

In March 2013, the European Commission proposed an update of the laws governing the rights of air passengers when their flight is cancelled, lengthily delayed or they are denied boarding (Regulation 261, passed in 2004). That update is currently being negotiated in the European Parliament and Council of Ministers.

## 1 What is the need for revision?

The regulation (R261) has helped improve the status of passengers by granting basic rights. However, the enforcement of these rights has been toothless and incoherent. Problems remain widespread and consumer complaints about poor compliance have risen steadily. Passengers are often left with the sole “alternative” of taking legal action against non-compliant airlines, but few are able to do so.

The volume of cases before the Court of Justice of the European Union (CJEU) in recent years clearly shows the need to clarify fundamental aspects of the regulation and ensure passengers can enforce their rights more easily. Therefore it is crucial these rulings are codified in EU law.

## 2 Is the Commission’s proposal satisfactory?

In general, BEUC welcomes the new proposal. It includes some advances for passengers and clarifies some of the controversial provisions in R261 (e.g. re-routing with other means of transport, the right to assistance between a missed connecting flight, a right to correct booking spelling mistakes).

Notably however, significant reductions of a number of key existing rights are put forward. This particularly concerns the rights to accommodation and care in “extraordinary circumstances”, as well as that to compensation for long delays.

## 3 How can the proposal be improved?

### Delay

In 2012, the European Parliament called on the Commission to codify the CJEU rulings (*Sturgeon, Nelson and Folkerts*) which state that airlines are obliged to compensate passengers after 3 hours of delayed arrival. However, the Commission proposes a 3-tier approach of 5, 9 and 12 hours of delay based on flight distance. This makes the law more complex and less equitable. BEUC urges legislators to follow the CJEU with a 3 hour threshold for all flights. After all, it must be borne in mind that passengers do not enjoy a right to compensation in “extraordinary circumstances”.

### Right to accommodation in extraordinary circumstances

Limiting R261’s general right to accommodation to 3 nights and €100 per night as the European Commission suggests is unacceptable. Passengers often incur significant expenses beyond this and it risks them being left in the streets. The volcanic ash cloud incident in 2010 is at the heart of this policy choice, yet such a highly exceptional event is an unsound basis for setting general rules. BEUC believes the current R261 provisions should be left unchanged.



## Re-routing as soon as possible

75% of passengers hit by cancelled flights choose re-routing instead of refund. Re-routing should be granted as soon as possible and involve alternative means of transport. The proposed waiting threshold of 12 hours is much too long and could kick-in during the night when passengers have to be offered accommodation instead. Moreover, travellers should not be simply referred to a website or telephone number to sort themselves.

## Prohibit the 'no-show' clause

The new Regulation should include an outright ban on airlines denying boarding on a connecting or return flight where passengers have not taken/missed the outbound leg. This amounts to an unfair clause, as many national courts have ruled e.g. in Austria, Germany and Spain.

The Commission only half tackles this problem – as proposed, airlines can continue to apply the clause. Though if the passenger is denied boarding on a return flight the company will have to compensate and re-route. This does not apply to connecting flights.

## Compulsory financial guarantee against airline insolvency

An airline which goes bust and suddenly cancels its flights can leave thousands of passengers completely stranded or without refund for the already acquired tickets (think of Malev or Spanair recently). EU lawmakers should establish a mandatory guarantee against airline insolvencies. The Commission's current policy to call for voluntary measures by Member States and airlines is insufficient.

BEUC calls for the following further measures to improve EU consumer rights:

- A presumption that technical problems are not an “**extraordinary circumstance**”. This is a loophole used too often by airlines to avoid compensation obligations.
- Air ticket **advertised prices** to include the **minimum services of check-in, boarding pass and an item of checked luggage**.
- The right to **transfer a ticket** to another person if prevented from travelling.
- An obligation on airlines to adhere to **Alternative Dispute Resolution (ADR)** systems.
- An **airline representative available** in each airport they operate from.
- The availability of **inexpensive telephone helplines** and e-mail addresses.
- The regulation's **scope should be extended** to include non-EU carriers arriving in the European Union and the European Economic Area.

“**Extraordinary circumstances**” are a reasonable regulatory caveat for airlines not to compensate passengers when events are beyond their control. Too often however, conventional technical difficulties are cited by airlines as the reason for the delay/cancellation, thus compensation is not paid to passengers. The legal update should include a presumption that technical problems are *not* extraordinary, placing an onus on airlines to prove otherwise.

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## Does passenger protection cost airlines too much?

The Commission report (SEC/2011/428) on R261 compliance costs shows the financial impact of the law on airlines is often overestimated – between 2006 and 2009 less than 1% of medium-haul flights and 0.4% of short-haul flights were obliged to pay compensation. It also acknowledges the circumstances of the ‘ash cloud crisis’ are unlikely to be repeated thanks to improved coordination. Clearly, the cost of basic passenger protection is not disproportionate.