INTRODUCTION

The EU's approach to protecting the rights of passengers in the air transport sector has evolved significantly over the years. The introduction of Regulation (EC) No 261/2004 by the European Parliament and the Council of the European Union on 11 February 2004 marked a major step in ensuring passengers' rights. This regulation replaced the previous national and international rules concerning passengers' rights and obligations. It established a comprehensive framework that protected passengers' fundamental rights, such as the right to compensation for delays, cancellations, or overbookings.

The introduction of Regulation (EC) No 261/2004 was a significant milestone in the development of EU law on air transport. Since its implementation, the UK has been an active participant in the development of EU air transport law, playing a key role in shaping the regulation's application and enforcement.

Preliminary communication

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1. AIRLINES' CONTRACT

When passengers book the flight, their relation with the airline is defined by a standard contract. Passengers cannot negotiate their contracts, indeed, were aware of their existence let alone their terms, so they cannot check that they are fair. While the passenger is in the weak position; the airline is in a strong position offering a standard contract drafted by him.

The form of a contract is generally made of several documents; while international scheduled service, resolution and recommendation of the Air Transport Association (IATA) play an import role although the association is not a regulatory body. The first element of the contract for an international scheduled flight is the ticket or a confirmation paper in the case of electronic ticketing. This sets out conditions specific to flight such as: the identity of the airline; that of the passenger; the origin of the destination, class, date, time and number of flight; the fare, taxes and charges; status of reservation; restrictions, for example of changing the reservations; the baggage allowed. The ticket devised by IATA is widely used.

As for international flights, IATA members undertake to follow Resolution 724 Passenger Ticket – Notice and Condition of contract. The Notices cover limitations on liability, overbooking, information on taxes and user fees, and a number of national requirements. The Conditions of Contract include certain articles and incorporate by reference the provisions of the ticket itself, the carrier's tariffs and general conditions of carriage. For general conditions of carriage, IATA members usually follow a model for international flights, known as recommended Practice 1724 on general conditions of carriage (Passenger and Baggage), though are not obliged to do so. In recent years, IATA has revised Recommended Practice 1724 several times. IATA members commonly apply these conditions of the contract and carriage to domestic as well as international services.

The situation is different with the package travel. Here a consumer has a contract with the tour organiser or retailer, not with the airline, because of the contract between the organiser and the carrier.

2. IMPROVEMENT IN THE PROTECTION OF PASSENGERS

The aims are to ensure that contracts were clear, complete and known to the passenger, to create new rights in the areas presently left to contractual freedom and to specify rights to passengers with reduced mobility, including disabled persons.

To improve passengers’ rights one must promote voluntary commitments. Texts were prepared in the framework between the European Union and the European Civil Aviation Conference (ECAC) and on 10th May 2001 the associations representing European airlines and airports recommended those to their members. Airline Passenger service Commitment is intended to considerably raise the standards of service and improve the treatment of passengers. (9) In 1991 the Community adopted the legislation on denied boarding caused by overbooking and gave passengers the right to financial compensation and to assistance.

Passengers have obligations as well as rights. To avoid delaying of flights, they must respect time for check-in and boarding. They must not endanger the safety and health of other passengers and of crew, nor create threats to security. They must not
aggress, upset or inconvenience other passengers. Airliners are aware of these dangers and, in their contract reserve the right to decline passengers who have already behaved unacceptably or who may do so, in their reasonable belief. Airliners also maintain the right to refuse transport of potentially dangerous baggage and to search baggage for reasons of security.

The relation between air carriers and their passengers is not regulated by legislation on contracts and passenger's rights only. Other laws shall apply, like Regulation 2027/97 on liability in the event of accidents (4) and amending Regulation 892/2002 (7) whose main purpose is to align Community rules on the Montreal Convention concerning liability for damages caused by death or injury, by delays or by mishandling of baggage. Legislation specific to air transport also covers denied boarding.

3. SOURCES OF LAW

3.1. Legislation


The air carrier must lay down the rules in the event of an overbooked flight. The occasion of boarding being denied, a passenger shall have the choice between reimbursement without penalty of the cost of the ticket for the part of the journey not made, or re-routing to his final destination at the earliest opportunity, or re-routing at a later date at passenger's convenience. In addition, the airline must pay minimum compensation in cash EUR 150 for flights up to 3500 km (EUR 75 if the delay to the passenger is less than two hours); or EUR 300 for flights over 3500 km (EUR 150 if delay to the passenger is less than four hours). (2, Art.4)

Where the passenger is travelling with package tour, the airline must compensate the operator, who must then pass the sums collected to the passenger. (2, Art.5)

The airline shall offer free of charge a telephone call and/or telex/fax message to destination, meals and refreshments in reasonable relation to the waiting time, accommodation in cases where additional stay of one of more nights is necessary and transport to the original destination if the passenger accepts a replacement flight at an alternative airport. (2, Art.6)


That regulation summarises the liability rules applied by Community air carriers as required by Community legislation and the Montreal Convention. In case of carrier delay, the air carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures. The liability for passenger delay is limited to 4150 Special Drawing Rights and the liability for
The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to the approximation of the rates, rules, etc.

3.1.3. Conversion for the Declaration of Certain Rates for International

Conversion shall be nil and void.

Recognition by the Monetary Committee

3.1.5. Conversion for the Declaration of Certain Rates for International
3.1.6. Proposal for a regulation of the European Parliament and the Council establishing common rules on compensation and assistance to air passengers in the event of denied boarding and cancellation or long delays of flights

Legislation is required better to protect passengers and the Commission announced its intention to withdraw its proposal of 1998 to amend regulation (EEC) No 295/91 on compensation for denied boarding, which also covered cancellations, and to replace it by a stronger one. When the air carrier or a tour operator reasonably expects to deny boarding on a flight, it shall first identify any passenger still waiting check-in for the flight concerned at the time of check-in closes and then call for volunteers to surrender their confirmed reservation exchange for benefit under condition to be agreed between the passengers concerned and the air carrier or tour operator.

In the case of denied boarding passengers shall receive compensation amounting to EUR 750 for flights of less than 3500 km and EUR 1500 for flights of 3500 kilometres or more. In the case of denied boarding passengers shall be offered the choice between reimbursement of the full cost of the ticket, re-routing to the final destination at the earliest opportunity or re-routing to their final destination at the passenger convenience (Art.7)

In the case of denied boarding passenger shall be offered free of charge meals and refreshment in a reasonable relation to the waiting time and hotel accommodation in cases of stay of one or more nights.

Furthermore, the paper deals with cancellation and delay as well as the obligation to inform passenger of their rights in a clearly legible notice.


Package means the pre-arranged combination of not fewer than two of the following: when sold or offered for sale at an inclusive price and when the service covers the period of more than twenty-four hours or include overnight accommodation: transport, accommodation and other tourist services: not ancillary to transport or accommodation and accounting for a significant proportion of the package. (1, Art.2 para 1)

The organizer and/or retailer shall also provide the consumer with times and places of intermediate stops and transport connections as details of the place to be occupied by the traveller. Member States shall take the necessary steps to ensure that the organizer and/or retailer party to the contract is liable to the consumer for proper performance of the obligation arising from the contract, irrespective of whether such obligations are to be performed by the organizer and/or retailer or by suppliers of services without prejudice to the right of the organizer and/or retailer to pursue those other suppliers of services. In the matter of damages arising from non-performance or improper performance of the services involved in the package, the Member States may allow compensation to be limited in accordance with the international conventions governing such services.

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4. THE NEED OF THE NEW LEGAL FRAMEWORK FOR AIR TRAVELERS RIGHTS PROTECTION

4.2.1. Airport Voluntary Commitment on Passenger Service

A voluntary commitment on Passenger Rights in the European Union

Indisputable is the need for creating new rights to passengers by setting minimum requirements for contracts in air travel. One aim would be to create certainty, by requiring airliners to draft contracts clearly setting out services offered and conditions applied.

The goal is to give passengers the information they need to make well-founded choices between airliners, by requiring airliners to submit the data necessary for publishing regular consumer reports. Finally, the legislation laid down will seek a balance between legal certainty for passengers and that for airliners while guaranteeing more rights to passengers.

CONCLUSION

It is the author’s opinion that legislation should be the way to ensure that contracts are clear, complete and known to the passengers, to establish rights to passengers presently left to contractual freedom. Achieving the right balance in contractual conditions is also a key element in policy of consumer protection. In addition, policy needs to go beyond legislation and voluntary codes on service quality.

The legislation to be proposed shall have the objective to enable delayed passengers to continue their journeys under good condition by giving them the right to reimbursement of the ticket or to an alternative flight at the earliest opportunity. Furthermore, the objective should be to create new rights to passengers, by setting requirements for a contract of travel. The aim would be to draft contracts clearly setting out services offered and conditions applied with the wish to improve the balance in favour of passengers. The need to give passengers the information needed to make well-founded choices between airliners should be also stressed.

In author’s view the voluntary commitments are of utmost importance for improvement of service quality (lower fares, better information, and easier complaint procedure), care of delayed passengers and simpler procedure for lodging complaints and mechanisms for settling disputes out of court.

Finally, while protecting air passengers’ rights, over-regulation should be avoided. Namely, the regulation of contracts should be clear, complete and easily available, creating right balance between legal certainty for passengers and airliners, while guaranteeing more rights to passengers. However the legislation should leave a sufficient area of contractual freedom as not to hamper competition.

REFERENCES

8. Airport Voluntary Commitment on air passenger service, The Voice of Europe's Airport, 24.04.2001