



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT AND THE COUNCIL**

PROTECTION OF AIR PASSENGERS IN THE EUROPEAN UNION

SUMMARY

I. GENERAL REMARKS

1. Despite the growth of air transport, stimulated by the single market, dissatisfaction with service quality is growing. This is worrying as the Community has adopted a body of legislation to protect the interests of air passengers, covering compensation for denied boarding, liability in case of accidents, computer reservation systems and package tours. Part of the problem is that passengers do not know their rights and so do not insist on their respect. The Commission has therefore launched a campaign to make passengers aware of rights already created by Community legislation, beginning with the publication and display of a charter in European airports.
2. This is only a first step, however, and there are strong reasons to go further in protecting the interests of air passengers. Already in 1998 the Commission proposed strengthening the regulation on compensation for denied boarding because of overbooking. The proposal remains before the Council, which has failed to adopt it for unrelated political reasons. Early this year, the Commission launched a consultative document on the difficulties experienced by passengers and possible solutions to the problems identified. There was a strong response from organisations representing airlines, passengers, airports, travel agents and disabled people. After this consultation, the Commission has defined the overall policy set out in this communication.
3. This general policy is based not only on Community legislation on passengers' rights but also on voluntary commitments by the air transport sector to improve service quality. To find the right balance between legislation and voluntary action, it is important to consider the overall treatment that a passenger receives when flying, a measure of the benefits that he or she draws from Community policy on air transport. Consequently, strong and effective commitments by airlines and airport to improve their services might allow looser legislation in some areas.
4. When legislating, the Community must strike a balance between simply creating certainty for passengers and airlines and further extending passengers' rights. Also, it must reconcile the protection of passengers with the need to avoid over-regulation, that could restrict the sector's freedom to respond to demand, lessen the scope for competition and hamper co-operation between airlines that facilitates international travel.
5. Finally, policy needs to go beyond legislation and voluntary codes on service quality. Passengers require up-to-date comparisons of airlines' performance to make informed choices between different carriers. They are often disappointed and frustrated by the handling of their complaints and the difficulty of settling disputes - issues that policy should address. Besides, representation of their interests is often weak and should be strengthened to balance that of airlines and airports.

II. PROPOSALS

6. The Commission will propose legislation in order to:
 - **enable delayed passengers to continue their journeys under good conditions**, by giving them the right either to reimbursement of the ticket or to an alternative flight at the earliest opportunity (2001),
 - **create new rights for passengers, by setting minimum requirements for contracts in air travel**, after consultation of interested parties (2001). One aim would be **to create certainty**, by requiring airlines to draft contracts clearly setting out the service offered and the conditions applied. The other would be **to improve the balance of contracts in favour of passengers**; some changes needed are clear, while others will require further discussion,
 - **give passengers the information they need to make well-founded choices between airlines**, by requiring airlines to submit the data necessary for it to publish **regular consumer reports** (2000). These would also stimulate airlines to improve service quality.
7. The Commission will promote the preparation and adoption of voluntary commitments by European airlines (2000 – 2001), covering in particular:
 - **improvement of service quality as widely as possible**, for example by offering the lowest fare available, by allowing reservations to be held for a certain time, by informing passengers rapidly of delays, by meeting the needs of disabled people and by facilitating the lodging of complaints,
 - **adequate care for delayed passengers** in order to minimise inconvenience to them,
 - **simple procedures for lodging complaints** and mechanisms for **settling disputes out-of-court**.

It will also promote voluntary commitments by airports to set quality standards for services and to consider design standards for terminals.

These voluntary codes should be ambitious, engage as many operators as possible and include mechanisms for monitoring compliance. The Commission will strongly encourage the involvement of all interested parties and co-ordination when the responsibilities of airlines and airports overlap.

8. The Commission will also take these initiatives:
- to discuss how best **to strengthen the representation of passengers** with Member States and passengers' organisations, (2000).
 - to examine the effects on the market of **sales and reservations via the Internet** and their **conformity with competition rules and the Code of Conduct for computerised reservation systems**. (2000).
 - to study **the effects on competition of code-sharing**, in the context of individual competition proceedings, **and of tariff co-ordination in interlining**, in its review of the block exemption for interlining (2001),
 - to **assess the impact of cabin conditions on passengers' health**, by setting up expert groups to scrutinise existing research and draw conclusions on risks to health. (2001).

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

PROTECTION OF AIR PASSENGERS IN THE EUROPEAN UNION

1. INTRODUCTION

1. More and more citizens of the European Union are travelling by air for business and pleasure, many at historically low prices. Yet there is a steadily growing stream of complaints about quality of service, lack of information and treatment when things go wrong. It seems that the air transport sector often fails to meet its customers' expectations and, when this happens, passengers do not know how to obtain satisfaction. Changing to another airline may not be a practical solution because of the lack of competition on some routes and the difficulty of obtaining refunds.
2. This dissatisfaction is worrying in that passengers ought fully to benefit from Community policy on air transport. The third package of 1992 created a single market for air transport: since 1st April 1997 each Community carrier is free to operate in all Member States, including cabotage. This has greatly increased competition and led airlines to develop innovative strategies to adapt to new markets. This is not to say that the internal market is complete. In its 1999 communication on the airline industry¹, the Commission identified the shortcomings of the present regulatory framework and proposed initiatives to complete market integration and promote adjustment by Community carriers.
3. Apart from the Warsaw Convention² of 1929 (amended in 1999 by the Montreal Convention) dealing above all with the liability of air carriers in the case of accidents, loss of baggage and delays, and general national and Community legislation on consumer protection^{3,4,5}, little was done in the past to protect air passengers. Certainly the airlines themselves, through the International Air Transport Association (IATA), attempted to organise international transport, but their resolutions naturally do not have the force of law. For that reason, and because the proliferation of national legislation and divergent interpretation of international law would have threatened the single market, the Community decided that it was necessary to act at European level. It therefore adopted, on the basis of Article 80 (2) of the Treaty, legislation that specifically protects the interests of air passengers, on compensation for denied boarding⁶, on airlines' liability towards passengers in case

¹ "The European airline industry: from single market to world-wide challenges" Communication from the Commission COM (1999) 182 final of 20.05.1999

² Convention for the unification of certain rules relating to international transportation by air

³ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours. O.J. L158, 23.06.1990

⁴ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. O.J. L95, 21.04.1993

⁵ Council Directive N°. 84/450/EEC of 10 September 1984 on misleading advertising, O.J. L250 of 19.09.1984, as amended by Directive N°. 95/55/EC

⁶ Council Regulation (EEC) N°. 295/91 of 4 February 1991 establishing common rules for a denied-boarding compensation system in scheduled air transport. O.J. L36, 08.02.1999

of accidents⁷ and on computer reservation systems⁸. Also, the Commission has proposed amendment of the legislation on denied boarding, including its extension to the cancellation of flights⁹, and will propose ratification of the Montreal Convention on air carriers' liability and amendment of the present Community regulation (see Annex 1).

4. Part of the problem is that passengers are unaware of their legal rights and so unable to insist on their respect. The Commission has therefore announced a campaign to make passengers aware of the rights already created by Community legislation¹⁰. The central element of this campaign is the publication of a charter of existing rights and its display where passengers will see it, beginning with airports and then moving on to the offices of travel agents and airlines¹¹. This is being done in close liaison with these parties, whose co-operation is essential to the success of the exercise. Following this operation, the Commission will assess how to extend the information campaign, for example by putting the charter on its "Dialogue with Citizens" web site so as to ensure continuous dissemination of this information via the internet. Citizens already have the opportunity to seek advice on their rights and on overcoming practical difficulties through the "Citizens Signpost Service". Another part of the problem is the difficulty of enforcing Community legislation, for which adequate mechanisms and sanctions may not be in place.

2. CASE FOR FURTHER ACTION

5. Passenger and consumer organisations nevertheless insist that existing rights do not go far enough to protect passengers and ensure that they benefit from Community policy on air transport to the full. Experience shows that simply relying on the market to produce solutions may not work in all circumstances. In particular, certain elements of the treatment of passengers are unlikely ever to be a matter of competition between airlines. A competitive market is essential but may need to be complemented by specific measures to protect consumers of air transport, as of other goods and services.
6. In fact, a passenger is in a weak negotiating position compared to the airline when buying a ticket or subsequently making the flight. He or she is subject to conditions of carriage and to business practices decided by the airline (see Annex 1), but will frequently be unaware of the exact terms and have little alternative to accepting them even if dissatisfied. The customer's position is further weakened by the obligation to pay for the service, before actually taking the flight. Here transport differs from many other services, of which only part of the price is paid before the service is provided, leaving the customer some bargaining power if it does not come up to

⁷ Council Regulation (EC) N°. 2027/97 of 9 October 1997 on air carrier liability in the event of accidents. O.J. L285, 17.10.1997

⁸ Council Regulation (EEC) N°. 2299/89 establishing a code of conduct for computerised reservation systems. O.J. L220, 29.07.1989; as amended by Regulation (EEC) N°. 3089/93 of 29 October 1993, O.J. L17, 25.01.1995, and by Regulation (EC) N°. 323/99 of 8 February 1999, O.J. L40, 13.02.1999

⁹ Proposal for a Council Regulation (EC) amending Regulation (EEC) N°. 295/91 establishing common rules for a denied-boarding compensation system in scheduled air transport. COM(1998)41 final, 30.01.1998

¹⁰ The Council (Transport) supported this initiative at its meeting on 8th March 2000

¹¹ Explained in Commission staff working paper "Air passenger rights in the European Union" SEC(2000)535 of 23.03.2000

expectations. Finally, a passenger depends heavily on the efficiency and good will of the airline when things go wrong, for example when flights are delayed or cancelled and baggage lost or damaged. He or she will probably be unable to make other arrangements because of financial commitments already made, the difficulty of finding alternative flights or the sheer impracticality of using other forms of transport like the train or the car.

7. The Community should therefore further strengthen the rights of air passengers, so that policy on air transport fully works to their advantage. This would follow the new priority that the Amsterdam treaty gives to the protection of consumers, which in air transport means passengers¹². The Treaty also commits the Community to combat discrimination on the grounds of disability and to take into account the needs of disabled people for measures relating to the internal market. In this communication the Commission proposes an overall policy, based not only on Community legislation but also on voluntary commitments by airlines and airports to raise service quality, on the improvement of information to passengers and on stronger representation of their interests. Overall, this should put the protection given passengers in the Community on a par with that afforded in the United States.
8. The Commission is aware of the danger of over-regulation that could raise costs, lessen the scope for competition, and hamper co-operation between airlines that facilitates international travel. Hence, the importance it attaches to striking the right balance between legislation and voluntary agreements to improve service quality, in keeping with the emphasis placed by the European Council of Lisbon on simplifying the regulatory environment and on adopting more flexible approaches to legislation. In deciding the balance, it has to consider the overall quality of treatment that a passenger receives when flying; it is in these terms that the benefits to passengers of Community policy on air transport should be assessed. Consequently ambitious and effective commitments by the sector to improve services might create scope for looser legislation in some areas, and every effort will be made in the coming months to promote self-regulation by airlines in the spirit of the conclusions of the European Council of Lisbon, before preparing legislation.
9. Stronger protection of passengers will also push airlines to offer better service, whether this is achieved by legislation, voluntary commitments or comparative information on their performance. European airlines will have a greater incentive to pay attention to passengers' demands, maintain consistently high standards and avoid all the failures in service that create frustration. This should improve their position on the international market, in which companies compete on both price and quality of service. A Community initiative on passenger protection can therefore be expected to contribute positively to the competitiveness of Community carriers.
10. The Commission recognises that it may also be necessary to protect passengers using other modes of transport. It intends in due course to study their rights, in particular

¹²

Article 153 of the Amsterdam Treaty states:

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.

2. Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.

contracts and conditions of carriage, and to propose any measures needed. It is justifiable, however, to begin by strengthening the rights of air passengers because the Community has advanced much further in creating a single market for air transport than for transport of passengers by road and rail. Another reason is that they often have no alternative means of transport to flying. In any case, air passengers face problems that largely differ from those encountered by other passengers, so that there is little advantage in devising solutions in parallel.

11. The Commission also is aware that the smooth functioning of transport systems depends on a responsible attitude from passengers. However efficient they may be, airlines and other transport companies cannot provide the quality of service of which they are capable, if a minority of passengers shows irresponsibility, for instance by not respecting departure times, not showing up for confirmed flights, ignoring safety rules or behaving badly towards staff or other passengers. Its proposals for legislation should therefore cover obligations on passengers as well as on airlines.
12. In addition, the Commission recognises that the worsening of delays and the inadequacy of airports may be reasons for dissatisfaction; as well as the performance of airlines. While some delays result from exceptional, unpredictable events, it is generally recognised that the Air Traffic Management System is working at the limit of its capacity. Small disturbances of traffic peaks in the summer can seriously affect the performance of the network. In December 1999, the Commission presented a communication on the creation of a single European sky¹³ which proposed both short term measures to ameliorate the situation and a medium term strategy to remove frontiers in the management of Europe's skies. This communication is the basis of the intensified dialogue with the interested parties, intended to provide a report with action plan by the end of the year. As for airports, the Community is trying to maintain or raise their capacity by integrating them into multi-modal Trans-European Networks and by providing a common environmental framework¹⁴.

3. CONSULTATIVE DOCUMENT

13. In January 2000 the Commission sent out for consultation a document on the protection of air passengers¹⁵. The document covered four areas:
 - the contract between the airline and the passenger¹⁶: conditions of carriage; liability for death and injury; delays, cancellations and overbooking; loss and damage to baggage; transferability of tickets; sequential use of coupons; treatment of the disabled. The responsibilities of airports and the bankruptcy of airlines were also mentioned,
 - the business practices of airlines: code-sharing, franchising and sub-contracting; interlining; frequent flier programmes; air fares,

¹³ "The creation of the single European sky" Communication from the Commission COM(1999)614 final of 01.12.1999

¹⁴ "Air transport and the environment" Communication from the Commission COM(1999)640 final of 01.12.1999

¹⁵ "Air passenger rights in the European Union. A consultation document on consumer protection in air transport"

¹⁶ See Annex 1 for short explanation of airlines' contracts and conditions of carriage

- conditions in the aircraft cabin: air quality and radiation; seat pitch; “air rage”,
 - information and transparency: information for passengers before and during the flight including consumer reports; voluntary service codes adopted by airlines; complaints.
14. Over sixty replies presented the views of airlines, passengers and consumers, airports, travel agents and disabled people¹⁷. To simplify the full and well-argued responses, the following emerged as the main issues for Community policy: uncertainty about airlines’ contracts and conditions of carriage¹⁸; their possible imbalance in favour of airlines; treatment of passengers when flights are delayed; information for passengers in different forms; the treatment of disabled people; complaints and redress.
15. As might be expected, the organisations representing passengers and consumers, travel agents and disabled people saw a strong need to strengthen passengers’ rights. The representatives of the passengers, consumers and travel agents strongly argued that contracts were biased in favour of the airlines, an imbalance that could only be righted by Community legislation. However, in addition to recommending legislation on contracts and conditions of carriage, they also called for voluntary codes on service standards to be adopted by airlines, a chain of contracts between airports, airlines and other service providers, consumer reports comparing airlines’ performance, improvements in information for passengers and new arrangements for handling complaints.
16. Instead of legislation, the airlines’ associations preferred voluntary commitments on the modification of their contracts and conditions of carriage and considered that this was close. Legislation by the Community could standardise products, and so reduce competition, put European airlines at a competitive disadvantage and threaten the world-wide network of services, as airlines could not operate under different legal regimes without additional cost. It also raised issues of scope, including extra-territorial application. The airlines’ and airports’ organisations opposed legislation on passengers’ rights when flights are delayed, as this would often make them responsible for events outside their control. Both favoured voluntary codes on service standards, on which they were working; they considered that these could provide solutions to many problems. The Commission first made a detailed analysis of all the responses and then selected the areas where Community action to improve consumer protection was justified, on which the present communication concentrates.

¹⁷ See Annex 2 for list of organisations that responded

¹⁸ Henceforth simply called contracts

4. CONTRACTS: COMMUNITY LEGISLATION

17. An essential distinction must first be made. Community legislation on contracts could aim solely at creating certainty for both parties about their respective rights and obligations. It could require airlines clearly to specify the product offered and the conditions attached but would go no further. This would leave the supplier full freedom to use its commercial judgement about the nature of the product to supply. But the purpose of legislation could also be to protect the interests of one side or another, to tip the usual balance of the contract in favour of one party. The risk would be legislation that reduced commercial freedom and competition, so it is essential to find the right balance.

Why legislate?

18. There are strong arguments for Community legislation on contracts and conditions of carriage. It would create certainty for both sides, airlines and passengers, about their respective rights and obligations, and would make legal redress possible for passengers if such rights were not respected. The possibility of legal enforcement is crucial, as without it passengers do not enjoy effective rights. These aims cannot be achieved by an agreement by the International Air Transport Association (IATA) to change its recommendation on conditions of carriage. It is not binding on members, so that they can set different terms, and does not apply to domestic flights or to services operated by non-member airlines.
19. In any case airlines' contracts have been under discussion for several years without concrete results. In 1997 the Commission ordered a study of the consistency of IATA's recommendation on conditions of carriage with the Community directive on unfair terms in consumer contracts; this suggested changes to the recommendation. The following year a meeting of experts from the Member States also came to the conclusion that changes were required. In United Kingdom the Air Transport Users Council negotiated for several years with IATA on the revision of the conditions of carriage. In 1999 it ended up complaining to the Office of Fair Trading, which requested IATA to amend its recommendation; the two sides have not yet adopted an agreement. It follows that negotiations with the airlines on changing their contracts and conditions of carriage have not yet given conclusive results. There is then the possibility of further complaints to national competition authorities or to national courts, and so a danger of Member States interpreting the consistency of airlines' contracts with competition or consumer law in different ways, which would create different regimes within the Community.
20. The preparation of Community legislation would also be an occasion to consider the balance in contracts of rights and obligations between airlines and passengers. Airlines and passengers' organisations take different positions on this balance; thorough discussion and detailed analysis will be necessary to clarify which terms are unfair and to devise appropriate modifications when required. There should also be full consultation on the planned regulation on minimum assistance to passengers when their flights are delayed, which would tackle a major source of dissatisfaction.
21. While the Commission favours legislation on contracts, it is aware of the risks to be avoided. Law should be limited to what is needed to create certainty and to protect

passengers. It must not deprive airlines of freedom to innovate nor frustrate competition, in contradiction with the general aims of the Common Transport Policy.

22. Community legislation might affect the competitiveness of European carriers on the international markets. The largest share of their revenue comes from extra-Community services on which they compete with third-country operators. The Commission is aware that legislation could affect the position of Community airlines on the global market, although it is difficult to assess the balance between possible increases in costs and off-setting benefits, like the expansion of the market and the increase in revenue that could result from higher standards of service. However, it intends to limit the impact of legislation by restricting its proposals to the essential needed to protect passengers.
23. Nor should Community law block beneficial co-operation between airlines. Although in competition, international airlines co-operate so as to allow a passenger with a single ticket to take the flights of several airlines, whether or not Community carriers. Legislation should not hamper such co-operation and deprive the travelling public of opportunities that it currently enjoys.
24. These risks can be avoided, if Community legislation on contracts only specifies the substance of obligations when necessary to protect passengers' interests. This would avoid over-prescription and leave airlines free to exercise their commercial judgement in other areas. The right balance can be found through full discussion of drafts of the regulation with the interested parties.

Creation of certainty

25. One aim of a law on contracts would be to create certainty for airlines and passengers alike. The legislation would require airlines to draft a contract clearly setting out the service offered and the conditions applied, so as not to leave important decisions to their discretion or to special conditions outside the contract. It would specify the subjects that a contract should cover, a list that would probably turn out similar to the contents of IATA's recommended conditions of carriage (see Annex 3); and it would make airlines inform passengers of the contract and, if practicable, file it with the supervisory authorities in the Member States. In addition, to ensure that these terms were in practice included in contracts and the regulation respected, it will probably be necessary to establish subsidiary requirements. A common principle in consumer law, this would automatically provide for contract terms on those points which the contract fails to address; these subsidiary terms would not be mandatory.
26. This does not mean that Community legislation would dictate the service to provide and the conditions to apply in each area. In many cases, it would leave airlines free to design their products and to set conditions, according to their commercial judgement. However, it would oblige them to state clearly in the contract of what the service consisted and which conditions applied. Framed this way, legislation would not restrict competition, as is sometimes claimed. When necessary to protect passengers' interests, however, the law would prescribe what airlines should do (like existing legislation on denied boarding and liability for accidents), so creating new rights for passengers.

Creation of new rights

27. The other aim would be to create the right balance in contracts between the interests of the airline and those of the passenger. These contracts should not be unfair in the sense of causing a significant imbalance in the parties rights and obligations, to the detriment of the consumer; this is the basic requirement of Directive 93/13 on unfair terms in consumer contracts. In their replies to the consultative document, passengers' organisations recommended various changes to make contracts more favourable to consumers. Some of their suggestions require further discussion - with airlines and passengers' organisations. On others it is possible to take position at this stage.
28. First, the transparency of fees, charges and taxes additional to the fare. To fully understand the price they pay, passengers should be informed of the total cost of their flight, when they reserve tickets. Community legislation should create such an obligation. However, since changes in fees, charges and taxes are made by the authorities, it should allow airlines to pass on increases but require them to refund decreases, when they occur after a passenger has booked a ticket.
29. Second, the possibility of increasing the fare after the ticket has been booked, which airlines generally accord themselves the right to do. However passengers make their choice of flight and usually commit themselves financially when reserving a ticket. At the same time, airlines take on obligations towards their customers. There is no obvious reason why airlines should be allowed to raise the price fixed. Increases in their costs, whether within or outside their control, are a normal commercial risk, to be taken into account when setting fares. Such an obligation to respect the fare agreed would not interfere with the wide freedom of airlines to determine fares themselves, as established by Regulation 2409/92¹⁹.
30. Third, code-sharing: the ticket carries the code of the airline with which the passenger makes a contract, while another operates the flight under its brand. Passengers' organisations were worried by the lack of transparency about the identity of the carrier actually operating the flight. Travellers might end up flying with a carrier that they did not choose, offering a different service. Legislation on contracts should make the contracting airline specify the carrier actually operating the flight. This would be consistent with Community rules on computer reservation systems, which require that passengers be informed of the identity of the carrier actually operating the flight, whether the ticket is booked through a travel agent or an airline (in its office, at a sales counter, by telephone or through the Internet). The problem is then one of enforcement; it is the responsibility of Member States to make sure the rules are respected (passengers can also complain of infringements).
31. Another issue with code-sharing is which airline's contract applies, that of the contracting or that of the operating carrier. This must be clear to the passenger so that he or she knows the exact conditions applicable to the ticket. Linked to this are the questions of the airline to which complaints should be made and of the relevant law and court if a passenger seeks legal redress. There is general agreement that, for the sake of clarity and simplicity, the contract of the contracting airline should apply

¹⁹ Council Regulation (EEC) N°. 2409/92 of 23 July 1992 on fares and rates for air services, O.J. L240, 24.08.1992

(that is of the carrier whose designator code appears in the ticket). This should be reflected in Community legislation on contracts.

32. Contracts might be better balanced in favour of passengers in other ways. Various suggestions have been made, including:
- transferability of tickets. The present practice of airlines is to prevent one passenger transferring a ticket to another.
 - sequential use of coupons. Passengers who have bought a ticket for a multi-stage journey must use all the coupons in their ticket in the correct order, or risk the airline declaring their ticket void. This may prevent them from exploiting a low priced ticket, one stage of which goes through a convenient airport. The practice can be interpreted as a legitimate way of distinguishing products by market or as an unfair restriction on consumer choice.
 - use of both outward and return coupons. This can be interpreted in a similar way to sequential use.
 - confirmation and reconfirmation of tickets, although reserved and paid for. This can be considered as inconvenient imposition on passengers or a means of discouraging multiple reservations that are not respected.

As for compensation for denied boarding because of overbooking, it is necessary to strengthen passengers' rights; and the Commission intends to withdraw its proposal to amend the existing regulation and replace it with one that is stronger.

As the advantages and drawbacks of legislation on these subjects are complex and controversial, the Commission believes that further reflection is needed. It will fully consult the interested parties when preparing its legislative proposal on contracts.

Rights of disabled people

33. There was a strong response to the consultative document from organisations representing disabled people, which made proposals involving both legal obligations and the working methods of airlines and airports. While airlines and airports are in advance of other modes of transport in their treatment of disabled people, their services vary in quality from one to another. Disabled people, however, must be able to count on similar treatment in order to plan their journeys in advance and to avoid unpleasant surprises when making them.
34. Community legislation could set various requirements without imposing heavy costs, covering assistance to and from the aircraft free of charge; special assistance in case of denied boarding, delay or cancellation; transport of guide dogs of blind people in the aircraft cabin; full liability for loss or damage to wheel chairs. Another obligation could be to allow a passenger to board on aircraft if he or she has notified a disability when reserving a ticket and received confirmation. As for airlines' restrictions on the carriage of disabled people for safety reasons, the Community's aim should be to remove uncertainty and ensure consistency. European safety regulators should work on the definition of objective criteria, which could form the basis of requirements. When considering proposals, the Commission will take account of the extensive regulations already in force in the USA and Canada.

Form of legislation

35. Community legislation on contracts could lay such basic obligations on airlines as these:
- to draft a contract that clearly states the rights and obligations of both parties,
 - to specify the services to be provided, including: the fare; additional fees, charges and taxes; the total to be paid; the status of the ticket; conditions for refunds; the identity of the operating carrier; and to inform the passenger of these core elements before the ticket is booked,
 - to specify the conditions of carriage (the subjects would be laid down by the regulation); and to inform the passenger of these conditions, either when booking or before flying,
 - to specify various new rights, including for disabled people.

To ensure full protection of passengers, the legislation would apply to contracts for flights to, from and within the Community, irrespective of the state where the carrier was established or of the nationality of the passenger. Thus its scope would be analogous to that of the regulation on compensation for denied boarding, which applies to all departures from Community airports. It would extend to contracts made by e-commerce.

The Commission will propose legislation to create new rights for passengers by setting minimum requirements for contracts in air transport, after consultation of interested parties (2001).

36. While this legislation would harmonise law on contracts within the Community, globally a patchwork of national rules would remain in force. This obliges airlines to operate under different regimes and faces passengers with a bewildering variety of rights and obligation. Unlike shipping, or to some extent the railways, the aviation sector has not benefited from an international agreement on contracts, with the exception of the Warsaw and Montreal Conventions. The airlines themselves, through IATA, have attempted to standardise contracts and conditions of carriage but their exercises have limitations and drawbacks. Without prejudice to Community measures, it is perhaps time to consider the harmonisation of contract regimes at world level, a task that the International Civil Agent Organisation (ICAO) could undertake. The European Community should consider launching such an initiative at the ICAO's assembly in 2001.

5. IMPROVEMENT OF SERVICE: VOLUNTARY COMMITMENTS

37. Legislation can be complemented by voluntary commitments or codes on raising standards of service. Such commitments can mobilise a sector to raise its standards of service to customers, exploiting its capacity to find out their demands, to adapt its products, and to work out innovative solutions. Customers can benefit by assurance of a certain standard of service from an airline that subscribes to such a code.
38. At the prompting of the United States authorities, the Air Transport Association (ATA) has adopted a code on service quality "Customers First", and the main

carriers have followed up with detailed plans to implement this framework. The airlines have notified their plans to Congress and the Department of Transportation, which will monitor implementation. This wide-ranging code could serve as an example, if not a precise model, for customer service plans by other groups of airlines. It contains several interesting innovations, including the undertaking to offer on an airline telephone reservation system the lowest fare for the dates, flight and class of service requested. Another is the commitment to allow customers either to hold a telephone reservation without payment for twenty-four hours or to cancel it without penalty in this time period, in order to give them the opportunity to look for lower fares through other distribution channels.

39. IATA is presently working on a global framework for customer service to which it hopes all member airlines will commit themselves; this covers similar ground to the ATA's plan. On this basis, airlines would develop their individual service commitments and plans for implementing them. The Association of European Airlines is also starting preparatory work on a set of basic commitments on passenger service.
40. The Commission welcomes these voluntary initiatives which it sees as an essential complement to legislation. It hopes that European airlines, including AEA members, charter operators, regional airlines and low cost carriers will rapidly adopt a far-reaching agreement. It could be based on these commitments, as a minimum:
 - offer of the lowest fare available on an airlines' reservation system for the date, flight and class of service requested,
 - allowing reservations to be held or cancelled without penalty for twenty-four hours,
 - informing passengers of itinerary, change of aircraft, cancellation rules, frequent flier conditions and aircraft configuration (if asked),
 - rapidly informing passengers of delays, cancellations and diversions,
 - adequate care for passengers when delayed in an airport,
 - adequate care for passengers when delayed on board the aircraft,
 - alignment on best practice in the treatment of disabled people, including publication of airlines' requirements,
 - provisions to meet the needs of disabled people (for example training of staff and making information accessible),
 - higher limits on liability for baggage,
 - delivery of baggage within a given time,
 - minimum assistance to passengers whose baggage is damaged or lost,
 - facilitation of complaints and ensuring of responses within a given time.

The voluntary code could also include a mechanism for settling disagreements between airlines and passengers out-of-court (see section X). If the airlines do not agree on convincing commitments by April 2001, the Commission will consider including some of the above subjects in its envisaged legislation on contracts.

41. The Airports Council International-Europe is presently working on general standards for airports throughout Europe, which individual airports would then plan how to implement. These might cover:
- time spent queuing, for example at check-in and baggage delivery,
 - signs to guide passengers on their way,
 - training of staff in service to customer service,
 - safety management,
 - cleanliness and maintenance,
 - responsiveness to customers' complaints,
 - transport and access to terminals.

In the Commission's view, such standards should cover assistance for disabled people and care for passengers delayed before check-in. It also considers that the industry should consider design standards for airports and terminals, so as to bring into the conception of airports quality criteria like upper limits on transit time, time spent taxiing, walking distance and so on.

42. To work out these voluntary commitments, the Commission, together with the European Civil Aviation Conference in the framework of the EU-ECAC dialogue, envisages bringing together representatives of the different groups of airlines and of airports. It strongly recommends the involvement of organisations representing passengers, consumers and disabled people and the co-ordination of work on the airlines' code with that on the airports, as they share responsibilities in several areas such as check-in and baggage handling. It would also discuss arrangements for reporting and monitoring results, essential for the success and credibility of such voluntary agreements. In addition it would consider the case for defining Community standards for certain services, such as ground handling and baggage delivery.

The Commission will promote the preparation and adoption of voluntary commitments by European airlines and airports to raise their quality of service as widely as possible (2000–2001).

6. DELAYED FLIGHTS: COMMUNITY LEGISLATION AND VOLUNTARY COMMITMENTS

43. Passengers suffer the same inconvenience and frustration from delays as from denied boarding or cancellation. However it is only when passengers are denied boarding at Community airports that they have a right to assistance and compensation. Regulation 295/91 gives important rights to all passengers denied boarding at a Community airport because of overbooking of a scheduled flight:

- reimbursement of the relevant part of the ticket or travel on an alternative flight at the earliest opportunity. This lets a passenger continue his or hers journey;
 - financial compensation depending on the length of the flight and the delay in arrival caused by taking an alternative flight;
 - minimum care in the form of free telephone calls, meals and refreshments and hotel accommodation.
44. In 1998, moreover, the Commission proposed an amendment to this regulation. As well as raising the amounts of financial compensation to take account of economic charges, it proposed extension of the regulation to non-scheduled flights, inclusion of new forms of ticketing and information on the rights of passengers denied boarding. It has also adopted an important amendment from the Parliament, to widen its scope to cancellation of flights for commercial reasons. While the Member States support the Commission's proposal, agreement by the Council has been blocked for unrelated political reasons. Once the amending regulation is adopted, passengers denied boarding will be well protected, unlike those suffering delays.
45. There is a difference, however, in that the airline is always responsible for overbooking but not for delays. Leaving aside force majeure, delays may be caused by airports, air traffic managers and other service providers, as well as airlines. The obvious solution would be for the airline to assist and compensate the passenger and then reclaim the cost from other service providers when it itself was not at fault. At the present time, however, this would encounter two difficulties. First, identification of the cause of a delay may be difficult, particularly when it is an effect of earlier delays. Second, a chain of contracts is lacking between airlines, airports, air traffic managers and other service providers that would allow an airline to reclaim costs. The Commission accepts that in these circumstances it would be technically impossible to legislate on financial compensation for delays, but will reflect on how to overcome these difficulties.
46. There remains the question of assistance to delayed passengers so that they can continue their journeys as soon as possible. In the Commission's view, it is unacceptable for airlines to leave passengers stranded for many hours, when they have undertaken to use their best efforts to carry them "with reasonable dispatch" and have accepted payment to provide such a service. It therefore intends to propose legislation requiring airlines to offer a passenger delayed for more than a few hours at a Community airport the choice of: either reimbursement of relevant part of the ticket or an alternative flight to his or hers destination at the earliest opportunity. This would help delayed passengers on their way. In addition, neither cancellation of a flight nor failure to fly one leg because of delays should be used as a pretext for annulling the whole ticket. This too should be covered by legislation.
47. Minimum care for delayed passengers is somewhat different. European airlines could make commitments to assist delayed passengers under a voluntary code. This would have the advantage over legislation of allowing airlines to find the best solutions and to compete in the service offered to delayed passengers. Some airlines might offer full care; others, particularly low cost carriers, considerably less. So long as they were given adequate information, passengers could choose what best met their needs and their purse. However in some circumstances delays may cause travellers severe difficulties, for example when they last overnight or when small children or people

with special needs are involved. The Commission will consider whether to cover such cases in legislation. Finally, passengers may be delayed before check-in; then it is the responsibility of the airport to look after them, and airports could include such essential care in their voluntary code.

48. Two other measures would greatly help passengers. One is rapid information on the cause and expected length of delays as soon as they occur (and similar information on overbooking and cancellation of flights). Airlines could include this in a voluntary code – see section 5. The other is comparison of airlines' records for punctuality, which the Commission intends to make in its planned report on punctuality indicators – see the following section.

So that delayed passengers can continue their journeys under good conditions, the Commission will propose legislation giving them the right either to reimbursement of the ticket or to an alternative flight at the earliest opportunity (2001).

In order to minimise the inconvenience of delays to passengers, the Commission will promote the inclusion of adequate care among airlines' voluntary commitments to improve service quality (2000-2001).

7. CONSUMER REPORTS

49. To make good choices between airlines, both in general and on specific routes, passengers need information on the performance of different airlines. This would enable them to make well-informed comparisons of performance and so select the airline with the best record of service. Furthermore, making this information widely known would give a strong incentive to airlines to compete on service quality, so raising standards across the industry. For some years, the United States administration has published monthly consumer reports, whose results are widely reported. These reports compare the performance of the ten major carriers in terms of punctuality²⁰, proportion of baggage mishandled, proportion of passengers denied boarding because of overbooking, and number of complaints with their causes. They rank airlines by their performance under each heading in a way that is easy to understand.
50. A Community initiative to set up similar reports would benefit European passengers. Judging from experience in the United States, they would not only allow consumers to make informed choices but also stimulate airlines to achieve higher levels of service. As announced in its communication on a single European sky, the Commission intends to publish monthly punctuality reports and will propose legislation to obtain the necessary data from airlines. These reports could also cover other aspects of service quality, such as: the proportion of passengers denied boarding because of overbooking or cancellation of the flight for commercial reasons; incidents of delayed, lost or damaged baggage; the level of complaints and their reasons; and possibly the proportion of seats sold at the lowest fare. Airlines would be ranked by their performance according to the different indicators and, if possible, overall. After discussing the exact indicators with interested parties, the Commission will propose the legislation needed to obtain the statistics. While aware

²⁰ Overall, by airport of arrival and departure (broken down by time of day), by major links between cities

that airlines may consider this an additional burden, it believes that such indicators are a common management tool and the data should be readily available within companies.

In order to give passengers the information they need to make will-founded choices among airlines, the Commission will propose legislation to require airlines to submit the data necessary for it to publish regular consumer reports (2000).

8. COMPLAINTS

51. Passengers address complaints to airlines, as the organisations with which they have contracts; it is their responsibility to respond and to settle them. Dissatisfaction and frustration with the handling of complaints emerged from the consultation process, and passengers' and travel agents' organisations advocated the overhaul of procedures. Under a voluntary code, European airlines could commit themselves to adopting simple, standardised procedures for lodging complaints, to creating effective systems for treating them, and to responding within a short time. They could also clearly inform passengers of the office to which they should send their complaints, as they are often at a loss about how to proceed.
52. Even with such improvements, airlines and passengers will disagree about the settlement of some complaints, and it is often not worth a passenger's while to take the matter to court. Both sides have an interest in a mechanism for settling disagreements out-of-court, for example through alternative dispute resolution (ADR). One option would be for national authorities or the Commission to intervene as mediator in order to facilitate settlement, but this would be a heavy and clumsy process. A better solution would be for European airlines to create a system for settlement to which either side could apply. This should follow the principles set out in the Commission's recommendation²¹ on out-of-court settlements of consumer disputes: independence, transparency, adversarial principle, effectiveness, legality, and liberty of representation.
53. Settlement of disputes becomes more complex and costly when the consumer resides in one Member State and the airline is established in another. One solution would be for European airlines to set up a single out-of-court settlement scheme for the Community as a whole, after consultation with passengers' and consumers' interests. Another possibility would be for separate national separate schemes to be established in each Member State and for cross-border complaints to be transferred via the European Extra Judicial Network (a Community-wide network of bodies for out-of-court settlement of consumer disputes.²² The Commission intends to discuss the different options with the interested parties and promote a generally acceptable solution.

The Commission will promote the inclusion of simple procedures for lodging complaints and of a mechanism for settling disputes out-of-court among airlines' voluntary commitments to improve service quality (2000-2001).

²¹ Commission Recommendation N°. 98/257/EC of 30 March on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes, O.J. L 115, 17.04.1998

9. REPRESENTATION OF PASSENGERS

54. At present, strong representation of passengers' interests is lacking at Community level and in various Member States, which is an undoubted weakness in the protection of their rights. Clear and firm expression of passengers' interests would balance the voice of airlines and airports, and ensure that policy paid full attention to the view of all sides. It would also help the development of voluntary commitments by airlines and airports to improve services - they need an effective counterpart to express demands, constructively criticise proposals and support solutions satisfactory to all parties. Moreover, passengers' organisations with some resources could help monitor the observance of such commitments, assess how far airlines' contracts were properly balanced and, if airlines and airports did not respect Community law, seek injunctions to enforce compliance when the collective interests of consumers were involved²³.
55. At national level, representation of passengers is uneven. In some Member States, specific organisations exist to represent air passengers; in others consumer organisations fulfil this role. The level of activity varies considerably, as do the resources available for the job. A first step is therefore for Member States to promote the establishment or reinforcement of representative organisations.
56. As for the Community as a whole, the Federation of Air Transport Users Representatives in Europe (FATURE) actively defends passengers' interests but has few resources and depends on national organisations for policy analysis and political representation. The Commission will discuss with Member States and passengers' and consumers' organisations how to strengthen representation at Community level, including the possibility of financial support.

The Commission will discuss with Member States and passengers' organisations how to strengthen representation of passengers' interests at Community level (2001).

10. OTHER MEASURES

57. Sales and reservations via the internet: Travel agents, airlines and computerised reservation systems (CRSs) are all currently competing for the consumer's attention by establishing internet web sites through which air transport services can be purchased. These developments potentially offer consumers great opportunities to compare prices and take direct control of their own travel plans. The airlines themselves have so far largely developed web sites under their own brand names in order to sell tickets direct to the public. However three groups of major air carriers from the US, Europe and the Asia-Pacific region respectively have announced they intend to build joint internet portals to secure a portion of the online market.
58. It will be important to monitor these ambitious plans by the major airlines and to make sure that they do not make it more difficult either for smaller carriers to

²² Council Resolution on a Community wide network of national bodies for the extra-judicial settlement of consumer disputes, 13th April 2000

²³ Acting as "qualified entities" under Directive 98/27/EC of 19 May 1998 on injunctions for the protection of consumers' interests, O.J. L 166, 11.06.1998

distribute their products effectively or for consumers to obtain comprehensive information about available services. The existing EC Code of Conduct for CRSs requires the information that these systems provide through traditional travel agents to be neutral and comprehensive. As internet-based travel agencies develop, the Commission will examine the effects on the market, and conformity with both competition rules and the Code of Conduct. It will assess whether the Code adequately addresses any problems that may emerge.

59. Competition. The Commission will consider the effects of code sharing on competition, in particular in the context of individual proceedings. Under its review of the block exemption for interlining in 2001, it will consider the impact of tariff co-ordination on competition. Moreover, the Commission will study the competition effects of frequent flyer programmes, in particular in the context of mergers and joint ventures.
60. Several other issues were raised in the consultative process. Bankruptcy of airlines. The Commission sees no special need to protect consumers against bankruptcy of airlines as opposed to other financial risks, as the chance of bankruptcy is not particularly high. In any case, Regulation 2407/92 on the licensing of Community air carriers²⁴ ensures financial soundness and various forms of protection already exist. Moreover, IATA and the Group of National Travel Agents' and Tour Operators' Associations within the EU (ECTAA) are discussing the creation of a guarantee fund. This would pay for the reimbursement of tickets or alternative flights and be financed by a modest levy on tickets. The Commission intends to see whether this scheme gathers sufficient support to work and is consistent with completion rules, before considering any other steps.
61. Safety of code-share partners. It would be quite unacceptable for code-sharing to lead to passengers suffering lower levels of safety on the flights of partner airlines from third countries than on those of Community carriers. There are calls for airlines to be required to audit the safety of code-share partners, particularly carriers from third countries. This would imply a shift of responsibility from the regulatory authorities to airlines or, if done by authorities in Europe, extra-territorial application of Community safety rules. At present, Regulation 2407/92 provides that airlines must obtain prior approval for leasing of aircraft, which cannot be given in the case of leasing with crew unless safety standards equivalent to those of the Community apply. The Commission holds that these provisions apply to code sharing and franchising, as well as to subcontracting, and will recall these obligations to Member States.
62. Conditions in the aircraft cabin. Some experts have warned about the health effects of low pressure, seat pitch and of cosmic radiation and about the risk of transmission of disease. The responses to the consultative document showed wide agreement that the extent and nature of any problems had first to be determined, by examination of existing research and further work if needed. The Commission intends to set up expert groups to scrutinise existing research and draw conclusions on risks for health, in co-operation with the interested parties. It will also explore whether Community measures could be taken to deal with disruptive behaviour by passengers ("air rage").

²⁴ Council Regulation (EEC) N°. 2407/92 of 23 July 1992 on licensing of air carriers O.J. L 240, 24.08.1992

When considering possible Community measures in the above fields, the Commission will take full account of the principle of subsidiarity.

Internet

The Commission will examine their effects on the market of sales and reservations via the internet, and their conformity with competition rules and the Code of Conduct for computerised reservation systems.

Competition

The Commission will consider the effects of code-sharing, in the context of individual proceedings, and in interlining study the impact of tariff-co-ordination in its review of the block exemption for interlining (2001).

Conditions in the aircraft cabin

The Commission will set up expert groups to scrutinise existing research on the effects of cabin conditions and draw conclusions on risks to health (2001).

Explanatory notes

1. Contract and conditions of carriage

The contract is essentially a binding agreement to supply and purchase a certain service at a certain price, under a set of conditions. IATA has rules on contracts, that apply to international flights operated by member airlines. Contracts concerning domestic flights and non-members, like charter companies and low-cost carriers, may differ.

IATA's rules on contracts deal with the essence of the exchange, in particular the definition of the service, the fare and the limitations on liability. Other terms are set out in "conditions of carriage", which form part of the contract. IATA has not adopted binding rules on conditions of carriage, only recommendations (Recommended Practice 1724). Each member airline has its own conditions, which may differ from the recommended practice; the latter in any case gives airlines discretion in various areas. Like its rules on contracts, IATA's recommended practice applies to international flights provided by member airlines.

Following a complaint, the Office of Fair Trading in the United Kingdom (OFT) has questioned the conformity of Recommended Practice 1724 with Directive 93/13 on unfair terms in consumer contracts and has asked IATA to amend the recommended practice. Discussions continue between the two sides.

2. Air carriers' liability for death, injury and loss or damage to baggage.

The Warsaw Convention, as amended, sets limits to liability at a low level. In 1997 the Community adopted a regulation establishing unlimited liability for death and injury, subject to various conditions (Council Regulation (EC) N°. 2027/97 of 9 October 1997 on air carrier liability in the event of accidents). Last year, a new international agreement was signed, the Montreal Convention (Convention for the unification of certain rules for international carriage by air); its terms are similar to those of the Community regulation except that it also covers liability for baggage. The Montreal Convention has now to be ratified and the Community regulation amended

List of organisations replying to consultative document

Member States and official organisations

Ministerio de Fomento (Spain)
République Française
Bundesministerium für Verkehr (Germany)
Department of Environment, Transport and Regions (United Kingdom)
Department of Public Enterprise (Ireland)
Ministry of Justice (Finland)
Finnish National Consumer Administration
Das Büro für Konsumentenfragen, Bundeskanzleramt (Austria)
Permanent Representative of Greece to the European Union
Bundeskammer für Arbeiter und Angestellte (Austria)
Det Kongelige Samfedsels-departement (Ministry of Transport of Norway)
Civil Aviation Authority (United Kingdom)

Air carriers

International Air Transport Association (IATA)
Association of European Airlines (AEA)
International Air Carriers Association (IACA)
European Regions Airline Association (ERA)
Air Transport Association of America
Arab Air Carriers Association
British Airways
Airtours International
Virgin Atlantic
Go Fly
Britannia Airways
Ryanair
Portugalia Airlines
Cyprus Airways
United Airlines
Braathens

Passenger and consumer organisations

Federation of Air Transport User Representatives in Europe (FATURE)
International Airline Passengers Association (IAPA)
European Consumers' Organisation (BEUC)

Air Transport Users Council (United Kingdom)
Comitato Consumatori, Altro Consumo (Italy)
Unione Nazionale Consumatori (Italy)
Comité des Usagers du Transport Aérien (France)
ANWB (Royal Dutch Touring Club)
Associação Portuguesa a defesa do consumidor (DECO)
Federação Nacional das Cooperativas de Consumo (Portugal)
Forbrugerradet (Denmark)
General Consumer Council for Northern Ireland

Travel agents

Group of National Travel Agents' and Tour Operators' Associations within the EU²⁵ (ECTAA)
Guild of European Business Travel Agents¹ (GEBTA)
Association of British Travel Agents

Airports

Airports Council International, European Region

Disabled peoples' organisations

European Disability Forum
Disabled Peoples' International, European Region
European Blind Union
European Association for Cochlear Implant Users
Royal National Institute for the Blind (United Kingdom)
Deutscher Blinden-und-Sehbehinderten verband e.V.
De Samvirkende Invalideorganisationer (Denmark)
DPI - Italia
IHD Airport Services
Disabled Persons Transport Advisory Committee (United Kingdom)²⁶
Access to the Skies (United Kingdom)²

²⁵ Joint submission

²⁶ Joint submission

Other

International Union of Aviation Insurers

Worldspan (travel information services)

European Cockpit Association

Aviation Health Institute (United Kingdom)

IATA: RECOMMENDED PRACTICE 1724
GENERAL CONDITIONS OF CARRIAGE**(1998 version)**

Applicability:	general charter operations code shares overriding law prevalence of conditions over regulations
Tickets:	requirement for valid ticket period of validity coupon sequence and use name and address of carrier
Fares and charges:	general applicable fares taxes and charges currency
Reservations:	reservation requirements ticketing time limits personal data seating service charge when space not occupied reconfirmation of reservations
Check-in/boarding	
Refusal and limitation of carriage:	right to refuse carriage special assistance
Baggage:	free baggage allowance excess baggage items unacceptable as baggage right to refuse carriage right of search checked baggage excess value declaration and charge collection and delivery of checked baggage animals
Schedules, delays, cancellations of flights:	schedules cancellation, re-routing, delays etc.
Refunds:	involuntary refunds voluntary refunds refund on lost ticket right to refuse refund currency by when ticket refundable
Conduct aboard aircraft:	general electronic devices arrangements for additional services

Administrative formalities:

general
travel documents
refusal of entry
passenger responsible for fines, detention costs
etc
customs inspection
security inspection

Successive carriers

Liability for damage

Time limit action on claims and actions:

notice of claims
limitation of actions