

“How to improve air passenger rights during the COVID-19 crisis?”

Regulation (EC) No 261/2004

Wednesday, 14 July 2021, European Parliament, Brussels

Joint hearing

Committee on Petitions and Committee on Transport and Tourism

Right to compensation and right to information

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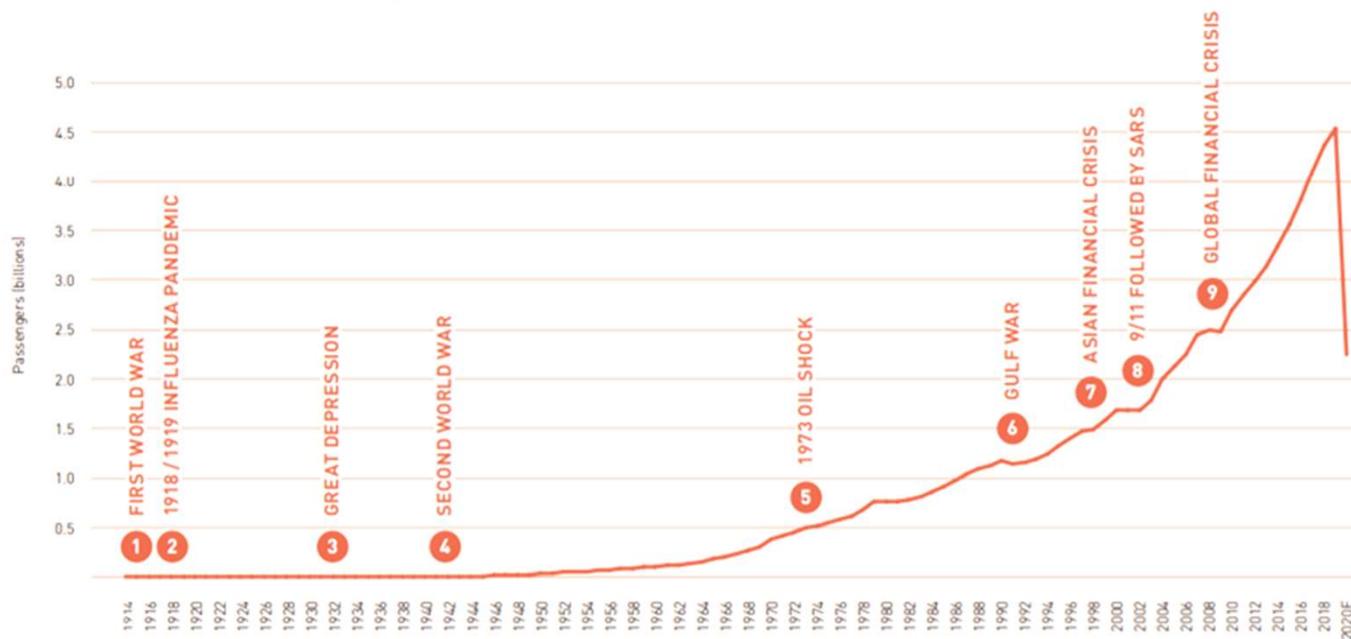
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Airlines International Representation in Europe

Aviation is facing the biggest crisis in its history

Global air passengers 1914-2020F¹³

Previous crises have resulted in a fairly rapid return to trend. The Covid-19 situation may see a slower recovery.



-94,4%

Drop in passenger traffic
APR2020 vs APR2019

EU passenger rights rules need urgent revision

Airlines follow the European Regulation EC 261/2004, which during the last revision attempt in 2013 was found to be **unfit for purpose**.

The goal of EC 261/2004 was to counteract and compensate for:

- overbooking
- flight cancellations due to unjustified reasons

EC 261/2004 wasn't designed as legislation to compensate delays!
The Sturgeon ruling of the European Court of Justice diverted the Regulation 261/2004 from its original form and transformed it into a de-facto regulation for delays imposed by an unaccountable legal body – ECJ based on legal precedent.

Bad laws are the worst sort of tyranny

Edmund Burke

(Irish statesman, economist and philosopher)

ECA report makes some good observations

- Good evaluation of passengers lack of awareness of their rights to compensation
- Fair assessment of Covid-19 impact on aviation
- Detailed analysis of delays in passenger compensation due to Covid-19
- Good intuition that the 2013 proposed revision of EC 261/2004 would have offered fundamental improvements into passenger rights regulations as: *„This 2013 proposal (...) included solutions that could have helped to better enforce passenger rights in times of crisis, such as better complaint handling procedures, and strengthened enforcement, monitoring and sanctioning to safeguard passenger rights.”*

...but disproportionate recommendations

Proposed recommendations are unlikely to provide robust solutions in case of a crisis, eg.:

- **Recommendation 1d) is completely unrealistic and shows no understanding of the root cause of refund delays as experienced during Covid-19 pandemic;**
- **Guarantee fund for flights cancellations can't be effective – according to EC own study, 85% of the fund money will be wasted for overheads¹⁾**
- **Extending the insolvency protection of EC 261/2004 to the standard offered by the PTD is dealing with a relatively minor problem (2011-2019, only 0.04% of passengers in EU affected by airlines bankruptcies, Steer Report, Jan 2020)**

WHO IS SUPPOSED TO PAY FOR THIS EXCESSIVE REGULATION?

1) Impact assessment of Passenger protection in the event of airlines insolvency, Final Report, European Commission, March 2011, page 112.

Regulatory limbo has harmed aviation enough

Since 5th FEB 2014, when the European Parliament approved the proposal to revise EU rules on air passenger rights, we have now over seven years of unjustified delay in adopting the approved changes to the EC 261/2004, which resulted in:

- A legislative chaos concerning what is and what isn't an extraordinary circumstance
- Disproportionate and unscrutinised growth of claim farms feeding of aviation industry and its customers
- Billions of EUR wasted for unjust and unqualified claims, which has unnecessarily weakened the aviation industry pre Covid-19

...and has had long-term negative implications for passenger rights

Had the revised Regulation EC 261/2004 been adopted pre Covid-19, the aviation would have been in a much better position to deal with the refunds, as it would have:

- **created legal clarity to passengers on their rights**
- **improved awareness of passenger rights**
- **prevented claim farms from taking advantage the aviation industry and passengers**
- **led to better financial liquidity of airlines to deal with claims**
- **reduced administration and compensation backlog**

AIRE requests urgent clarification of extraordinary circumstances

Lack of clarity on extraordinary circumstances has created:

- **unnecessary and harmful burden on airlines,**
- **confusion to customers,**
- **fertile ground for claim farms,**
- **extra administration and costs to passengers and legal systems,**
- **room for wild legal misinterpretation by the courts (eg. ECJ ruling on strikes),**

which lead to a financial and administrative weakening of the aviation industry before the Covid-19 outbreak.

AIRE requests urgent adoption of revised passenger rights regulation

Council should adopt the EC 261/2004 Commission update proposal from 2013 which was already approved by the European Parliament, with the following requirements:

- **non-exhaustive list of extraordinary circumstances**
- **change of delay treshhold from 3h to 5h, 9h and 12h respectively**
- **limitation of airline responsibility for passenger acommodation in case of extraordinary circumstances (3 nights max. @ 100 EUR/night).**

and one additional amendment that compensation should be limited to the ticket price.

Thank you