Weekly seats (penultimate month)
Astraeus	UK	2012	Charter	5,892
VLM Airlines D.D.	SI	2018	Scheduled short-haul only	5,642
VLM Airlines N.V.	BE	2016	Scheduled short-haul only	5,608
Air Finland	FI	2012	Charter	5,256
Limitless Airways	HR	2016	Charter	4,915
City Airline	SE	2012	Scheduled short-haul only	4,523
FlyViking	NO	2018	Scheduled short-haul only	4,446
Eagles Airlines	IT	2011	Scheduled short-haul only	3,831
SkyGreece Airlines	GR	2015	Charter	3,768
Small Planet Airlines	PL	2018	Charter	3,738
Viking Hellas Airlines	GR	2011	Charter	3,046
Amsterdam Airlines	NL	2011	Charter	2,873
Livingston Air	IT	2014	Charter	2,811
Danube Wings	SK	2014	Charter	2,658
Czech Connect Airlines	CZ	2012	Scheduled short-haul only	2,515
Hellenic Imperial Airways	GR	2011	Charter	2,186
Fly KISS	SI	2017	Scheduled short-haul only	2,148
Atlas Atlantique Airlines	FR	2017	Charter	2,127
Citywing	UK	2017	Scheduled short-haul only	2,070
Freedom Airways	AT	2012	Charter	1,638
European Coastal Airlines LTD	HR	2016	Scheduled short-haul only	1,620
Air Alps Aviation	AT	2012	Scheduled short-haul only	1,545
Darwin Airline	CH	2017	Scheduled short-haul only	1,500
Robin Hood Aviation	AT	2011	Scheduled short-haul only	1,097
Belair Airlines	CH	2017	Scheduled short-haul only	1,027
Viking Airlines	SE	2011	Charter	969
Tor Air AB	SE	2012	Charter	966
Sky Wings Airlines	GR	2013	Charter	793
Avies Air Company	EE	2013	Scheduled short-haul only	582
Hamburg Airways	DE	2014	Charter	366
Romavia	RO	2011	Charter	313
Sweden Airways AB	SE	2012	Charter	72
Surf Air Europe	UK	2018	Charter	15
Comtel Air	AT	2011	Charter	2,781
4YOU Airlines	PL	2014	Charter	4,171
Air Poland	PL	2012	Charter	4,171
Air Via	BG	2016	Charter	2,781
Dubrovnik Airline	HR	2011	Charter	2,781
FLM Aviation	DE	2013	Charter	6,952
Fly Romania	RO	2014	Low cost	10,240
FlyNonstop	NO	2013	Scheduled short-haul only	3,400
Jetalliance	AT	2013	Charter	19,466
Krohn Air	NO	2014	Scheduled short-haul only	3,142
Linxair	SI	2014	Charter	11,124
Medallion Air	RO	2013	Charter	5,562
Mint Airways	ES	2012	Charter	2,781
Orbest Orizonia Airlines	ES	2013	Charter	12,514
Pyrenair	ES	2011	Charter	5,562
Ryjet	ES	2012	Charter	2,781

Airline Name	State	Date of ceasing operations	Type of operation	Weekly seats (penultimate month)
XL Airways Germany	DE	2013	Charter	6,952

Source: Steer analysis, OAG, industry press, media reports, stakeholder consultation. Note: For the purposes of modelling Monarch has been treated as a hybrid low-cost/charter carrier to best reflect the market it catered for. Monarch was an established charter carrier but it moved towards a low-cost strategy in its last years of operation.

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