

## EUROPEAN AVIATION UPDATE

### Purpose

1. To provide, for the information of Conference, a brief round-up of current EU activity in the field of aviation *not* covered by reports which appear elsewhere on the Agenda for this meeting.
2. Most of the regulations, directives, consultation papers and reports referred to in this report can be readily accessed from the Euro Round-up Page of the Liaison Group's website at <http://www.ukaccs.info/euro.htm>. The Secretariat is happy to provide electronic or hard copies of any of these documents if required. The web page is regularly updated and is a ready source of current information on European initiatives in aviation.

### New EU Transport Policy - "Keep Europe Moving"

3. On 22nd June 2006 the European Commission unveiled the outlines for a future EU transport policy – including aviation.
4. The Commission said it planned a number of concrete actions. These include:
  - (a) **Optimisation of existing transport modes**
    - An internal market review of road transport to ensure the proper functioning of the market, determine the role of SME's, and provide an analysis of the social elements involved (2006)
    - Launch European ports policy (2007)
    - Removal of technical barriers in rail transport to ensure interoperability between companies. Programme to promote rail freight corridors and prepare a review of the internal market in rail transport (2006), with a scoreboard for market performance of rail (2007)
    - A review of air transport liberalisation measures, airport charges and capacity (2006)
    - A mobilisation of all sources of infrastructure financing; multi-annual investment programme up to 2013 for Trans-European networks
  - (b) **Mobility for the citizen**
    - Publication of a Green Paper on Urban Transport (2007)
    - Development of a strategy for critical infrastructure (2006), land and public transport security (2007), and review air and maritime security rules (2008)
    - Passenger rights: proposal on minimum standards for coach transport, notably for people with limited mobility (2007)
    - A first European road safety day (2007); promotion of road safety through vehicle design and technology, infrastructure and drive behaviour (on a continuing basis)
    - Review legislation on working conditions in road sector (2007)
  - (c) **Better transport solutions through new technologies**
    - Development of a freight transport logistics strategy, as well as the launch of a broad debate on possible preparation of an EU action plan for 2007

- Energy and transport: strategic technology plan for energy in 2007 and green propulsion programme for 2009
  - Technology: RTD and support to market penetration, including big technology projects such as Galileo and ERTMS which should be implemented on certain corridors from 2009 onwards.
  - Smart charging (basis for methodology by 2008)
  - Major programme to bring intelligent road transport systems to market (2008)
5. Concrete measures will be decided after consultations and impact assessment.

### **Airport capacity, efficiency and safety in Europe**

6. Last year we reported on the moves being taken towards a *Communication* on airport capacity, efficiency and safety in Europe. This was finally published<sup>1</sup> on 24th January 2007. According to the Commission's press release<sup>2</sup> the communication "provides a comprehensive action plan detailing a coherent strategy for responsibly tackling congestion at European airports".
7. The measures described in the Communication aim to accommodate traffic growth in an environmentally sustainable manner as follows:
- to optimise the use of existing capacity;
  - to provide a coherent approach to air safety operations at aerodromes;
  - to promote "co-modality";
  - to improve the environmental capacity of airports and the planning framework of new airport infrastructure; and
  - to develop and implement cost efficient technological solutions
8. There is a useful summary<sup>3</sup> of the proposals in the Commission's impact assessment on their website. The Secretariat will keep track of initiatives flowing from this Communication and information will be circulated through the News Service in the usual manner.

### **Information for passengers on the identity of the operating carrier and on communication of safety information by Member States - Regulation (EC) No 2111/2005**

9. As reported last year, this Regulation<sup>4</sup>, made in December 2005, gives air passengers the right to be informed of the identity of the air carrier which will operate the flight(s), for which they have made a reservation and, in parallel, provides for the establishment of a Community list of air carriers subject to operating bans within the Community.
10. The Regulation establishes a process whereby the Commission, in consultation with Member States and using common safety criteria, will decide that air carriers should be refused permission to operate services within the Community. The Member States are responsible for enforcing the operating bans. There are provisions for a Member State to impose its own bans under exceptional circumstances, taking into account the common safety criteria, and these will be considered by the Commission for Community-wide action. In addition, a Member State may maintain a ban in its own territory when the Commission decides against Community-wide action if there are safety problems specifically affecting the Member State.
11. The Community list is published on the Community's website and both Member States and the Commission must facilitate public access to the list. The first such list was

<sup>1</sup> [http://ec.europa.eu/transport/air\\_portal/airports/doc/2006\\_communication\\_action\\_plan\\_en.pdf](http://ec.europa.eu/transport/air_portal/airports/doc/2006_communication_action_plan_en.pdf)

<sup>2</sup> [Click here](#) to see the press release

<sup>3</sup> <http://register.consilium.europa.eu/pdf/en/07/st05/st05886-ad02.en07.pdf>

<sup>4</sup> The text of the [Regulation](#) can be seen in the Eur Lex

published in March 2006 and can be accessed via the DfT website<sup>5</sup>. It was last updated on 5th March 2007.

12. The Regulation also requires an air carrier making a booking (“the contracting air carrier”) to ensure that the passenger is informed of the identity of the carrier(s) actually operating the flight(s). Where the precise identity of the carrier(s) is not yet known the contracting air carrier will need to tell the passenger the name or names of the air carrier(s) likely to provide the service(s) and subsequently to inform the passenger as soon as the precise identity of the carrier(s) is established. Where the operating carrier is changed after reservation the contracting air carrier will be expected to make all reasonable efforts to ensure that the passenger is informed of the change in good time and, in any case, by not later than check-in.
13. Article 13 of the Regulation requires all Member States, by 16 January 2007, to ensure compliance with these rules and to lay down effective, proportionate and dissuasive penalties for their infringement. Following a consultation exercise the Secretary of State on 12th December 2006 made the *Civil Aviation (Provision of Information to Passengers) Regulations 2006 (SI 2006/33030)*<sup>6</sup>. These took effect on 16 January 2007.

### **Voluntary Commitments on Air Passenger Service**

14. More than twenty UK airports signed up to the Airport Voluntary Commitments which are based on ECAC codes which set quality standards for services as well as a range of other matters including design standards for terminals.
15. In the UK the monitoring of the Airport Commitments is the responsibility of the Department for Transport. In 2003 they did this on the basis of the consumer reports which signatory airports are expected to produce at least once a year. In order to build in a measure of independent validation, the Airport Consultative Committee for each airport would have an opportunity to comment on the document before it was sent to the Department. The Department’s first annual report on the implementation of these Commitments was published in November 2003.
16. On 2nd February 2004 the Department said that in the UK they had found that the airport authorities which had signed up to the Commitments were generally meeting the undertakings, often going much further, and in the relatively few cases where there were shortcomings the airports concerned were working hard on remedies. They were particularly pleased to note the interest and engagement of the airports’ Consultative Committees, and regard the Commitments as a helpful benchmark against which airports and their Consultative Committees can continue to assess performance. Against this background they had taken the view that the Department should now cease active monitoring, although they would be grateful to continue to receive copies of the passenger service reports required under Commitment No. 11. They would not, however, use these to compile progress reports, nor to pass on information about individual operators.
17. It is not clear to what extent these arrangements continue to operate at airports and members might like to compare notes on the matter.

### **Compensation for denied boarding or the cancellation or long delay of flights**

18. There have been previous reports on this Regulation - (EC) 261/2004 - which came into force on 17th February 2005 and continues to attract much publicity. It provides for compensation and assistance for passengers who are denied boarding or are affected by cancellations and lengthy delays.

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<sup>5</sup> <http://www.dft.gov.uk/pgr/aviation/safety/foreignairlinepermits>

<sup>6</sup> <http://www.dft.gov.uk/consultations/aboutria/ria/sectioncivaviaregs/pdfcivaviaregs>

19. The text of the EU Regulation can be seen on the EU's website<sup>7</sup>. The regulations made by the UK Government to ensure and supervise air carrier compliance with the Regulation in the UK, and to impose sanctions, can be seen on the OPSI website<sup>8</sup>. Enforcement is a two-stage process. First, the *Air Transport Users Council (AUC)* filters complaints from passengers, bringing to the attention of the CAA any patterns of non-compliance or suspected deliberate misapplication of the Regulation. Second, on the basis of such information, the CAA decides on the appropriate enforcement action to take, whether by persuasion or legal proceedings.
20. The Regulation, and the arrangements made for its implementation, has given rise to considerable controversy. For example, the Commission's publicity for the new requirements last year caused the *European Regions Airline Association* and the *International Air Carrier Association* to complain to the European Ombudsman. Annexed is an extract from the Report of the Ombudsman detailing the ERA's complaints. This summarises very well the sources of the controversy to which these arrangements give rise.
21. The Ombudsman's draft recommendations were published in January 2007<sup>9</sup>. The Commission should, he said, "as soon as possible correct the inaccurate and misleading statements identified by the Ombudsman and present its apologies to the complainant". A final decision is awaited.
22. On 4th April 2007 the European Commission issued a report which evaluates the results of the Regulation so far<sup>10</sup>. The Report says that further work is needed to improve enforcement, clarify the interpretation of certain aspects of the Regulation, establish clarity between delays and cancellations "as different rights are awarded to the passengers depending on the circumstances" and to enhance the role of the national enforcement bodies which oversee the application of the common rules. "Although there is no doubt that air passengers enjoy better protection today" says the Commission, "we must make sure that airlines and Member States fully comply with their obligations". The Commission says it will give them six months to make the air passengers regulation work and will provide them with full support in that process.
23. Also in April the Commission announced it had prepared updated publicity material "in order to better guide passengers concerning their rights". A copy of the English version of the new poster is attached. The Commission says it will be available at all European airports before the Summer. Members might like to check that it has reached their airports and that it is displayed in an appropriate manner. There are already indications that some airports may be unwilling to antagonise the airlines (who they see as their primary customers) by displaying the poster. This is coupled to a feeling that the Regulation is an airline problem and not a matter for them. There seems to be no legal obligation on airports to display the poster and the question arises how then passengers are to be effectively advised of their rights under the Regulation?
24. It is likely that these arrangements will continue to give rise to controversy and resistance among the airlines and especially among the low cost carriers who, they say, find themselves having to pay compensation well in excess of the fare originally paid by the passenger. Low cost carriers also complain that they are obliged to provide services that are not included in the low fares package and are neither paid for nor required by their passengers.

### **Revision of the third package for liberalisation of air transport**

25. Members will be aware from previous reports of the Commission's intention to revise Regulations (EEC) 2407/92, 2408/92, 2409/92 of 23 July 1992, together known as "the

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<sup>7</sup> <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:32004R0261:EN:HTML>

<sup>8</sup> <http://www.opsi.gov.uk/si/si2005/20050975.htm>

<sup>9</sup> [http://www.ombudsman.europa.eu/recommen/en/051475.htm#\(2\)](http://www.ombudsman.europa.eu/recommen/en/051475.htm#(2))

<sup>10</sup> [http://ec.europa.eu/transport/air\\_portal/passenger\\_rights/information\\_en.htm](http://ec.europa.eu/transport/air_portal/passenger_rights/information_en.htm)

third package" for liberalisation of air transport. Their proposals were finally issued on 18th July 2006<sup>11</sup>.

26. Many of the proposals lie outside the ordinary remit of Consultative Committees but there are some points which are of interest. Chief among these are the proposals for public service obligations. The use which can be made of PSOs to subsidise socially-necessary but unprofitable air services (e.g. to remote islands), and also to reserve slots for these services at congested airports, is limited in order to minimise distortions to the single market. However, differences have arisen in the interpretation of these PSO rules which have, in some cases, led to carriers being prevented from operating certain routes on a commercial basis. At the same time, where PSOs are necessary, present rules do not always attract a sufficient number of competitors in the tender procedure.
27. The Commission's proposal aims to clarify the conditions attached to PSOs and the airports to which PSOs can apply. It also suggests lengthening the concession period for PSOs from 3 years to 4 and simplifying some elements of the tender procedure. The proposal gives the Commission powers to ensure greater scrutiny of PSOs and of their compliance with European law.
28. Another possible area of interest to Consultative Committees is the Commission's proposals on Traffic Distribution Rule (TDRs). These are intended for use for operational purposes to ensure an appropriate division of traffic between a number of airports serving the same city. Again, there has been a difference of interpretation across the EU which has led to some carriers being unable to serve their airport of choice. The proposal requires Member States to seek prior approval of TDRs from the Commission. It would also clarify and simplify the rules as to when they can be applied.
29. On 25th October 2006 the UK Department for Transport launched a consultation exercise<sup>12</sup> with the aim of ensuring the Department is well briefed in the European discussions on the proposals and that the final regulation benefits consumers and operators. Members were informed of this consultation and of the closing date for responses which was 19 January 2007.
30. Discussion of the proposals is ongoing. The Secretariat will keep a watch on progress and members will be informed of developments.

### **Ground Handling**

31. This is another long running saga. In December 2001, the European Commission appointed the SH&E consultancy group to study the impact of Council Directive 96/67/EC on the liberalisation of the ground handling market at Community airports. The study concerned the number of handlers at airports, the criteria for selecting them and the consequences of the opening up of the market, especially in terms of employment, prices and 'quality services'. The study involved visits to 33 airports and a postal survey of another 48. SH&E's Final Report was submitted in October 2002<sup>13</sup>.
32. A central finding of the report was that quality standards at European airports were falling and that urgent action to address this issue was required. Rather than targeting a further liberalisation of the ground handling market, any new legislation must address these problems as a first priority.
33. In the light of the report the Commission said it intended to issue a proposal for the revision of Directive 96/67/EC. In preparation for this the Directorate-General Energy and Transport in mid 2003 invited Member States and stakeholders to comment on a Consultation Paper.
34. There followed a long period of silence and it was not until January 2007 that the Commission - as part of its 'Airport Package' (see paras.6-8 above) - published a report

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<sup>11</sup> [http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0396en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0396en01.pdf)

<sup>12</sup> <http://www.dft.gov.uk/consultations/closed/reformthirrdaviationpackconsultat/>

<sup>13</sup> [http://ec.europa.eu/transport/air\\_portal/airports/doc/2002\\_ground\\_handling\\_final\\_report.pdf](http://ec.europa.eu/transport/air_portal/airports/doc/2002_ground_handling_final_report.pdf)

on the implementation of the 1996 ground handling directive. According to the Commission's press release this "demonstrates the positive effects that the initial phase of liberalisation has had on opening up access to ground handling markets at European airports to competition and opens the door for a debate as to the next steps that need to be taken".

35. As reported last year ACI Europe, in its February 2006 e-Communiqué, published a thoughtful article on Ground Handling. They believe that any EU action in relation to ground handling should ensure locally-defined minimum quality standards allowing for the efficient management of an airport system. It is, they say, certain that clearly agreed service standards would greatly improve the passenger experience at all community airports. Such minimum standards would also require clearly defined penalties for airlines and ground handlers who do not comply. This could initially take the form of financial penalties - with the ultimate sanction being the removal or suspension of the grant of approval for ground handling. Quality of service is enhanced by staff training. It is, they say, hard to believe that a new EU security regulation imposes security training for all operators at the airport including handling staff but as yet there is no EU-wide regulation requiring completion of a minimum training for their day to day handling work.
36. The Secretariat will continue to keep watch on this long running story and report developments as they unfold.

### **European Single Sky**

37. As previously reported the process of reaching agreement on this essential measure was very time consuming and there were many problems to overcome, not least in matters of civil-military co-operation. It was not until January 2004 that a compromise was reached which cleared the way for a package of four new Regulations - all signed on 10th March 2004<sup>14</sup> - dealing with the Framework, Air Navigation Service Provision, Airspace Design and Management, and Interoperability.
38. The Single European Sky means a fundamental change in air traffic management in Europe. Working together the EC and Eurocontrol are aiming for a single European Air Traffic Management (ATM) infrastructure, called SESAR (formerly SESAME). This will "fully coordinate airspace users, operators and the supply industry and bring together the regulatory framework, funding sources, and implementing actors across Europe". It is a long term project which is still in its definition phase.
39. On 15th March 2007 the Commission published two progress reports:
  - Progress on the project to implement the new generation European air traffic management system (SESAR)  
This concludes that SESAR is "arousing much enthusiasm and a strong commitment within the European aviation community. The definition phase, which has been entrusted to Eurocontrol and an industrial consortium, is meeting the objectives assigned to it and is yielding promising results which industry in general endorses".
  - Building the Single European Sky through functional airspace blocks: a mid-term - status report  
Functional airspace blocks are the tool to reduce airspace fragmentation and so enhance current safety standards and overall efficiency, optimize the steadily growing capacity requirements of all airspace users and minimise delays by managing the traffic "more dynamically". Nearly all Member States have initiatives to establish such functional airspace blocks. However, the report notes big discrepancies in the "intensity of the efforts of Member States and their air navigation service providers". Some Member States will have to do better!

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<sup>14</sup> Regulations [EC 549 /2004](#), [EC 550 /2004](#), [EC 551 /2004](#) and [EC 552 /2004](#).

40. The Secretariat will keep watch on this project as it unfolds over the years ahead and progress reports will be submitted to Conference from time to time.

### **Airport Slot Allocation**

41. Members will recall that at the end of April 2004 amending Regulation (EC) 793/2004<sup>15</sup> was signed giving more clarity and transparency to the current slot allocation rules notably by taking away any ambiguity in relation to the principles and procedures, the status of the slot coordinator and the imposition of sanctions to prevent any abuse of slots that would further worsen the scarcity of slot capacity at congested Community airports. The amendments also included clarification of the definition of a slot as a 'permission' rather than 'entitlement', thus eliminating any risk of a slot being interpreted by airlines as a property right.
42. These changes took effect at the end of July 2004. The sanctions to be imposed in cases of abuse are a matter for the member states and following a consultation exercise, and some work design work by Airports Coordination Limited (ACL), the Department in October 2006 made the *Airport Slot Allocation Regulations 2006 (SI 2006/2665)*<sup>16</sup>.
43. Meanwhile, as previously reported, the Commission in the autumn of 2002 appointed the National Economic Research Associates (NERA) to carry out the in-depth study as the basis for a more fundamental review. Their 402 page report was completed in January 2004<sup>17</sup>. It assessed the effects of different types of slot allocation scheme. All are market-oriented:
- slot trading,
  - Attaching posted prices to slots and
  - Auctioning slots.
44. Then in September 2004 the Commission issued a Staff Working Document<sup>18</sup> setting out ideas and seeking the views of Member States. The Response of the UK Government can be seen on the DfT's website<sup>19</sup>. It is worth noting that this included support for the Commission's proposal that parties other than air carriers could participate in slot trading. In theory, this proposal would allow regional bodies to buy slots to protect regional services.
45. It was the Commission's intention to issue a proposal for further amendments to European slots legislation towards the end of 2006. In this connection they engaged a consortium consisting of Mott MacDonald & Oxera to undertake a study on the secondary trading of slots. This study was to form part of the Commission's impact assessment work to support its case for revising the existing EU regulatory framework. The study<sup>20</sup> was published in December 2006 but thus far there have been no proposals from the Commission for further amendments to the legislation
46. The UK Government supports secondary trading, and last year it commissioned a study by DotEcon Ltd to help inform its position on the use of alternative market mechanisms (e.g. auctions) to allocate new capacity. The study was published in October 2006<sup>21</sup>. The UK's position on all slots matters is of course subject to the details of the Commission's proposals when they emerge.

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<sup>15</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0793:EN:HTML>

<sup>16</sup> <http://www.opsi.gov.uk/si/si2006/20062665.htm>

<sup>17</sup> <http://www.ukaccs.info/nerareport.pdf> .

<sup>18</sup> [http://ec.europa.eu/transport/air\\_portal/consultation/doc/2004\\_12\\_01/2004\\_consultation\\_paper\\_en.pdf](http://ec.europa.eu/transport/air_portal/consultation/doc/2004_12_01/2004_consultation_paper_en.pdf)

<sup>19</sup> <http://www.dft.gov.uk/pgr/aviation/airports/ukresponsetoeuropeancommissi2842>

<sup>20</sup> [http://ec.europa.eu/transport/air\\_portal/airports/doc/2006\\_slots\\_final\\_report.pdf](http://ec.europa.eu/transport/air_portal/airports/doc/2006_slots_final_report.pdf)

<sup>21</sup> <http://www.dft.gov.uk/pgr/aviation/airports/alternativeallocationmechani1040>

## European Aviation Safety Agency

47. At an earlier meeting we reported the setting up of this Agency under Regulation (EC) 1592/2002<sup>22</sup>. EASA became operational on 28 September 2003.
48. At present the Agency is responsible for:
  - safety rule-making;
  - the certification of aeronautical products, parts and appliances;
  - the approval of organisations and personnel engaged in the maintenance of these products.
49. However, in November 2005 the Commission published a communication (COM/2005/578) and a proposed new regulation (COM/2005/579) which would:
  - extend the scope of the Regulation to cover basic principles and essential safety requirements for flight crew;
  - extend the scope of the Regulation to cover basic principles and essential safety requirements for Community and third country operators;
  - make EASA responsible for certifying compliance of third country operators with the essential requirements for operating aircrafts in the EU.
50. The proposed Regulation is still under consideration by the EP and Council and is not likely to be approved until Autumn 2007 at the earliest.

## Guidelines on financing of airports and start-up aid to airlines departing from regional airports

51. From earlier reports members will recall that in February 2004 the Commission announced its findings on a complaint lodged in 2001 concerning the advantages granted to the airline Ryanair at Charleroi airport by Brussels South Charleroi Airport (BSCA), the airport's managing body, and the Walloon Region (Belgium). The Commission had to determine whether the measures taken in favour of Ryanair by the Walloon Region and BSCA, a public undertaking controlled by the Walloon Region, were compatible with the "private market investor" principle. It concluded that no private operator in the same circumstances as BSCA would have granted the same advantages and accordingly that they constituted State Aid which could distort competition in favour of Ryanair.
52. In the wake of the Charleroi case the Commission in September 2005 adopted new rules<sup>23</sup> which lay down the conditions under which start-up aid can be granted to airlines to operate new routes from regional airports and which also provide airports and Member States with guidance on the public financing of airports.
53. In the UK the Government studied the Guidelines with some interest not least because of the impact they might have on the Route Development Funds referred to in paragraph 4.41 of the White Paper *The Future of Air Transport*. On 30th June 2006 the UK Department for Transport published a protocol setting out rules and principles governing the operation by the devolved administrations and regional development agencies of funds to provide start-up aid. The new rules can be seen on the Department's website<sup>24</sup>. With effect from 1 June 2007, all start-up aid offered by UK Route Development Funds must be fully compliant with the Commission's Guidelines and DfT is updating its protocol to reflect his requirement.

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<sup>22</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002R1592:EN:HTML>

<sup>23</sup> [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/c\\_312/c\\_31220051209en00010014.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/c_312/c_31220051209en00010014.pdf)

<sup>24</sup> <http://www.dft.gov.uk/pgr/aviation/domestic/ukrdf/>

## **Air Quality**

54. In September 2005, the Commission presented a thematic strategy on air pollution (COM 2005/446) and a proposal for a new air quality directive (COM 2005/447). The draft Directive would revise the current ambient air quality legislation:
  - by merging five legal instruments into a single directive.
  - introducing air quality standards for fine particulate matter (PM<sub>2.5</sub>) in the air, because of the large health benefits to be obtained.
55. At the same time, more flexibility would be given to the Member States. Where they can demonstrate that they have taken all reasonable measures to implement the legislation but still need more time to comply with air quality standards in certain places, it is proposed to allow them to request a time limited extension to the compliance deadline in the affected zones under certain conditions.
56. The European Council considered these proposals in June 2006 and again in October 2006 when political agreement was reached. The draft Directive was seen by the European Parliament in September 2006 who approved it but with amendments. Following the political deal struck in the European Council in October it will now be considered again by the European Parliament, probably in the first half of 2007.
57. The Secretariat will keep watch on the progress on this draft Directive through the Euro-labyrinth and Members will be kept up to date.

**Stuart Innes**  
**May 2007**

**Annex**

**European Regulation - (EC) 261/2004) -  
Compensation for denied boarding or the cancellation or long delay of flights  
Extract from report of European Ombudsman (January 2007)**

The statements in the poster to which the complainant and IACA objected were the following:

Denied boarding and cancellation (in general)

(1) *"If you are denied boarding or your flight is cancelled, the airline operating your flight must offer you financial compensation and assistance."*

This opening paragraph creates a completely wrong impression. Only a minority of cancelled flights will lead to payment of compensation.

The following categories of passengers are not entitled to compensation:

- passengers on flights that are cancelled due to exceptional circumstances;
- passengers who are offered alternative transport within a few hours of the cancelled flight; and
- passengers who are given at least 14 days' notice of a cancellation.

Denied boarding

(2)(a) *"These [benefits] must include the choice of either refund of your ticket (with a free flight back to your initial point of departure, when relevant) or alternative transport to your final destination."*

A rerouting to the final destination will take place under comparable transport conditions. The Commission's poster may lead to an expectation that the passenger chooses his or her alternative transport freely.

(2)(b) *"Compensation may be halved if you are not delayed more than 2, 3 or 4 hours respectively."*

Regulation 261/2004 specifies "delayed on arrival", not on departure. The relevant statement is inaccurate and will thus lead to unnecessary discussions at the boarding gate.

(2)(c) *"The airline must also give you: a choice of either a refund of your ticket (with a free flight back to your initial point of departure, when relevant) or alternative transport to your final destination (...)"*

See comment on statement 2(a).

Cancellation

(3)(a) *"Whenever your flight is cancelled, the operating airline must give you: a choice of either a refund of your ticket (with a free flight back to your initial point of departure, when relevant) or alternative transport to your final destination (...)"*

See comment on statement 2(a).

(3)(b) *"The airline may also have to compensate you, at the same level as for denied boarding, unless it gives you sufficient advance notice."*

By only citing one of three important exceptions, the reader will almost certainly believe that there are no other exceptions.

The leaflet has the following text:

*"The airline may also have to compensate you, at the same level as for denied boarding, unless it gives you sufficient advance notice and offers alternative transport close to the original time."*

This text contains a clear error, given that the airline needs to offer either advance notice or alternative transport close to the original time.

Long delays

(4) *"Immediate assistance (...) the airline must give you (...)"*

The notion of "immediate" assistance is not in line with the Regulation, as it would lead to unreasonable expectations from passengers. The provision of assistance may be dispensed with if it further delays a flight.

#### Later claims, baggage, injury and deaths in accidents

(5) The Commission's poster refers to the provisions of the Montreal Convention and not to Regulation 261/2004. Its text omits all references to airlines' defence provisions mentioned in this Convention. The following exclusion clause should be retained: "Under international agreements an airline is liable for damage caused by delay, except if it proves that it did all it reasonably could to avoid the damage or that it was impossible to do so. It is also liable for loss or damage to baggage. Ask for information from your airline or travel agency."

#### Package holidays

(6) The wording on the poster is misleading in the sense that the non-execution of a service does not necessarily cause damages. The reference to a part of a package other than the flight should not appear on a poster on passenger rights. This will create additional confusion.

With the exception of statement 3(b), the Commission's fact sheet contains the same statements as its poster.

In its reply of 23 February 2005, the Commission reiterated its view that there was no need for any changes. No reply was given to the request for a meeting.

As regards the video that had been produced by the Commission, the complainant considered that it contained the following three misleading statements:

*(1) "From 2005, passengers should not have to go through long procedures to defend their rights at European airports. Immediate and automatic compensation will be paid for delays, cancellations and overbooking".*

*(2) "Third, airlines must offer identical compensation [as that payable in relation to overbooking] and, where necessary, look after passengers in cases of a last minute cancellation of flight".*

*(3) If the delay is more than 5 hours, the airline must also reimburse the price of the ticket (...)"*

According to the complainant, statement (1) is inaccurate, as compensation never has to be paid in respect of delay, and where compensation is payable under Regulation 261/2004, it does not have to be paid immediately.

Statements (1) and (2) fail to mention that passengers do not have a right to compensation in the following three cases:

- passengers are given at least 14 days' notice of the cancellation;
- passengers are advised of the cancellation less than 14 days before the flight but are offered rerouting, allowing them to reach their destination close to the original scheduled time of arrival; or
- the cancellation is caused by "extraordinary circumstances".

The complainant further submitted that statements (1) and (2) failed to mention that compensation can be reduced by up to 50 % and that statement (3) was inaccurate, since it implied that full reimbursement was always due following a delay of 5 hours. According to the complainant, however, Regulation 261/2004 only obliges airlines to offer reimbursement where a passenger chooses not to proceed with the journey, and then only of the part of the journey not made (unless the flight is no longer serving any purpose in relation to the passenger's original travel plan, in which case full reimbursement is due).

On 16 February 2005, the Commission published a press release (IP/05/181: "Air transport: Europe reinforces passengers' rights"), which was accompanied by a document setting out questions and answers concerning the subject.

The answer to question 10 was worded as follows:

*"Fog or other weather conditions, such as rain, storms, snow etc., only rarely constitute exceptional circumstances. Indeed, in order to be able to use the exemption for 'exceptional circumstances', the*

*airline has first to show that it took all reasonable measures to avoid the problems caused to passengers following these weather conditions. Current technological development makes it possible for a plane in almost all cases to take off or land in the most difficult weather conditions. It is incredible that airlines continue, as in the past, to improperly use this exemption by pleading it in any circumstance".*

According to the complainant, this statement was inaccurate for the following reasons: (i) aircraft manufacturers often state that their aircraft should not be flown in certain weather conditions for safety reasons and carriers rigidly adhere to such advice; (ii) many aircraft are not certificated to operate in certain poor weather conditions; (iii) not all flight crew are qualified to fly in certain poor weather conditions; (iv) not all airports have the facilities to enable aircraft to depart and arrive in certain poor weather conditions; and (v) in conditions of very poor visibility, airports often restrict the number of aircraft movement for safety reasons. Such restrictions often prevent aircraft from departing from an airport, even though they are certificated to operate in those conditions and the flight crew are sufficiently qualified.

The complainant and its members were also concerned about what they considered to be a serious accusation, namely that airlines improperly use the excuse of weather conditions in 'any circumstances', an accusation which they considered to be unjustified and unsubstantiated.

On 18 February 2005, the complainant and IACA therefore wrote to the Commission about the above statements in the press release and accompanying document. The relevant text was subsequently amended by the Commission. The version that is now available omits question 10 of the original version. However, in its reply dated 21 March 2005 to the letter of 18 February 2005, the Commission stated that it disagreed with the opinion expressed by the complainant and IACA that the relevant statements were inaccurate and should be withdrawn.

