

ECC-Net Air Passenger Rights Report 2015

Do consumers get the compensation they are entitled to and at what costs?

Help and advice for consumers in Europe

ECC-Net

Co-funded by the European Union

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This publication is available on the websites of the ECCs. Contact details can be found in the end of this report.

Design: Linnea Persson, ECC Sweden. December 2015

Executive summary



The number of people who are travelling is growing every year and this is why air passenger rights are seen as one of the most important consumer rights.

A survey shows[1] that 22% of the air transport users had faced disruption in the last 12 months when travelling by air. The most common forms of disruption were long delays (69%), baggage-related disruptions such as delayed, damaged or lost baggage (21%), or cancellation (15%). Of those respondents who had experienced disrupted travel, 57% were dissatisfied with how this was handled, whether in terms of the general information received about the disruption, assistance (48%) or financial compensation (55%).

In Europe, extensive information campaigns and apps have been launched regarding air passenger rights, many passengers are aware that they have rights, but not necessarily what rights exactly[2] and there is still a high number of complaints received by the network of European Consumer Centres (ECC-Net). It is in the interest of the air sector to investigate how the existing legislation is functioning at a pan-European level, the main source of complaints so as to better understand the problems in the market and provide the adequate remedies.

In 2014, the ECC-Net handled 37 609 complaints in total, of which 6 834 related to Air Passenger Rights. Of those 46 % could be resolved in an amicable manner compared to 40,6 % in 2010, an increase of 13, 3 %. ECCs cite the lack of response from the air carrier as an important reason why a case could not be resolved. 24 % of the cases handled in 2014 were transferred to another organisation or agency. This can be an ADR-body or a NEB. In the majority of these cases, the outcome is unknown to ECCs

Methods of communication with airlines vary from airline to airline and often the consumer must go to the airlines website to see what designated forms of communication are accepted by the customer service. If a consumer uses the “wrong” method of communication, he/she will likely receive no response to their claim.

1 Special Eurobarometer 420, PASSENGER RIGHTS REPORT, December 2014. Page 48-49. This survey was carried out by TNS Opinion & Social network in the 28 Member States of the European Union between 13 and 22 September 2014. Some 28,050 respondents from different social and demographic groups were interviewed face-to-face at home in their mother tongue on behalf of the Directorate-General for Mobility and Transport. http://ec.europa.eu/public_opinion/archives/ebs/ebs_420_en.pdf

2 The same survey (page 6) shows that 31 % of respondents were aware of their rights and obligations linked to a transport contract. 23% had read, seen or heard information about these passenger rights but 59 % had not. 37% of respondents thought that passengers were well informed by the airline company about their rights as passengers; 45% agreed that passengers received correct, complete and transparent information about the full ticket price. 54% agreed that passengers were properly informed by the airline company about the details of their flights.

Particularly problematic is the fact that some airlines do not provide any e-mail address and still only offer customer service over the phone or by a web based portal, making it difficult for consumers to keep a written record of their complaint. In many complaints, consumers refer to long periods of time before they receive any replyor they get a standardised response which does not address the consumers concerns. Often consumers may have contacted an airline several times before receiving a response. ECCs continuously strives to encourage and enhance communication and co-operation with air carriers.

Apart from the ECC-Net there are several other types of organisations which offer free of charge assistance to consumers seeking redress from airlines; they include the National Enforcement Bodies (NEBs), Consumer Agencies or Ombudsmen. Alternative Dispute Resolution Bodies (ADRs) and also courts may have to be called upon when no amicable solutions are achieved. In the last years, private claims companies have also been offering consumers to assist them for a fee, usually a share of the compensation they have been able to obtain from airlines, however the business model of these private claims companies is not always very transparent and consumers have to pay attention to their terms and conditions.

The report intends to provide a picture of how all these organisations and companies operate and succeed to assist passengers in obtaining their rights. To this effect, it will analyse the specific problems experienced by passengers about flight delays, cancellations, lost/damaged or delayed luggage, difficulties in modifying bookings, unclear pricing, denied boarding, as well as issues with the reimbursement of taxes and charges.

Examination of the complaints shows that the existing mechanisms to ensure that consumer receive the necessary compensation as foreseen by the Air passenger rights Regulation[3] or by the Montreal Convention[4] could still be improved, especially through a more vigorous action of National Enforcement bodies.

The aim of the EU law is to provide standardised and immediate compensatory measures. This is what distinguishes it from any tort law, national or Conventional. When no immediate compensation can be obtained, there is a strong demand from air passengers for a quick and efficient handling of their claims. This demand can be satisfied through a well-functioning system to assist passengers that could build on better co-operation between the relevant bodies in charge of assisting consumers claim their rights and therefore dispense them from having to recourse to expensive private consultancies.

The European Consumer Centre in Sweden has led this project in close cooperation with the Centres in France, Norway, Denmark and Ireland, who formed a working group.

The views and interpretations reflected in this report are solely those of the working group members based on their assessment of the data and questionnaire answers submitted to the working group by all project participants.

ECC France **ECC Norway** **ECC Denmark** **ECC Ireland** **ECC Sweden**

This report is part of the action ECC-Net FPA which has received funding under a grant for an ECC action from the European Union's Consumer Programme (2014-2020). The content of this report represents the views of the working group only; it cannot be considered to reflect the views of the European Commission and/or the Consumers, Health, Agriculture and Food Executive Agency or any other body of the European Union. This Agency does not accept any responsibility for use that may be made of the information it contains.

3 Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 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 repealing Regulation (EEC) No 295/91 http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004R0261&from=SV

4 CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR DONE AT MONTREAL ON 28 MAY 1999 http://www.icao.int/icao/en/leb/mtl99.pdf

Abbrevations



ADR	Alternative Dispute Resolution
APR	Air passenger rights
CJEU	Court of Justice of the European Union. Since the Lisbon Treaty, the name has officially been changed to Court of Justice of the European Union and this abbreviation will be used throughout the report instead of the former name European Court of Justice (ECJ).
CPC	Consumer Protection Cooperation
CPD	Continuing Professional Development
ECC	European Consumer Centre
ELFAA	European Low Fares Airline Association
ESCP	European Small Claims Procedure
FAQ	Frequently Asked Questions
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
NEB	National Enforcement Body
PIR	Property Irregularity Report
Q&A	Questions and answers
SDR	Special Drawing Rights. The currency value of the SDR is determined by summing the values in U.S. dollars, based on market exchange rates, of a basket of major currencies (the U.S. dol¬lar, Euro, Japanese yen, and pound sterling). The SDR currency value is calculated daily.

1. Introduction



About 870 million passengers travelled by air in 2014 in the EU[5], which makes air travel a very important sector for consumers.

Therefore, it is in everyone's interest to investigate how air passenger rights legislation is being respected by airlines and whether there are problems in the market. The main legislation protecting these passengers is the following:

- Regulation (EC) 261/2004 applies in cases where a flight is cancelled or delayed, or when a passenger is denied boarding.
- The Montreal Convention[6] establishes that it is the airline's responsibility when the consumer suffers economic loss damage due to a flight delay or when their baggage is lost, damaged or delayed.
- Regulation (EC) No 2027/97 of the European Parliament and of the Council on air carrier liability in the event of accidents as modified by Regulation (EC) No 889/2002.

This report focuses on the specific problems experienced and reported by passengers including:

- A lack of information regarding their rights.
- A lack of assistance.
- A lack of respecting the right of compensation in case of delay and cancellation.

In the period between 19.03.2015 and 10.06.2015, the European Commission carried out a public consultation on the "Aviation package for improving the competitiveness of the EU Aviation sector". Aviation is a key driver of economic growth, jobs and trade with a major impact on the EU's economy and the life and mobility of its citizens.[7]

5 The Association of European Airlines, http://www.aea.be/statistics.html

6 CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR DONE AT MONTREAL ON 28 MAY 1999 http://www.icao.int/icao/en/leb/mtl99.pdf

7 Public consultation on the "Aviation package for improving the competitiveness of the EU Aviation sector" Report on the contributions received. http://ec.europa.eu/transport/modes/air/consultations/doc/2015-aviation-package/synopsis-report.pdf Page1.

1.1 The ECC-Net

The European Consumer Centre Network (ECC-Net) consists of 30 centres (one in each European Union (EU) Member State, Norway and Iceland).[8] It is co-financed by the European Commission Directorate-General for Justice and Consumers and by each of the participating states. The aim of the Network is to increase consumer confidence in the European Internal Market by providing consumers with information on their rights under European consumer legislation, and by giving them advice on, and assistance with the resolution of their cross-border complaints. As the ECC-Net deals with cross-border consumer complaints and disputes, it is in a unique position to document issues that consumer face when travelling to another country by air.

ECC-Net regularly receives contacts from consumers seeking advice as to the manner in which to contact airlines or the difficulties they are experiencing trying to notify the airline of the problems they experienced. Many passengers tend to purchase their tickets directly with the airline company involved, which often is licensed in another Member State. Also online booking portals from other Member States have a growing part of the market and that is the reason why air transport issues has remained on of the primary issues why consumers with cross-border complaints contact the ECC-Net for assistance.

In keeping with the ECC-Net's tradition of analyzing and reporting the complaints received from air passengers throughout Europe, this report seeks to investigate how the development has progressed.

In 2014, at least 3.5 million visits were registered on the ECC-Net members' websites[9], while the network also carries out information campaigns and publishes information and publicity material. The centres give presentations to interested parties and engage in joint reports and surveys with other ECCs.

The network provides important feedback and statistics to national consumer agencies, national authorities, the European Commission and other stakeholders on potential problem areas which may require enforcement.

Due to the fact that the ECC-Net deals with problems within the air travel market on a daily basis, ECC-Net has seen an increase in cases relating to this area since its introduction.
Figures from the Network and the specific experiences provided in this report can give some indication to the Enforcement Bodies and the legislature where more work still has to be done in order for the market to function more effectively. A pending revision of this regulation is ongoing and the ECC-Net has issued recommendations for this based on their experience with handling these cases.

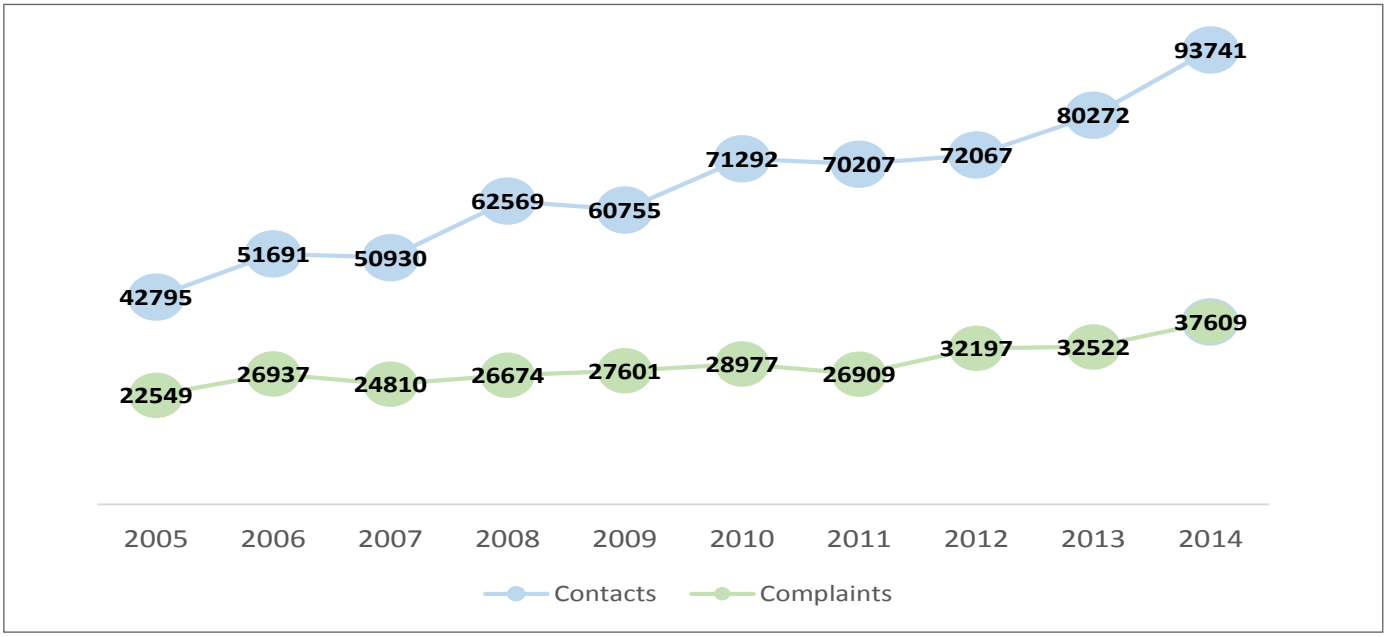


Table 1.1 Over the 10 years from 2005-2014 the ECCs had over 650 000 direct contacts with consumers.[10]

8 http://ec.europa.eu/consumers/ecc/index_en.htm»

9 Infographic 10 years serving Europe´s consumers.

10 Infographic 10 years serving Europe´s consumers. http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/ecc-net/docs/ecc_net_infographic_en.pdf

337 609 complaints were handled by ECC-Net during 2014 and of these 6 834 related to Air Passenger Rights compared to 5 863 in 2013[11]. This represents an increase of 16 % in the number of air passenger rights complaints. The cases handled by the ECC's only concern reported cross-border cases, where both the trader and the consumer are based in different Member States, Iceland or Norway. As such, the statistics in this chapter account for only a small portion of the overall number of complaints from air passengers in Europe; they should be considered the 'tip of the iceberg" with regard to that the amount of cancellations and delays in Europe during a thirty days period were 30 454 and 430 805.[12]

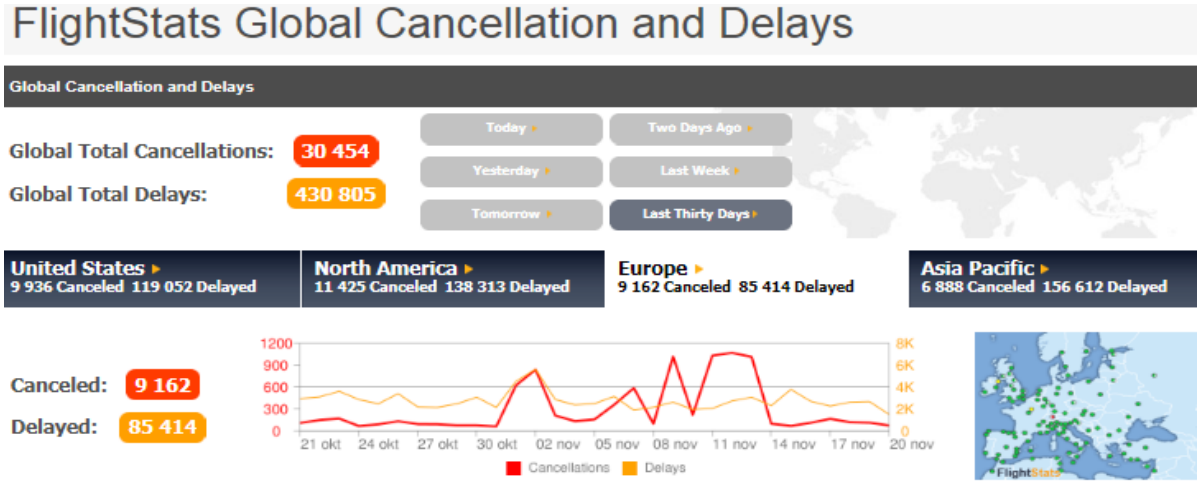


Table 1.2 Statistics for cancelled and delayed flight in Europe the laste 30 days (22.10.2015 - 20.11.2015).[13]

However, a European Commission study[14] found that airline data indicates that only between 5 and 10% of passengers entitled to compensation actually claim it. This low "claim rate" can be explained by two factors:

- The low awareness of passengers about their rights, and the perceived failure of airlines to fully inform passengers of their entitlements.
- Inadequate airline complaint handling procedures discourage many passengers from pursuing a claim. Similar shortcomings were reported with regard to National Enforcement Bodies whose role consumers often found confusing.[15]

This number has improved as a more recent analysis by mode of transport reveals that respondents were more likely to have complained when they experienced air travel disruption (41%) than any other mode of transport; ship or ferry (36%), train (32%) and long-distance coach (31%).[16]

11 See chapter 5, section 5.2.3 page 25.

12 Which? The analysis of Civil Aviation Authority (CAA) data found that 9,000 flights, carrying an estimated 900,000 people, were delayed by more than three hours between June 2014 and May 2015, potentially entitling passengers on those flights to claim compensation. Research by consumer group Which? found fewer than four in 10 of its members who suffered a delay had claimed. The survey indicates that as many as 558,000 people may have neglected to submit claims and could be owed money. Delayed air passengers could claim millions. http://www.which.co.uk/news/2015/08/delayed-air-passengers-could-claim-millions-411688/

13 Flightstats, http://www.flightstats.com/go/Media/stats.do;jsessionid=F3C5D88F54ED5E00D44A9616E182E239.web3:8009?region=europe&queryDate=last30Days

14 Commission working document SWD (2013) 62 final, 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, page 16. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0062:FIN:EN:PDF

15 Ibid.

16 Special Eurobarometer 420, PASSENGER RIGHTS REPORT, December 2014. Page 56. This survey was carried out by TNS Opinion & Social network in the 28 Member States of the European Union between 13 and 22 September 2014. Some 28,050 respondents from different social and demographic groups were interviewed face-to-face at home in their mother tongue on behalf of the Directorate-General for Mobility and Transport. http://ec.europa.eu/public_opinion/archives/ebs/ebs_420_en.pdfA.

52% mentioned that the main reason for not complaining was that they considered it useless to complain, 22% thought that the amount involved was too small and 19 % mentioned that the complaint process was too cumbersome. 9 % did not know how or where to complain.[17]

The analysis of complaints received by ECC-Net relating to air travel should also be read within a wider context as other parties dealing with consumer problems and air passenger rights including the National Enforcement Bodies (NEBs whose role is to verify that transport operators are treating all passengers in accordance with their rights), Consumer Agencies and Ombudsmen (responsible for the enforcement of a wide range of consumer legislation), Alternative Dispute Resolution Bodies (ADRs whose role is to resolve legal disputes without going to court), courts as well as private legal assistance consultancies are involved in assisting consumers obtain their rights.



17 Special Eurobarometer 420, PASSENGER RIGHTS REPORT, December 2014. Page 58. This survey was carried out by TNS Opinion & Social network in the 28 Member States of the European Union between 13 and 22 September 2014. Some 28,050 respondents from different social and demographic groups were interviewed face-to-face at home in their mother tongue on behalf of the Directorate-General for Mobility and Transport. http://ec.europa.eu/public_opinion/archives/ebs/ebs_420_en.pdfA.

2. The 2015 ECC-Net

air passengers´ rights report



2.1 Objective of the report

This report is a follow up of the previous air passenger rights report from 2011[18], focusing on whether or not consumers really get the compensation they are entitled to and at what costs.

The aim of this report is to check whether passengers receive a due compensation in case of delay, cancellation and denied boarding etc., to investigate what hampers such compensation and to recommend measures in order to facilitate this compensation process. The report will highlight still existing problems, based on the cases reported to the ECC-Net from 2014 until June 2015.

The aim of the EU law is to provide standardised and immediate compensatory measures. If an airline doesn't comply, claiming the compensation a consumer is entitled to in accordance with Regulation (EC) 261/2004 should be free of charge and airlines should not require fees for the management of such claims. However, the development of private legal consultancies proposing consumers to pay in exchange of an assistance service to obtain these compensations, show that the procedures in place are often not straightforward.

The EU regulation provides for defined remedies under unquestionable circumstances. Passengers in these situations should not be obliged to pay to have their consumer rights respected but the ECC-Net is concerned that this is the reality for many air passengers who either need to go to court individually or seek redress through private claims companies working for a fee which is typically deducted from any payment of compensation they may receive from an airline. This project looks at the private companies' active in this area.

The information provided intends to contribute to improved practices from airlines for the benefit of consumers travelling by air to, from and within the European market.

18 ECC-Net Air Passenger Rights Report 2011 – in the aftermath of the "Volcanic Ash Crisis", published in October 2011, http://www.konsumenteuropa.se/globalassets/rapporter/ecc_net_air_passenger_report_2011.pdf

2.2 Scope

The scope of this report is:

- Regulation (EC) 261/2004 which applies in cases where a flight is cancelled or delayed, or when a passenger is denied boarding.
- The Montreal Convention[19] which establishes that it is the airline's responsibility when the consumer suffers economic loss damage due to a flight delay or when their baggage is lost, damaged or delayed.
- Regulation (EC) No 2027/97 of the European Parliament and of the Council on air carrier liability in the event of accidents as modified by Regulation (EC) No 889/2002.
- ADR complaints.
- Information from the ECC-Net (30 countries) and from NEBs during 2014 until June 2015.

2.3 Research methodology

All the statistical data, statements and conclusions contained in this report are based on the data gathered by the local ECC offices and provided to the working group in responses to questionnaires circulated. The questionnaires used in the process can be found in Annex 2 to this report.

They sought information about the main areas of complaints, booking intermediaries, National Enforcement bodies (NEB) and Alternative Dispute Resolution bodies (ADR) as well as private claims companies.

Most of the quantitative data was collected from the IT system provided by the European Commission for use by the ECC's in logging all complaints and information requests received.

The data from the questionnaires was analysed in this report to help identify relevant issues or concerns. Questionnaires were sent out in May 2015 and the analysis and drafting of this report took place from August to November 2015.



19 CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR DONE AT MONTREAL ON 28 MAY 1999 http://www.icao.int/icao/en/leb/mtl99.pdf

3. Legal framework



Air passenger's rights are mainly[20] governed by two pieces of legislation: Regulation (EC) 261/2004 and the Montreal Convention.[21] Horizontal consumer protection legislation also applies but this is not covered by this report.

The governing Council of the International Civil Aviation Organization (ICAO) has established new global core principles on air transport consumer protection. The principles cover three phases of a customer's experience: before, during and after travel, and will now be considered by ICAO's 191 Member States when they develop or review their applicable national regimes.[22]

- **Prior to travelling,** the passengers should benefit from sufficient levels of advance information and customer guidance, given the wide variety of air transport products in the market and associated legal and other protections which may apply. Product and price transparency is also recommended as a basic customer right.
- **During their travel,** the passengers shall be provided regular updates on any special circumstances or service disruptions which arise, as well as due attention in cases of a service disruption. This could include rerouting, refund, care, and/or compensation. The core principles also call on airlines and other stakeholders to have planning in place for situations of massive disruptions characterized by multiple flight cancellations, and reiterate the fundamental right to fair access for persons with disabilities.
- **After travelling,** the ICAO core principles stipulate efficient complaint handling procedures be established that are clearly communicated to customers.

20 Other legislation includes the EC Regulations 1107/2006, which deals with rights for passengers with reduced mobility, and 1008/2008 regarding common rules for the operation of air services. In the latter, mainly art. 21 is of interest to passengers as it sets out rules for discrimination

21 Also to mention Regulation (EC) No 2027/97 on air carrier liability in the event of accidents as modified by Regulation (EC) No 889/2002. This Regulation lays down the obligations of Community air carriers in relation to liability in the event of accidents to passengers for damage sustained in the event of death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board an aircraft or in the course of any of the operations of embarking or disembarking.

22 ICAO COUNCIL ADOPTS CORE PRINCIPLES ON CONSUMER PROTECTION AND NEW LONG-TERM VISION FOR AIR TRANSPORT LIBERALIZATION http://www.icao.int/Newsroom/NewsDoc2015/COM.25.15.EN.pdf

3.1 Regulation (EC) 261/2004

The Regulation came into force in February 2005 and governs air passenger's rights when flights are either cancelled or delayed or when passengers are denied boarding. It applies to all flights departing from an EEA Member State[23] airport and all flights arriving in these countries if the airline has a licence issued by an authority in an EEA Member State.

The Regulation states that if a flight is cancelled or a passenger is denied boarding, airlines must offer the passenger the choice between being rerouted/rebooked and being reimbursed. If the passengers choose to be reimbursed, the airline no longer owes them a duty of care and they must make other travel arrangements themselves. If the passengers choose rebooking the airline must care for the passengers until they reach their final destination. This includes providing meals, refreshments, communication facilities, in reasonable relation to waiting time and in those cases where a rebooking cannot be done on the same day, the airline must provide hotel accommodation and transportation to the hotel.

When a flight is delayed beyond certain timeframes (depending on the length of the flight), the air carrier is equally obliged to provide the care and assistance as described above. If your flight is delayed and you arrive at the final destination 3 hours later than the original travel plan you are entitled to financial compensation, unless the delay is caused by extraordinary circumstances outside the air carrier's control which could not have been avoided even if all reasonable measures had been taken. The amount of compensation that you are entitled to depends on the distance of the flight. You are entitled to:

- 250 Euros when the distance is up to 1500 km
- 400 Euros when the distance is between 1500 and 3500 km
- 600 Euros when the distance is more than 3500 km.

When the delay is at least five hours, the airline must provide a reimbursement within seven days, of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return flight to the first point of departure, at the earliest opportunity.[24]

It is important to note, that there are no exemptions from the right to care, regardless of the reason for the disruption.[25]

If a flight is cancelled less than 14 days prior to the scheduled departure and no suitable alternative[26] is offered, or if a passenger is denied boarding, the passenger is entitled to claim compensation. However, if the air carrier can prove that the cancellation was due to extraordinary circumstances, they can be relieved of the obligation to pay.

The compensation payable is set at a fixed amount, which is determined by the length of the flight in question. Its aim is to compensate the passenger for the inconvenience suffered as a result of the disruption, and as such it has no connection to the actual economic loss suffered by the passenger. The consumer does not need to prove anything.

The air carrier is obliged to inform passengers of their rights at the check-in desk via a clearly legible notice, which should be visible to passengers. In addition, the Regulation requires that the air carrier provide each passenger with a written notice setting out the rules for compensation and assistance, in the event of a cancellation, denied boarding or a delay of at least two hours.

The Regulation obliges Member States to nominate or create "National Enforcement Bodies", which are responsible for enforcing the Regulation in their territory. Passengers who believe they have not been treated correctly should contact the body in the country where the incident took place. These bodies will be referred to as NEBs or "National Enforcement Bodies" throughout this report.

23 All EU Member States plus Liechtenstein, Switzerland, Norway and Iceland.

24 Article 6 and Article 8(1)(a).

25 See Case C-12/11McDonagh v Ryanair http://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=uriserv%3AOJ.C_.2013.086.01.0002.01.ENG

26 Cancellation 7-14 days before departure: The air carrier must offer the passenger to travel no more than 2 hours earlier and arriving no later than 4 hours after scheduled arrival in order to avoid the claim for compensation. Cancellation less than 7 days before: The air carrier must offer the passenger to travel no more than one hour earlier arriving at the final destination no later than 2 hours after scheduled arrival.

In March 2013, the European Commission published a proposal amending 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 and amending Regulation (EC) 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air. [27] The legislative proposal Air transport: enforcement of passenger rights; air carrier liability limits 2013/0072(COD) has been adopted by the EP in February 2014 and it is currently awaiting Councils position.[28]

One of the aims of the passenger rights revision is to clarify areas where the current rules that have been unclear and problematic for both passengers and airlines. The proposal includes a clear definition of the term extraordinary circumstances as "circumstances which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control". The new definition, which is in line with the European Court's case law (C-549/07 Wallentin-Herman), confirms that while natural disasters or air traffic controller strikes would continue to be considered as 'extraordinary' , some technical problems - such as those identified during routine aircraft maintenance - would not.[29]

The new rules also take into account the financial implications that passenger rights create for the air transport sector. The objective of the revision is to ensure that European air carriers operate under harmonised conditions in a liberalised market.[30]

The proposed regulation would clarify the rules for access to compensation, including:[31]

- an increase in the time threshold before compensation would be payable in the event of flight delay from 3 to 5 hours for all journeys within the EU (for journeys outside the EU, the threshold would depend on the length of the flight)
- the introduction of a single time threshold of 2 hours for access to care and assistance, such as refreshments, for all delayed flights
- clear rules for connecting flights and when passengers have the right to care and/or compensation
- a requirement for airlines to reroute passengers on other carriers or means of transport if they can't reroute passengers on their own service within 12 hours
- clarification of rights for passengers whose flights are rescheduled less than 2 weeks before departure
- a clear explanation of passenger rights during tarmac delays and the requirement for passengers to be told about flight disruption as soon as information is available

The changes would also create more effective complaint handling procedures and strengthen enforcement, monitoring and sanctioning policies. In particular, airlines would have to provide clear complaint handling procedures (web form, email address) and reply to passengers within specific deadlines.

The draft proposal introduces better rights for baggage handling problems, such as:

- specific new rules for mobility equipment and musical instruments
- transparency for passengers on baggage allowances and any additional charges for baggage
- the requirement for airlines to provide forms for baggage handling complaints at the airport

The pending revision of EU Regulation 261/2004 shows that the right to flight delay compensation will now be implemented into the Regulation, as today it is based upon the CJEU Court cases Sturgeon and Nelson. Another proposed change is a limitation of assistance to 3 days and maximum 100 € per person and night for hotel.

27 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013PC0130&from=EN

28 Remaining legislative demands of the European parliament's 7th legislative term, August 2014, page 38-39. http://www.europarl.europa.eu/the-secretary-general/resource/static/files/Documents/2014september-Remaining_Legislative_Demands.pdf

29 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. http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52013PC0130&from=EN

30 OUTCOME OF THE COUNCIL MEETING 3394th Council meeting, Luxembourg, 11 and 12 June 2015.

31 http://www.consilium.europa.eu/en/policies/air-passenger-rights/

3.2 Court of Justice of the European Union's clarification

Since the Regulation came into force the Court of Justice of the European Union has received several preliminary questions from the national courts in the Member States and so has had several opportunities to interpret its content.

In 2008 the CJEU was presented with a case where the airline refused to pay compensation on the ground of extraordinary circumstances[32]. The Court found that a technical error is not necessarily an extraordinary circumstance unless" *the problem stems from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control.*" The Court dismissed that the frequency of the technical problems experienced by an air carrier in itself is a deciding factor, and also rejected that the argument that an air carrier's mere compliance with the minimum aircraft maintenance rules could in itself suffice to establish that that carrier had taken 'all reasonable measures'. Moreover, the Court noted that when defining an extraordinary circumstance the similar, but not identical term, in the Montreal Convention is not decisive. Finally, in this ruling the Court also made clear that the burden of proof rests upon the air carrier who is claiming extraordinary circumstances and that terms, not previously defined in EU law, must be interpreted strictly when they appear as an exception to a main rule. This is especially the case when it concerns consumer protection.

The CJEU had also very recently, in 2014, interpreted the term extraordinary circumstances in relation to technical issues.[33] In that case, the CJEU came to the conclusion that a technical problem, which occurred unexpectedly, which is not attribute to poor maintenance and which was also not detected during routine maintenece checks, does not fall within the definition of "extraordinary circumstances" within the meaning of that provision.

In 2010[34] the Court established that the definition of 'a flight' is to be understood as only concerning either the outward or homeward journey, not the two combined, and this is so even if both are booked at the same time. In practice, this means that an incident which happened in a country outside the EU was not covered by the Regulation[35] because the air carrier was not licensed in the EU.

In 2012, the CJEU provided a further definition of "denied boarding".[36] The court decided that the concept of "denied boarding" must be interpreted as relating not only to cases where boarding is denied because of overbooking but also to those where boarding is denied on other grounds, such as operational reasons. In the same ruling the court defined that denied boarding must be interpreted as meaning that the occurrence of "extraordinary circumstances" resulting in an air carrier rescheduling flights after those circumstances arose cannot give grounds for denying boarding on those later flights or for exempting that carrier from its obligation to compensate a passenger to whom it denies boarding on such a flight.

The CJEU stated in 2012[37] that there are no common time-limits for bringing actions for compensation under article 5 and 7 of the Regulation. Time-limits are therefore to be determined in accordance with the rules of each Member State on the limitation of actions.

In May 2011[38], the Court ruled that in cases of delay, the airline should make sure that the necessary resources are available, so that when the reason for the delay ceases operations may be resumed as soon as possible. However, it is not possible to set a fixed timeframe, as each situation must be taken on a case by case basis.

The most noteworthy interpretation came in 2009 in the so called Sturgeon-case[39]. Here, the Court stated that if a delay causes passengers to arrive at their final destination later than three hours after the scheduled arrival, the passengers may be entitled to compensation. This ruling has been widely discussed because the articles in the

32 C-549/07 (Friederike Wallentin-Hermann vs. Alitalia Linee Aeree Italiane SpA)

33 C-257/14 (Corina van der Lans vs. KLM)

34 C-173/07 (Emirates Airlines vs. Schenkel)

35 An accident such as a delay at arrival or a misconnecting flight on the territory of a third country, when the operating air carrier is a non-EU carrier, still falls under the Regulation if the journey started on EU territory.

36 C-22/11 (Finnair Oyj vs. Timy Lassooy)

37 C-139/11 (Joan Cuadrench Moré vs. KLM)

38 C-294/10 (Eglitis/Ratnieks vs. the Latvian Ministry of Economics and Air Baltic Corporation AS)

39 C-402/07 (Sturgeon vs Condor Flugdienst GmbH) and C-432/07 (Böck/Lepuschitz vs. Air France)

Regulation only mention compensation in regards to cancellations and denied boarding. The High Court of the United Kingdom challenged it, asking the CJEU to reconsider[40] and the UK NEB suspended the application of the Sturgeon decision to complaints received regarding delays of this nature pending final determination of the matter by the CJEU.

The Grand Chamber of the CJEU again decided on compensation for delayed flights in the joined cases Nelson and TUI Travel.[41] The judgment confirms the 2009 ruling in Sturgeon, in which the Court held that under Articles 5-7 of Regulation 261/2004 passengers not only have the right to standardised monetary compensation in case of denied boarding or cancellation, but also in case of long delay (long being three hours or more). This interpretation of Articles 5-7 had raised some questions because neither Article 7 nor any other provision of the Regulation expressly provides the right to compensation in case of delay. The ruling in Sturgeon has been questioned by airlines since 2009. The arguments the airlines have made is for example that Sturgeon is invalid because it is inconsistent with both the 2006 IATA ruling and the Montreal Convention for the Unification of Certain Rules for International Carriage by Air (ratified by the EC).

The questions put to the Court essentially sought to ascertain whether any of the objections raised by the airlines have merit. The Court ruled that they did not.

On the compatibility with the Montreal Convention:

49 *(…) it should be made clear that, like the inconveniences referred to in IATA and ELFAA, a loss of time cannot be categorised as 'damage occasioned by delay' within the meaning of Article 19 of the Montreal Convention, and, for that reason, it falls outside the scope of Article 29 of that convention.*

50 *Article 19 of the Montreal Convention implies, in particular, that the damage arises as a result of a delay, that there is a causal link between the delay and the damage and that the damage is individual to passengers depending on the various losses sustained by them.*

54 *The specific obligation to pay compensation, imposed by Regulation (EC)* 261/2004, does not arise from each actual delay, but only from a delay which entails a loss of time equal to or in excess of three hours in relation to the time of arrival originally scheduled. In addition, whereas the extent of the delay is normally a factor increasing the likelihood of greater damage, the fixed compensation awarded under that regulation remains unchanged in that regard, since the duration of the actual *delay in excess of three hours is not taken into account in calculating the amount of compensation payable under Article 7 of Regulation (EC)* 261/2004.[42]

As to the principle of legal certainty:

67 *(…) having regard to the requirements arising from the principle of equal treatment, air carriers cannot rely on the principle of legal certainty and claim that the obligation imposed on them by Regulation (EC) 261/2004 to compensate passengers, in the event of delay to a flight, up to the amounts laid down therein infringes the latter principle.*

68 *In addition, as the Advocate General observed in point 46 of his Opinion, once the judgment in Sturgeon and Others was delivered, both air passengers whose flights were delayed and air carriers were able to know unequivocally the point from which those passengers may claim payment of compensation and the carriers will be required to pay that compensation, respectively, since the introduction of a clear timelimit also serves to prevent national courts from making different assessments of what constitutes a long delay which would, in some cases, give rise to legal uncertainty.*

40 Case-629/10 Tui Travel, British Airways, EasyJet, IATA vs. Civil Aviation Authority

41 Joined Cases C-581/10 Nelson and Others v Deutsche Lufthansa AG and C-629/10 Tui Travel, British Airways, EasyJet, IATA vs. Civil Aviation Authority

42 The U.K's High Court of Justice referred the case to the ECJ for reconsideration of whether EC 261 should be interpreted as requiring airlines to pay compensation to passengers whose flights are subject to delays in excess of three hours and, if so, whether such interpretation is in accordance with the Montreal Convention and principles of proportionality, legal certainty and equal treatment. 55 In those circumstances, the loss of time inherent in a flight delay, which constitutes an inconvenience within the meaning of Regulation No 261/2004 and cannot be categorised as 'damage occasioned by delay' within the meaning of Article 19 of the Montreal Convention, cannot come within the scope of Article 29 of that convention. 56 Consequently, the obligation under Regulation No 261/2004 intended to compensate passengers whose flights are subject to a long delay is compatible with Article 29 of the Montreal Convention.

As to the principle of proportionality:

77 First of all, the obligation to pay compensation which stems from Article 7 of Regulation (EC) 261/2004 does not concern every delay, but only long delays.

78 Next, the amount of compensation, fixed at 250 €, 400 € and 600 € depending on the distance of the flights concerned may still be reduced by 50 % in accordance with Article 7(2)(c) of Regulation (EC) 261/2004, where the delay is – in the case of a flight not falling under subparagraphs (a) or (b) of Article 7(2) – less than four hours (Sturgeon and Others, paragraph 63).

79 In addition, air carriers are not obliged to pay compensation if they can prove that the cancellation or long delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, that is, circumstances which are beyond the air carrier's actual control (see Sturgeon and Others, paragraph 67).

80 Moreover, the discharge of obligations pursuant to Regulation (EC) 261/2004 is without prejudice to air carriers' rights to seek compensation from any person who caused the delay, including third parties, as Article 13 of that regulation provides. Such compensation may accordingly reduce or even remove the financial burden borne by carriers in consequence of those obligations. Nor does it appear unreasonable for those obligations initially to be borne, subject to the abovementioned right to compensation, by the air carriers with which the passengers concerned have a contract of carriage that entitles them to a flight that should be neither cancelled nor delayed (IATA and ELFAA, paragraph 90, and Sturgeon and *others, paragraph 68).*

The Court concluded:

1. Articles 5 to 7 of 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, and repealing Regulation (EEC) 295/91, must be interpreted as meaning that passengers whose flights are delayed are entitled to compensation under that regulation where they suffer, on account of such flights, a loss of time equal to or in excess of three hours, that is, where they reach their final destination three hours or more after the arrival time originally scheduled by the air carrier. Such a delay does not, however, entitle passengers to compensation if the air carrier can prove that the long delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, namely circumstances beyond the actual control of the air carrier.

2. Consideration of the questions referred for a preliminary ruling has disclosed no factor of such a kind as to affect the validity of Articles 5 to 7 of Regulation (EC) 261/2004.

The decision confirmed that passengers have the right to fixed monetary compensation under Article 7 of the Regulation in case of a delay of three hours or more. Compensation is only not due in case of 'extraordinary circumstances'[43]. Several judgments have already been rendered on the question what exactly constitutes 'extraordinary circumstances'.[44]

In 2013 the CJEU provided another ruling on the right to compensation when it comes to delayed flights.[45] The court ruled that article 7 of the Regulation must be interpreted as meaning that compensation is payable, on the basis of that article, to a passenger on directly connecting flights who has been delayed at departure for a period below the limits specified in article 6 of that regulation, but has arrived at the final destination at least three hours later than the scheduled arrival time, given that the compensation in question is not conditional upon there having been a delay at departure and, thus, upon the conditions set out in article 6 having been met.

43 In the CJEU decision of *C549/07 Wallentin Hermann v Alitalia* it was held that for an event to be characterized as "extraordinary" it must be one which, *"is not inherent in the normal exercise of the activity of the air carrier concerned and is beyond the actual control of that carrier on account of its nature or origin."* In considering this definition of extraordinary, the CJEU ruled that as aircrafts regularly experience technical problems it followed that the resolution of technical problems, which came to light during maintenance of the aircraft or as a result of a failure to carry out maintenance, could not amount to an "extraordinary circumstance". However, the court went on to state that not only must "extraordinary circumstances" be present, but the airline must also be able to show that the circumstances, "could not have been avoided even if all reasonable measures had been taken."

44 Cases C-294/10 and C-549/07.

45 C-11/11 (Air France SA vs. Heinz-Gerke Folkerts and Luz-Tereza Folkerts)

3.3 Clarification from the EU Commission[46]

The Commission has different means to ensure consistent and seamless application of the regulation and the relevant case law. For example, the Commission holds regular meetings with NEBs, have regular contact by emails/phone, open infringement procedures, etc.

Since the Regulation's introduction, the Commission has issued two interpretative documents[47] in order to facilitate a more homogenous application of the Regulation.

One important issue was the right to re-routing. The question arose as to whether other means of transportation was included under the right to re-routing, as many airlines were not prepared to offer such options. The Commission emphasised that re-routing could also be done by trains, buses and presumably cars. In a Communication to the Parliament and Council from April 2011, the Commission definitively stated, that re-routing could also be done via another mode of transportation. Furthermore, re-routing can also be done via another airline, and not, as many airlines believe, only through their own flights.

To limit the liability for air carriers in special situations like the ash cloud incident during 2010, it must be noted that many delays and cancellations experienced during the heavy snow falls were caused by airports not being sufficiently prepared or equipped to handle such situations. In these instances it would be appropriate to advise the air carriers to avail of the option in Article 13 of the Regulation, which states that the air carrier can seek redress from contractual parties.[48]

3.4 The Montreal Convention

Since 1999 the Montreal Convention, ratified by around 130 countries including all the EU Member States, has regulated both the delay of passengers and the delay, damage or miscarriage of their luggage. The Convention is applicable on international flights, in those instances where both the country of departure and arrival have ratified the Convention. The Convention is therefore applicable to all flights within the EU, both domestic and international.[49]

The main rule set out in the Convention is that the air carrier is liable for losses suffered by passengers unless the air carrier can prove that *"it or its servants and agents took all measures that could reasonably be required to avoid the damage or that is was impossible for them to take such measures"*. Liability may be avoided if it can be shown that the air carrier took all reasonable measures to avoid the loss suffered by the passenger. Thus the exception pertains to the actual loss suffered, not the incident causing the loss. The Convention limits the potential liability of an air carrier to 1,131 Special Drawing Rights (SDR) in respect of passengers whose luggage is delayed, damaged or lost, and to 4,694 SDR in respect of passengers suffering loss due to a delay.[50]

As a general rule when dealing with claims for damages, the claimant must try to mitigate their loss and should limit their expenses to reasonable necessities, only purchase necessities.

46 It is important to note, that only the CJEU can interpret EU legislation and that statements from the Commission are not legally binding, but indications on the Commission view on the regulation.

47 Q&A, February 17th 2008,Memo/10/143 of April 20th 2010 and COM/2011/0174 final COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the application of Regulation 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. http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52011DC0174&from=EN

48 The main third parties, who could be responsible for disruption, are principally airports, air navigation service providers (ANSPs) and ground handlers. But in practice it is very difficult to claim against these bodies in view of legal obstacles in contracts or national law (e.g. airport conditions of use generally only allow claims in very exceptional cases which are difficult to prove; airports and ANSPs are usually government bodies and may have State immunity from claims; ground handlers are protected by the IATA Standard Ground Handling Agreement, which means that in most circumstances airlines cannot claim costs from them.

49 EU Acquis, The acquis is the body of common rights and obligations that is binding on all the EU member states. http://ec.europa.eu/enlargement/policy/conditions-membership/chapters-of-the-acquis/index_en.htm

50 An SDR or "Special Drawing right" is a currency unit used by the IMF and its exchange rate is around 1.2 in August 2015. https://www.imf.org/external/np/fin/data/rms_five.aspx

There are set time restrictions outlined in the Convention and these specify the timeframe within which passengers must make their claim. For damaged luggage this is seven days from the moment of delivery. For delayed baggage the claim must be made within 21 days of the passenger receiving the baggage back. Even if the carrier does not admit the loss of the luggage, the passenger is entitled to make a claim for his/her the loss if the luggage does not arrive 21 days after it ought to have.

Under Article 35 of the Convention, an action has to be brought to the court within two years after the luggage's arrival or scheduled arrival. Therefore, passengers need to be aware of these timeframes and respect them when contacting the airlines.

2012 the CJEU ruled in a case regarding the right to compensation when a passenger had belongings in another passengers checked in luggage.[51] The CJEU ruled that art. 22(2) read in conjunction with art. 3(3) in the Montreal Convention must be interpreted as meaning that the right to compensation and the limits to a carrier's liability in the event of loss of luggage apply also to a passenger who claims that compensation by virtue of the loss of luggage checked in another passenger's name, provided that the lost luggage did in fact contain the first passenger's items.

In 2009 the Court of Justice of the European Union established that the concept of 'damage' under the Convention pertained to both material and non-material damage. This means that the maximum amount set out in the Convention – 1,131 SDR – must comprise both types of damages.[52]



51 C- 410/11 Sánchez, Gonzáles, Oviedo vs. Iberia Líneas Aéreas de España SA)

52 C-69/09 Walz va. Clickair SA



4. ECC-Net

case handling data

In this chapter, the report provides an overview of air passenger complaints reported to the ECC-Net, based on data from two sources. The quantitative data was collected from an online database, which was developed by the European Commission to be used by the ECC's in the recording of all cases received and for sharing complaints which need to be handled by two ECC's, the ECC in the country of the consumer and the ECC in the country of the trader. In addition to the data retrieved from the online database, data was also gathered from a questionnaire that was sent to each ECC, of which a copy can be found in Annex 1.

The cases handled by the ECC's only concern reported cross-border cases, where both the trader and consumer are based in different Member States, Iceland or Norway. As such, the statistics in this chapter account for only a small portion of the overall number of complaints from air passengers in Europe.

According to the Association of European Airlines, the number of passengers transported in 2014 was 869 795 000 compared to 2010 when 769 079 000 passengers were transported.[53] The number of cases handled by the Network regarding problems for air passengers in Europe must be seen in relation to this overall perspective of the number of passengers transported.

A survey shows that 22% of the air transport users had faced disruption in the last 12 months when travelling by air. The most common forms of disruption in the last 12 months were long delays (69%), baggage-related disruptions, delayed, damaged or lost baggage (21%), or cancellation (15%). Of those respondents who had experienced disrupted travel, 57% were dissatisfied with how this was handled, whether in terms of the general information received about the disruption, assistance (48%) or financial compensation (55%).[54]

53 The Association of European Airlines, http://www.aea.be/statistics.html

54 Special Eurobarometer 420, PASSENGER RIGHTS REPORT, December 2014. Page 48-49. This survey was carried out by TNS Opinion & Social network in the 28 Member States of the European Union between 13 and 22 September 2014. Some 28,050 respondents from different social and demographic groups were interviewed face-to-face at home in their mother tongue on behalf of the Directorate-General for Mobility and Transport. http://ec.europa.eu/public_opinion/archives/ebs/ebs_420_en.pdfA

Even though complaints relating to air travel received by the ECC-Net represent only a small segment of the problems experienced by all air passengers, the number of cases handled by the Network is large enough to gain an insight into the type of problems air passengers in Europe are confronted with.[55]

The main problem is that some airlines are not applying the law as they do not agree with it. It is surprising to encounter an industry where several traders openly decide to not apply the law or the case-law from the EU-court.[56] Some examples[57] are the airlines, not complying with the ADR decisions, mentioned in the blacklist[58] in the Swedish consumer magazine "Råd & Rön" and the companies mentioned on the website of the Air Passenger Complaint Handling Body in Norway[59] which is dealing with cases where the air passengers' rights have not been respected by the airlines.

Also a report from the UK Civil Aviation Authority (CAA) shows "that it appears a small number of airlines are letting their passengers down by failing to consistently pay compensation and also applying a two year limit to claims."[60] The CAA are now commencing the legal phase of their enforcement process as stated "With the law clear, passengers rightly expect airlines to abide by it and expect the CAA to enforce it."[61]

These difficulties may be related to the average level of ticket prices compared to the compensation rates, even though when taken on the overall business turnover this should be part of the overall costing strategy of airlines.

Also as some of the airlines still do not inform consumers about their rights, and many consumers therefore do not request the compensations they are entitled to. The communication from air lines should be better, which is our finding in the part on direct dealing with the airline.[62]

55 From 1 January until 30 October 2015, ECCs registered 7 381 complaints regarding air passenger rights, 835 on luggage and 6 546 on passenger transport; 1 604 of them regarded delays.

56 CAA launches legal action: regulator acts against three major airlines to protect UK passengers. The UK Civil Aviation Authority (CAA) has announced enforcement action against three major airlines, as the regulator steps in to safeguard the rights of millions of passengers. The action follows the CAA's comprehensive six-month review of airline policies in relation to supporting passengers during disruption, including their approaches to paying flight delay compensation and the provision of information about their rights. This review has already resulted in a number of airlines changing their policies, resulting in millions of passengers benefiting from improved support during disruption. http://www.caa.co.uk/application.aspx?appid=7&mode=detail&nid=2437

57 The situation in Denmark is that the NEB, according to the information received from them, is using the possibility to report to the prosecutor every time an airline does not pay the consumer according to a decision from the NEB. They do this because there is a possibility to punish the airline with a fine for not accepting the decision from the NEB.

58 Blacklist 2015 Råd & Rön http://www.radron.se/svarta-listan/?ind=10. The current blacklist is based on cases from the second half of 2014 handled by the Swedish National Board for Consumer Disputes (ARN) in which the consumer still has not received redress. Råd & Rön goes through ARN's decisions and contact both the consumer and the company to hear what happened. Sometimes the companies pay after that contact, rather than being published on the blacklist. Some of the airlines has a warning triangle which means that the company has been on the blacklist earlier during the last two years. Air Baltic (Delayed flight), Air China (Delayed flight), Air Mediterranée (Delayed flight), British Airways (Cancelled flight, rebooked to a flight departing 23 hours later.), Norwegian (20 cases with a total of 56 travelers regarding delayed flights. Some travelers have partially received compensation before or after ARN's decision, some have gone ahead and hired a flight solicitor. One case has been taken to the district court where the traveler got right and where Norwegian paid.) Primera Air (Delayed flights), Pullmantur Air S.A (Delayed flights) Qatar Airways (Canceled flight, four passengers rescheduled for the following day. The airline should pay a total of EUR 2 400 in compensation for the delay, and 3 306 crowns for hotels and phone calls. Qatar Airways has paid 3306 crowns.), Tailwind Airlines Delayed flight) Wizz Air (7 cases with a total of 13 travelers regarding delayed flights.). Vueling Airlines S.A. (Delayed flights)

59 In Norway, the National Enforcement Body will, on a regular basis, publish the names of the companies that do not comply with their decisions on their website. https://fly.transportklagenemnda.no/Forside/Foelger-ikke-vedtak (Only in Norwegian)

60 Financial compensation, technical faults and time limitations, Compliance report, Civil Aviation Authority UK 2015, page 2. https://www.caa.co.uk/docs/33/CAP%201275%20Compliance%20Report%20230315.pdf. Haines, chief executive of the CAA, said: "Airlines are well aware of the support they must provide when there is disruption and passengers have every right to be disappointed that a small number of airlines are not complying with the Court of Appeal rulings and continue to let people down in this way."… "We have been active to ensure airlines are applying consumer law appropriately and I warmly welcome the response of those airlines that have changed their policies as a result of this work. Our job is not done until all airlines can demonstrate they are providing care, assistance and compensation as required by law." "While we have no power to secure redress for individual consumers, we are determined to stand up for passengers and are taking this action to safeguard their rights, making sure all airlines consistently provide their passengers with the support and compensation they are legally entitled to."

61 Ibid. page 3. See also article "UK airline regulator to force Ryanair to pay flight delay compensation. "http://www.theguardian.com/business/2015/sep/17/european-court-ruling-boosts-flight-delay-compensation-claims. Ryanair denies breaching consumer law. "The CAA claims Ryanair is still failing to comply with rules over flight delay compensation, despite pressure from the airline body and binding court decisions. While it has managed to force three other airlines - Jet2, Aer Lingus and Wizz Air - to change their policies, the CAA says Ryanair is still not falling into line." http://www.travelmole.com/news_feature.php?news_id=2018540.

62 This has also been seen in a survey. See page 4 in this report.

4.1 Total volume of cases handled by the ECC-Net

During the period 2012-2014, the volume of contacts[63] handled by the ECC-Net has increased by 30 %, from 72 067 contacts in 2012 to 93 741 contacts in 2014 (See table 1.). One explanation for this could be that the ECCs are better known in their country now in comparison to 2012 when a survey showed that 22 % of respondents have heard of European Consumer Centres.[64] In addition to this, there is a consistent increase in the number of consumers engaging in cross-border shopping. In 2012, 11 % of the consumers made at least one cross-border purchase, whilst in 2014, this proportion increased to 19%.[65]

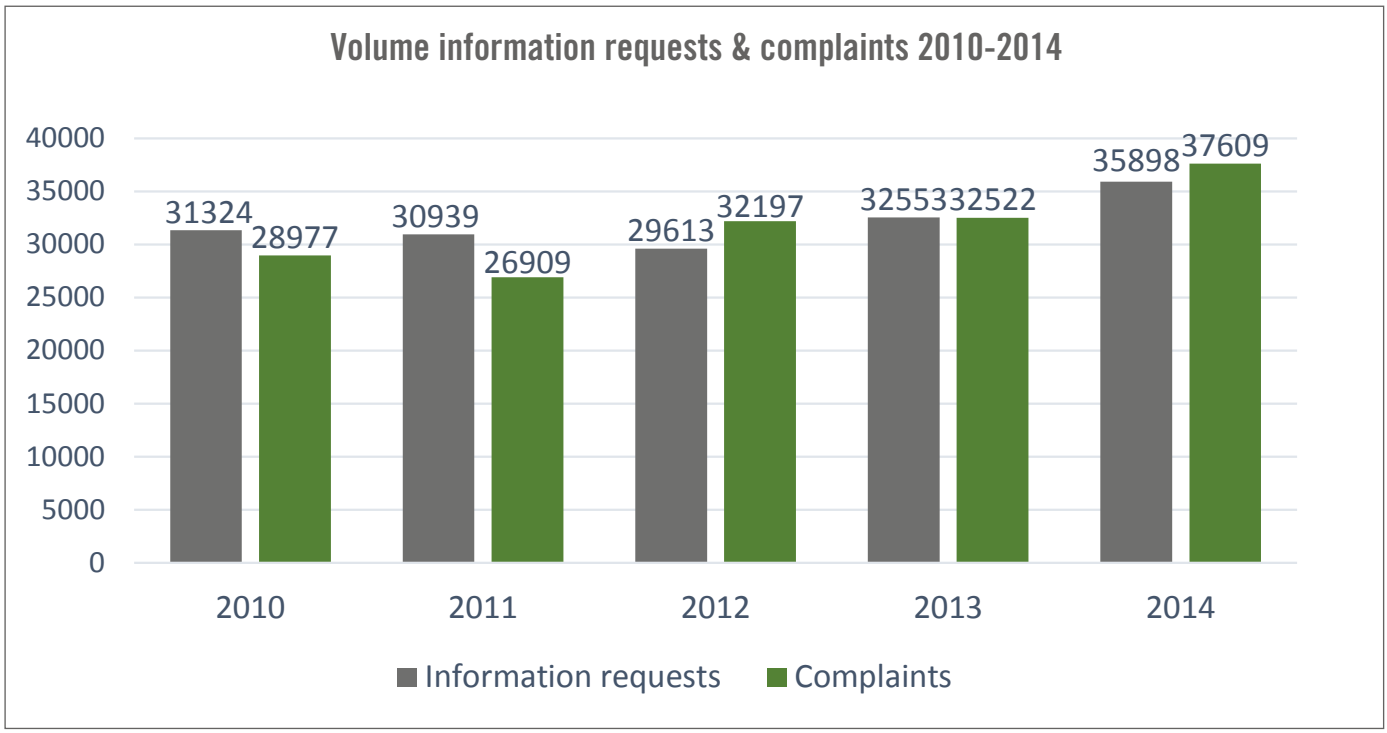


Table 4.1 Information requests and complaints, statistics from DG Justice and Consumers.E.5. Data: ECC Database.

63 A contact can be an information request or a complaint. Complaint is defined as a statement of dissatisfaction by a consumer concerning a cross-border transaction with a seller or a supplier. Where information is given to consumers but no further follow up is required, the matter is encoded as information request. The ECC-Net register every contact in the ECC-Net Case Handling IT-tool that is used to collect and handle the necessary data. IT-tool is operated by the European Commission. The cases are classified through the COICOP-classification system, which is implemented in the IT-tool registration. This system is a reference classification published by the United Nations Statistics Division.

64 Flash Eurobarometer 358, June 2013 http://ec.europa.eu/public_opinion/flash/fl_358_en.pdf

65 Flash Eurobarometer 397, CONSUMER ATTITUDES TOWARDS CROSS-BORDER TRADE AND CONSUMER PROTECTION, September 2015, page 4, http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2031. Consumer Conditions Scoreboard, page 4, 9th edition, July 2013 http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/9_edition/index_en.htm Growth forecast of cross-border online sales in Western Europe, http://e-commercefacts.com/research/2015/06/growth-forecast-of-cross-border-online-sales-in-western-europ/index.xml

4.2 Volume of air transport cases

Looking at the volume of information requests and complaints of air passengers, we see an increase in the number of complaints in 2014. The ECC-Net handled 37 609 complaints and of these 18 % concerned air transport services.

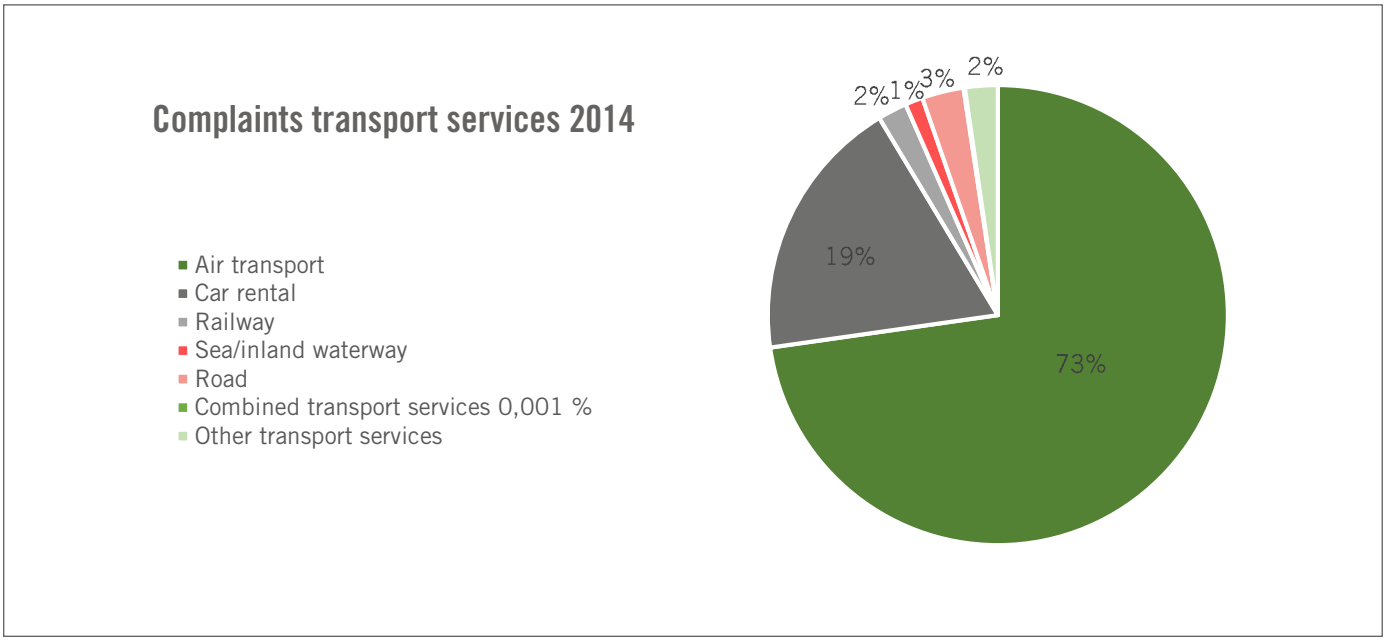


Table 4.2 Complaints transport services 2014, statistics from DG Justice and Consumers.E.5. Data: ECC Database.

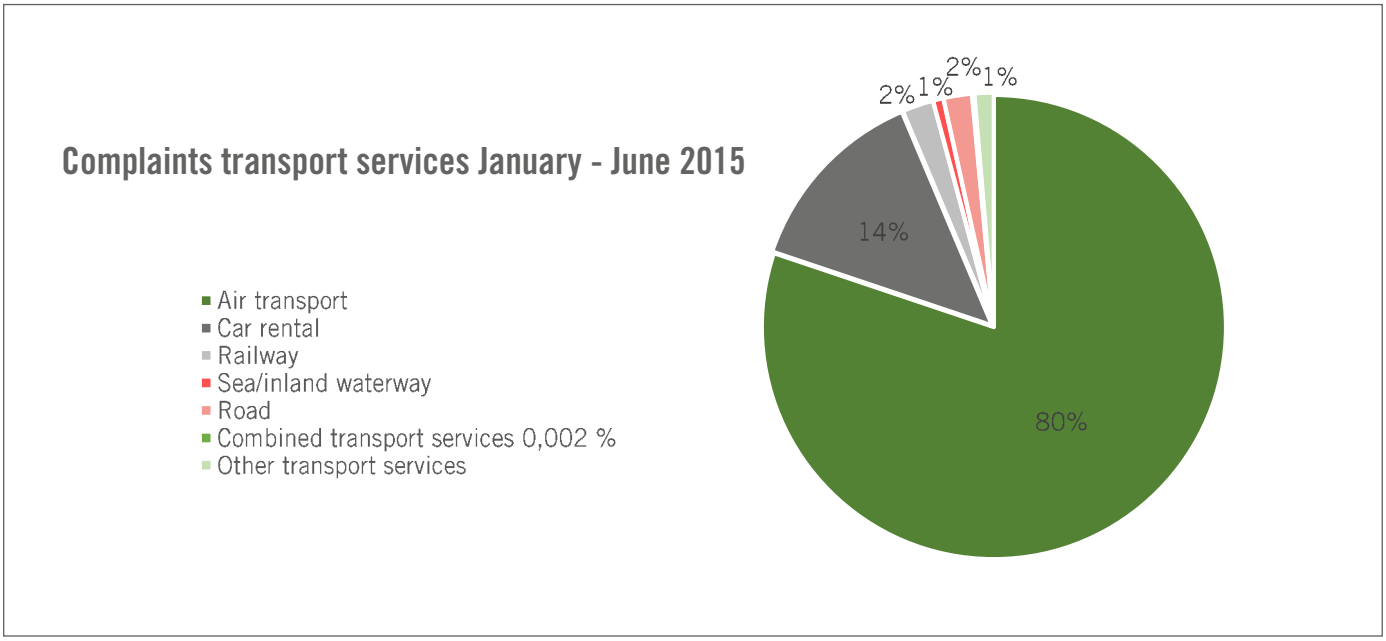


Table 4.3 Complaints transport services January – June 2015, statistics from DG Justice and Consumers. E.5. Data: ECC Database.

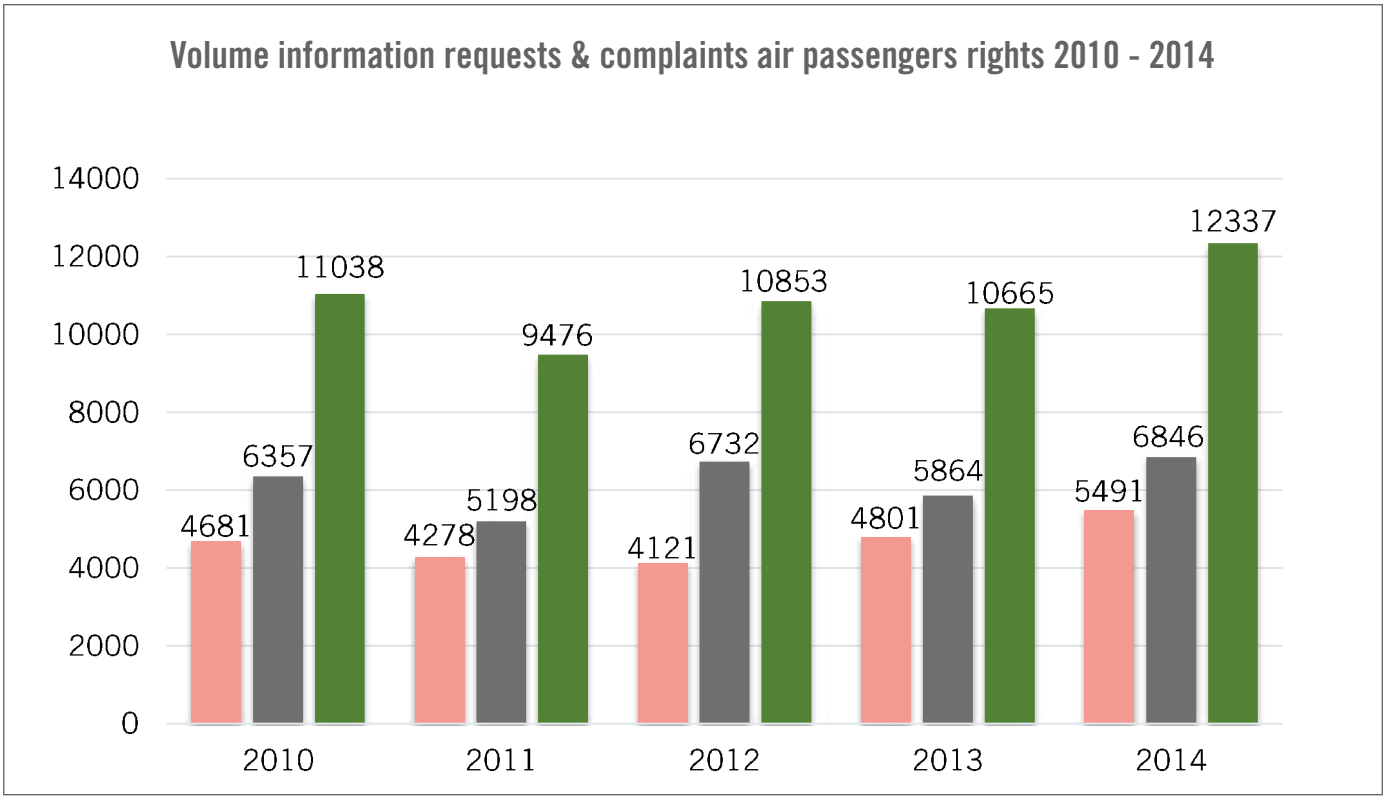


Table 4.4 Information requests & complaints regarding air passenger rights 2010-2014. Total number of contacts is the sum of these two items.

The ECC-Net saw a substantial increase in complaints in 2010 due to the volcano eruption in Eyjafjallajökull which occurred on the 14th of April 2010 and affected a large number of travellers.[66]

In 2011 the numbers returned to the levels of 2007-2009, but in 2012 there was an increase of 29,5%. A decrease of 14,8% was seen in 2013 and then it turned to a 16.7% increase in 2014.

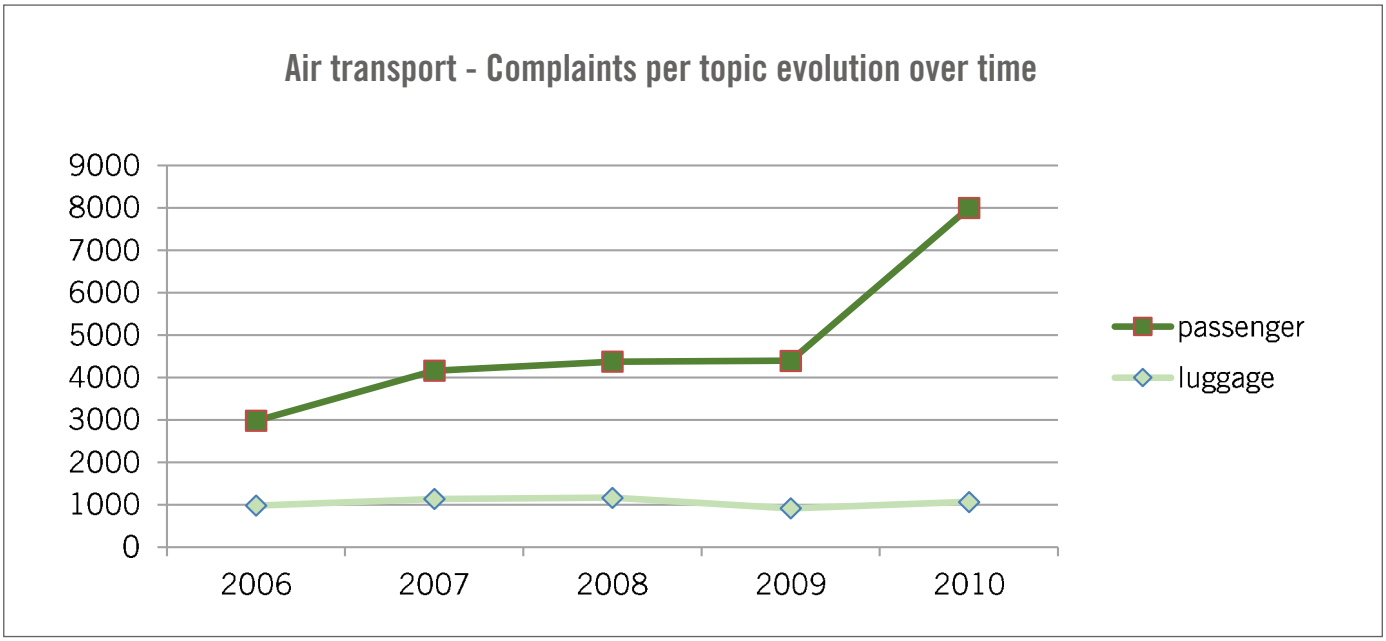


Table 4.5 Increase of complaints concerning air passenger transport and increase of complaints concerning transport of luggage by air received by the ECC-Net (2006-2010).[67]

66 ECC-Net Air Passenger Rights Report 2011 - in the aftermath of the 'Volcanic Ash Crisis', Oktober 2011 http://ec.europa.eu/consumers/ecc/docs/ecc_net_air_passenger_report_2011.pdf

67 Ibid. page 22.

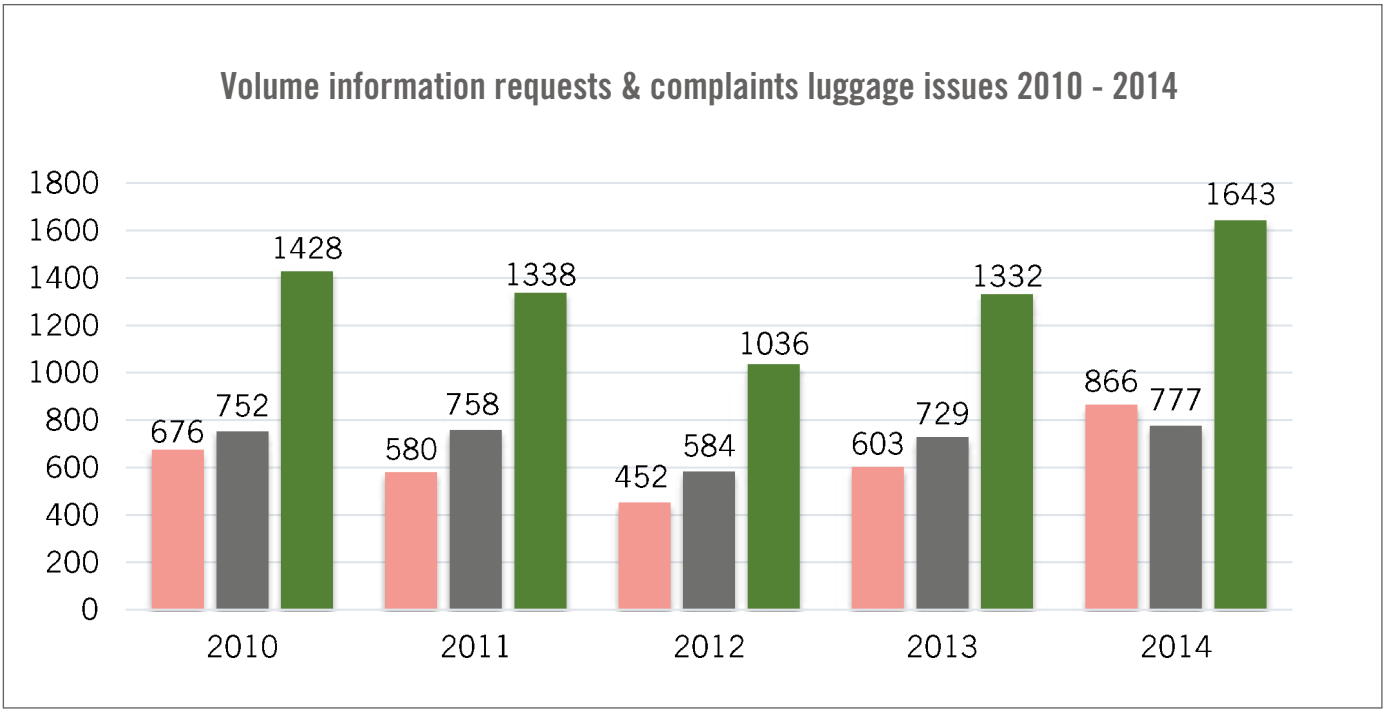


Table 4.6 Information requests & complaints regarding luggage issues 2010 – 2014, statistics from DG Justice and Consumers.E.5. Data: ECC Database.

Whilst consumers frequently seek information or have a complaint about their rights as an air passenger, less have a question or a complaint about the transportation of their luggage in 2014. In 2013 and 2012, the percentage of information requests and complaints received pertaining to luggage was 12 % and 10 % respectively. These difficulties can be mainly categorised into damaged, delayed or lost luggage.

Under the Montreal Convention, consumers are entitled to compensation of up to 1,131 Special Drawing Rights (SDR) when luggage is damaged, delayed or lost. This is the maximum amount that a consumer can claim and it is important to note that any compensation is not awarded automatically, meaning the consumers have to prove the extent of their loss. The attempted resolution of baggage complaints will involve two components:

- **Property Irregularity Report**
  If an individual is experiencing difficulties with their luggage, whether it is damaged, delayed or lost, the first step is to report the matter, usually to a representative of the airline or more commonly a handling agent, and complete a Property Irregularity Report. Generally, these desks are located at the baggage pick up point. Upon completion of the report, consumers should be given a copy of it. Airlines may request a copy of the report upon receiving the complaint, however this is not a legal requirement and failure to produce a PIR alone should not prove fatal to a consumer´s claim though it may cause evidential difficulties particularly in cases of damaged luggage.

- **Written Complaint**
  However, few consumers realize that a follow up letter is required and that it is vital that this letter must be sent to the airline within the time limits set out under the Montreal Convention. Time limits are as follows:

  1. For damaged luggage and items which are missing from bags, the time limit is seven days.
  2. For delayed luggage, the time limit is 21 days from the date of delivery of the bag.
  3. For lost luggage, there is no set time limit but the advice is to write as soon as possible after 21 days.

Failure to do so often results in consumers losing their right to claim from the air carrier. This can be particularly harsh for those consumers who complained at the airport but failed to follow up their complaint in writing either because they believed that their initial complaint was sufficient or for those travellers whose luggage is delayed or damaged or lost on the outward journey of an extended trip and they intend complaining in writing upon their return home.

Quantifying the value of the claim can be a problem since there are no detailed rules on how to calculate appropriate compensation. When luggage is damaged, airlines will generally request proof of purchase for the luggage itself. Depending on how old the luggage is, this may in itself present obstacles in trying to recoup compensation as the older the luggage is the less likely that consumers will have the requisite proof, such as receipt/credit card statement.

In those instances where luggage is delayed, consumers obviously incur expenses as a result of the absence of their belongings. In these situations some airlines offer immediate once-off cash payments at a set amount to cover emergency purchases until the delayed bag is delivered. Others will pay a set amount per day, up to a maximum number of days. Other airlines do not make immediate cash payments, but prefer to reimburse a passenger's expenditure on essential purchases, and will often therefore insist on seeing receipts.

Where luggage is lost, most air carriers will request receipts, not only of the luggage itself but also for all of its contents. Even where receipts are provided, airlines will usually apply a depreciation rate when calculating compensation with the rationale being that as the consumer had the item for a certain period of time they had received some beneficial use of the item and therefore are not entitled to its full value.[68] In the event of any items going missing from luggage, it can be very difficult to get any compensation; primarily because it is almost impossible to prove that the items were present in the baggage in the first place. It is important that consumers receive information about the possibility of making a Special Declaration of interest at check-in.

Most airlines advise consumers in their terms and conditions not to include certain items such as money, jewellery, keys, cameras, spectacles etc. in their checked in luggage. Should these items be contained in checked in luggage, the airlines will accept no responsibility for their damage or loss. Airlines have also different rules on how much kilos are allowed for the specific carrier and different ticket categories, even when connecting flights.

Particularly problematic are those instances where luggage is damaged, delayed or lost in what is known as a successive carriage contract (where two or more airlines work together to fulfil contractual obligations). Often in these cases, both airlines will refuse to accept responsibility for the loss incurred, instead directing that the consumer seek compensation from the other airline involved.

The Montreal Convention contains the joint and severable liability of successive carriers, therefore the consumer can sue either party.



68 Airlines should inform consumers about the relevant depreciation rules and on what grounds they are applied but complaints reported to ECC-Net suggest that this is rarely the case.

2014	Air transport complaints as a % of the total number of complaints from consumers residing in country.
AT	20 %
BE	13 %
BG	31 %
CY	36 %
CZ	27 %
DE	10 %
DK	29 %
EE	21 %
ES	23 %
FI	14 %
FR	14 %
GR	19 %
HR	19 %
HU	28 %
IE	9 %
IS	50 %
IT	46 %
LT	33 %
LU	9 %
LV	25 %
MT	11 %
NL	10 %
NO	5 %
PL	38 %
PT	18 %
RO	35 %
SE	20 %
SI	29 %
SK	11 %
UK	15 %
ECC-Net	18%

Table 4.7 % APR complaints as % of the total number of complaints from Consumer ECC, statistics from DG Justice and Consumers. E.5. Data: ECC Database.

4.2.1 Importance of air travel complaints

In 2014 approximately 25 % of all recorded complaints were in the area of transport, 46 % of those concerned air passenger rights.[69] In some countries, like Cyprus, Iceland, Italy, Poland and Romania, they account for more than a third of all cases.

69 Complaints and disputes, statistics from DG Justice and Consumers. E.5. Data: ECC Database.

4.2.2 Country of the air passenger

Country of the consumer 2014			
	Complaints luggage transport by air	Complaints air passengers transport	Total Complaints air transport
Italy	97	595	692
Belgium	57	580	637
Poland	145	469	614
Spain	17	594	611
France	79	529	608
United Kingdom	19	530	549
Austria	46	454	500
Sweden	3	449	452
Germany	33	250	283
Finland	12	259	271
Denmark	33	230	263
Ireland	27	140	167
The Netherlands	20	118	138
Hungary	21	104	125
Bulgaria	37	75	112
Czech Republic	19	81	100
Romania	22	86	108
Lithuania	14	81	95
Luxembourg	14	76	90
Latvia	7	67	74
Portugal	11	53	64
Estonia	10	52	62
Norway	4	55	59
Slovenia	8	39	47
Cyprus	9	31	40
Greece	2	23	25
Malta	5	18	23
Iceland	0	15	15
Croatia	3	11	14
Slovakia	3	11	14
TOTAL	**777**	**6 075**	**6 852**

Table 4.8 Total amounts complaints and APR complaints as Consumer ECC, statistics from DG Justice and Consumers. E.5. Data: ECC Database.

The largest number of air travel complaints received by the ECC-Net in 2014 came from consumers living in Italy, Belgium, Poland, Spain, France and United Kingdom. Together they represented 54 % of the complaints. In 2015 (January-June) most complaints come from consumers in Austria, Italy, Poland, France, United Kingdom and Belgium. They represented 59 % of the complaints.

Country of the consumer January – June 2015			
	Complaints luggage transport by air	Complaints air passengers transport	Complaints air transport
Austria	49	418	467
Italy	42	392	434
Poland	101	229	330
France	36	283	319
United Kingdom	6	253	259
Belgium	14	210	224
Finland	20	152	172
Sweden	2	167	169
Germany	13	145	158
Denmark	12	112	124
Spain	4	92	96
Ireland	9	86	95
Romania	16	53	69
The Netherlands	6	60	66
Luxembourg	13	52	65
Czech Republic	6	48	54
Bulgaria	6	42	48
Hungary	8	37	45
Latvia	3	40	43
Lithuania	8	29	37
Norway	0	36	36
Portugal	2	31	33
Estonia	5	19	24
Slovenia	7	16	23
Greece	1	20	21
Cyprus	2	15	17
Malta	1	7	8
Slovakia	2	4	6
Croatia	2	3	5
Iceland	0	3	3
TOTAL	**396**	**3 054**	**3 450**

Table 4.9 Total amounts complaints and APR complaints as Consumer ECC, statistics from DG Justice and Consumers. E.5. Data: ECC Database.

4.2.3 Complaints: country of the air carrier 2014 and 2015

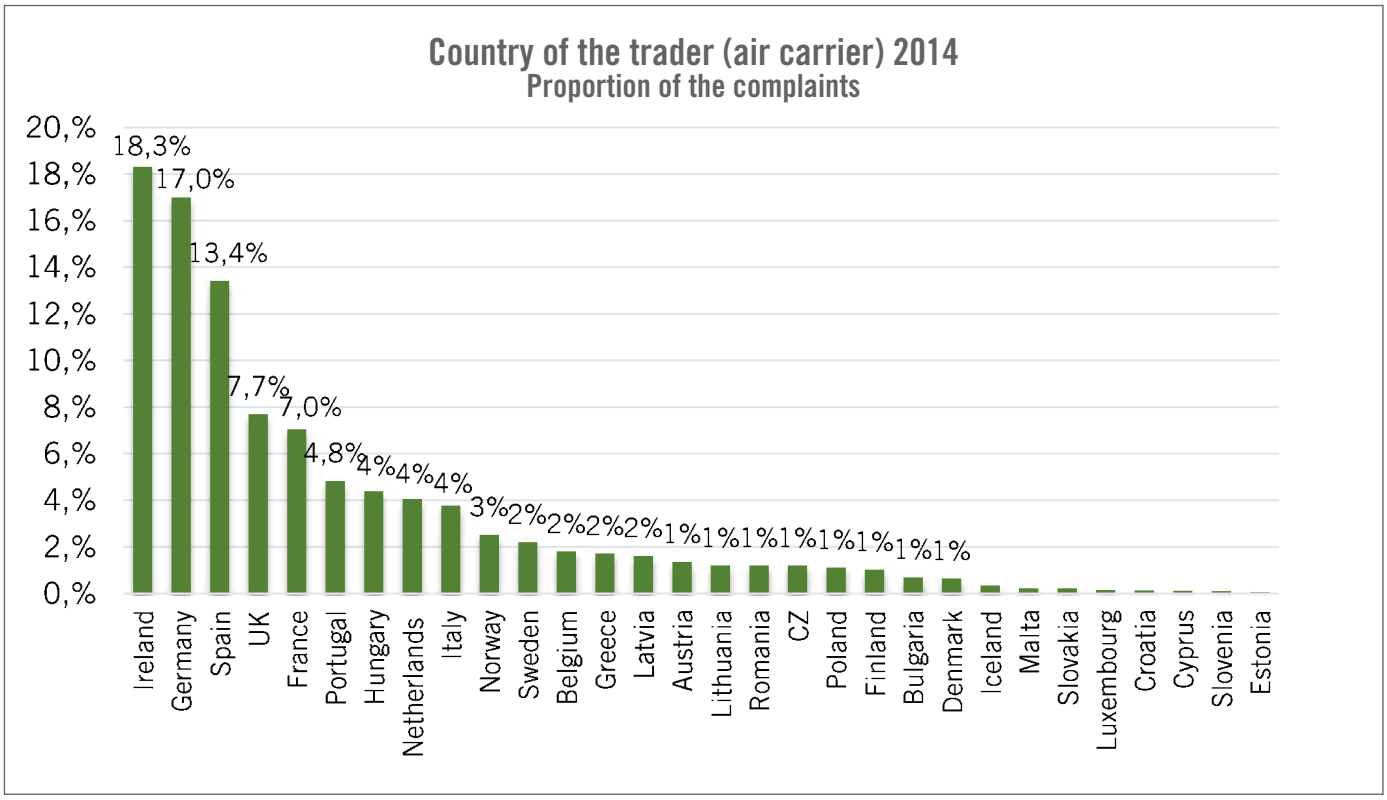


Table 4.10 Country of the air carrier 2014, statistics regarding Tradere ECC from DG Justice and Consumers. E.5. Data: ECC Database.

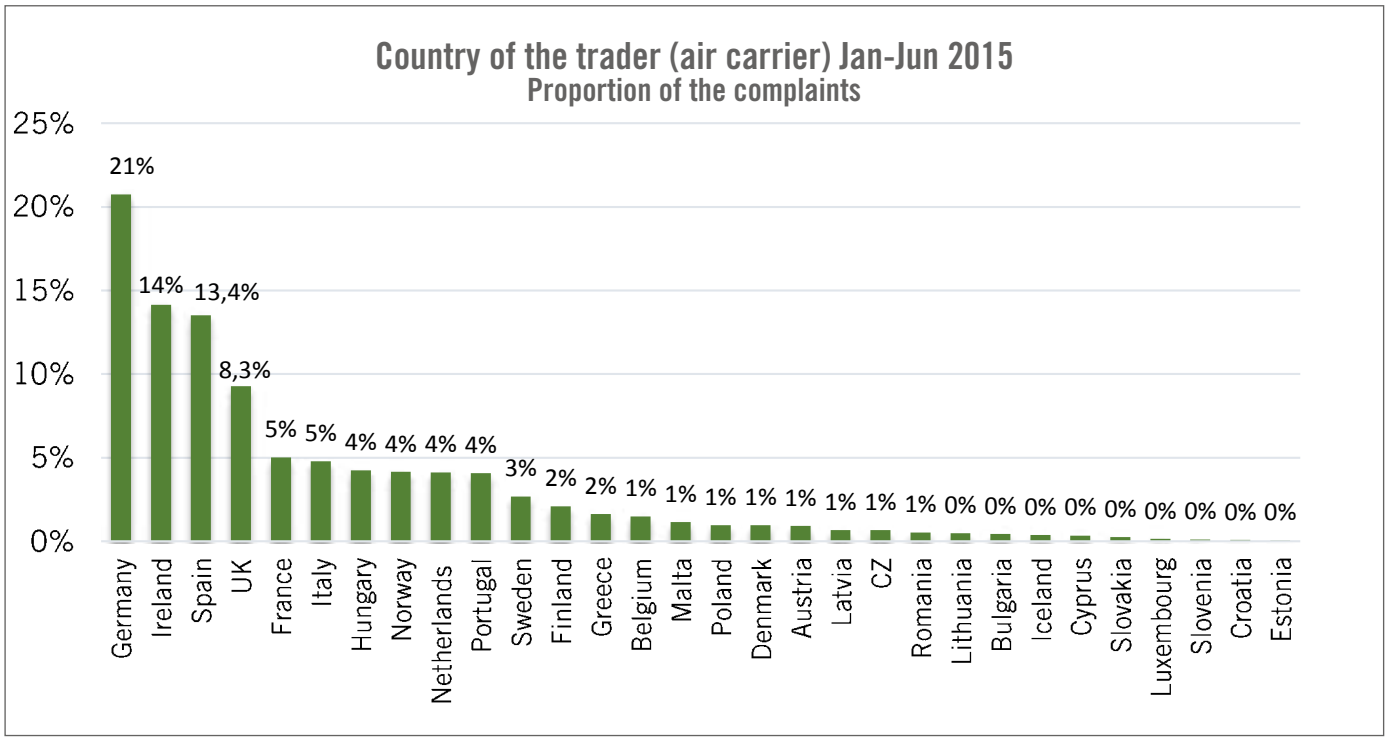


Table 4.11 Country of the air carrier January – June 2015, statistics regarding Trader ECC from DG Justice and Consumers. E.5. Data: ECC Database.

TOP 5 – country of the trader

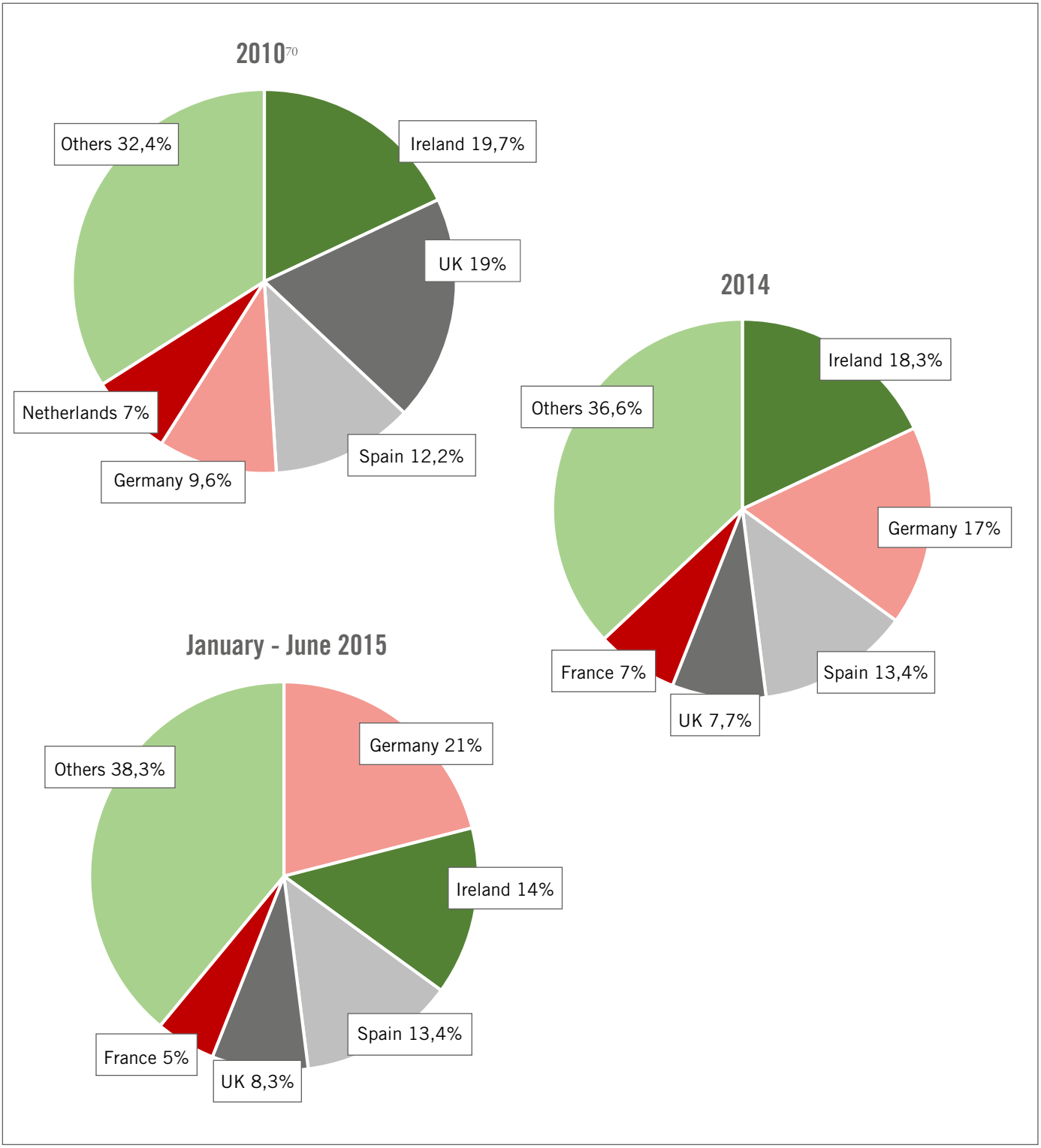


Table 4.12 Country of the air carrier, % of the total air transport complaints. Statistics regarding Tradere ECC from DG Justice and Consumers. E.5. Data: ECC Database

63,4% of all the complaints 2014 and 61,7 % of all the complaints 2015 (January -June) are against air carriers from only 5 countries: Ireland, Germany, Spain, the United Kingdom and France.

These numbers should be treated with caution, as it is important to beer in mind that the causes of why carriers from these countries top the list may depend on many different factors such as the number of passengers carried, severe weather conditions, strikes, incidents at airports mm.

70 ECC-Net Air Passenger Rights Report 2011 - in the aftermath of the 'Volcanic Ash Crisis', Oktober 2011, page 25. http://ec.europa.eu/consumers/ecc/docs/ecc_net_air_passenger_report_2011.pdf

4.2.4 Clearance rate of cases resolved by amicable settlement

When a complaint reaches the ECC-Net, the ECC in the country of the consumer will make an initial assessment if the complaint is valid and if necessary, will share the case with the ECC in the country of the airline in order to assist the consumer in solving his/her complaint in an amicable way with the airlines. If the airline doesn't react positively to this request or doesn't respond at all, the ECC will advise the consumer to use an Alternative Dispute Resolution body (ADR) or to contact the National Enforcement Body (NEB) if the case relates to Regulation (EC) 261/2004.

NEBs are bodies designated by the Member States (Norway and Iceland) to supervise and ensure compliance by the air carriers with Regulation (EC) 261/2004. However, NEBs approach to individual complaints is not the same in all the Member States, which means that even if such a NEB does intervene and for example sanctions the airline, the consumer will still not be reimbursed.[71]

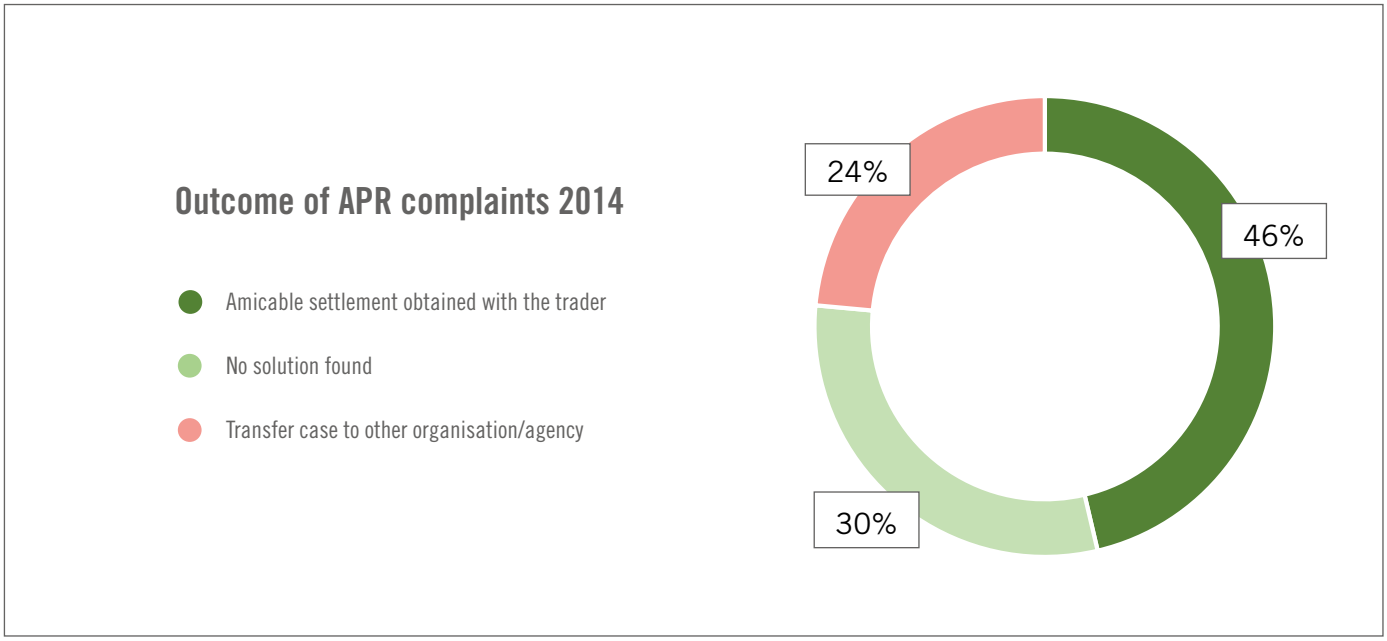


Table 4.13 Outcome of APR complaints 2014, statistics from DG Justice and Consumers. E.5. Data: ECC Database.

46 % of those cases received by ECC-Net in 2014 were resolved amicably, compared to 40,6 % in 2010, an increase of 13, 3 %.

24 % of the cases handled in 2014 were transferred to another organisation or agency. This can be an ADR-body or a NEB. In the majority of these cases, the outcome is unknown to ECC-Net as no feedback regarding the outcome is reported to the ECC-office.[72]

One other possibility is to use the European Small Claims Procedure (ESCP) that was introduced in 2009. It is meant to be effective, efficient and cheap but despite this, awareness of the ESCP is low in courts and with consumers.[73]

71 According to the Regulation 261/2004, NEBs' functions include: complaint handling and sanctioning. NEBs must conduct an evaluation of individual complaints reported by passengers, or their representatives, on a case-by-case basis in order to ensure that the Regulation is properly applied by the air carriers. In assessing an individual complaint, NEBs shall provide a motivated opinion on whether they consider an air carrier has fulfilled its obligations under the Regulation. This opinion is not binding for the air carrier, but it allows the complainant to make an informed decision as to whether or not to pursue the matter further, either by trying to find an amicable solution with the airline, or by bringing his case in civil court or, if applicable, through a national alternative dispute resolution ("ADR") body. The complaint handling procedure is an essential element in enabling the NEB to fulfil the general compliance supervision task. There is therefore no obligation under Article 16 for the NEB to mediate between the passenger and the airline or a fortiori to adopt binding acts (administrative decisions) addressed to the carrier in individual cases. This is not prohibited by the Regulation and some NEBs indeed mediate between passengers and airlines, but this is not required by the Regulation.

72 ECC-Net Joint Project Report Alternative Dispute Resolution in the Air Passenger Rights sector report. September 2012, updated September 2015. http://ec.europa.eu/consumers/ecc/docs/adr_report_06022013_en.pdf

73 ECC-Net European Small Claims Procedure Report, September 2012. http://ec.europa.eu/consumers/ecc/docs/small_claims_210992012_en.pdf

5. Redress mechanisms for consumers



Apart from the ECC-Net there are several other types of organisations offering assistance to consumers seeking redress from airlines. Other parties dealing with consumer problems and air passenger rights include the National Enforcement Bodies (NEBs), Consumer Agencies and Ombudsmen, Alternative Dispute Resolution Bodies (ADRs) and also the courts. Also private claims companies seem to be a growing industry. The report will try to provide a picture of how these organisations and companies operate and if the passengers can actually effectively claim their rights.

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In any case, consumers should receive the compensation they are entitled to in accordance with Regulation (EC) 261/2004 free of charge. But today, more and more consumers seek redress through private claims companies for a fee which is typically deducted from any payment of compensation they may receive. This report retraces the different redress mechanisms that exist when the ECC-Net services do not led to a positive outcome for the consumer.

5.1 Dealing directly with Airlines

ECC-Net regularly receives contacts from consumers seeking advice as to the manner in which to contact airlines or the difficulties they are experiencing trying to notify the airline of the problems they experienced. Methods of communication with airlines vary from airline to airline and often one must go to the airlines website to see what designated forms of communication are accepted by customer service. If a consumer uses the “wrong” method, they will likely receive no response to their claim.

Particularly problematic is the fact that some airlines do not provide any e-mail address and still only offer customer service over the phone or by a web based portal, making it difficult for consumers to keep a written record of their complaint. Often consumers will have to wait a long period of time before they receive any reply to their complaint. This problem is exacerbated by the fact that frequently the airlines will reply merely with a

74 Alternative Dispute Resolution in the Air Passenger Rights sector, ECC-Net Joint Project 2012, updated September 2015. http://ec.europa.eu/consumers/ecc/docs/adr_report_06022013_en.pdf

standardised response which does not seem to have addressed any of the consumers concerns. Often consumers may have contacted an airline multiple times before receiving any response at all.

In some instances, no response to correspondence will ever be received. ECC's cite the lack of response from the air carrier in question as an important reason why a case could not be resolved.

ECC-Net continuously strives to encourage and enhance communication and co-operation with air carriers.

5.2 Alternative Dispute Resolution schemes regarding Air Passenger Rights

As a general remark, the ADR landscape varies considerably from one country to another and has not yet reached its full potential, especially in the APR sector.[75]

A Directive on consumer ADR[76] was to be transposed by the Member States by 9 July 2015. Several Member States have announced delays in the transposition, but, as stated by the Directive, "In order for consumers to exploit fully the potential of the internal market, ADR should be available for all types of domestic and cross-border disputes covered by this Directive". This will hopefully lead to more consumers asserting their rights before qualified and efficient ADR bodies and strengthen consumers' confidence that complaining to sellers will lead to satisfactory outcomes.

If a consumer's initial claim is not handled satisfactorily, they can go to an ADR to resolve the matter without launching legal proceedings. Hopefully, sellers will give consumers' complaints proper consideration and demonstrate the airline industry's willingness to find amicable solutions out of court.

At present, the organisation and the structure of the ADRs differ amongst the various Member States.[77]

Country	ADR body	Restrictions
Austria	Agentur für Passagier- und Fahrgastrechte (The Agency for Passenger Rights)	This ADR is competent for passenger rights concerning flight, bus, train, ship – but only rights according to the 4 EU-Regulations
Belgium	Commission Litiges Voyages/Geschillencommissie reizen, Service de Mediation pour le Consommateur	Only for package travel Residual ADR.
Bulgaria	Conciliation Commission for Disputes in the Air Transport Sector	
Czech Republic	No ADR	
Croatia	No ADR	
Cyprus	Competition and Consumer Protection Service of the Ministry of Energy, Commerce, Industry and Tourism, Arbitration procedures for settlement of consumer disputes	
Denmark	The Consumer Complaints Board, Rejse Ankenavnet (Danish Travel Industry Complaints Board)	Does not handle Regulation 261 cases
Estonia	The Consumer Complaints Committee	Only handles cases regarding national traders
Finland	Kuluttajariitalautakunta/The Consumer Disputes Board	Also functions as the NEB
France	Mediation for Tourism and Travel	Only for the members of the mediation scheme: most of the French airlines and the main tour operators and travel agencies.

75 Ibid.

76 DIRECTIVE 2013/11/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF

77 Alternative Dispute Resolution in the Air Passenger Rights sector, ECC-Net Joint Project 2012, updated September 2015.

Germany	SOP - Schlichtungsstelle für den öffentlichen Personenverkehr e.V.(Conciliation Body forPublic Transport), Bundesamt für Justiz Schlichtungsstelle Luftverkehr. Online-Schlichter (For complaints concerning the booking process or online booking intermediaries).	
Greece	Hellenic Consumer Ombudsman (HCO)	
Hungary	Arbitration boards operate in each county and in the capital of Hungary. http://magyarefk.hu/en/dispute-settlement/alternative-dispute-resolution/arbitration-boards.html.	
Iceland	Urskurdarnefnd Neytendasamtakanna og Samtaka ferdatjonustunnar/The Ruling Committee in Travel Industry Matters	The ADR handles all travel matters (not really general competence) where members of the trade association are involved. (The NEB also works as an ADR)
Ireland	No ADR	
Italy	The Mediation Chamber of the Chamber of Commerce in Milan / Online Dispute Resolution Service"RisolviOnline", Conciliazione paritetica Alitalia (Alitalia's Joint Conciliation) Alitalia,	
Latvia	Consumer Rights Protection Centre of Latvia (CRPC/PTAC)	
Lithuania	State Consumer Rights Protection Authority	
Luxembourg	The CLLV	The ADR in the travel sector in Luxemburg (CLLV) cannot deal with air passenger rights cases. It can deal with "disputes involving transport services which are part of the package", but not 261/2004 air passenger rights cases.
Malta	The Malta Mediation Centre and The Malta Arbitration Centre	
The Netherlands	No ADR	
Norway	Transportklagenemda Norsk Reiselivsforum/The Complaints Board for Scheduled Flights	
Portugal	Centro de Arbitragem de Conflitos de Consumo de Lisboa (CACCL), Centro Nacional de Informacao e Arbitragem de Conflitos de Consumo – CNIACC	
Poland	Trade Inspection/ Wojewodzkie Inspektoraty Inspekcji Handlowej Trade Inspections are located by every Branch Offices of the Office of Competition and Consumer Protection, Wojewodzki Inspektorat Inspekcji Handlowej we Wrocławiu	
Romania	National Authority of Consumer Protection in Romania (will enter into function in 2016)	
Slovakia	No ADR	
Slovenia	European Centre for Dispute Resolution (ECDR)	A private ADR scheme, which covers also APR cases.
Spain	74 official ADR boards : http://consumo-inc.gob.es/arbitraje/juntas.htm#01	
Sweden	The Swedish National Board for Consumer Disputes/Allmänna reklamationsnämnden (ARN)	Also functions as the NEB. For a claim to be tried it must exceed certain value limitations, for travel issues 1 000 SEK. This amount will be reduced by half 2016 to 500 SEK. If a dispute is of a principle nature or if there are other special circumstances, the Swedish ADR can choose to try the dispute despite the claim being below the value limitations
The United Kingdom	No ADR	

Table 5.1. The organisation and the structure of the ADRs amongst the various Member States. Data: ECC Database Wiki, ECCs answers to a questionnaire and also ECC-Net report Alternative Dispute Resolution in the Air Passenger Rights sector, updated September 2015.

5.3 Collaboration with National Enforcement Bodies (NEBs)

According to Regulation (EC) 261/2004 all Member States, as well as Norway and Iceland, must appoint a body who will be responsible for the enforcement of the Regulation on its territory and the sanctions available to this body should be effective, proportionate and dissuasive. These bodies are referred to as National Enforcement Bodies or NEBs.

The territorial scope of NEBs is linked to flights situated in airports in its territory or concerning flight from a third country to an airport situated in its territory operated by an EU licensed airline.

The NEBs[78] are tasked with enforcing the regulation both by addressing any potential infringements, and responding to individual complaints filed by passengers. Some Member States have divided the tasks so that enforcement and complaint handling are managed by different agencies[79].

There are two "informal" agreements on how the NEBs handle complaints – one between the appointed NEBs and one between the NEBs and the airlines. [80]

2010 the Commission issued a report on the regulation,[81] and though major improvements had been made, the functioning of the NEBs still leaves much to be desired.

The current proposal under discussion to amend existing rules on compensation and assistance for passengers and on air carrier liability is meant to "create more effective complaint handling procedures and strengthen enforcement, monitoring and sanctioning policies.[82]

The European Parliament Committee on Transport and Tourism (TRAN) proposed amendments for the revision of the current Regulation (EC) 261/2004 which consist detailing the roles of NEBs. The exchange of information and the coordination between the NEBs is also key to the revision proposal.[83]

The Council of the European Union is proposing to go further in article 16:
"The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive. In particular, such sanctions shall be sufficient to provide air carriers with a financial incentive to comply consistently with the Regulation."

Article 16 foresees *"Where the body or bodies designated under paragraph 3 are different from those entrusted with the enforcement of this Regulation under Article 16(1), they shall cooperate and exchange information."*[84]

The option for the Commission to act against Member States is limited by the vague definition of the NEBs role in the Regulation. The absence of any information obligations on their monitoring and sanctioning activities, the provision of information from the NEBs to the Commission remains irregular and lacks details. The provisions of the Montreal Convention with regard to mishandled luggage are not adequately enforced because no specific enforcement body is foreseen neither by the Montreal Convention nor by Regulation 2027/97[85]. Affected passengers are entirely dependent on the policy and goodwill of air carriers and the legal and out-of-court means of settlement or have to rely on private travel insurance. It follows that, in the absence of a credible and dissuasive enforcement policy, air carriers are not encouraged from granting air passengers their rights especially if their competitors are not doing so.[86]

78 In 18 / 21 (the staff working paper for the communication dated April 11th 2011 says 18, but the report from Steer Davis Gleave from 2010 says 21) of the 27 EU Member States the NEB has been placed with the aviation authority as they have the necessary knowledge and expertise of the sector. Some countries have instead placed it within a government ministry or with a consumer organisation.

79 Commission Staff Working Paper accompanying Communication on the application of reg. 261.

80 The agreements are not legally binding documents.

81 Evaluation of Regulation 261/2004, Final report, Steer Davies Gleave, February 2010.

82 http://www.consilium.europa.eu/en/policies/air-passenger-rights/

83 http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2013/0130/COM_COM%282013%290130_EN.pdf

84 http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209820%202014%20ADD%201%20REV%201

85 Regulation 2072/97 of 9 October 1997 on air carrier liability in the event of accidents

86 Commission staff working document SWD (2013)62 final, page 15. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0062:FIN:EN:PDF

All Member States have authorities to handle complaints from passengers who believe they have not been treated correctly by airlines. There seems to be differences in the way each of the NEBs handle passenger complaints –as regards the individual/collective approach of a complaint, the time it takes, the level of investigation, the communication with the passenger and the result of the efforts made, or even whether they assist the passenger in obtaining redress. The variations in interpretation of CJEU court rulings in each Member States and the different requirements for documentation faced by air carriers depending on which NEB is competent does not assist matters. All NEBs must provide an assessment of the complaint filed by the passenger, as a last resort, passengers might want to go to court in order to obtain individual redress. The differentiation between individual and collective interest is often confusing for the consumer.

Due to the ECC-Net Vademecum[87] and the experiences of the ECCs, the network assist consumers with claims under the Regulation (EC) 261/2004; instead of just referring them to the competent NEB as this often is the quickest way, as many ECCs have a good cooperation with their national airline. The rationale in doing so is mainly to offer the consumers the support needed against a stronger contractual party. This assistance also allows for the collection of data on the functioning of the NEB network, the air carriers involved in complaints and the countries where incidents occur. The public consultation[88] confirmed that passengers are often confused by the role of NEBs with regard to enforcement of individual claims compared to their general enforcement remit.[89]

The differences in NEB practices may result in passengers having different legal positions depending on where their flight is cancelled or delayed, and unless the NEBs insist on air carriers proving the presence of extraordinary circumstances – as stated in the NEB-Air carrier agreement - the burden of proof is in reality put on the consumer who will have to contest the statement from an airline[90].

In addition to this, inconsistent interpretation of the Regulation weakens the authority of the NEB network and lessens the incentive to comply with decisions, let alone the regulation as a whole.

With regard to enforcement of the Regulation, the NEB's position is undermined by large differences in the manner in which the Member States and even other NEB's have implemented the rules. When the proposed Regulation speaks of effective, proportionate and dissuasive sanctions, it must mean financial consequences such that air carriers have an economic incentive to comply with the Regulation. Some airlines disregard the decision of a NEB forcing the passenger to go to court – perhaps in a different jurisdiction.

In some cases the authorities have reacted. The UK Civil Aviation Authority (CAA) announced enforcement action against three major airlines, as the regulator steps in to safeguard the rights of millions of passengers. The action follows the CAA's comprehensive six-month review of airline policies in relation to supporting passengers during disruption, including their approaches to paying flight delay compensation and the provision of information about their rights. This review has already resulted in a number of airlines changing their policies, resulting in millions of passengers benefiting from improved support during disruption. Some airlines are yet to make the required changes set out by the CAA or face the prospect of a court order.[91] Recently these three airlines avoided legal action after agreeing to change their rules on how passengers are helped during disruption.[92]

The Swedish Consumer Ombudsman (KO) filed a lawsuit[93] in July 2015 against a Norwegian air carrier as KO considers that this air carrier provides insufficient information to air passengers on several issues. Airline passengers have a right to clear information about their rights when their flight is delayed or cancelled. There is also guiding judgments of the European Court of Justice which says that if a flight is more than three hours late, it shall provide the same rights to compensation for flight cancellation.

87 ECC-Net Vademecum, Article 6, Objective 2. http://ec.europa.eu/chafea/documents/consumers/ECC-NET/2013/ECC-Net_Vademecum.pdf

88 Public consultation on the possible revision of Regulation 261/2004 – results. http://ec.europa.eu/transport/themes/passengers/consultations/doc/2012-03-11-apr-public-consultation-results.pdf

89 Commission staff working document SWD(2013) page 16, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0062:FIN:EN:PDF

90 This consideration may also apply to other claims than compensation, i.e. whether the passenger was actually offered the choice between rerouting and reimbursement, whether the services of care were provided, whether the passenger was informed correctly of his rights, etc. Staff working document (2014) 156 of 7 May 2014 on complaints handling and enforcement by Member States of the Air Passenger Rights Regulation. http://ec.europa.eu/transport/themes/passengers/air/doc/swd(2014)156.pdf

91 Aer Lingus, Jet2 and Wizz Air all face legal action for breaching consumer law. March 2015 http://www.caa.co.uk/application.aspx?catid=14&pagetype=65&appid=7&mode=detail&nid=2437

92 Airlines avoid watchdog action after changing how passengers are treated during disruption. http://www.itv.com/news/2015-08-19/airlines-avoid-watchdog-action-after-changing-how-passengers-are-treated-during-disruption/

93 Lawsuit http://www.konsumentverket.se/Global/Konsumentverket.se/Best%c3%a4lla%20och%20ladda%20ner/Bransch%c3%b6verenskommelser/2015/St%c3%a4mningsans%c3%b6kan%20Norwegian%20Air%20Shuttle.pdf

The Consumer Agency pointed out the information obligation already in 2013 which led to that the Norwegian air carrier undertook to inform on passenger rights, but problems still remain.[94] The company choose to display certain information on its website and excludes another, equally important, which leads to that the information will be misleading for the consumer, considers KO. KO requests that the Stockholm District Court will judge the company to pay half a million crowns in fines.

The Consumer Agency has received numerous complaints against this air carrier. The Consumer Agency has held a dialogue with the airline for deficiencies and inaccuracies in the company's information to passengers regarding rights. The airline also dominates among flight cases at the National Board for Consumer Disputes (ARN). Of the 549 decisions during the period 1 January 2014 to 31 March 2015 where the airline is the counterparty, more than 38 percent of decisions concerned this air carrier. In about 90 per cent of the decisions, the consumer completely or partially won against this company.[95]

The Swedish KO has also acted in another case where an Irish air carrier refused to provide financial compensation to a Swedish couple stranded in Brussels in 2006.[96] In 2012 when the case reached the Supreme Court (HD) the air company finally paid, as they wanted to have the dispute dismissed, probably in fear of a precedent-setting ruling. The case background: Shortly before the return trip from Brussels in May 2006, the Irish air carrier cancelled the flight. Passengers were offered to take a flight a few days later but received no compensation for hotel costs or food. But the Swedish couple could not wait that long, so they made their own way home and took for granted that the Irish air carrier would give them compensation for their outlay on additional costs, which the air carrier refused to do.

This was the start of a protracted dispute that the Swedish Consumer Ombudsman (KO) pursued all the way to the Supreme Court (HD) on the couple's behalf. The Supreme Court sent the appeal to the Court of Justice of the European Union for guidance. But before the main hearing in HD the Irish air carrier paid 15 000 Swedish crowns and demanded that HD withdrew the case from the Court of Justice of the European Union. Even before, KO was contacted by the Irish air carrier who wanted to get a settlement, which the couple turned down and from KO's side, the idea was to have a precedent case.

For cases against Maltese and Estonian airlines, the ECCs state that they refer the cases to the NEB. NEBs in countries that have power to issue individual binding[97] decisions are in some cases better equipped than the ECC to handle consumer claims for compensation.

5.4 Legal action

There is no obligation for the consumer to use an ADR entity or to lodge a complaint with a NEB. However, due to the complexity of the Regulation and the perception of the court system many passengers will chose to use the free complaint handling service offered by the NEBs, which is in many countries also paired with expertise on air traffic and technical matters – expertise which the courts most likely lack.[98]

The Regulation does not contain rules on jurisdiction, but the CJEU[99] has established that in cases concerning the regulation of air passenger rights jurisdiction can be both at the place of departure and the place of arrival – depending on the passenger's choice.

94 Norwegian Air Passengers Seek $28M For Delayed Flights. http://www.law360.com/articles/569154/norwegian-air-passengers-seek-28m-for-delayed-flights

95 http://www.konsumentverket.se/Om-oss/Nyheter-och-aktuella-fragor/Nyheter/Nyhetsarkiv-2015/KO-tar-Norwegian-till-domstol/

96 http://www.dn.se/ekonomi/ryanair-ger-upp-i-ersattningstvist/

97 Generally, Member States designate the National Civil Aviation Authority (CAA) as NEB. In accordance with the national administration organization or the mission given to the NEB, some of these bodies are able to handle and to enforce cases individually (for example in Denmark or Estonia).

98 See chapter 7, private claims companies.

99 C-204/08 (Rehder vs. Air Baltic Cooperation)

5.4.1 European Small Claims Procedure (ESCP) in Air Passenger Rights cases

The EU Small Claims Procedure entered into force 2009 with the purpose to provide EU citizens with easier access to dispute resolution mechanisms in cross border cases.[100] The European Small Claims Procedure is a simplified version of a normal court case where the case is filed by using a standard form and lawyers are removed from the preliminary steps of the case, minimizing both the handling time and the costs involved. However in some cases, the small claims procedures in civil courts can be slow and expensive and judges often lack relevant experience in aviation law and passengers can be therefore discouraged from pursuing their claims in court.

It is the experience of many ECCs that the small claims procedure has not had the desired effect yet and that many consumers refrain from using the courts at all to settle disputes – simply because it seems to be complicated.[101]

Previous reports from the ECC-Net have shown that the ESCP has not yet reached its full potential. Language barriers, uncertainty concerning court fees in other Member States and complicated and costly enforcement procedures prevent consumers from availing of the ESCP. During the writing of this report the working group submitted an identical case to the ECC-Net to enquire the average cost for filing a claim in court, the average duration of a first instance court procedure and the enforcement procedure.

The case reads as follows: *"The consumer flew with an EU carrier a distance of less than 1500 km. The flight was cancelled. He was rerouted and arrived at final destination with a delay of 2.5 h. The compensation would be 250 €. The airline refused to pay but didn't argue any extraordinary circumstances. The consumer decides to go to court to enforce his rights."*

How much would be the approx. cost of filing this claim in court under the EU small claims procedure?

- No costs at all: France, Greece, Lithuania, Luxembourg, Romania
- 10 to 30 €: Hungary (17 €[102]), Poland (23 €[103]) Bulgaria, Malta and Ireland (25 €)
- 30 to 50 €: Belgium (40 €), Austria (43 €), UK (48 €[104])
- 50 to 80 €: Estonia (75 €), Finland (86 €), Italy (43 to 69 €), Latvia (71.14 €[105]), the Netherlands (78 €), Slovenia (54 €).
- 80 to 100 €: Sweden (96 €[106])
- More than 100 €: Portugal (102 €[107]), Germany (110 €)
- In Croatia the fee will depend on which court the claim is brought to (commercial or municipal court)
- **The ESCP does not apply to Denmark.** Under the Danish small claims procedure the cost would be approximately 67 €.

It should be noticed that the amounts mentioned above exclusively concern the court fees, exclusive of any legal representation or even assistance with completing the form and filing the claims. Normal solicitor rates would apply. It is worth bearing in mind that such fees are unlikely to be added to the claim, i.e. they are likely not to get reimbursed in the small claims court cases.

100 Regulation 861/2007. Denmark has opted out of the judicial cooperation. Therefore, the EU Small Claims Procedure cannot be used in Danish courts, but Danish citizens can use it in courts of other Member States. However, a parallel, national version exists in Denmark.

101 ECC-Net European Small Claims Procedure Report, September 2012. http://ec.europa.eu/consumers/ecc/docs/small_claims_210992012_en.pdf

102 According to the relevant act the fee is 3% of the claim, but not lower than 5000HUF (~17 EUR) and not higher than 250000HUF (~800 EUR).

103 100 PLN

104 Depending on the value of the complaint http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex050-eng.pdf

105 The amount of a State fee with respect to the European Small Claims Procedure is determined in accordance with the Civil Procedure Law, which for claims up to 2134,00 € is 15 % from the amount claimed but not less than 71,14 €.

106 For cases regarding claims worth less than 22 250 SEK and for ESCP the cost of filing the case to court is 900 SEK.

107 An initial fee of 1 UC (UC = "unidade de conta"/money unity) = 102 € has to be paid to commence the procedure and final expenses depend of the value spent with translations, whiteness, etc., and the unsuccessful part pays the expenses incurred by the winner.

Average duration of a trial in first instance courts

- 1 to 3 months: Belgium (2 to 3 months), Lithuania (about 3 months),
- 3 to 6 months: France, Luxembourg, Ireland, Slovenia,
- Up to 6 months: Romania
- 6 months to 1 year: Denmark, Greece, Poland (8 months, in Warsaw 15 months), Sweden [108], the Netherlands, UK (30 weeks)
- Less than a year: Bulgaria
- 1 year: Italy
- 1 to 3 years: Cyprus, Malta
- Unknown: Austria, Croatia, Czech Republic, Estonia, Finland, Hungary, Latvia, Portugal, Slovakia, Slovenia, Spain

Once the consumer has obtained a judgement in his favour, most of the ECCs would make an attempt to contact the airline to ask for compliance with the judgment as enforcement procedures especially in a cross-border context remain complex and may also cause further costs.

Which authority is in charge of enforcing this kind of decisions in the respective Member States? [109]

- Trader's regional or district court: Austria, Croatia, Cyprus, Hungary, Italy
- Court executor: Romania
- Bailiffs (public and/or private): Belgium, Bulgaria, Czech Republic, Denmark, Estonia, France, Germany, Greece, Latvia, Lithuania, Luxemburg, Netherlands, Slovenia, UK[110]
- Sheriff: Ireland, county of Cork and Dublin, County Registrars in all other places in Ireland
- Execution solicitor: Portugal
- Enforcement Officer: Norway
- Enforcement authority: Finland, Sweden

Such a procedure last an average of 6 to 12 months in most of the Member states.

108 Seven months for civil cases and five months for criminal cases.

109 http://ec.europa.eu/civiljustice/enforce_judgement/enforce_judgement_gen_en.htm

110 For claims over 600 £ high court enforcement officers at the district court of the trader's registered office.

How much would this enforcement approx. cost to the consumer?

- **0 to 20 €:** Finland (In a regular enforcement matter, the fee is 10 € and in a limited enforcement matter 5 €. If the creditor has requested that the debt be entered into the passive register, a supplementary processing fee of 10 € is payable. The creditor will be liable to pay a disbursement fee for each amount that the enforcement authority disburses to him or her. The fee amounts to 1.45 per cent of the disbursed amount, but in any event not more than €500[111].)
- **20 to 50 €:** Portugal (0,25 UC (UC = unidade de conta) = 25,50 €), Greece (30 €), Austria (38 €)
- **50 to 80 €:** Sweden (64 €), Lithuania (It depends on the value of the claim but in the above scenario the administration fee probably would be 18 € and the execution 58 €).
- **80 to 100 €:** Germany (80 €), Denmark (93 €), Czech Republic (100 €)
- **80 to 200 €:** France (the fees for most tasks are regulated and depend on the value of the complaint and other criteria. However, some activities are freely negotiable such as remuneration for the assistance function ("honoraires"). Disbursements are always freely negotiable, whether regulated or unregulated fee.)
- **Over 200 €:** Belgium (220 €)
- In the Netherlands the appeal / petition itself will cost 62 €. Besides this amount the consumer needs to pay the bailiff's costs. There is a free play of price-making forces concerning the costs of a bailiff. Most bailiffs mention their rates in their terms and conditions which are published on their website.
- In Hungary 1% of the claim but no lower than 5 000 HUF (17 €) but no more than 350 000 HUF (1 130 €).
- In Ireland the fees are set out in statutory instruments (currently the Sheriff's Fees and Expenses Order (SI 644/2005) made under the Enforcement of Court Orders Act 1926. This provides for various fixed fees and a scale of fees related to the amount involved. This is 5 % of the first 5 500 € and 2.5 % of the balance.
- In Poland it depends on the amount of the dispute (min 30 PLN, max. 300 PLN).
- In Romania a judicial tax of almost 5 € + an executor's fee which depends on the value of the request and which can go up to 10 % of the value will have to be paid.
- In Slovenia the court costs depend on the value of the claim brought and then there are also fixed and variable costs of the bailiff (expenses for examination of the dossier, costs for the calculation of default interest, travel expenses etc.). The costs would certainly be higher than 100 €.
- In the UK the fee depends on the complexity of the process involved[112]. It is worth noting that the claimant may be expected to pay £ 90 to the enforcers if the enforcement is unsuccessful.

111 http://oikeus.fi/ulosotto/en/index/ulosotto/ulosottomaksut.html

112 https://www.gov.uk/make-court-claim-for-money/enforce-a-judgment

5.4.2 Judicial collective redress in the Air passenger rights sector

For many years, the European Commission has tried to promote collective judicial procedures for consumers within the EU.

According to the EU Commission *"Collective redress is a procedural mechanism which allows for reasons of procedural economy and/or efficiency of enforcement, many single claims (relating to the same case) to be bundled into a single court action. Bundling claims reduces the burden on claimants and therefore facilitates access to justice. It thus constitutes a key mechanism to ensure that rights do not only exist on paper but are enforced. Collective redress is a broad concept that includes injunctive relief (lawsuits seeking to stop illegal behaviour) and compensatory relief (lawsuits seeking damages for the harm caused)."*[113]

In Air Passenger rights cases, the detriment of consumers is often similar as one incident causes harm to many consumers, all passengers of the same flight. The compensation schemes being harmonised, collective redress seems an appropriate tool in APR-cases, if no out-of-court settlement can be obtained directly with the airline. Several countries already have collective redress mechanisms in place.

Collective redress mechanisms in court for air passenger rights exist in Belgium, Bulgaria, Croatia, Denmark, Finland, France, Greece, Hungary,[114] Italy, Lithuania, Malta, the Netherlands, Norway, Poland, Portugal, Sweden and UK.

In Cyprus consumer associations may apply to a court for an injunction representing the collective rights of consumers.

In Austria the ECCs host-structure VKI has the possibility to collect the claims of several consumers and start proceedings (out of the legal framework) on behalf of the consumers. To finance these actions VKI cooperates with litigation funders (Prozessfinanzierer), who take a certain percentage of the amount gained by succeeding the proceedings. The VKI recently used this option in a case against a German airline on behalf of 14 passengers for payment of compensation. After submitting the claim the airline settled.

In Portugal the consumer association "DECO" initiated a collective case regarding unfair contract terms in the airline sector, the case is still pending.

In the UK the NEB took airlines to court over certain issues regarding interpretation of Regulation (EC) 261/2004 (e.g. the proceedings which ultimately ended with CJEU case of TUI and others vs CAA.) This has effectively resulted in the passengers being able to claim compensation for flight delays. This can be considered as acting in the wider interest of passengers as a whole.

Collective redress does not yet exist in all countries and private claim companies therefore have found an interesting profitable market.

113 http://europa.eu/rapid/press-release_MEMO-13-530_en.htm

114 In one case the court specified the value of food and refreshment the airlines shall provide to passengers in the case of delay when the flight concerned departs from Hungary.

6. Private claims companies

and organisations helping consumers to seek redress



Apart from the ECC-Net there are several other types of organisations and companies that offer assistance to consumers seeking redress from airlines. Since this seems to be a growing industry, the working group has chosen to send out questionnaires to all the local ECC's in order to get a picture of how these organisations and companies operate. The questionnaires can be found in annex 2. The different initiatives have been divided into three groups; private claim companies, consumer body initiatives and industry initiatives.

6.1 Private claim companies

There is a growing industry of several private companies existing in the market, helping consumers to seek and receive redress, mostly for a percentage of the possible sum that the consumer receives. There are both companies registered in an EU country as well as companies registered outside EU, Norway and Iceland operating within EU. This chapter provides the compilation of the answers received from the ECC's with regard to questionnaire 3 – private companies' initiatives.

Not all of the companies had enough information available on their websites in order for the ECC's to fill out the questionnaire. The questionnaire was filled in for a total of 36 companies. For 9 companies no information was provided.

Some of these companies have representatives at the airports, where they actively seek out passengers "ambulance chasers" who have suffered delays. Other have special offers as "Get €15 for every fellow passenger.

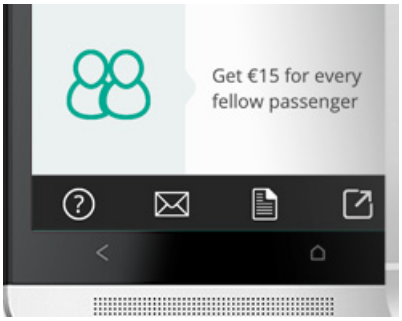
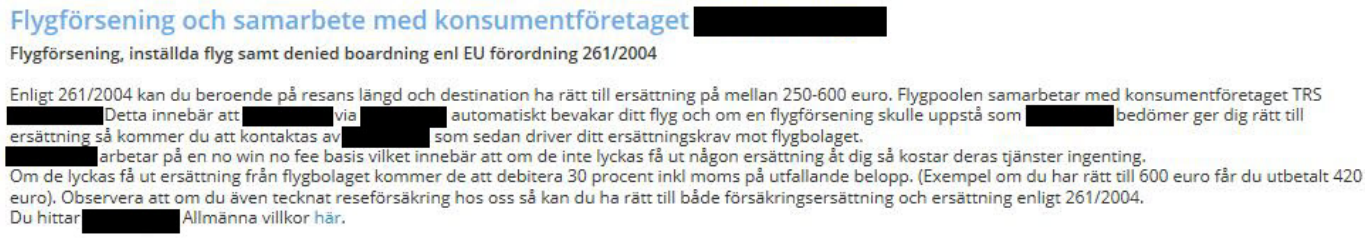


Table 6.1. Clip from AirHelps website.[115]

115 https://www.getairhelp.com/en#

What is also interesting to mention in this context, is that there are private companies starting to cooperate with for example booking intermediaries, having partners programs. Promoting this as "Flight disruptions happen, but it is what you do next that matters most. Turn delays & cancellations into your own advantage. …Earn money from customers who file a claim."[116]

As an example, the following text has been found in the terms and conditions of a booking intermediary[117] which provides the service of booking flights etc.:



Flygförsening och samarbete med konsumentföretaget [redacted]

Flygförsening, inställda flyg samt denied boardning enl EU förordning 261/2004

Enligt 261/2004 kan du beroende på resans längd och destination ha rätt till ersättning på mellan 250-600 euro. Flygpoolen samarbetar med konsumentföretaget TRS [redacted] Detta innebär att [redacted] via [redacted] automatiskt bevakar ditt flyg och om en flygförsening skulle uppstå som [redacted] bedömer ger dig rätt till ersättning så kommer du att kontaktas av [redacted] som sedan driver ditt ersättningskrav mot flygbolaget.
[redacted] arbetar på en no win no fee basis vilket innebär att om de inte lyckas få ut någon ersättning åt dig så kostar deras tjänster ingenting.
Om de lyckas få ut ersättning från flygbolaget kommer de att debitera 30 procent inkl moms på utfallande belopp. (Exempel om du har rätt till 600 euro får du utbetalt 420 euro). Observera att om du även tecknat reseförsäkring hos oss så kan du ha rätt till både försäkringsersättning och ersättning enligt 261/2004.
Du hittar [redacted] Allmänna villkor här.

The text is in Swedish but according to a draft translation it says as follows:

"Flight delays and cooperation with the consumer company X
Delayed flights, cancelled flights and denied boarding according to Regulation (EC) 261/2004

According to 261/2004 you can, depending on the journeys length and destination have the right to compensation of between 250-600 EUR. Y (the booking intermediary) cooperates with the consumer company X. This means that Y via X automatically look after your flight and if a flight delay would occur that X estimates would give you right to compensation, you will be contacted by X who then will pursue your claim of compensation towards the airline. X works on a no win no fee basis which means that if they do not succeed to get you any compensation their services are free of charge. If they manage to get you compensation from the airline they will charge 30 % VAT included, of the compensation received. (For example, if you have the right to 600 EUR you will receive 420 EUR). NB, even if you have taken out travel insurance with us you can have the right to both compensation from the insurance and compensation according to 261/2004. You find X's general terms and conditions here."

Targeted consumer countries

The targeted consumer countries of the private companies' vary. Some of the private companies only seem to operate in their own country, whereas some operate in several other countries including their own country.

Question 1: Do the companies raise claims regarding Regulation (EC) 261/2004 only? Or regarding other legislation as well (please detail)?

72 % of the companies only help consumers with issues regarding Regulation (EC) 261/2004. However, there are some companies that also assist consumers with claims concerning luggage issues and other problems related to the Montreal Convention. Some of the companies are not only specialized in the APR field, they also help consumers with other issues such as those related to other means of transport, energy, real-estate and artisan craft.

Question 2: Are the rules of their procedures published?

69 % of the companies have their rules and procedures published on their website, in their terms and conditions or elsewhere on the website.

116 https://beta.getairhelp.com/en/partners

117 http://www.flightfinder.se/terms

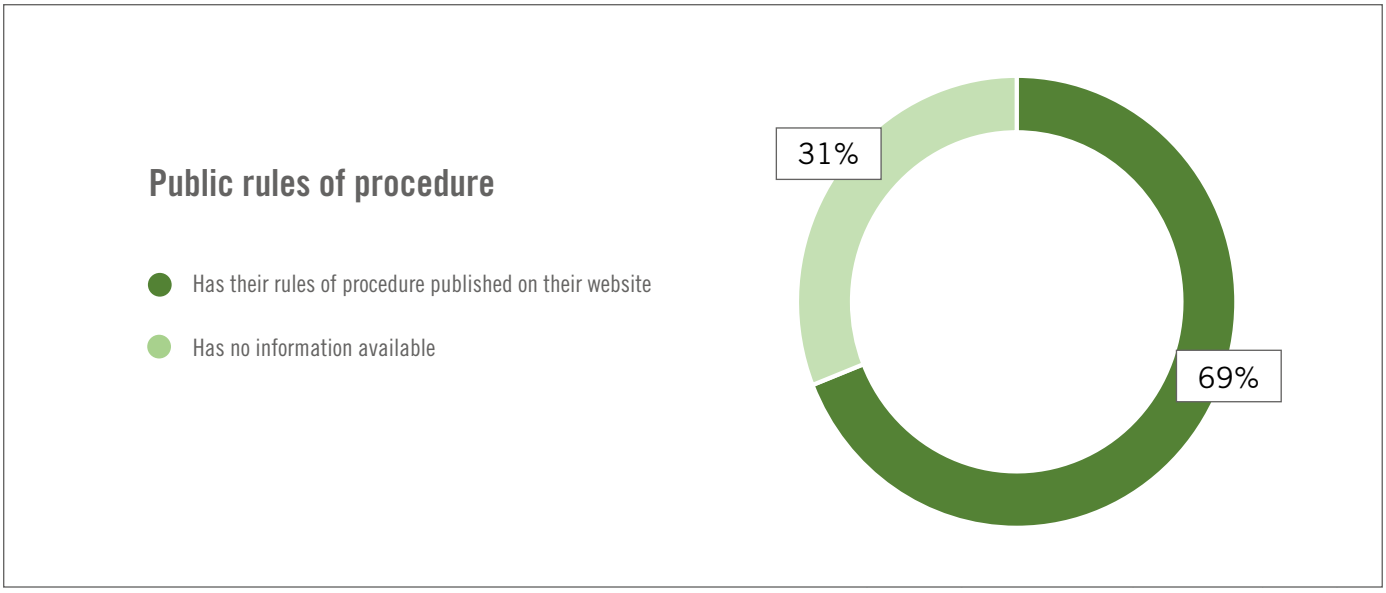


Table 6.2 Amount of companies that have their rules and procedures published on their website. Data: Questionnaire part 3.

Question 3: What are the time limits/duration of their intervention?

The duration of the companies' intervention varies. 56 % of the companies had no information available on their websites concerning time limits. Some say that it can vary from days to years because their intervention stops when the compensation is paid to the consumer or when the company decides that there is no chance of success in the case. The reason why it can take up to years, is if the case goes up to a higher court. A few companies mention that if there is no reply from the airline within 30 days, the company takes the case to court. When it comes to time limits, two companies take no cases older than three years.

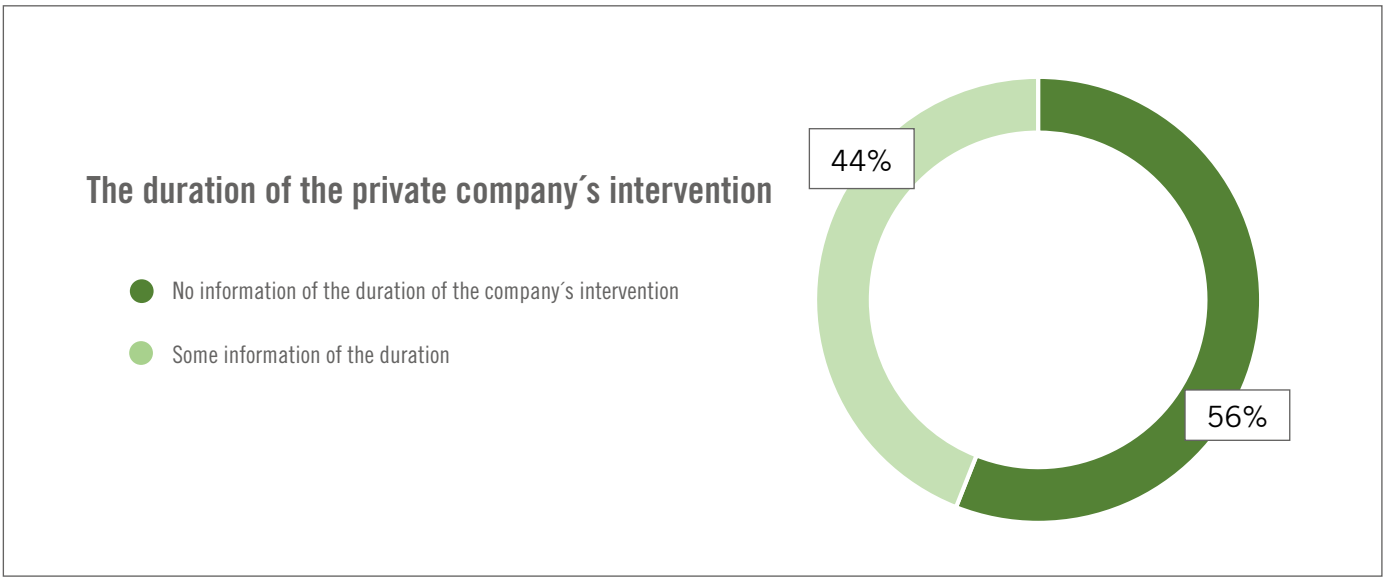


Table 6.3 Information provided about the duration of the private company's intervention. Data: Questionnaire part 3.

Question 4: Only in court or out of court also?

69 % of the companies try to solve the problem both out of court and in court if necessary. Normally they seem to first try settlements and out of court procedures and then turn to NEB's or ADR's and eventually court proceedings.

Question 5: If they offer both possibilities, will the consumer be asked before a court procedure is introduced on his behalf?

On some websites there was no information regarding whether the companies ask the consumer before a court procedure is introduced on his/her behalf. 84 % of the companies who had this information available seem to ask the consumer before turning to court.

Question 6: Is there any exclusivity agreement, preventing the consumer to act on his own while the case is with the company?

For 60 % of the studied claim companies, the consumer undertakes not to initiate other proceedings during the duration of the contract, whether by his own with the airline or with other institutions (private or public).

The question of the exclusivity of the agreement is particularly relevant. In most of the cases in which the private claim company provides this obligation in the terms and conditions, the company also added that regardless of who really obtained the compensation for the consumer, the fee will always be due as far as there was a positive solution.

This rule can indeed prevent other interventions during the procedure and avoid useless interventions by the claims companies or confusion for the airline in the treatment of the claim. But in some cases, this exclusivity might be considered to limit the consumer's chances for redress.

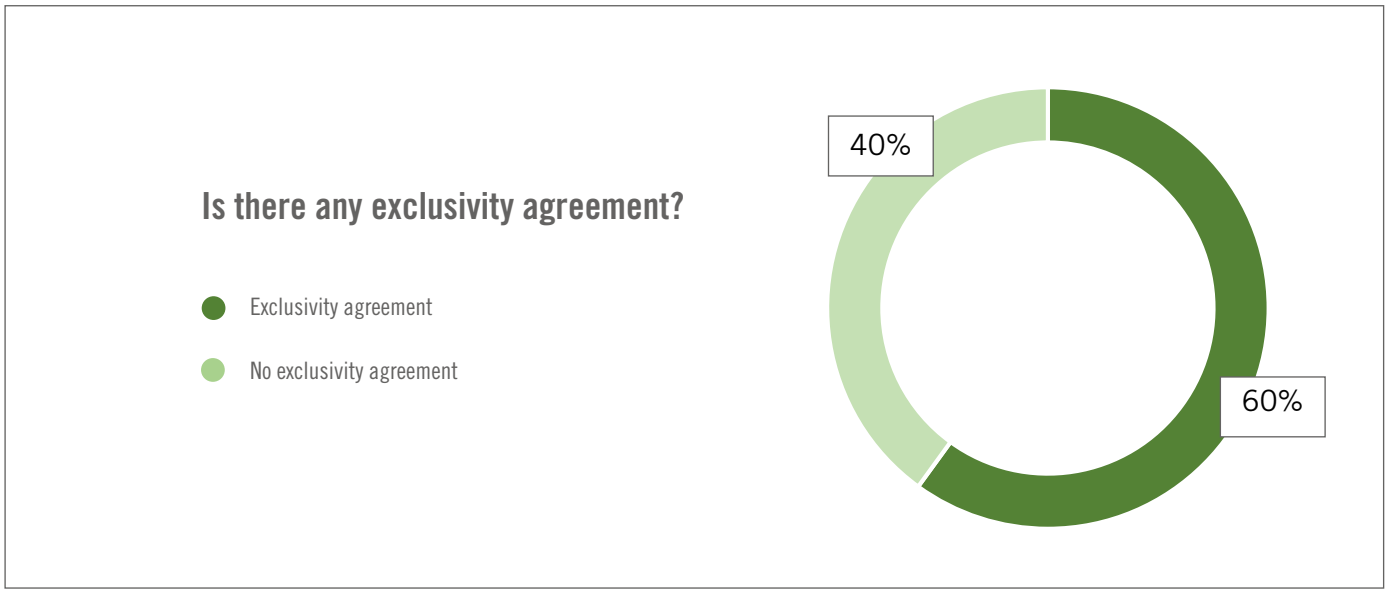


Table 6.4 Information about exclusivity agreement. Data: Questionnaire part 3.

Experience of a French consumer: *He first called on the ECC France to help him with a request for compensation from a Greek airline. In the meantime, thinking that it could be useful and maybe quicker, the consumer also calls on a consumer association working with a private claim company and concludes a contract. Two days after he received the acknowledgment of receipt from the consumer association claim company informing him that the case will be handled, the consumer received the compensation via the ECC-Net, who could find an amicable solution for the consumer by directly contacting the airline. The ECC-Net was unaware that in parallel the consumer had hired this private claim company. When the consumer informed the association and private company about the positive solution and the closure of the complaint, he was asked to pay the fee foreseen in the contract in case of success, 25 % of the compensation received.*

The consumer was quite upset and turned to the ECC-Net to complain. The association and claim company argued that it was clearly stated in its terms and conditions that the consumer is not supposed to call on another private claim company during the contract and in any cases the fee will be due in case of success. With the help of the ECC-Net, which operates free of charge for consumers as financed by public funds, the consumer argued that he did not call upon another "private" claim company. The association then proposed only a 50 € penalty. The consumer refused as such a penalty was not provided for in the terms and conditions. In the end, the claim company renounced to the fee.

Question 7: If the consumer signs a contract, especially one with a renewal clause is there a cooling off period? How long?

Even if in most of the cases the contract can be concluded at a distance, only 38 % of the private claim's companies studied provide or inform about a cooling off right. Its duration is in the majority of cases 14 days, which is in line with the rights granted to consumers under the Consumer Rights Directive. Only two companies with a different duration, 30 days in one case and 7 days in the other, have been noticed. Whereas the first one grants supplementary protection to consumers, the second one if concluded at a distance does not respect binding law. Only in one case [118] a form to enable the consumer to exercise more easily his/her cooling off right, a mechanism foreseen by the Consumer Rights Directive, has been seen.

For the Austrian claim company, in addition to the cooling off right, the consumer has the possibility to cancel, without fee, if the claim company takes no action within 6 weeks, or if no solution can be found within 24 months.

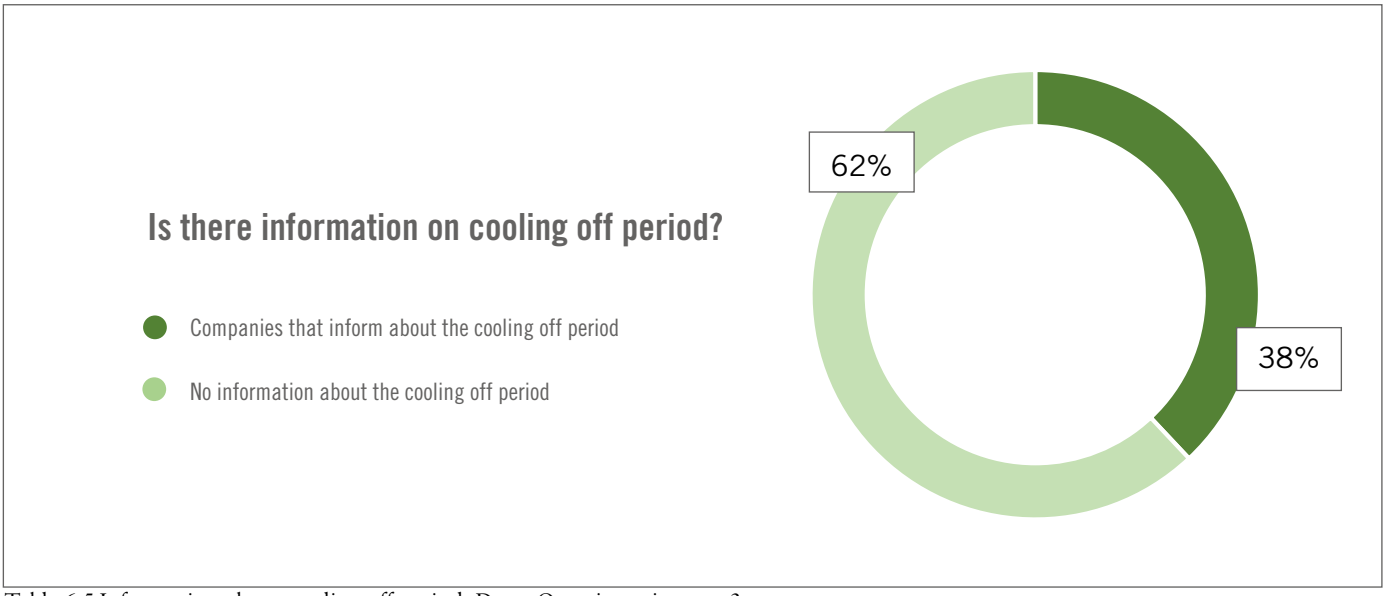


Table 6.5 Information about cooling off period. Data: Questionnaire part 3.

Question 8: If the contract contains a renewal clause, is there a period in which the consumer can resign from the contract? When is this possible? (Ex. 14 days prior to the anniversary of the contract?)

None of the private claim companies studied propose a system of contract with automatic renewal. Actually, there's rarely a validity period mentioned for the contract. It generally ends when the solution is found but nothing is planned to stop the contract before this possible end. In three cases, the consumer can stop the procedure when he/she wants but will have to pay the fee regardless if there is a solution or not.[119]

Some companies offers consumer to cancel under certain conditions. For example, for one of the company based in France, terms and conditions allow a cancellation if the company does not respect its obligation, in case of force majeure or at any moment after a delay of treatment over 6 months.
In one of the Hungarian companies, it is possible to resign from the contract before the end but with a 50 € penalty.

118 Company in Belgium.

119 Companies in Denmark, France and Sweden.

Question 9: Is it a conciliation process only or can an ADR be involved? Which ADR?

In a majority of cases the procedure or the means that will be implemented by the company are not clearly stated (62 % of the cases).

Only 11 companies mention at least that first there will be a conciliation phase. Then the possibility of a court procedure is mentioned by 6 companies. Two of them evoke the NEB. In one case, the private claim company is actually clearly a solicitor office, which means that it has the ability to consider legal action in the name of consumer.

In almost none of the companies studied, an ADR procedure is mentioned. Only in two cases, an explicit reference to an external entity has been made. One is a Danish private claim company[120], who mentions that if the conciliation does not work, the case can be sent to a "relevant authority". This could be an ADR as well as the NEB.

The other one is a Swedish company which explicitly refers to an ADR.

Question 10: Are there any costs for the consumer for this out of court procedure (to the agency, the costs for the ADR)?

In 62 % of the studied companies, a clear statement of cost of procedure is made. In most of the cases, 15 companies out of 18 clearly indicate the cost, the fee is a percentage of the refunded amount. In case of failure, the consumer will owe nothing to the company. The percentage can vary between 20 % and 33 %.

In two cases, the claim company asks for a fix amount (one company in Denmark and one company in France). This fee is to be paid just for the handling of the case, regardless of the solution.

The solicitor office based in the United Kingdom foresees a fix fee of 25 € for handling the case and 27 % of the payment obtained from the airline (no win no fee scheme).

For the other cases, the information was not available and therefore not transparent for the consumer. So this does not mean that there is no fee.

In general, there's no precision if it the costs mentioned concern only the conciliation phase plus the eventual court procedure, or if they cover only the conciliation procedure but some other fee need to be expected in case of a court procedure.

As a matter of fact, in case of a court procedure, the consumer may incur other costs (even if starting the court procedure may be for free), for example, in France, if the court decides in favor of the airline, the "consumer" side can be condemned to pay for "procedural expenses" which means the lawyer fees of the airline or other extra costs.[121]

120 Company in Denmark.

121 Article 700 of the Civil procedure code.

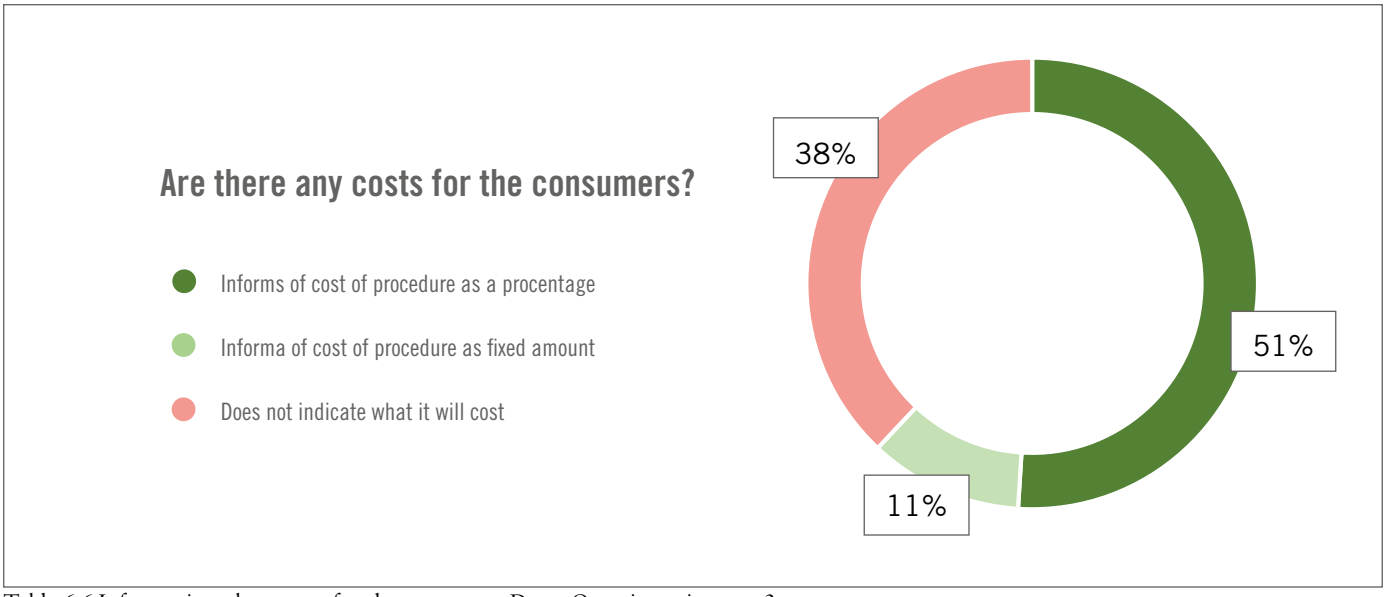


Table 6.6 Information about cost for the consumer. Data: Questionnaire part 3.

Question 11: What is the duration of the out of court procedure?

The duration of the out of court procedure is on average 52 days. It is, however, only 14 % of the companies that mention a specific duration before referring the case to the court system or dismiss the case. 3 % states that it is a case by case assessment and 83 % of the companies have no information available.

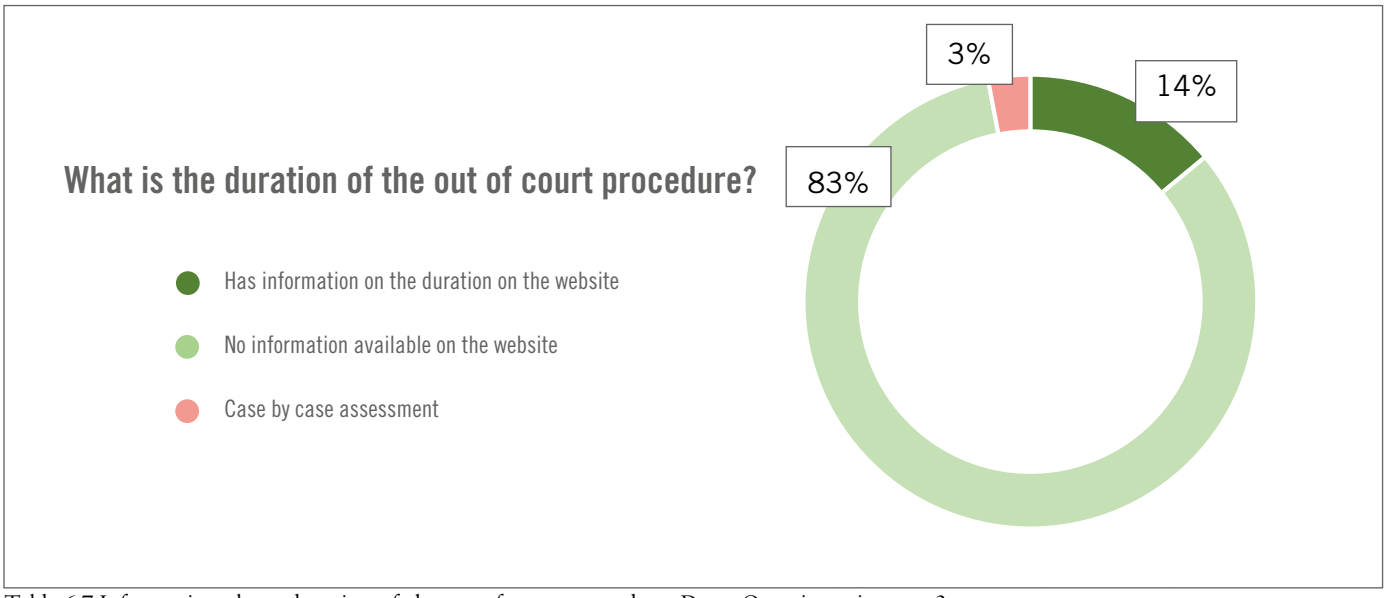


Table 6.7 Information about duration of the out of court procedure. Data: Questionnaire part 3.

Question 12: What is the nature of the decision (binding, non-binding)?

14 ECCs have replied that they have current experience with these types of companies; no countries have mentioned that the out of court decision is binding. Any reconciliation process is, however, not binding. None of the websites of the companies have this information available.

Question 13: Is the service run by law professionals (lawyers etc.)?

39 % of companies state that the service is run by law professionals and 6 % states that they are not law professionals. 47 % have no information available of their website and 8 % states that they are not law professionals but work with lawyers if the case is taken to court.



Table 6.8 Service run by law professionals. Data: Questionnaire part 3.

Question 14: Is it necessary to have an authorization/qualification/diploma in your country to represent the consumer in court? And then, which services from these private entities seem not in conformity with your national law?

Out of the 14 ECCs that have replied to the questionnaire, 4 says it depends on the value of the claim, 6 declare that it is necessary to have an authorization to represent a consumer, 2 says it is not necessary and 2 ECC mention that closely related people can represent a consumer in court.

No ECC has mentioned that the current companies are not in conformity with national law. ECC Denmark notices that the concept of payment of a percentage of the claim may not be in conformity with regulation regarding good practice with law professionals. In Sweden this is forbidden for lawyers of the Bar Association under section 4.a terms of Conduct for Lawyers.[122] ECC Poland states that they have had few entities that provide unfair practice in this field; two of them have been reported to the enforcement authority (CPC).

Question 15: Which are the competent courts in your country for APR cases? Is this information mentioned on the website of these companies? Is this information correct?

86 % of websites had no information regarding which court is competent to hear the dispute. Of the information provided in the questionnaire, only Belgium and Spain provided information on specific courts that differ from local first instance courts.

Question 16: Does the website of the company indicate the amount of court fees?

None of the reviewed private companies provided specific information on the amount of applicable court fees. One company, based in Hong Kong, charges a standard "legal action fee", in the event that court action is required of either 63 €/100 €/150 € depending on the distance involved in the disputed flight and relevant compensation due. This is in addition to the service fee payable in order to commence a claim with the company.

A Spanish based claims company indicated that consumers may incur additional costs of 60 € if court action is required but does not provide further details on whether and how such fees will be charged or whether they are recoverable in the event of a successful outcome to their claim.

Question 17: Does the consumer pay something to the company?

Over 81 % of the private companies reviewed by ECC-Net for this report charged a fee to the consumer for utilizing the offered service. In 5 % of cases, it was not possible to ascertain whether a fee was payable. All the Italian companies looked at provided their services entirely free of charge.

122 https://www.advokatsamfundet.se/Documents/Advokatsamfundet_sv/Advokatetik/V%c3%a4gledande%20regler%20med%20kommentarer%20december%202012.pdf

The vast majority of companies who levied a fee, calculated this as a percentage of the compensation payable in the event of a successful outcome. The rate applied varied from 20 % to 30 % though in the most common amount charged was 25 % (levied by 44 % of the companies checked). Almost 8 % of companies charged a flat rate fee.

Question 18: Who pays the court procedure? The company or the consumer?

This was frequently not clear from the information provided on the website of the companies reviewed. In one third of the companies looked at, no information at all was provided regarding who was to be responsible for court fees. The company is most frequently responsible for paying the court procedure (55 %) with many indicating that such charges form part of their commission. However, other companies will pass these costs to consumers so it is important that the information provided is transparent and complete. In practice, if a claim is successful in court the relevant court fees should be payable by the losing party ie the airline in which case whichever party pays the court fees should be reimbursed.

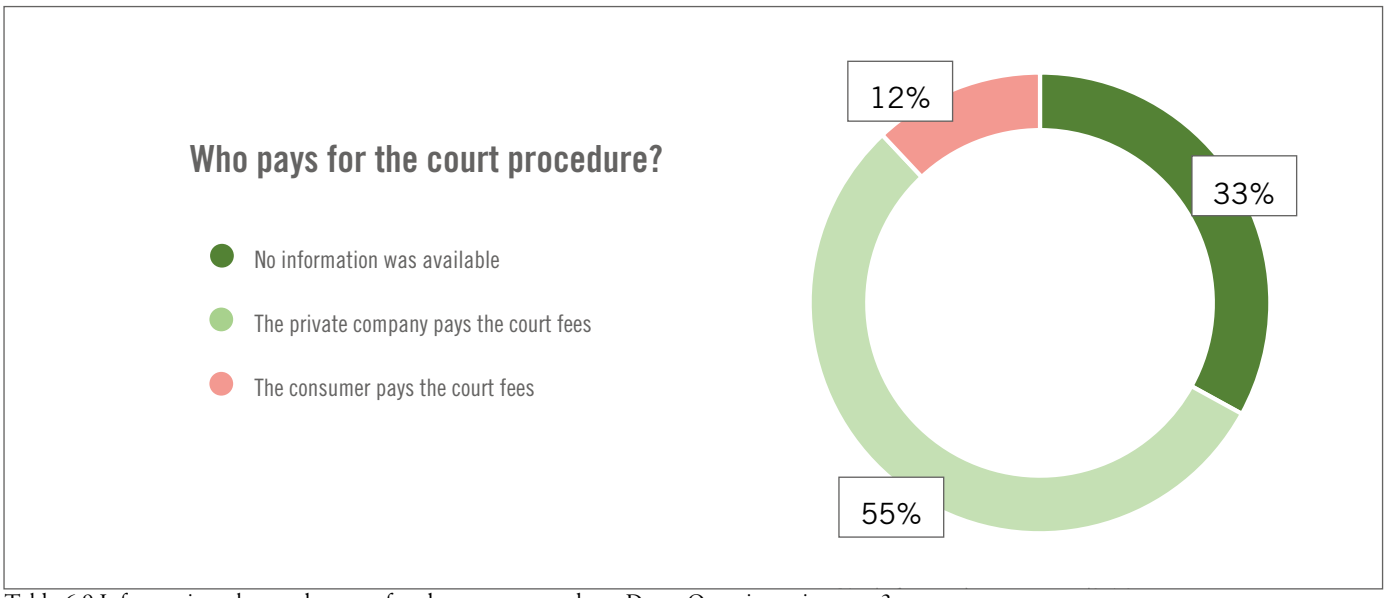


Table 6.9 Information about who pays for the court procedure. Data: Questionnaire part 3.

Question 19: What other costs does the consumer has to bare (translation, execution…)? Does the website mention such costs and where?

Again there was scant information provided on any additional fees payable. Although not explicitly stated on any of the websites of the companies looked at, it is likely that the consumer would incur additional costs should the award need to be enforced given that the scope of the service provided by these companies tend to be limited to securing the award of compensation. Three of the companies specifically stated that fees would be levied on consumers who withdrew prematurely from the agreement to cover costs incurred to date. One company charges consumers 30 € to simply process the payment of compensation and 30 € to receive an invoice.

Question 20: How and when will the consumer be paid the compensation if they win the case, either in court or amicably?

57 % of the companies looked at did not provide any information at all on how the compensation would be paid should the consumer be successful in their claim. Those that did provide some information simply stated that the money would be paid as soon as it was received from the airline and would be paid by electronic funds transfer. Seven companies indicated a specific timeframe which ranged from 5 days to 90 days of receipt of the funds by the company. A further two companies stated that they did not process the payment and this would be done directly by the court.

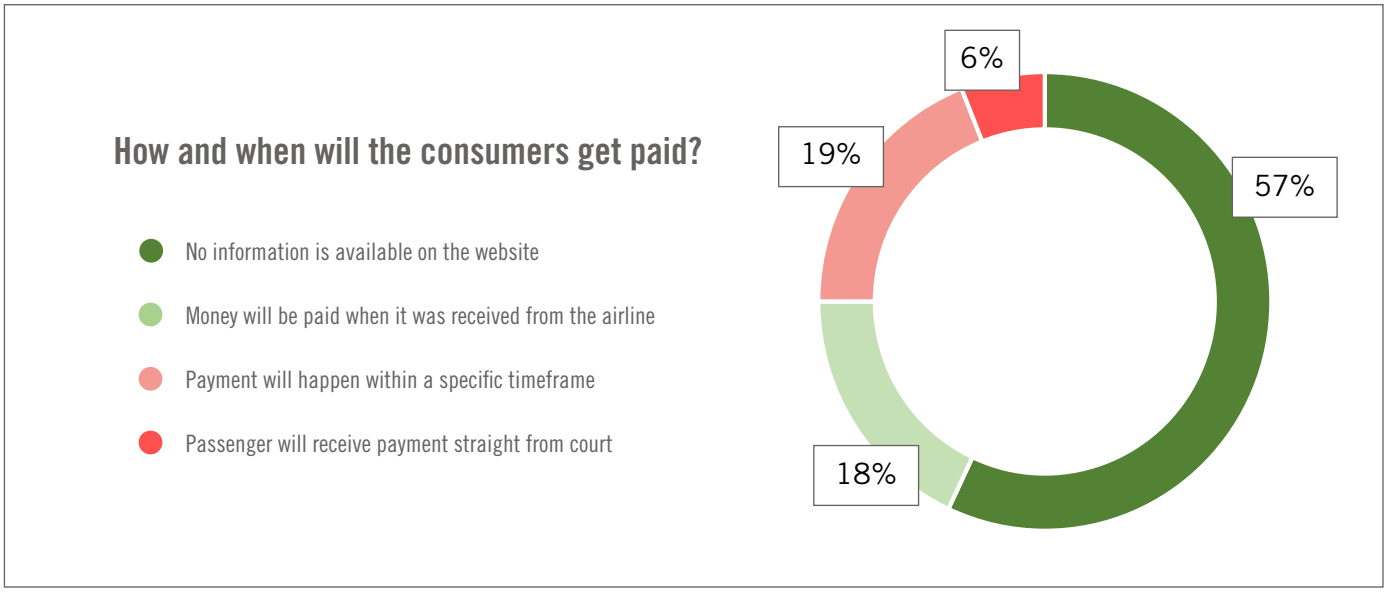


Table 6.10 Information about how and when the consumer will be paid. Data: Questionnaire part 3.

Question 21: Is there already any case law? What is the position of your courts toward the intervention of these types of companies?

There is very little case law or general information available on the position of European courts towards the involvement of these companies in consumer air passenger rights disputes. ECC France reports that a body of case law exists but the attitude of the court varies depending on the individual private company involved. One issue that has arisen in French jurisprudence is the lack of competence of some of these companies to represent consumers given that they are not legal professionals nor in receipt of a power of attorney from the consumer.

Question 22: By which means do these companies advertise for their services in your country?

The companies advertise for their services mainly via the media, internet and social media. One company has google ads and even a smartphone app for their service.

Question 23: What are the marketing arguments?

The marketing arguments used are mainly that they are fast, safe and efficient for the consumer. Further they emphasize that there is no risk to use them, and that the procedure is simple for the consumer. They highlight that the company has a high success rate. Finally, some companies marked themselves as free of charge, others with “no win, no fee”.

Question 24: Are the marketing arguments in conformity with the service really provided? Please detail discrepancies. (For example, is it really for free if you consider court costs or other costs?)

It is difficult to find sufficient information to assess whether the marketing arguments are in conformity with the service really provided. Further, in some countries the consumer has to pay the court fee. Also, some of the companies have some hidden costs.

Question 25: Are they really allowed to advertise in your country (thinking of the professional status such as lawyer or other)?

These private companies are allowed to advertise in the countries asked in this survey, EU, Norway and Iceland. In many countries there is a ban on ”no foal, no fee” advertising by lawyers.
The private claims companies use advertising to attract the attention of possible air passenger victims. Law professionals in France are not entitled to advertise.

Question 26: Does their marketing create the impression that it is complicated to use the procedure via the NEB/ADR?

29 of the registered companies do not mention in their marketing portray that it is complicated to use the procedure via the NEB/ADR. On the other hand, 2 companies mention that this is complicated; they are registered in Germany and Belgium. For the rest of the companies it was not possible to find any information regarding this.

Question 27: Do they mention a "European Union Support"? Or any other official support? Please provide examples.

5 of the 36 companies wrongly mention the European Union as supporting their activities.

> Our company is supported by the European Union.

Question 28: Do you have any case studies that highlight particular problems consumers in your country have encountered in relation to these companies? If so please note them.

In France, the number of case law implying private claims companies is starting to grow. But at the moment, most of the decisions from the court do not even start to decide on the grounds and facts of the claim but stay at a procedural considerations level.

Generally, a consumer will turn to such a private claim company to get the payment of the compensation he/she considers to be entitled to. The private claim company will start its procedure and often file the claim court. However, in conformity with French legislation, the first thing the defendant will check is whether the private claim company is legally entitled to act in court on behalf of the consumer.

In France, only an attorney can represent the consumer in court to handle an individual case. These lawyers should not be considered as representing the consumer as they usually intervene on behalf of the private claims company with which they have a contract.
A consumer association can represent the consumer as well under very restrictive conditions, and only in a collective interest, not for an individual case. Another exception is the representation of the requiring for example by a "member of the family" but at a very close family degree.

When it comes to private claims companies not working with a lawyer, the air carrier can argue that the private company does not have any habilitation, even with a power of attorney, to handle the case in court on behalf of the consumer. The case may then be dismissed to the detriment of the consumer being usually condemned to pay then the court fees.

Other examples before first instance courts (juges de proximité) confirm an incompatibility of the commercial practices of private claims companies with French civil procedure rules. Requests for compensation under application of Regulation (EC) 261/2004 in which the claimant / consumer was represented by the same lawyer than the one representing a private claims company (Skymediator) at the trial have been dismissed on the grounds that the private claims company should be considered a relay for the lawyers.

Also the consumer does not have the choice of his/her lawyer, as the private claims company only works with one lawyer office. So the claimants were condemned to pay the expenses in accordance with article 700 of the civil procedure code. This means that also the airline was able to claim for the refund of their lawyer and procedural fees. If the contract between the consumer and the private claims company is not clear, the dismissal may cause the consumer further financial loss than he/she thought.

6.1.1 Specific problems experienced regarding private claims companies

Some private claims companies do not handle cases that are sent to the ADR in an appropriate and professional way. One example can be seen in a recent decision[123] from the Norwegian ADR. In this case the private claim company did not send additional information as requested by the ADR. Due to this failure, the outcome became negative and the consumer lost the case. Also the Swedish National Board for Consumer Disputes (ARN) has experienced some problems. The issue was that the private claims companies did not submit the requested supplementary within the deadline. The Board could not consider the case without having received the requested information, so the cases were not examined.[124]

Here below are some examples of consumer complaints regarding private claims companies received by ECC-Net:

"Three years ago, on 06/26/2012 we had a flight delay of around 16 hours from San Francisco to Paris CDG. At that time there was no assistance given to us by the French airline nor offered a hotel for an overnight stay or any information on the duration of the delay. At home I learned that in such cases passengers are entitled to compensation of 600 € per person. I therefore have this raised with the French airline but they said we were not entitled to compensation and offered us a voucher for a flight within the 12 months, which we have rejected. We then appealed to www.claimit.be.

We granted them all the legal powers and they say they went to court in Belgium. A few months ago they reported to me that they have lost the case, as the French airline called incompetence of the court, on the grounds that the flight did not arrive in Belgium or left. After examination by one of their French lawyers, they had to conclude that there is no possibility to start the case in France, given the prescription period. The fact that a Belgian court has ruled, has no interrupting effect on the prescription period and they closed the complaint without success."

Consumer flew with the Belgian airline from Tenerife to Charleroi. The flight was delayed by 3:40 hours. Consumer claimed a payment of compensation but the airline denied by arguing extraordinary circumstances. Subsequently, the consumer turned to ECC-Net and asked for help. ECC Austria shared the case with ECC Belgium and they contacted the airline. The airline replied very quickly but opposed that the prescription period of one year had elapsed.

Consumer gave his case to Fairplane.at. After 1,5 years this company told the consumer that the airline never replied and they do not want to make more effort (go to court) since the airline is situated in Belgium. Hence, they close the case. It turned out that the attorney-at-law engaged by Fairplane just sent one e-mail to the airline within 1,5 years. There were no registered letter and no reminders. And no court proceedings on consumer's behalf, as he expected due to the trader's advertisement/website.

When the consumer confronted the attorney-at-law engaged with the answer ECC-Net received from the airline, the lawyer said that it was wrong what was told to the consumer (that the prescription period elapsed). However, this is not correct since Belgian law is applicable and ECC Belgium told ECC Austria that the period indeed is one year in Belgium.

123 Transportklagenemnda, the Air Passenger Complaint Handling Body is Norway's official complaints body and channel for dealing with cases where the air passengers' rights have not been respected by the airlines. It is attached to the European NEB network, which handles disputes between passengers and airlines according to EU decree 261/2004 regulations. Decision 1266/14F, nr: 9/15, 21. September 2015. https://fly.transportklagenemnda.no/Forside/Nemndsavgjoerelser/1266-14F-behandlet-i-moete-nr.-9-15-den-21.-september-2015.

124 The Swedish National Board for Consumer Disputes is a public authority that functions roughly like a court. They impartially try disputes between consumers and business operators. It is attached to the European NEB network. Decision 2015-00217 and 20015-02604.

A French consumer called on ECC France services regarding the payment of compensation based on Regulation (EC) 261/2004 by a Greek airline. After several months of amicable treatment, ECC France were close to receive the payment, but consumer started to be impatient and decided (without informing ECC France) to call on one of these agencies (one held by a consumer association) to get more help. Consumer just validated the contract when in the end, the payment of the compensation arrived on consumer's account thanks to ECC France services.

Then the consumer informed the agency, that its intervention is no more needed. Until this point, the agency only acknowledged consumer's file (2 or 3 days before consumer received the money). Without any further notice the agency sent to the consumer an invoice requesting the payment of 25% of the compensation she had received. The agency claimed that it was provided in their terms and conditions. The consumer was upset by this request: obviously the success comes from the intervention of the ECC-Net, and not the agency. The agency argued that the consumer was not supposed to call on 2 "agencies" at the same time and then, agree to the payment of a penalty of 50 € (but this penalty does not exist in the terms and conditions).

When the agency noticed that the second one was not really an agency but the ECC-Net (with a free intervention), it finally gave up any compensation claim from the consumer.
It is understandable that such agencies will suffer some kind of loss (start of treatment, some administrative costs etc.) if a consumer solicited them for a file and also asked some others services like another agency or a free service like the ECC-Net. A penalty fee can be motivated as far as it is clearly mentioned in the terms and conditions, and the consumer is warned about the fact that he/she is not entitled to seize 2 services at the same time.

6.2 Consumer body initiatives helping consumers to claim their rights

Next to the ECC-Net, specialized in cross-border consumer issues, national consumer bodies provide information and assistance in air passenger rights cases. Some are of general competence in consumer issues, others may be specialised in passenger rights. Some can only inform passengers on their rights, others may assist out-of and in court.[125] Consumer bodies may even be mandated to represent consumers in collective cases or to introduce test cases on behalf of consumers when a clarification of legislation by the judge is needed.[126]

However, consumer bodies are financed in the majority of member states by public funding and in some also by membership fees. With and state resources becoming scarce in several member states, consumer associations may be inclined to seek other sources of financing. Similarly to the private claims agencies, consumer associations may specialise in representing groups of consumers in court to claim their air passenger rights as well as acting in individual cases.

The Belgian consumer organization Test Achats for example has developed a special service focused on air passenger rights under Regulation (EC) 261/2004. They work with +/-20 lawyers specialized in the travel sector. The service comprehends mediation directly with the airline, cooperation with the NEB, as the Belgian NEB can handle individual claims, if necessary. If no solution can be found, recourse to the court is possible. As long as the mediation phase is still ongoing, a consumer will not have to pay anything. If Test Achats starts a judicial procedure, they will ask the consumer to become a member of their organization but there are no other fees involved by the court procedure. The court fees of 40 € for the judge of peace / 100 € for the Court of 1st Instance are paid by Test Achats.

In France UFC-Que choisir, a main player in the consumer movement has set up a service specialised for air passenger rights Indemnit'Air. They can intervene in claims regarding Regulation (EC) 261/2004, Montreal and Warsaw convention for flights departing from an EU airport, Iceland, Norway or Switzerland. In case of a delay, the flight must have been operated within the last 2 years, in case of cancellation or denied boarding 5 years.

125 See also the report ADR in the APR sector. ECC-Net Joint project 2012, revised 2015. http://ec.europa.eu/consumers/ecc/docs/adr_report_06022013_en.pdf

126 For example Consumers Association of Austria - Verein für Konsumenteninformation VKI in Austria.

According to the terms and conditions[127], the consumer mandates them for a duration of intervention of 12 months[128] renewable to represent him/her in and out of court. To represent the consumer in court, they will work with external lawyers. The organization seems to intervene amicably first, no transfer to an ADR-body is foreseen. In case they obtain a solution, they will transfer the money within 30 days after having received the funds from the airline keeping 25 % of the amount obtained. Concerning court fees, the procedure before the juge de proximité (value of the claim under 4 000 €) is free of charge. But the consumer may need to pay the enforcement fees if the airline doesn't apply the court decision right away. The service offered by Indemnit'Air is very similarly named to the private company Air indemnité which may cause consumer confusion.

Another initiative in France associates the consumer movement with a private claims company. Another main player, the CLCV has launched a new online service in cooperation with Demanderjustice.com to enable consumers to file a claim at the first instance court (juge de proximité). This initiative doesn't specifically concern air passenger rights but covers all consumer law issues. For 79.90 € the consumer will receive administrative help with trying to find an amicable solution, and if this is unsuccessful with filing a claim with the competent court and a membership to the CLCV for a year[129]. The CLCV clearly present this service as an alternative to in-house mediation which is quite widespread in the French ADR landscape where many businesses have set up their own ADR-bodies which are notified to the European Commission.

In the Netherlands, the Consumer association Consumentenbond has created the Vlucht Claim Service specialised in air passenger rights under Regulation (EC) 261/2004. However this service doesn't cover any individual assistance of the consumer, but only constitutes a calculator. By indicating the flight number the consumer will know if he/she is entitled to receive compensation.

An alliance #rightsonboard has been created by private claim companies and consumers' associations from Germany, France, Austria, Denmark and Spain with the vocation to defend passengers' rights.[130]

6.3 Industry initiatives facilitating complaint handling in the APR sector

So far the ECC-Net is only aware of one concerted industry initiative to facilitate the complaint process for consumers, see also page "dealing with airlines".

Considering the growing industry of private claim companies and the fact that some of them are quite quick to consider legal action without no amicable attempts to find a solution directly with the airline, as well as the negative consumer feedback many airlines have received, the syndicate of independent airlines in France created an online platform[131] to allow and invite passenger to contact their airline prior to any other step.

This platform does not operate as a consumer body, an ADR, or pretends to be a NEB; it is simply a way of enabling the consumer to know his/her basic rights, to clearly explain the claim and to send it to the right service of the participating airlines. No legal analysis is done of the case but the moderators make sure that the case is well documented before transferring it to the airline. The procedure operates exclusively online and is totally free of charge for consumers.

The consumer will be able to see the follow up of his/her case thanks to a time line and can communicate with the airline or the SAV.Flights team via a direct dialogue in his online file.

If the company does not answer the consumer within 2 months or if the solution proposed does not fit the consumer's expectations, he/she has the possibility to have the file directly forwarded through the platform (in one click) to the French ADR for Tourism and Travel.[132.] So the consumer will be at the same time informed about the existence of this ADR scheme and can directly access it by easily forwarding the case to it (with no further action needed).

127 http://www.quechoisir.org/que-choisir-site-internet/ufc-que-choisir-indemnit-air-conditions-generales-de-vente-du-service-indemnit-air

128 If the contract is signed online, the consumer has a 14 days cooling off period.

129 If the consumer is already a member of the association, he can order the other two services for 49.90 €.

130 http://rightsonboard.org/?page_id=2. Members: AirHelp, AirRefund, flightright, reclamador.es and Verbraucherschutz.de.

131 SAV flight https://fr.sav.flights/

132 http://www.mtv.travel/

As the ADR for Tourism and Travel is only competent for traders who are members of the ADR scheme (mainly the French airlines and Easyjet regarding APR), for claims from French consumers against an airline based in another EU Member state, Iceland or Norway, the case can be redirected to ECC France.

If the direct contact with trader or the ADR or if the ECC-Net intervention remains unsuccessful the consumer can still consider legal proceedings. If the case involves the appreciation of technical issues such as extraordinary circumstances for example, he/she might forward the case to the NEB first.

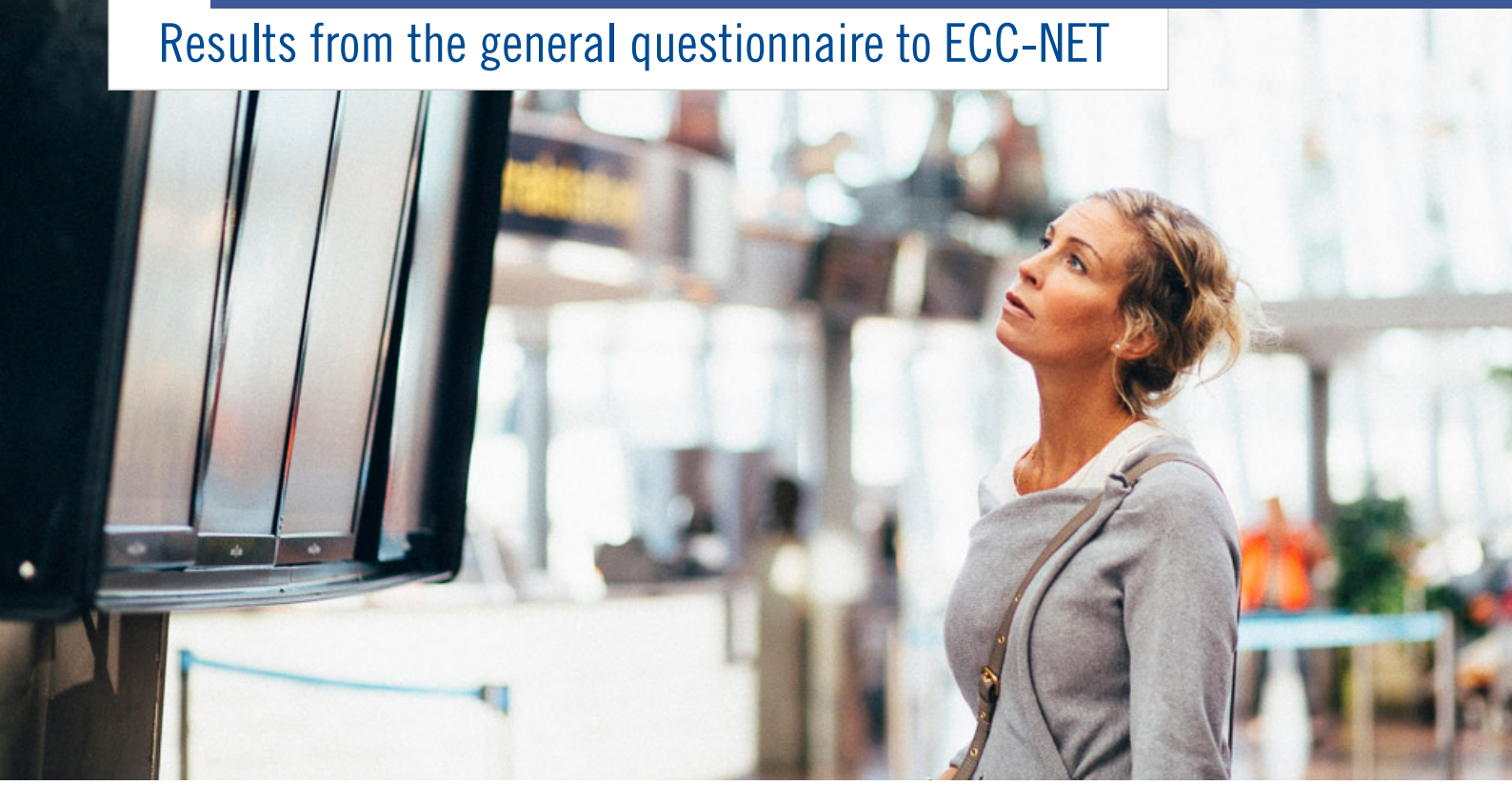
So the aim of SAV.Flights is quite easy as its objective is to restore the normal consumer complaint handling mechanism, allowing both consumers and airlines to avoid unnecessary court proceedings and fees:

- Contact with the airline/trader.
- Case transmitted to the competent ADR, in France to the MTV and in another EU Member state via the ECC-Net, as both consumer ECC and trader ECC will be involved in the case.
- If the previous steps failed the consumer will then be invited to consider legal actions.



7. Main areas of complaint

Results from the general questionnaire to ECC-NET



7.1 Flight Delays and Cancellations

Under Article 14 of the Regulation, airlines are obliged to provide consumer with information about their entitlements in the case of flight, delay, cancellation or denied boarding.[133]

One of the main problems consumers experience in these instances, is that many airlines fail to provide this assistance up-front, instead offering a refund of expenses incurred at a later stage.
Many consumers may question whether it is worthwhile to complain when the reimbursement of refreshments/the cost of a telephone call is involved and for those who do complain the airline may request receipts. It is important therefore to remember that the "right to care" is concerned with the provision of assistance at the time of the incident, as opposed to reimbursement at a later date.
If this is the case, many of these difficulties can be overcome.

As regards **cancellations,** Regulation (EC) 261/2004 states that consumers should be notified of the cancellation and offered either the option of a refund of the price of the ticket not used or alternatively rerouting to their final destination. Where consumers chose to be re-routed this must be done at the earliest opportunity and the airline will owe them a duty of care such that costs such as meals and accommodation costs, if applicable, should be paid for. It is crucial to ensure such information about the option, because in many cases, the consumer will refuse a re-routing for good reasons (proposed too many days later or not to the destination required sometimes) and then would prefer to accept the cancellation-refund. But here, accepting the refund will end the company's liability to assist the consumer and he/she is no conscious of this. He/she expect then to receive an assistance he/she is not allowed to, according to the strict application of the regulation.

The phrase "extraordinary circumstances" is not defined in the legislation. Rather the Regulation provides a non-exhaustive list of examples such as political instability, weather conditions, security risks, strikes and unexpected safety shortcomings.

133 Article 14.2 states, "An operating air carrier denying boarding or cancelling a flight shall provide each passenger affected with a written notice setting out the rules for compensation and assistance in line with this Regulation. It shall also provide each passenger affected by a delay of at least two hours with an equivalent notice. The contact details of the national designated body referred to in Article 16 shall also be given to the passenger in written form."

As regards whether the circumstances could have been avoided if reasonable measures had been taken by the airline, the recent CJEU decision *C-294/10 (Eglītis and Ratnieks v Ekonomikas Ministrija)*, is also very instructive in this regard. Following on from its reasoning in Wallentin, the CJEU held that Article 5(3) of Regulation (EC) 261/2004 must be interpreted as meaning that an air carrier must take account of the risk of delay connected to the possible occurrence of extraordinary circumstances. It must, consequently, provide for a certain reserve time to allow it, if possible, to operate the flight in its entirety once the extraordinary circumstances have come to an end.[134]

Another very recent decision in C-257/14 further clarifies that *"Article 5(3) of Regulation (EC) No 261/2004 /…/ must be interpreted as meaning that a technical problem, such as that at issue in the main proceedings, which occurred unexpectedly, which is not attributable to poor maintenance and which was also not detected during routine maintenance checks, does not fall within the definition of 'extraordinary circumstances' within the meaning of that provision."*[135]

It is important that consumers are aware that the "right to care" applies in all circumstances, irrespective of the reason for the delay or cancellation and "exceptional circumstances" can only be invoked with regards to compensation.

The questionnaire sought to examine the type of issues in the APR cases dealt with by ECC-Net that arise most frequently. Both in consumer ECC cases and in trader ECC cases delays and cancellations are the most common overall, while denied boarding is rarely subject to consumer complaint.

The lines can be blurred between **delays** and **cancellations** as there is no fixed timeline when a delay amounts to a cancellation. There is also the indicator where the flight number is changed and then it is a cancellation. ECC UK notices that airlines based in the United Kingdom rarely actually cancels flights but instead have long delays.

The ruling of the EUCJ is very clear on long delays – like in case of cancellation – they give rights to compensation.

Luggage issues and **problems with intermediaries** are very common in some countries while other countries receive a lower amount of cases on this subject.



134 Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62010J0294:EN:HTML

135 Full Judgment http://curia.europa.eu/juris/document/document.jsf?text=&docid=167942&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=420867

The issues the ECC experience in consumer cases are visualized in the graph below. 1 being the most common and 5 being the least common in the view of ECCs.

Consumer ECC	Delay	Cancellation	Luggage	Intermediaries	Denied Boarding
CR	1	2	3	4	5
NO	1	4	2	3	5
LI	1	3	2	4	5
NL	1	4	2	3	5
AU	2	3	4	1	5
HU	1	3	2	4	5
LV	2	1	4	3	5
CY	2	3	1	4	5
GR	3	2	1	4	5
SE	1	2	3	4	5
CZ	1	3	2	5	4
DK	1	2	4	3	5
FI	1	2	4	3	5
UK	1	5	3	2	4
IC	1	2	3	4	5
RO	1	2	3	4	5
BE	1	2	4	3	5
IE	3	4	2	1	5
LU	1	2	3	4	5
MT	4	3	1	2	5
PO	2	3	1	3	5
SL	1	4	3	2	5
PT	1	2	4	3	5
IT	1	2	3	4	5
BU	4	4	3	2	2
ET	1	2	4	3	5
FR	1	3	4	2	5
DE	1	4	2	3	5
SK	1	3	2	5	4
ES	1	3	2	5	4

Table 7.1. The most common issues the ECC experience in consumer cases.

7.1.1 Strike as extraordinary circumstance

Regulation (EC) 261/2004 dispenses the air carrier of some of his duties in case of extraordinary circumstances. However, the regulation does not provide any definition of what should or should not be considered an extraordinary circumstance. The CJEU has specified this issue to a certain extent but questions still remain, such as regarding strikes for example.

Strikes in the air transport are a common event which can affect more or less heavily the air traffic and then cause disruption for consumers such as delays or cancellations.

The Regulation (EC) 261/2004 does not give any specific rule concerning strikes and if and how they should be considered with regard to extraordinary circumstances. Court rulings in the member states depend on the national jurisdiction, national law or positions of the NEB.
The ECC-Net therefore organised a small questionnaire on this topic to which 24 ECCs answered.

The result shows that the positions are quite different from one country to another. In most countries, a strike is clearly considered as an extraordinary circumstance. In 8 countries, the jurisdictions or the law provides a difference of treatment depending on the origin or reasons of the strike. For example, an internal strike of the company's staff would be considered to be under the company's control resulting in, it not being qualified as an extraordinary circumstance. On the contrary, if the strike originates from external personal such as the air controllers or follows or a decision from the Government, it would be considered as extraordinary circumstance (as outside the company's control).

In Denmark, it will depend on the information given prior to the strike and its predictability. An announced strike will not be considered as an extraordinary circumstance, the airline having the time to find solutions.

In any case, the current situation is not satisfactory as it leads to a difference of treatment depending on the country where the consumer will start the judicial action and may cause situations of "forum shopping".

For example, if a French consumer suffered a cancellation of his flight from Paris to Berlin with a German company because of a pilot strike, he will be able to choose between recourse in Germany or France. The consumer will probably chose the second option as in France he will have the hope that the court considers the strike as a non-extraordinary event for the company, while in Germany, thanks to the Supreme Court decision, it will be impossible to get any compensation as the strike, even from the company's pilots' initiative is considered as extraordinary.

7.2 Denied Boarding

Denied Boarding is governed by Regulation (EC) 261/2004 and occurs when there are not sufficient seats for all the passengers who are booked on the flight. Article 4 sets out the procedure to be followed in such circumstances. The air carrier must call on passengers to volunteer their seats to other passengers. If volunteers come forward they are entitled to a sum of money or other benefits to be agreed between the air carrier and the passenger. They must also be assisted in accordance with Article 8, which means a choice between reimbursement and re-routing.

However, if enough people do not volunteer their seats, the airline may deny passengers from boarding the flight against their will. In this case, consumers are entitled to reimbursement of the ticket price or rerouting. If the consumer chooses the latter, the airline should provide them with adequate care such as meals, refreshments, telephone calls and overnight accommodation if required. In both cases, the consumer will be entitled to monetary compensation, the amount of which is determined by the distance of the flight.

It is important to note, however, that the above rules will not apply when an airline has reasonable grounds to refuse boarding to passengers. This encompasses health, safety or security concerns.

A distinction must then be made between those consumers who are denied boarding due to overbooking and those who are not allowed to board either as a result of invalid documentation or not leaving sufficient time to check in.

It is clearly stated in the terms and conditions of most air carriers that it is entirely the passenger's responsibility to ensure that they are in possession of the necessary documentation. This includes items such as acceptable forms of photographic ID, passports, visas, transit visas.

Consumers should be aware that whilst certain identification documents may be acceptable for public authorities in charge of border control, it is possible that particular forms of ID will not be accepted by the airlines on which they intend to fly. This is because the checks carried out by both differ in their objectives and the technical means available. However not in all cases the refusal of certain ID is justified. It is advisable that consumers read the terms and conditions carefully to see what forms of identification are specified by the airline.

7.3 Claims for Consequential Damages

In the CJEU's preliminary ruling C-344/04 IATA v Department of Transport,[136] it distinguished between individualized and standard damage as a result of delays stating that whilst excessive delay will cause damage that is almost identical for every passenger, passengers are liable to suffer individual damage inherent in the reason for travelling. Redress for individual damage requires a case-by-case assessment of the extent of the damage caused.

As a result of the volcanic ash disruption ECC-Net received numerous complaints from consumers in relation to additional expenses which they incurred as a result of flight delay or cancellation. Whilst Regulation (EC) 261/2004 entitles consumers to free accommodation, refreshments, phone calls etc., frequently consumers will experience other types of damage such as the cost of missing work, days of their holidays, pre-booked accommodation or events.

Articles 19 and 22.1 of the Montreal Convention state that air carriers are liable for *"damages occasioned by delay"* in the carriage of persons or luggage up to a maximum threshold of 4, 694 SDR. However, an airline may not be liable if, *"it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage, or that it was impossible for it or them to take such measures."*

Despite this, it is ECC-Net's experience that it is difficult for consumers to achieve such damages in an amicable, out of court setting as the Convention does not stipulate what types of damages are recoverable.

7.4 Other air-related queries

7.4.1 Airport taxes and fees

The question of airport taxes becomes relevant in cases where consumers have a flight ticket but doesn't make use of it. In those cases consumers has the right to be reimbursed the recoverable taxes. In most countries there are only statutory airport taxes. Cyprus and Poland, however, states that these countries only have private taxes, while Hungary, Denmark, Portugal and Bulgaria have both private and statutory airport taxes.

In Germany and Sweden the airline can impose private fees but it is unclear how these differ from taxes. United Kingdom and Ireland states that the local airport can impose taxes directly on the consumer.

The taxes and fees the airlines impose on the consumers through the tickets vary in name and size. The average consumer will not even notice what kind of taxes they pay for and for which reason or who is getting the money in the end. Nothing conclusive can be said of which taxes and fees are recoverable and which are unrecoverable based on their name. In general taxes and fees that are being triggered by the consumer actually taking the flight are usually recoverable.

Some airlines use the term taxes and fees as a supplementary charge to the ticket price in order to compete in price, these charges are not recoverable. What can be said conclusively is that there is no uniform or homogenous use of the terms taxes and fees in the EU, Norway and Iceland. It is unclear which taxes that are recoverable and which is unrecoverable for the consumer buying the ticket, and the consumer must rely on the information given by the airline. Furthermore in practice some airlines take a fee of approximately 50 € per ticket to pay the consumer of the recoverable taxes.[137]

The issues mentioned in CPC report on airlines' taxes[138] from 2009 still appear to hold true.

136 See: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62004J0344:EN:HTML

137 In France, article L 121-118 of the Consumer code foresees that in case the consumer didn't take the flight, airport taxes have to be reimbursed within 30 days after receiving the consumer's demand. Administrative fees cannot be higher than 20% of the amount to be reimbursed. In case the consumer submitted his claim online, no fee can be applied. http://www.legifrance.gouv.fr/affichCode.do;jsessionid=1B5139BA6AA3AF6CC42D17D0D1E2A68A.tpdila11v_2?idSectionTA=LEGISCTA000031052533&cidTexte=LEGITEXT000006069565&dateTexte=20151019

138 http://ec.europa.eu/consumers/enforcement/docs/airline_charges_report.pdf. See also 2012 ECC-Net report "The Cost of Paying" available at http://www.eccireland.ie/wp-content/uploads/2013/07/Study_On_Currency__Payment_Card_Fees.pdf

7.4.2 Extra charges on payments with credit or debit cards

According to several legislations it is not allowed to charge a fee for using a card. The questions concerned how the Directive 2007/64/EC (Art.52 pt. 3) was implemented in the countries and if it was forbidden or restricted to charge the consumer for payments made with credit or debit cards.

Country	Can consumers be charged for paying with credit or debit cards	Can consumers be charged for using other means of payment
BE	YES	YES
CR	NO	YES
FI	YES	YES
DE	YES	YES
LX	YES	YES
NL	YES	YES
PO	YES	YES
SE	NO	NO
UK	YES	YES
NO	NO	YES
IE	YES	YES
AU	NO	NO
BU	NO	NO
CZ	YES	NO
CY	NO	NO
DK	YES	YES
EE	YES	YES
FR	NO	NO
GR	NO	NO
HU	NO	NO
IC	NO	NO
IT	NO	NO
LV	NO	NO
LU	YES	
MT	YES	NO
PT	YES	
RO	NO	NO
SK	NO	NO
SL	YES	NO
ES	YES	NO

Table 7.2 Country overview regarding fees and bank charges. Grey indicates that fees can be imposed but only if this reflects additional cost for the trader.

16 ECC countries replied that the trader can impose additional costs if the consumer chooses to pay by credit- or debit card. The ECC countries marked with yellow, however, specify that the cost may not exceed the real cost the trader incurs caused by the transaction.

Germany specifies that they have no restrictions but on the base of the German transposition law of Article 19 of Directive 2011/83/EU, an agreement obligating a consumer to pay a fee for the use of a certain means of payment to fulfil his/hers contractual obligations is ineffective if:
- no customary and reasonable payment method is available to the consumer that is free of charge,
- the fee agreed exceeds the cost borne by the entrepreneur for the use of such means of payment.

In France the law does not allow traders to charge a fee for a specific payment method. If the traders want to encourage consumers to use a specific means of payment or a credit card rather than another, they can propose a rebate but not apply a fee.

14 of the ECC countries have answered that the trader may not impose additional fees for paying with credit- or debit cards. . In Lithuania it is not forbidden, but it is limited. The fee must not be bigger than trader's obligations to the bank that gave the trader a possibility to accept cards. In Denmark extra fees are allowed for e-commerce purchases and if the product is purchased on the premises the trader is allowed to charge for payments by credit cards but not for debit cards. Ireland has not implemented the option in Article 52(3) to forbid or limit the right to impose a payment fee.

Can the consumer be charged for using another payment method?

16 ECC countries replied that the consumers cannot be charged for using other means of payment, whereas 12 ECC countries have replied that it is possible for the trader to charge the consumer for using other means of payment.

In Austria generally, a surcharge for any payment method is forbidden according to §27(6) ZaDiG. However, it is allowed to give a discount on a specific method, even though the outcome is the same.

On the base of the German transposition law of art. 19 of Directive 2011/83/EU an agreement obligating a consumer to pay a fee for the use of a certain means of payment by way of fulfilling his contractual obligations, is ineffective if no customary and reasonable payment method is available to the consumer that is free of charge, or the fee agreed exceeds the cost borne by the entrepreneur for the use of such means of payment.

In Sweden, it is forbidden to charge a payment fee for using a card, but it is legal to charge a general administrative fee as long as it is not only levied for card payments.[139]

In Denmark consumers will not be charged for paying with cash. As most APR-cases are distance selling (e-commerce), there are rarely any other payment methods than credit- and debit cards.

Companies in Finland can levy a separate surcharge for using a method or means of payment, if at least one commonly used method of payment is offered without a surcharge. The surcharge must be reasonable, and it must correspond to the real costs incurred by the company for the use of the method of payment. The imposition of a surcharge must be stated clearly in advance in the same connection that the acceptability of the method or means of payment is stated. A surcharge can be billed in cases such as: when a consumer asks that instead of paying in cash, a bill should be sent to the consumer's home. Or when the consumer opts for credit card payment instead of payment by debit card.

ECC Malta have never seen cases where the consumer was charged when paying for instance by cash or cheque.

Polish law allows charging consumer for using specific method of payment, eg. money transfer.

Companies in UK are only allowed to charge differently for using different payment methods if this reflects additional costs to them. Quote from the legislation: *"A trader must not charge consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of that means"*. In practice, the airlines tend to apply additional small charges to payments made with credit cards (as opposed to debit cards).

139 Lag (2010:751) om betaltjänster.

7.5 Return/one way flights

It is important that consumers are aware of that their entitlements will differ depending on whether two flights are made as one booking or not. Many of the low cost or low fare airlines operate as "point to point" airlines such that consumers may not book two consecutive flights during one reservation. As such two separate contracts are in existence and if consumers miss their subsequent flight, the airline is not obliged to ensure that they reach their final destination.

In contrast, however, if both flights are from the one booking, the consumer should remain under the care of the air carrier until they reach their final destination. In these instances, all of the entitlements derived from Regulation (EC) 261/2004 will apply.

Another problematic issue for consumers is the practice whereby airlines insist that the ticket must be utilised in the sequence in which it was booked. For example, it is common that if the outbound leg of the flight is not used, that the return leg will become invalid. Airlines claim that such a policy is implemented where the price of return tickets are lower than the price of one-way tickets, so as to prevent consumers from booking flights which they will not actually use. This practice will often form part of the airlines terms and conditions of transport, or rules attached to the fare paid. Unless the consumer can prove that they were provided with no information prior to purchase, this term will be incorporated into the contract.

Nevertheless according to Directive 93/13/EEC, on unfair terms in consumer contracts, a contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. Terms which are found by a national court, tribunal or competent administrative body to be unfair under the Directive are not binding on consumers.

It is in this context that the German Federal Consumer Protection Association (Bundesverband der Verbraucherzentralen) sued both BA and Lufthansa and the BGH in case Xa ZR 5/09. Whilst acknowledging that airlines have a legitimate interest in protecting their tariff structures, the German Supreme Court found that the policy could have been achieved by more proportionated means (e.g. a surcharge for not having used a coupon for a flight segment). To completely ban the passenger from further contractual services was disproportionate and against the principle of good faith as the provisions in question made no distinction on whether the passenger deliberately booked more segments than required or left coupons unused for justified reasons.

Whilst this decision has no legal value in other countries, it is to be welcomed. As a result, Austrian airlines and Lufthansa changed their terms and conditions; such that passengers may now use the remaining segment of the flight but must pay the differential between the cost of the return flight and a one-way ticket.

7.6 Booking intermediaries

More and more consumers book their flight tickets over the internet from online travel agencies, intermediate booking platforms or price comparison websites. Using an intermediary may create additional difficulties for passengers when faced with a problem related to the purchase of their flight or a refund related to it.

Indeed, according to the Directive 90/134 on package tours, intermediaries or agencies which sell transport alone do not have any responsibility in case of problems with the flight service (cancellation, delay etc.).

While it is understandable that the agency has no control on delays and flight cancellations due to air carriers, the ECC-Net noted that many of these agencies and other sales intermediaries wrongly think that they are exempt from any liability even when the problem concerns the booking or the ticket management (modification, booking error due to the agency, etc.).

At a time when this booking mode intensifies, it seems more and more crucial that the role of each of these stakeholders is clarified, especially for the consumer who often finds himself the victim of this lack of clarity.

The European Commission launched a public consultations in September on platforms, online intermediaries, data, cloud computing and the collaborative economy.[140] This consultation seeks evidence and input for the Commission's comprehensive analysis of the role of online spaces where providers and users of content, goods and services can meet. It will specifically explore how far and in what way online intermediaries should be responsible, and what duty of care intermediaries may have towards their users.

ECC	Important administrative fees to be paid besides the ticket price	Banking fees to be paid including debit and credit card fees (see above)	Reimbursement of airport taxes	Modification of the ticket due to the consumer having made a mistake in the destination or the dates	Modification of the ticket due to the intermediary having changed the destination or the dates	Modification of the ticket due to the consumer having inverted name and first name	Modification of the ticket due to the intermediary having inverted name and first name	Refund of the ticket to be processed via the booking intermediary	Airline needs to inform the consumer about a change in schedule/date, cancellation etc. but the consumer never receives the information
AT	3	1	4	5	7	8	9	2	6
BE	3	7	6	4	5	8	8	1	2
BU	5	2	5	3	2	4	1	3	4
HR	7	6	4	3	5	2	1	8	9
CN	5	4	1	7	9	6	8	3	2
CZ	5	4	3	6	7	9	8	2	1
DK	9	8	1	4	5	6	7	3	2
EE	-	-	-	2	-	-	-	1	-
FI	-	-	4	3	2	-	-	1	5
FR	1	6	5	7	9	8	3	2	4
DE	1	2	4	6	7	9	8	3	5
GR	8	8	4	1	2	7	8	3	5
HU	*	*	2	5	6	3	*	1	4
IS	1	-	2	4	5	-	-	6	3
IE	2	7	8	1	3	6	9	5	4
IT	3	4	9	6	8	2	7	1	2
LV	1	-	3	-	5	-	-	2	4
LT	4	9	5	2	8	6	7	1	3
LU	7	1	6	3	2	8	9	4	5
MT	8	9	5	1	6	2	7	4	3
NL	8	9	4	5	6	1	7	3	2
NO	5	8	9	1	4	2	3	6	7
PL	8	7	9	6	5	1	4	2	3
PT	5	6	7	1	2	8	9	4	3
RO	7	1	8	2	6	3	9	5	4
SK	9	3	1	2	8	7	6	4	5
SI	6	9	1	8	5	7	4	2	3
ES	9	7	8	2	4	1	3	5	6
SE	6	5	3	2	9	8	7	1	4
UK	2	1	7	3	5	8	9	6	4

Table 7.3 Importance of issues related to travel intermediaries in complaints received by ECCS (1 is most important and 9 least important)
*Means that no complaints were related to this issue during the relevant period (2014-2015)

140 The consultation on geo-blocking and other forms of geographically-based restrictions will gather opinions on unjustified commercial barriers which prevent from buying and selling products and services within the EU. It covers, for example, customers who are charged different prices or offered a different range of goods depending on where they live, but it does not cover copyright-protected content and content licensing practices. The second consultation will look at the economic role of online platforms, which include, for example, search engines, social media, video sharing website, app stores, etc. It will also explore the liability of intermediaries as regards illegal content hosted online and how to improve the free flow of data in the EU and to build a European Cloud. It will look as well into the possibilities and potential issues raised by the rise of the collaborative economy. http://europa.eu/rapid/press-release_IP-15-5704_en.htm

When it comes to booking intermediaries the main problem area for European consumers seem to be receiving refund of the ticket, the least common issue is change of name on the tickets. When looking at all results, the list of problems is as follows:

1. Refund of the ticket to be processed via the booking intermediary (airlines usually refund the intermediary who then should reimburse the consumer).
2. Modification of the ticket due to the consumer having made a mistake in the destination or the dates.
3. Airline needs to inform the consumer about a change in schedule/date, cancellation etc. but the consumer never receives the information.
4. Reimbursement of airport taxes.
5. Modification of the ticket due to the intermediary having changed the destination or the dates (sometimes when the consumer changes something in the research function, this may happen).
6. Banking fees to be paid including debit and credit card fees (See above).
7. Important administrative fees to be paid besides the ticket price.
8. Modification of the ticket due to the consumer having inverted name or first name.
9. Modification of the ticket due to the intermediary having inverted name and first name.

An ongoing case pending at the Danish second instance court will hopefully clarify the intermediaries' responsibilities under Danish law.

On Denmark 3 May 2012 the airline Cimber Sterling went bankrupt. Many consumers had tickets to their flights purchased through an intermediary, Den Danske Rejsegruppe, branch office of Svenska Resegruppen AB.

It is estimated that the Danish ADR has more than 800 cases pending in relation to this intermediary and similar cases, awaiting the judgement of the second instance court.

Example of a consumer complaint: *A consumer had the case tried at a first instance court*[141]*to determine whether the intermediary was responsible for the incurred losses. The consumer claimed to have contracted with the intermediary and not the airline directly. The intermediary claimed that they were not responsible and stated that in the 'footer' of their website they had expressly stated that they only act as an intermediary and that "they do not contract on their own behalf". He was under the impression that he contracted with the intermediary. The consumer did not look further into the case and legal status of the booking site as the price was relatively low.*

Under Danish law an intermediary is the direct contract party if the customer, based on an overall assessment, is rightfully under the impression that the intermediary acts on their own behalf and gives the impression that they are the contract party.
During the trial the intermediary claimed that the consumer, on several occasions, was made aware that the intermediary only acted on behalf of the airlines. The first instance court reached the conclusion that the intermediary had sufficiently made the consumer aware that they only acted as an intermediary on behalf of the airline. After the consumer lost the case, the Danish consumer Ombudsman (CPC) was granted permission to represent the consumer in the court of appeal.

The Consumer Ombudsman states that their assessment is that the consumer has had reason to believe that he contracted with the intermediary. The Ombudman furthermore states, that it is too often unclear who the direct contract party is.[142]

141 Afsagt den 2. januar 2014 i sag nr. BS 2A-1449/2012

142 http://www.forbrugerombudsmanden.dk/Nyheder-fra-FO/Pressemeddelelser/Forbrugerombudsmanden-gaar-ind-i-sag-om-ansvar-ved-flykonkurs?tc=4F11B2F9F5F74EC586F562EE592E995C The case will be tried in court 20-21 October 2015 and the decision will be finalised after 4 weeks in general. This can however, be derogated if the court the circumstances requires it.

Problems during the procedure of booking often concern lack of information about the conditions of the transport or the sale of the ticket.

The agency or intermediary generally refers to the conditions of the carrier in respect of the cancellation policy, modification or claim. Unfortunately consumers do not always understand that these conditions may differ from those of the website where they bought their tickets. They may find themselves with two sets of terms and conditions, sometimes incompatible.
For example, site conditions do not always indicate the status of the ticket, flexible ticket or not. Moreover, the ECC-Net observed that the luggage information, stating if luggage is included or not in the ticket price, is sorely lacking. Some companies offer tickets at low cost but does not include transportation of baggage. Consumers who are unaccustomed to these new conditions do not imagine that the luggage usually included in the price no longer is.

Example of a consumer complaint: *A disabled French consumer booked airline tickets on the site of a French online agency to visit Israel with an Italian company. He booked tickets for himself and a person to assist him during his trip. This person withdrew from the trip and the consumer wanted to change the beneficiary of the ticket to another assistant. Unfortunately, it was non-modifiable tickets, non-cancellable and the only option for him was to buy tickets at full price for the person who was to accompany (1,400 €). The consumer had not been informed about this particularity of the ticket when purchasing it. If he had known, he could have chosen his fare and ticket knowingly.*

Some agencies and online intermediaries tend to charge additional fees without necessarily informing consumers when they are choosing their price: insurance, application fees, fees for paying with certain credit cards etc.
As for the companies, the intermediaries and travel agencies are now forced to transparency on prices of their tickets by Regulation (EC) 1008/2008 [143] and the CJEU case law dating 15th January 2015 (C-573/13).[144]

Advertising must be fair and include all the "predictable" fees (like travel agency fee). The consumer must be in a position to compare prices to be able to choose his provider wisely.

Example of a consumer complaint: *A French consumer booked airline tickets on the site of an online agency based in Germany. The price shown was 400.64 €. The consumer finds that this price is lower than the same ticket on the website of the company that is 100 € more expensive. However, after confirmation of booking and communication of the credit card number, the agency has increased the bill for different sums which the consumer had not consented to: fee for credit card payment taken by the company: 15 €, fee for credit card payment taken by the agency: 53.48 € and travel Insurance: 39 €.*

The price of these flights was the final plus 137.94 €, from 400.64 € to 538.48 €. It had therefore become more expensive than that offered directly on the company's website. ECC Germany intervened in order to seek reimbursement of these amounts that were not included in the contract initially and some of which are contrary to French law (fee for using a card bank). Unfortunately, the professional has maintained that these expenses were planned (even if not included in the price) before the validation and was in accordance with its conditions of sale. Unless the consumer can prove materially the amount initially displayed, the French consumer was therefore unable to obtain reimbursement of those costs.

This is not an isolated case. ECC France faced an increase of this type of tariff drift and the opacity of information at the time of booking seems to be the rule in many cases.

143 Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community

144 Judgment of the Court (Fifth Chamber) of 15 January 2015. Air Berlin plc & Co. Luftverkehrs KG v Bundesverband der Verbraucherzentralen und Verbraucherverbände - Verbraucherzentrale Bundesverband e. V. Reference for a preliminary ruling: Bundesgerichtshof - Germany. Reference for a preliminary ruling - Regulation (EC) No 1008/2008 - Air services - Second sentence of Article 23(1) - Price transparency - Computerised booking system - Air fares - Indication at all times of the final price.

Another practice that becomes recurrent in some agencies is that consumers choose a trip on the website; they continue the booking process until the confirmation and fill in the bank details. But they do not generally see a small statement that the confirmation of their booking and the fare will arrive later. A day or two later, they receive an email from the agency explaining that the carrier's tariff increased between time and the price is increased by 100 €. In some agencies or intermediary sales, the consumer may be able to simply give up his journey with no fee, but in others more indelicate, it gave a new fee amount without asking their opinion or without providing an undo option.

This happens generally when booking and payment has not been made directly via the common base booking (BSP system set up by IATA, International Air Transport Association), but that the agency «manually» booked tickets for the consumer directly on the company's website. On the bank statement, there is not only one withdrawal on behalf of the agency, but several: one taken by the company being in direct contact with the consumer and the booking fee collected by the Agency. Given the time needed to enter the reservation of the customer on the website of the company (since this step is not simultaneous with online booking for the consumer on the agency's website), sometimes the airline just changed the price at that time, which explains the price increase which comes as the consumer thought his book was valid in the state at the mentioned price.

This type of manipulation is also a problem when consumers communicate an e-banking card number that can only be used once. Indeed, with this booking system, the payment is made in two stages: the payment of tickets on the company's website and the payment of agency fees. Now the consumer thinks in good faith that there will be one payment and usually, the map naturally blocks when the agency wants to make booking tickets on the company website. The situation becomes complex for the consumer who is then forced to again provide identifiers bank or misses a deal. The consumer had at no time during the procedure been informed that the use of a disposable credit card was not recommended.

Modifications or absence of booking: who is responsible? The company sometimes anticipates the cancellation of a flight and in accordance with Regulation (EC) 261/2004, it informs the passenger. If this information is made more than 15 days before departure, the company will not be required to pay compensation. Nevertheless, when tickets are purchased via a travel agency or other intermediary, which held inform passengers of these changes and the possible solutions? The agency or the company?

In case of lack of information, we frequently observe that consumers are generally fired from the agency to the airline, each blaming the other: the first alleging that the information obligation under Regulation is the responsibility only of the companies, the latter claiming that it does not have the full details of the consumer to make this information directly and that it is the agency's role as intermediary. Finally, the consumer does not find a solution, nor responsible clearly identified to be compensated.

In case of failure of booking or transmission of the tickets it also happens that the agency or intermediary does not correctly realise their duty as an intermediary whatsoever for booking or validation of subsequent amendments.

Example of consumer complaints: *A consumer purchases on a website of an intermediary a ticket for a trip from Paris to Miami via Madrid. But upon arriving at the airport, the consumer is informed that he is not part of the passenger list. The agency should not therefore have taken the necessary steps with the company to transmit the reservation or to pay the tickets. The error may also come from the company that has not properly taken into account the booking from the agency.*

In any case, the consumer ends up between the two interlocutors without having any way of knowing who is really responsible for this error and must compensate him. The agency or intermediary generally believes that with regard to the purchase of flight only, it has no responsibility and the company, not being directly involved in the booking process, can't check at what level the error has occurred.

Example of a consumer complaint: *A French consumer made a booking on the website of a German travel agency. The trip is scheduled on May 8, 2012. The whole booking process runs smoothly. The bank account is debited from the consumer with the right price. In accordance with the terms and conditions, the booking confirmation is expected within 48 hours. But five days later, the consumer had no confirmation, or any ticket.*

ECC France advised him to go directly to the airline operating the aircraft to check if it had a reservation in his name. Fortunately, the consumer's name was on the passenger list but he had to pay an extra fee to receive the tickets at the airport.

Who must refund in case of cancellation by the airline? According to the rules and in case of flight only, this obligation falls on the airline, but it sometimes refers to the travel agency. The agencies also tend to return the issue directly to airlines as they are liable for cancellations or delays according to the regulation. In the same way as regarding the communication of information, consumers may find themselves without contact or clear identification of the entity he/she must ask to receive the payment of the compensation. Ultimately in these cases the consumers will be left without the compensation to which they are normally entitled to.

Example of consumer complaint: *A French consumer has purchased tickets with an Italian company on the website of a Spanish travel agency. The outbound flight is canceled by the company and it is the agency that informs the consumer. He calls the agency for the reimbursement of the tickets. The agency refers to the Italian company that canceled the flight and according to the Regulation shall pay. The company on the other side indicates to the consumer that the refund application must go through the travel agency because of a practical ground, the reimbursement must follow the same way as the payment procedure. ECC France has attempted to intervene with these two professionals with the help of ECC Italy and Spain. Finally, it is the company that made the repayment after six months of discussion.*

If a consumer wishes to cancel a flight itself or does not show up for boarding, he/she is still entitled to the refund of airport tax. In case of cancellation of a reservation, the air company is no longer liable to pay the airport tax for passenger and it must be returned to him in full. As for flight cancellations by airlines, the consumer will find himself between the travel agency or intermediary and the air company to try to obtain reimbursement of such taxes, each referring the liability for payment or the refund procedure to the other part. In addition, some agencies will withdraw relatively high administration costs and deprive consumers virtually of the reimbursement of the taxes which is due by the law.

Example of a consumer complaint: *A Belgian consumer had to cancel a flight with a French agency. It primarily addressed his request for refund of airport tax to the airline. The company tells him how to get that refund; the procedure must be done via the travel agency. The consumer contacted the French agency, but received no response. ECC-network is then seized and ECC France intervened with the agency. The latter finally agreed to do the procedure for reimbursement of taxes. However at the time of repayment, the agency deducted 50 € for administrative costs (provided in the agency's terms and conditions). Finally, the consumer obtained a refund of 2.33 €.*

In all these examples, consumers find themselves hostages of relations between the air companies and agencies that sell their tickets. Each has different agreements regarding the information or refund policy, which maintains confusion and causes additional difficulties for consumers to get out of court enforcement of their rights and even the right to assign responsibility in case of legal action.

7.6.1 Booking directly with the airline

The following infographic show the most common areas of complaints when the consumer has booked directly with the airline. Number 1 being the most common and number 6 being the least.

	Administrative fees to be paid besides the ticket price	Banking fees	Reimbursement of airport taxes	Modification of ticket due to C having inverted name and first name	Refund of ticket	Compensation Reg. 261/2004
CR	2	3	1	1	5	4
NO	4	4	5	1	3	2
LT	3	6	5	4	2	1
NL	5	6	4	2	3	1
AU	6	4	2	5	3	1
HU	-	-	4	3	2	1
LV	4	-	2	5	3	1
CY	5	4	3	6	1	2
GR	5	4	3	4	1	2
SE	5	4	3	6	2	1
CZ	4	3	5	6	1	2
DK	6	5	3	4	2	1
FI	-	-	3	-	2	1
UK	5	6	3	4	2	1
IS	2	-	4	-	1	3
RO	6	1	4	5	3	2
BE	5	4	3	6	2	1
IE	5	4	6	3	2	1
LU	5	2	3	6	4	1
MT	5	6	4	3	2	1
PL	5	5	5	3	1	2
SI	3	5	4	-	2	1
PT	5	6	3	4	2	1
IT	3	5	6	2	1	4
BU	3	3	2	2	4	4
EE	-	-	-	-	2	1
FR	5	4	2	6	3	1
DE	4	5	3	5	2	1
SK	4	2	5	6	3	1
ES	6	4	5	1	3	2

Table 7.4 Infographic showing the most common areas of complaint when the consumer has booked directly with the airline. 1 being the most and 6 being the least common.

Claims for compensation in relation to Regulation (EC) 261/2004 are by far the most common type of complaint to the ECCs. The second most common type of complaint is consumer seeking a refund of the ticket. The questionnaire does not specify on what grounds the consumer seeks a refund. The consumer can rely on a refund according to Regulation (EC) 261/2004 in cases concerning delay or cancellation or seeks a refund on the basis of contract law. In some cases consumers seeks refund as they incorrectly believe that there is a cooling off period, as laid out on other services in the Consumer Right Directive. The third most common area of complaints is reimbursement of airport taxes, which the consumer can claim when the ticket in unused.

In cases where the trader is based in the below mentioned ECC's, these ECCs experience the outcome in general as positive. The claims are either totally or partially resolved. Hungary, Latvia, Finland, United Kingdom, France and Portugal all note that the unresolved cases often arise when the airline claims extra ordinary circumstances.

	Totally resolved	Partially resolved	Partially unfounded	Unresolved	Case still open	Claim unfounded	Other
CR	4	6	7	2	3	5	1
NO	1	2	3	6	4	5	7
LT	6	3	2	1	7	4	5
NL	4	1	5	2	6	3	-
AU	1	3	2	5	7	4	6
HU	3	2	-	1	4	6	
LV	2	3	1	4	7	5	6
CY	2	1	4	3	7	5	6
GR	2	1	4	5	6	5	-
SE	1	2	3	6	4	5	-
CZ	3	1	2	4	5	6	-
DK	2	1	4	6	3	5	7
FI	5	2	3	1	-	4	
UK	2	4	3	1	6	5	7
IS	1	2	3	-	-	-	-
RO	4	1	2	3	5	6	7
BE	2	4	5	1	3	6	-
IE	3	2	1	5	6	4	-
LU	2	5	4	3	1	6	7
MT	3	2	6	1	4	5	7
PL	2	2	4	4	2	5	-
SI	2	1	6	3	4	5	-
PT	3	4	5	3	2	1	6
IT	3	2	4	1	6	5	-
BU	2	3	3	6	5	6	-
EE	-	-	-	-	-	-	-
FR	1	2	3	4	5	6	7
DE	3	2	1	5	6	4	7
SK	-	-	-	-	-	-	-
ES	4	1	3	2	5	7	6

Table 7.5 Infographic showing the outcome in cases where the trader is based. 1 being the most and 7 the least common.

In cases where the consumer is a resident in below mentioned ECCs countries, the most common outcomes are positive as well, as the ECCs experience that most cases are fully or partially resolved. [145]

	Totally resolved	Partially resolved	Partially unfounded	Unresolved	Case still open	Claim unfounded	Other
CR	4	6	7	2	3	5	1
NO	2	1	3	5	4	6	7
LT	7	3	2	1	7	4	6
NL	5	1	3	2	4	6	
AU	2	1	6	3	4	7	5
HU	3	2	4	1	5	6	
LV	1	2	5	3	7	6	4
CY	3	1	6	2	4	5	7
GR	2	1	3	6	6	6	
SE	2	1	3	6	4	5	
CZ	4	1	2	3	5	6	
DK	1	3	4	2	6	5	7
FI							
UK	3	4	2	1	6	5	7
IS	1	2		3			
RO	5	4	2	1	6	3	7
BE	2	3	4	1	5	6	
IE	2	1	4	3	5	6	
LU							
MT	3	4	6	5	1	2	7
PL	3	2	4	4	2	5	
SI	2	1	3	4	5	6	
PT	2	3	5	1	4	6	
IT	4	1	3	2	5	6	
BU	4	4	3	4	4	3	
EE	6	5	4	2	3	1	
FR	4	3	5	2	1	6	7
DE	3	1	2	5	4	6	7
SK	4	1	2	3	5	6	7
ES	5	1	3	2	4	7	6

Table 7.6 Infographic showing the outcome in cases by countries where the consumer is based. 1 being the most and 7 the least common.

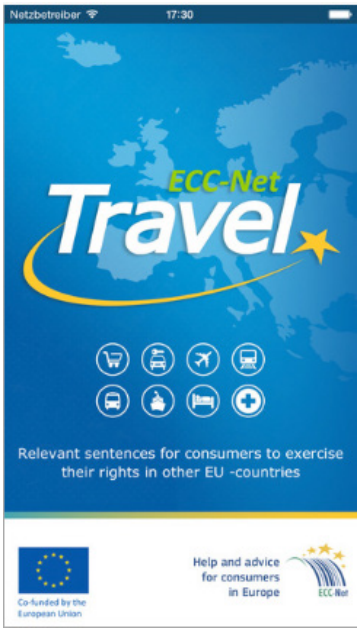
145 Portugal and Denmark notes that in cases where the NEB can render a decision, the consumer can be advised to contact the NEB instead of using the ECC-network. This is applicable to Portugal if the NEB are not the Portuguese NEB, because in the cases shared by ECC-Net, ECC Portugal send the cases directly to the Portuguese NEB, when competent.

8. Conclusion

and Recommendations



Consumers can receive very good information through different information campaigns and by different travel apps about air passenger rights.[146]



But you can be as good informed as you want to be; as long as you will need to go to court to get your rights respected, you are not helped. If this is the case, the consumers will lose trust in EU legislation and for the enforcement mechanism in Europe as a whole.

146 The European Commission has launched an application for smartphones which covers air and rail transport and works on four mobile platforms. http://europa.eu/rapid/press-release_IP-12-738_en.htm The ECC-Net has also launched an ECC travel app.

The purpose of this report is to present a statistical overview of the complaints relating to air travel received by ECC-Net and to investigate whether air carriers respect relevant EU legislation, focusing on whether or not consumers really get the compensation they are entitled to and at what costs.

According to the ECC-Nets statistics and the compiled answers from the questionnaire the areas where the consumers face most problems are issues regarding delayed and cancelled flights. There are also issues regarding luggage but not to the same extent as the other issues.

The lack of awareness of the rights and procedure rules among consumers and the lack of compliance with the air passenger rights among some airlines are maybe some reasons, why there is a growing industry for organisations and companies helping consumers to seek redress.[147] The lack of compliance with the compensation rules in Regulation (EC) 261/2004 has more or less created a new business model. This is a consequence of the fact that some airlines do not comply with the existing passenger rights, nor follow decisions in various transport and consumer dispute boards.[148]

This is a new type of business that has not been seen before in other sectors: companies taking on claims for a percentage of the eventual outcome of the case. Seeking redress by using these companies shows:

- Consumers do not receive the full compensation they are entitled to, as the private claim company takes a fee of 20 % – 33 %.
- The majority of the companies only help consumers with issues regarding Regulation (EC) 261/2004 so consumers can miss to receive what they really are entitled to.
- In addition, the airlines have to pay both compensation to air passengers when they receive a positive verdict in court, and also pay the legal cost for the private claim company's staff involved. Many airlines resign, equally automatically, to avoid costly legal proceedings.

Handling these kinds of cases through private claims companies is often leading to losses for both consumers and airlines. The increased costs imposed on airlines will maybe in the end lead to higher prices on flight tickets.

But there is also a useful point of view where these companies can have an added value for consumers. In cases where the ADR concludes that the consumer is entitled to money that the airline refuses to pay, there is a value of using private claims companies, if consumers do not want to take the case to court themselves.

If the consumers were better informed about their rights, knew how to exercise their rights and enforcement regarding these issues would work better, there would be no need for private claims companies and court procedures could focus on further developing the core law.[149]

The ECC-Net cannot emphasise enough the importance of enforcement and that all Member States take action against airlines that do not comply with Regulation (EC) 261/2004 or with the ADR decisions in favour for the consumer.[150]

147 http://www.dinside.no/934197/skal-du-velge-airhelp-eller-transportklagenemnda (In Norwegian). "- These companies have emerged because some saw the opportunity to create an income-generating product, based on that they submit claims they assume - and I emphasize guess - that air passengers are entitled to. So they take a share of the payout and sticking into their own pocket, says the head of Transportklagenemnda (Dispute Resolution Board/ Norwegian NEB) Rolf Forsdahl who is critical of the trend."

148 Floodgates open for flight delay claims, Article in the Guardian 19 September 2015. http://www.theguardian.com/money/2015/sep/19/flight-delay-claims-compensation-airlines-passengers

149 Legal threat is key to facilitating flight delay payouts. "More than half of legitimate compensation claims made by passengers for flight delays were paid only after the airlines were threatened with legal action, an analysis reveals..." http://www.thesundaytimes.co.uk/sto/business/money/Consumer/article1605603.ece. Airlines take fright, http://www.thesundaytimes.co.uk/sto/business/money/Consumer/article1593412.ece

150 The Swedish consumer magazine Råd & Rön publishes a "Blacklist" which is very well known in Sweden about companies that do not respect the ADR decisions. http://www.radron.se/svarta-listan/?ind=10

It is extremely important that the national authorities th at are legally responsible for overseeing and enforcing EU passengers' rights at national level join forces to improve the compliance and respect for the legislation on air passenger rights. Laws are to be respected and competition must be on equal terms. Airlines that abuse the law should not have competitive advantage, by not paying compensation to air passengers who are entitled to it by law.[151] It is important that airlines handle their passengers' complaints seriously and respect the air passenger rights mentioned in Regulation (EC) 261/2004 and the CJEU case law. Otherwise they will continue to man up for private claims companies and court procedures. This is of detriment to both consumers and airline companies.

But airlines are not the only contractual partners in this context as more and more consumers use booking intermediairies. To overcome problems during the procedure of booking, travel agencies and other intermediaries selling flight ticket should at time of booking clearly inform consumers about all the conditions of the ticket or offer a direct link to the airline website for complete information on the terms and conditions (flexibility, luggage included, stops, etc.).

The proposal to revise the Regulation (EC) 261/2004 allowing the communication of consumer's personal data to companies, with their agreement is a first step of improvement. Further improvements could be that the entity which is in charge of the information should be clearly defined in the text and the means of communication clearly implemented to ensure that important information is coming to the consumer in accurate times.

Due to the severe impact that for example a schedule change may have on passengers, particularly to the extent that they miss their flight, it would be advisable to have a greater protection for passengers faced with flight schedule changes, regardless of whether the departure time is brought forward or postponed. Passengers should be immediately informed of the rescheduled departure time and have the express right to cancel their ticket if required. Both the European Parliament Committee on Transport and Tourism (EP TRAN)[152] and the Committee on the Internal Market and Consumer Protection (IMCO)[153] reports proposed amendments extending protection to passengers whose departure times have been brought forward by an airline.

Booking intermediaries, such as online travel agents, should also have an explicit obligation to inform passengers immediately when they are made aware of a schedule change/cancellation/long delay. Consumers have reported instances in which they were only informed of the changes at very short notice, in circumstances where the carrier had passed the relevant information to the intermediary months previously. This greatly limits a passenger's ability to cancel and search for affordable alternatives, and make the necessary arrangements for other contracts connected with their trip.

In order to achieve the best possible results for consumers in the air passenger rights area, there is a clear need for improvement concerning the cooperation between consumers and airlines, airlines and the ECC-Net, national consumer protection authorities, ADRs and between the NEBs. ECC-Net continuously strives to encourage and enhance communication and co-operation with all stakeholders involved. Only a coherent system based on all involved parties will guarantee strong air passenger rights and strengthen the trust in EU legislation.

151 Floodgates open for flight delay claims, Article in the Guardian 19 September 2015. http://www.theguardian.com/money/2015/sep/19/flight-delay-claims-compensation-airlines-passengers

152 Proposal EP TRAN, http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2014-0020&language=EN&mode=XML

153 Opinion of the Committee on the Internal Market and Consumer Protection (IMCO), http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2014-0020&language=EN&mode=XML#title3

Annex 1.

Draft questionnaire for ECCs

Part 1

Main areas of complaint

1. We will ask the Commission for IT-Tool statistics **but from your feeling as consumer and trader ECC which are the most common areas of complaint in the APR sector?** *Please rank from 1 to 5, 1 being the most common.*

- **As consumer ECC**
  - Delay
  - Cancellation
  - Denied boarding (also due to identification papers, if this is a major problem for your ECC, please specify in the comment box)
  - Luggage issues (damage, loss, delay etc.)
  - Intermediaries/booking portals (price and service fees, technical problems during booking process, consumer being played ping pong with between portal and airline if something goes wrong)

Comment

- **As trader ECC**
  - Delay
  - Cancellation
  - Denied boarding (also due to identification papers, if this is a major problem for your ECC, please specify in the comment box)
  - Luggage issues (damage, loss, delay etc.)
  - Intermediaries/booking portals (price and service fees, technical problems during booking process, consumer being played ping pong with between portal and airline if something goes wrong)

Comment

Airport taxes

2. In your country, are there only statutory taxes (or can airports also impose private airport taxes?). This might be an issue if the consumer didn't take a flight and the airline has to reimburse the airport taxes.

- YES: there are only statutory airport taxes
- NO: there are both statutory and private taxes
- There are only private taxes.

Fees/bank charges

3.a According to several legislations it is not allowed to charge a fee for using a card. The question is how the directive 2007/64/EC (Art. 52 pt3) was implemented in your country. Is it forbidden or restricted to charge the consumer for payments with credit- or debit cards?

- YES
- NO

3.b Can the consumer be charged for using another payment method?

- YES
- NO
- If yes for which one? Please specify:

Booking intermediaries

4. Which are the areas of complaint you see most often with regard to booking portals? Please rank from 1 to 9, 1 being the most common. For some of the issues, we have additional questions.

- **As consumer ECC**
  - Important administrative fees to be paid besides the ticket price
  - Banking fees to be paid including debit and credit card fees (see above)
  - Reimbursement of airport taxes
  - Modification of the ticket due to the **consumer** having made a mistake in the destination or the dates
  - Modification of the ticket due to the **intermediary** having changed the destination or the dates (sometimes when the consumer changes something in the research function, this may happen)
  - Modification of the ticket due to the **consumer** having inverted name and first name
  - Modification of the ticket due to the **intermediary** having inverted name and first name
  - Refund of the ticket to be processed via the booking intermediary (airlines usually refund the intermediary who then should reimburse the consumer)
  - Airline needs to inform the consumer about a change in schedule/date, cancellation etc. but the consumer never receives the information

Booking directly at airline

5. Which are the areas of complaint you see most often with regard to booking at the airline directly? *Please rank from 1 to 5, 1 being the most important*. For some of the issues, we have additional questions.

- **As consumer ECC**
  - Important administrative fees to be paid besides the ticket price
  - Banking fees to be paid
  - Reimbursement of airport taxes
  - Modification of the ticket due to the consumer having inverted name and first name
  - Refund of the ticket
  - Compensation payment

Direct contact Trader ECC-airline company

6.a We will ask the Commission for IT-Tool statistics but **from your feeling as trader ECC which is the main outcome of complaint in the APR sector which you have handled directly (no redirection to ADR/NEB)?** *Please rank from 1 to 7, 1 being the most frequent.*

- Claim of the consumer was totally resolved
- Claim of the consumer was partially resolved – compromise
- Claim of the consumer was partially unfounded (for example the compensation claimed by the consumer was too high) but the claim was settled in accordance with the consumer's legal rights
- Unresolved (if you identified "extraordinary circumstances as a main reason for the claim to be rejected, please specify under Comment)
- Still open
- Claim was unfounded
- Other – please specify

Comment

6.b And as a consumer ECC, which is the main outcome of complaint in the APR sector which you have handled directly (no redirection to ADR/NEB)? *Please rank from 1 to 7, 1 being the most frequent.*

- Claim of the consumer was totally resolved
- Claim of the consumer was partially resolved – compromise
- Claim of the consumer was partially unfounded (for example the compensation claimed by the consumer was too high) but the claim was settled in accordance with the consumer's legal rights
- Unresolved (if you identified "extraordinary circumstances as a main reason for the claim to be rejected, please specify under Comment)
- Still open
- Claim was unfounded
- Other – please specify

Comment

Part 2

ADR

1. We will ask the Commission for IT-Tool statistics but **from your feeling as consumer and trader ECC which is the main outcome of complaint in the APR sector which you have transferred to ADR?** *Please rank from 1 to 7, 1 being the most frequent*. We will ask you further questions on your ADR a bit later.

- **As consumer ECC**
  - Claim of the consumer was totally resolved
  - Claim of the consumer was partially resolved – compromise
  - Claim of the consumer was partially unfounded (for example the compensation claimed by the consumer was too high) but the claim was settled in accordance with the consumer's legal rights
  - Unresolved (if you identified "extraordinary circumstances as a main reason for the claim to be rejected, please specify under Comment)
  - Still open
  - Claim was unfounded
  - Other – please specify

Comment

- **As trader ECC**
  - Claim of the consumer was totally resolved
  - Claim of the consumer was partially resolved – compromise
  - Claim of the consumer was partially unfounded (for example the compensation claimed by the consumer was too high) but the claim was settled in accordance with the consumer's legal rights
  - Unresolved (if you identified "extraordinary circumstances as a main reason for the claim to be rejected, please specify under Comment)
  - Still open
  - Claim was unfounded
  - Other – please specify

Comment

2. **From your feeling as consumer and trader ECC which is the main outcome of complaint in the APR sector which you have transferred to NEB (meaning that your NEB does individual redress)?** *Please rank from 1 to 7, 1 being the most frequent*. We will ask you further questions on your NEB a bit later.

- **As consumer ECC**
  - Claim of the consumer was totally resolved
  - Claim of the consumer was partially resolved – compromise
  - Claim of the consumer was partially unfounded (for example the compensation claimed by the consumer was too high) but the claim was settled in accordance with the consumer's legal rights
  - Unresolved (if you identified "extraordinary circumstances as a main reason for the claim to be rejected, please specify under Comment)
  - Still open
  - Claim was unfounded
  - Other – please specify

Comment

- **As trader ECC**
  - Claim of the consumer was totally resolved
  - Claim of the consumer was partially resolved – compromise
  - Claim of the consumer was partially unfounded (for example the compensation claimed by the consumer was too high) but the claim was settled in accordance with the consumer's legal rights
  - Unresolved (if you identified "extraordinary circumstances as a main reason for the claim to be rejected, please specify under Comment)
  - Still open
  - Claim was unfounded
  - Other – please specify

Comment

Your ADR

3.a Are there any changes in your ADR landscape and functioning? If so, please specify which changes need to be implemented for your country to this report.

3.b Do you actively participate/represent the consumer in the ADR procedure, so that the communication is between you and the ADR not the ADR and the consumer directly?

- YES
- NO

3.c Does your ADR allow "collective cases", either by regrouping of several consumers against a same company in one ADR procedure?

- YES
- NO

3.d Or by trying one test case of which the solution will be applicable to all other identical cases?

- YES
- NO

3.e Have there already been collective cases in the APR sector?

- YES
- NO

Your NEB

4.a Please name your NEB

4.b Does your NEB handle individual complaints, meaning that it tries to obtain individual satisfaction to an individual consumer complaint?

- YES
- NO, it only intervenes as an enforcement authority in the collective interest of consumers.

4.c Which sanctions can your NEB impose on the airline?

Comment

4.d Are they published?

- YES
- NO
  - If yes please indicate where?

5. In your country are your ADR and NEB hosted in the same organisation?

- YES
- NO

6. Has the ADR also NEB functions or vice versa?

- YES
- NO

Court procedures:

Small claims

7. Taking an identical case as reference all over Europe, please inform us about the approximate time and cost the consumer will need to support:
"The consumer flew with an EU carrier a distance of less than 1500 km. The flight was cancelled. He was rerouted and arrived at final destination with a delay of 2.5 h. The compensation would be 250 €. The airline refused to pay but didn't argue any extraordinary circumstances. The consumer decides to go to court to enforce his rights."

- **As consumer ECC**

Do you assist the consumer in filing the case in court? For example filling in the forms?

- YES
- NO
  - How much would be the costs of filing this claim in court under the EU small claims procedure?
  - Which is the average duration of a trial in your first instance courts?

- **As trader ECC**

Once the consumer has obtained a judgement in his favour and the consumer ECC informs you about this, will you approach the airline with this judgement to try to obtain settlement so that the consumer does not need to enforce the judgment?

- YES
- NO
  - If no, what would be the reasons? Please specify?

If the airline doesn't settle, the consumer would need to enforce the judgment.

- Who is in charge in your country of enforcing the decision?
- How much would this cost to the consumer?
- By chance do you know the average time the enforcement will take?

Collective redress

8.a In your country, are mechanisms for collective court actions ("group actions") foreseen?

- YES
- NO
- If yes, please specify the type of action

8.b Have collective court actions already been used in the APR sector?

- YES
- NO
- If yes, please specify the type of action
- If yes, if possible, indicate where to find the decisions

Part 3

Private complaint management:

1. Are there private companies registered in your country helping consumers to claim their air passenger rights *(Please fill in one set of question per company)*

1. Name and addres

Scope

2. Targeted consumer countries
3. Regulation 261/2004 only? More (please detail)?

Procedure

4. Are the rules of their procedures published? Where? Please provide a link to their terms and conditions.
5. What are the time limits/duration of their intervention?
6. Only in court or out of court also.
7. If they offer both possibilities, will the consumer be asked before a court procedure is introduced on his behalf?
8. Is there any exclusivity agreement, preventing the consumer to act on his own while the case is with the company?
9. If the consumer signs a contract, especially one with a renewal clause is there a cooling off period? How long?
10. If the contract contains a renewal clause, is there a period in which the consumer can resign from the contract? When is this possible? (ex. 14 days prior to the anniversary of the contract?)

Out of court procedure (if so)

11. Is it a conciliation process only or can an ADR be involved? Which ADR?
12. Are there any costs for the consumer for this out of court procedure (to the agency, the costs for the ADR)?
13. What is the duration of the out of court procedure?
14. What is the nature of the decision (binding, non-binding)?

Court procedure

15. Is the service run by law professionals (lawyers etc.)?
16. Is it necessary to have an authorization/qualification/diploma in your country to represent the consumer in court? And then, which services from these private entities seem not in conformity with your national law?
17. Which are the competent courts in your country for APR cases? Is this information mentioned on the website of these companies? Is this information correct?
18. Does the website of the company indicate the amount of court fees?
19. Does the consumer pay something to the company?
20. Who pays the court procedure? The company or the consumer?
21. What other costs does the consumer has to bare (translation, execution…)? Does the website mention such costs and where?
22. How and when will the consumer be paid the compensation if they win the case, either in court or amicably?
23. Is there already any case law? What is the position of your courts toward the intervention of these types of companies?

Advertisement/Marketing

24. By which means do these companies advertise for their services in your country?
25. What are the marketing arguments?
26. Are the marketing arguments in conformity with the service really provided? Please detail discrepancies. (for example, is it really for free if you consider court costs or other costs)
27. Are they really allowed to advertise in your country (thinking of the professional status such as lawyer or other)?
28. Do their marketing portrays say that it is complicated to use the procedure via the NEB/ADR?
29. Do they mention a "European Union Support"? Or any other official support? Please provide examples.
30. Do you have any case studies that highlight particular problems consumers in your country have encountered in relation to these companies? If so please note them.

2. Consumer body initiatives (please fill in one set of question per initiative)

1. Name and address
2. Targeted consumer countries
3. Scope: regulation 261/2004 only? More?
4. How do they advertise for their services? Are they allowed to advertise? Please provide some examples.
5. Are the rules of their procedures published? Where? Please provide a link to their terms and conditions.
6. What are the time limits/duration of their intervention?
7. Only in court or out of court also.
8. If out of court also, is it a conciliation process only or can an ADR be involved? Which ADR? Are there any costs? What is the duration of the procedure? What is the nature of the decision (binding, non-binding)?
9. If in court: Are they law professionals and do they need an authorization in the consumers country or in your country to represent the consumer in court
10. Which are the competent courts in your country for APR cases?
11. What is the court fee and who pays it? The company or the consumer?
12. What other costs the consumer has to bare?
13. Is there already any case law? What is the position of your courts toward these type of companies?

3. **Are there any industry initiatives (from trade organizations for example) to facilitate consumer complaints in the APR sector?** ***(please fill in one set of question per initiative)***

1. Name and address
2. Targeted consumer countries
3. Scope: regulation 261/2004 only? More?
4. How do they advertise for their services? Are they allowed to advertise? Please provide some examples.
5. Are the rules of their procedures published? Where? Please provide a link to their terms and conditions.
6. What are the time limits/duration of their intervention?
7. Only in court or out of court also.
8. If out of court also, is it a conciliation process only or can an ADR be involved? Which ADR? Are there any costs? What is the duration of the procedure? What is the nature of the decision (binding, non-binding)?
9. If in court: Are they law professionals and do they need an authorization in the consumers country or in your country to represent the consumer in court
10. Which are the competent courts in your country for APR cases?
11. What is the court fee and who pays it? The company or the consumer?
12. What other costs the consumer has to bare?
13. Is there already any case law? What is the position of your courts toward these type of companies?

Search engines

4. **What is the outcome of a google search in your own language for "Delayed flight"?**

- Who is represented with ads?
- What is the top five search results?
- Where do the local ECC turn up, on the first page?

YES

- Top five
- Six - ten

NO

- If no, where. Please specify?

Part 4

Cases / Testimonials

Do you have any case studies that highlight particular problems consumers in your country have encountered in relation to air travel and also with these kind of companies mentioned in part 3? If so please note them here:

List of the ECCs

Help and advice for consumers in Europe

ECC-Net

European Consumer Centres' contact details are also available at: *http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/ecc-net/index_en.htm*

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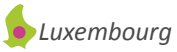
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