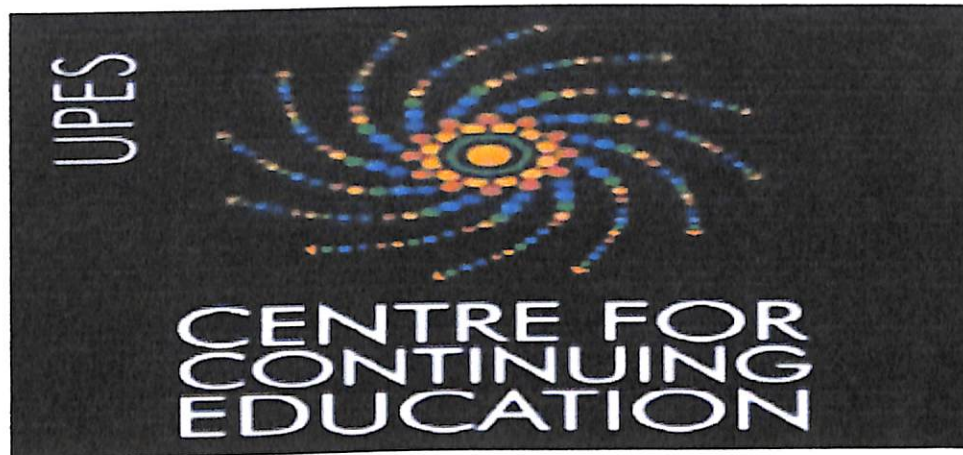


APPENDIX - 1



**CONSUMER PROTECTION ISSUES IN CIVIL AVIATION INDUSTRY**



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OPERATIONS OFUNIVERSITY OF PETROLEUM & ENERGY STUDIES,  
INDIA**

**CENTRE FOR CONTINUING EDUCATION  
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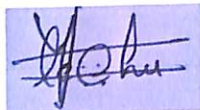
**APPENDIX – II**  
**Acknowledgement**

This is to acknowledge with thanks the help, guidance and support that I have received during the Dissertation.

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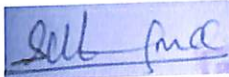
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**CHAPTER 1**

**INTRODUCTION**

Travel by air is commonly accepted as a commodity and no longer consider a luxury. Despite a general reduction in airfares, passenger expectations remain high with respect to facilitation, comfort and timeliness of flight and according to studies, the overall air travel experience today is often perceived as not meeting expectations.

This perceived deterioration in quality is tied to several factors including delays due to airspace or airport congestion and insufficient contingency planning in case of severe weather. Also of significance is the increased travel time associated with the passenger compliance of security measures. In the past decade, the issue of consumer protection has attracted increasing attention, highlighted by instances of air travel disruption caused by severe weather conditions or natural disasters.

In accordance with recommendations of the eleventh meeting of the ICAO Air Transport Regulation Panel (ATRP/11, 4-8 June 2012) requesting that ICAO conduct a study on the effectiveness of consumer protection regulations in different regions, account has been taken of regulatory initiatives by as broad a sample of States or regions as possible. It should be noted, however, that most of the available analytical tools on the effectiveness and characteristics of consumer protection regulations come from European Union (EU) and United States (U.S.) sources. Those two geographic units have extensive passenger protection regulations and, as such, there are many sources of information, both public and private, providing detailed data and analysis on the impact of such regulations. In some cases, regulations

impose an obligation to report and publicize consumer protection data which clearly facilitates analysis

## **1.1 Three Levels of Airline Passenger Protection**

The rights of domestic airline passengers are set forth at three different levels: in federal laws, in regulations, and in the airlines' own policies. Congress, under its constitutional power to "regulate Commerce with foreign Nations, and among the several States,"<sup>1</sup> has authority over airline passengers' rights. State and local governments are generally preempted by law from regulating "price, route, or service of an air carrier."

### **1.1.1 The Role of Congress**

By and large, the rights of airline passengers are defined by Congress. Congress determines the extent to which airline consumer rights are codified in law, authorizes federal agencies to enforce those rights, and directs or authorizes federal agencies to define and enforce passenger rights that are not specifically enumerated in legislation. The House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation are the primary congressional committees of jurisdiction, and exercise routine oversight



over DOT, the principal department responsible for executing and enforcing airline passenger rights laws. In many cases, Members of Congress become aware of passenger rights issues by receiving complaints from constituents, and congressional office staff members are often called upon to advise constituents about their rights as air passengers, to provide guidance on filing complaints with DOT, and to communicate with DOT about constituent concerns. The controversy surrounding tarmac delays illustrates the ways in which Congress exercises its oversight authority. Between 2007 and 2009, hundreds of incidents occurred in which passengers were held aboard planes that had either departed airport gates but were not allowed to take off or had landed but were not allowed to disembark passengers. These incidents were extensively reported in the news media, and congressional offices received numerous complaints from constituents who had been aboard planes that were unable to provide passengers with drinking water or on which lavatories stopped functioning. Congressional hearings ensued in 2009. In the wake of this attention, DOT issued rules on tarmac delays in 2010. Language on this subject, providing a firmer statutory footing for the federal rules that had already entered into effect, was incorporated into the FAA Modernization and Reform Act of 2012 (P.L. 112-95). Some Members of Congress also have expressed concern about issues related to flight schedules, aircraft capacity, and frequency of service. Although these matters are no longer subject to federal regulation, they are often raised in the context of business dealings between air carriers that do require federal approval, such as mergers

and code sharing arrangements. For example, the proposed merger between American Airlines and US Airways led to objections that the merger would reduce competition and limit consumer choices. These concerns were expressed by some Members of Congress and witnesses during congressional hearings in February and March 2013, before completion of the merger in December 2013 and the final approval of settlement between DOJ and airlines was granted in April 2014.

### **1.1.2. The Role of the U.S. Department of Transportation (DOT)**

#### **DOT Regulatory Authority**

DOT is responsible for executing and enforcing airline consumer rights laws established by Congress. It may also develop regulations based on more general statutory authority, giving it broad powers to prescribe regulations, standards, and procedures related to air travel.<sup>5</sup> More specifically, DOT has authority “under 49 U.S.C. Section 41712, in concert with 49 U.S.C. Sections 40101(a)(4), 40101(a)(9), and 41702 to protect consumers from unfair or deceptive practices and to ensure safe and adequate service in air transportation.” DOT’s authority in this area is exercised by the Office of the Secretary, not by the Federal Aviation Administration (FAA), which is responsible for aviation safety. DOT does not have authority over matters related to aviation security and airport security screening, which are administered by the Transportation Security Administration (TSA), an agency of the Department of

Homeland Security. DOT's statutory authority is generally used as the basis for rulemaking. Occasionally, it is also used in direct enforcement actions. Most of DOT's consumer rules are based on the "unfair or deceptive practices" provision, with a few based on the "ensure safe and adequate service" provision. The definition and interpretation of the phrase "unfair or deceptive practices" can significantly affect the scope of DOT's rulemaking and enforcement authorities.

### 1.1.3 Airline Deregulation and Contracts of Carriage

The third source of airline passengers' rights is each air carrier's "Contract of Carriage," the legal agreement between an airline and its ticket holders. Contracts of carriage typically define the rights, duties, and liabilities of parties to the contract. For example, United Airlines' contract of carriage lists 30 rules, covering matters from reservations and ticketing to cancellation and refund policies to medical ground transfer services. Before the age of electronic tickets, contracts of carriage were usually evidenced by ~~standard~~ terms and conditions printed on the reverse of paper tickets. Now, they are often available for download via airlines' websites or at an airline's ticketing facilities. Passengers may take legal action in federal courts based on the contracts. Contracts of carriage replace the pre-deregulation-era-rules "tariffs" that were subject to approval by the Civil Aeronautics Board (CAB). The CAB could take action against an air carrier that violated its

approved tariffs. Since the economic deregulation of the domestic airline industry in

1978, the federal government no longer has control over airlines' prices or routes, and contracts of carriage are not subject to federal review or approval. However, a contract of carriage that conflicts with federal laws or regulations may not be enforceable by the airline. With respect to passenger rights, the deregulated environment differs from the former regulated environment in two major ways. First, under regulation, the CAB had authority to approve carriers' proposed fares and even to set fares itself. The airlines' profitability was protected by this price setting and by barriers to the entry of new competitors. Airlines, for the most part, competed on service and frequency rather than price. Since deregulation, and especially with the advent of low-cost carriers, the primary means of competition has become price, not service.

In recent years airlines have "unbundled" their offerings, charging separately for services that once were included in the price of a ticket. Among these charges are fees for checked baggage, early/priority boarding, and seat change on a flight. Such ancillary fees have become major causes of consumer complaints.

#### **1.1.4 Consumer Complaints to DOT**

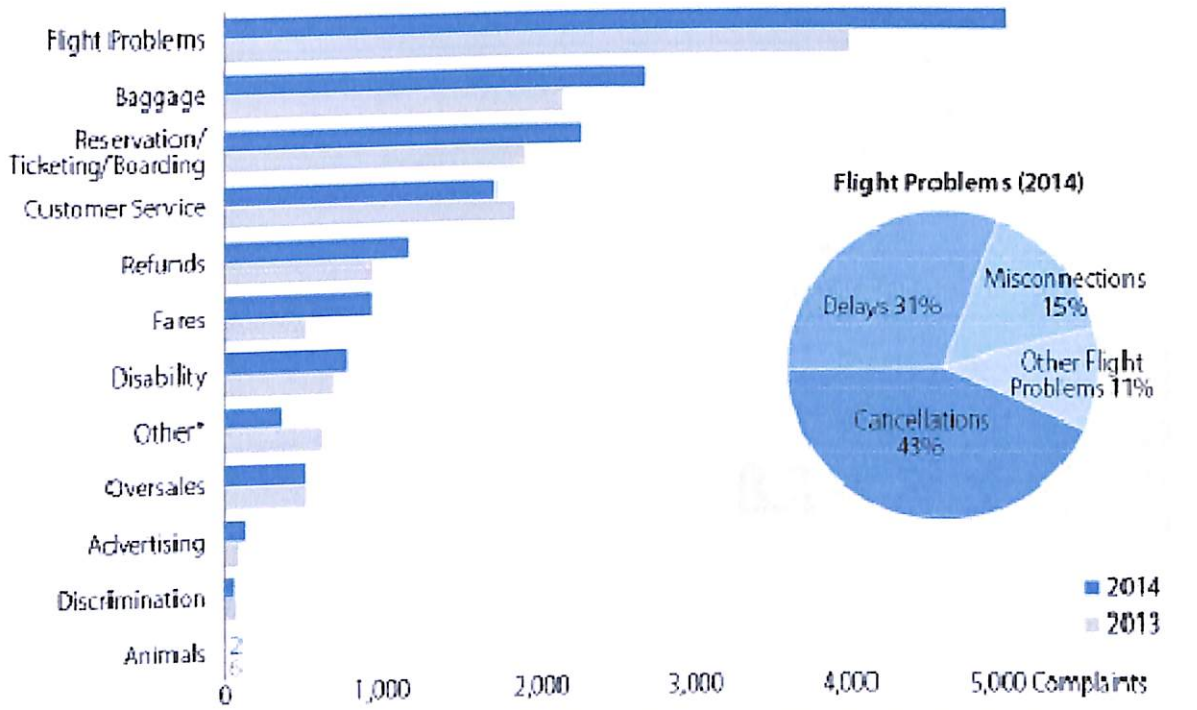
Despite the fact that the 15 largest U.S. airlines' on-time arrival rate was over 76% in 2014, flight delays and cancellations continue to be the most prevalent passenger complaint to DOT. In 2014, there were more

than 4,973 such complaints in total, accounting for more than 32% of all complaints. Mishandled baggage, problems with reservations, ticketing, and boarding, customer service, and refunds are also among the most frequent complaints (see **Figure 1**).

**Source:** U.S. Department of Transportation, Air Travel Consumer Report (February 2015),

**Note:** “Other” includes complaints regarding frequent flyer programs, smoking, cargo problems, airport facilities, security, etc. While DOT continues to receive many complaints about mishandled baggage, improved tracking systems have helped U.S. air carriers reduce the proportion of bags that are lost or sent to the wrong destinations

**Figure 1. Number of Airline Consumer Complaints Filed with DOT 2013-2014**



**CHAPTER 2**

**OVERVIEW OF CONSUMER PROTECTION RULES**

## **2.1 Previous ICAO work on consumer protection**

ICAO's activities in the area of consumer protection include the adoption of Assembly resolutions (notably A37/20), of ATConf/5 recommendations and the development of guidance material, as described in ATConf/6-WP/5. The ICAO Secretariat has developed and maintains a summary of airline and governmental responses to consumer protection issues, available on ICAO's website.

## **2.2 Warsaw and Montréal Conventions**

**2.2.1** The Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929 ("Warsaw Convention"), established the principle of the air carrier's liability for damage caused to passengers, baggage and goods, as well as for damage caused by delay. Over time, the Warsaw Convention had to be expanded and a number of amendments and additions were concluded (commonly referred to as Warsaw system of instruments). To modernize and consolidate the Warsaw Convention and related instruments, the Convention for the Unification of Certain Rules for International Carriage by Air, was adopted in Montreal on 28 May 1999 ("Montréal Convention").

**2.2.2** The Montréal Convention expressly recognizes the "importance of ensuring the protection of the interests of consumers in international



carriage by air and the need for equitable compensation based on the principle of restitution.”

## **2.3 Canada**

**2.3.1** Canada has taken a specific approach to passenger protection rules insofar as there are no prescriptive rules applied. Instead, the Canadian Transportation Agency issues decisions addressing the rights of passengers. The Agency adopts a “circumstance-focused approach” which requires consideration of the particular circumstances surrounding a passenger. The Agency, in five related recent decisions<sup>4</sup> stated that in some circumstances a delay or cancellation will defeat the purpose of the trip and that, in such cases, the passenger should have the right to choose between continued travel and a full refund. It appears from these decisions that the obligation of an air carrier is not absolute and that its responsibility applies only for delays within its control.

## **2.4 State of Israel**

**2.4.1** In August 2012, the State of Israel enacted an Airline Passenger Rights Law. The Law, which applies to scheduled airline flights as well as charter flights, provides for assistance (food, drink, phone access) in case of flight delays. An option is provided to the passenger to cancel the reservation and receive a refund if the duration of the delay is

between 5 and 8 hours. For longer delays, compensation and accommodation are provided.

## **2.5 Kingdom of Saudi Arabia**

**2.5.1** The General Authority of Civil Aviation (GACA) of the Kingdom of Saudi Arabia issued a Consumer Protection Regulation (the “GACA Regulation”) in August 2005. According to its Article 5 (Scope of Application), the GACA Regulation applies to “all domestic and international air carriage of persons, baggage or goods on flights arriving at the [Kingdom of Saudi Arabia] or departing there from.” Passengers are granted protections in cases of denied boarding due to overbooking, flight cancellations and delays, including assistance and compensation. Article 15 of the GACA Regulation promotes the “principle of utmost transparency in [...] advertisements on flight and services provided [...]”, notably by stating that the prices advertised should be considered as “total prices and [that] the air carrier shall not be entitled to add additional fees to such prices, unless such is included explicitly in advertising materials”.

## 2.6 U.S.

**2.6.1** On 25 April 2011, a rule enhancing Airline Passengers Protection was issued by the U.S. Department of Transportation (DOT). This rule applies to: U.S. and foreign air carriers operating passenger service using aircraft of 30 seats or more; and to or from a U.S. airport.

According to the *Manual on the Regulation of International Air Transport*, “passenger air service” is an air service performed primarily for the transport of passengers. Therefore, this rule does not apply to freight services.

**2.6.2** Compensation of up to USD 1,300 is due in cases where the passenger is denied boarding due to oversold flights, depending on whether the carrier offers alternate transportation and based on the delay of arrival at final destination. In addition, with respect to domestic flights, a carrier is not permitted to allow an aircraft to remain on the tarmac for more than three hours before allowing passengers to deplane, subject to security or safety-related circumstances or if air traffic control advises that returning to the gate would significantly disrupt operations. With a view to ensuring price transparency, the price for an airline ticket must be the entire price to be paid. Although charges (e.g. government taxes) can be stated separately, they must be displayed so as to accurately reflect the total price to be paid by the passenger.

## 2.7 EU

**2.7.1** In the EU, Regulation 261/204 was enacted in February 2004. The scope of application of the Regulation is set out in Article 3.

1. This Regulation shall apply:


- (a) To *passengers* departing from an airport located in the territory of a Member State to which the Treaty applies;
- (b) To *passengers* departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier [emphasis added].”

**2.7.2** The second paragraph of Article 3 describes the conditions for application of the Regulation:

- “(a) passengers must have a confirmed reservation on the flight concerned and, except in the case of cancellation, must present themselves for check-in, as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorized travel agent, or, if no time is indicated, not later than 45 minutes before the published departure time; and
- (b) Have been transferred by an air carrier or tour operator from the flight for which they held a reservation to another flight, irrespective of the reason.”

**2.7.3** The regulation does not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. However, it applies to passengers having tickets issued under a frequent flyer programme or other commercial programme by an air carrier or tour operator. Regulation 261/2004 does not apply to other users of air transport, such as users of air freight services, or parties with whom air carriers have a contractual relationship, such as airports, air navigation services providers (ANSPs), or ground-handlers.

**2.7.4** Regulation 261/2004 provides different protections to passengers. First, a right to care, or assistance: in case of flight delays and cancellations, the airline must minimize the discomfort to passenger (catering, hotels, communication means, etc.). Second, the Regulation gives passengers a right to compensation, in cases of flight cancellations and depending on flight distance, of up to EUR 600, unless the cancellation is caused by “extraordinary circumstances”. It should be noted that the exemption allowed for under “extraordinary circumstances” only applies to compensation obligations, and not to assistance.



## **2.8 Latin America**

**2.8.1** In November 2004, the Latin American Civil Aviation Commission (LACAC) recommended<sup>10</sup> that Member States adopt a set of rules protecting passengers with confirmed reservations who have been denied boarding involuntarily. Among the protections provided by the recommended rules is the possibility to choose between substitute transportation and reimbursement.

**CHAPTER 3**

**PASSENGERS' SATISFACTION: MAIN AREAS OF CONCERN**

### 3.2 General satisfaction indicators — Europe

3.2.1 In the European region, passenger satisfaction varies depending on the criteria used. The results of a survey published in December 2009 at the request of the European Commission<sup>11</sup> are provided below, indicating itemized percentages of satisfied passengers who traveled by air:

<b>Passenger satisfaction</b>	<b>Per cent</b>
Punctuality	80%
Comfort	76%
Information in case of delays or cancellations	63%
Information in case of loss, damage or delay of luggage	46%
Compensation offered in case of service failures	37%





### 3.3 General satisfaction indicators — U.S.

3.3.1 In the U.S., passenger complaint categories can be listed in order of decreasing importance.

Rank	Complaint category	Number	Per cent
1	Flight problems (cancellations, delays, misconnections)	317	25.2%
2	Reservation/ticketing/boarding	176	14.0%
3	Baggage	174	13.8%
4	Customer service	164	13.0%
5	Fares	132	10.5%
6	Refunds	117	9.3%
7	Disability	68	5.4%
8	Other, frequent flyer	46	3.7%
9	Over sales	36	2.9%
10	Advertising	24	1.9%
11	Discrimination	5	0.4%
12	Animals	1	0.1%
		<b>1,260</b>	<b>100%</b>

### **3.4 Passenger complaints**

#### **3.4.1 EU**

a) In 2009, a total of 35,198 complaints were received.

- 1) 41 per cent were due to cancellations;
- 2) 25 per cent were due to delays;
- 3) 24 per cent of all complaints were resolved;
- 4) in 3 per cent of the cases, sanctions were issued.

b) In the Federal Republic of Germany, draft legislation was adopted on 4 July 2012 regarding the introduction of conciliation bodies for airline passengers; the draft legislation needs to be approved by the Parliament. According to the draft legislation, claims can be brought by all passengers, except business travelers and passengers travelling on package tours, when the amount in dispute is between EUR 10 and EUR 5,000. Since the parties will not be bound by the mediator's suggestion, claims can be brought before civil courts. Airlines will be required to bear the cost of establishing and maintaining conciliation bodies. It is estimated that the average number of air passenger complaint cases in Germany is 6,500 per year.

### 3.4.2 U.S.

a) In May 2012, the DOT handled 1,260 complaints (compared to 1,065 in May 2011).<sup>14</sup> When looking at the complaint categories, an aggregate of 64 per cent of complaints are related to issues that occurred during the flight, including such areas as baggage, consumer service, disability, over sales, discrimination, animal-related incidents. The major single source of passenger complaint, with 25 per cent, stems from the category of “flight problems” which covers cancellations, delays, and misconnections.

b) A total of 26 per cent of complaints are related to pre-flight issues. Those are areas touching on commercial or marketing matters, such as reservation/ticketing/boarding, fares, and advertising. Advertising only generates 1.9 per cent of complaints while refunds generate 9 per cent of complaints.

c) The high level of satisfaction for punctuality (80 per cent) is remarkably consistent with the rate of on-time flights (around 83 per cent). The comfort is also generally satisfactory, with 76 per cent of satisfied respondents.

### 3.5 Causes of flight delays

**3.5.1** A comprehensive study has been prepared for the European Commission examining how airlines have applied Regulation 261/2004. The analysis is based on data published by the French *Direction Générale de l'Aviation Civile* (DGAC), the Association of European Airlines (AEA) and the European Regional Airlines Association (ERAA). Based on graphical information presented in the study, estimates were derived on the causes of flight delays and are presented below.

<b>French DGCA</b>	<b>Per cent</b>
Airline (flight operations)	25%
Reactionary and miscellaneous	40%
Airports and security	10%
Air traffic management	10%
Weather	5%
Passenger	10%

**3.5.2** According to a regular survey published by the DOT, 16 83.4 per cent of flights were on time in May 2012 and 0.6 per cent were cancelled. The report also provides a breakdown of the causes of delay.

<b>Cause of delay</b>	<b>Per cent</b>
On time	83.4%
Cancelled	0.9%
Diverted	0.2%
Airline	4.6%
Weather	0.6%
National aviation system	4.8%
Security	0.0%
Late arrival	5.6%
<b>Total</b>	<b>100.0%</b>

**3.5.3** According to a European Commission working paper published in April 2011 on the operation of Regulation 261/2004, about half of the cancellations in 2010 were due to the volcanic ash crisis which took place in April of the same year. This illustrates the high impact of circumstantial or cyclical disruptions on overall airline timeliness.

### **3.6 Flight cancellations in cases of strike**

**3.6.1** In March 2012, the French Parliament passed a new law on the organization of services and information to passengers in companies involved in the carriage of passengers by air. This law imposes on employees of airlines an obligation to declare their intention to initiate strike action at least 48 hours before the commencement of any disruption. Airlines must also inform passengers at least 24 hours before the commencement of disruptions caused by planned industrial action.

**3.6.2** This statute has been submitted to France's Constitutional Court, particularly with respect to the requirement for employees to inform their employer of their intention to initiate strike action 48 hours in advance, and was upheld, on the grounds that this requirement is proportionate from a constitutional viewpoint, considering passengers' right to travel.

**3.6.3** A decision by the Federal Republic of Germany's Federal Court of Justice confirmed that strikes should be considered as constituting "exceptional circumstances." Consequently, passengers may not claim for compensation provided by Regulation 261/2004 in cases of strikes.

### **3.7 Price transparency — U.S.**

**3.7.1** DOT rules require that the total price, including taxes, appear as the most prominent figure displayed on print advertisements and websites. Under the so-called “Airfare Advertising Rule,” airlines remain free to provide an itemized breakdown, displaying to the customer the amount of the base fare, taxes and other charges, but they may not display such price components “prominently” or in the same or larger size as the total price. To ensure that consumers clearly understand the final price to be paid, the total cost must be the most prominent figure.

### **3.8 Price transparency — EU**

**3.8.1** Regulation 1008/2008 on air services in the EU requires that the published price for the service shall include the fare and all applicable taxes, charges, surcharges and fees which are unavoidable and foreseeable at the time of publication. In addition, details must be given of the different components of the price (fares, taxes, airport charges and other costs).

**3.8.2** The Consumer Rights Directive 2011/83/EU22 aims at increasing transparency for passengers, especially when purchasing tickets online. The Directive explicitly bans pre-ticked boxes, internet cost traps and any additional charges which passengers were not duly informed of in advance.

**CHAPTER 4**

**EFFECTIVENESS OF CONSUMER PROTECTION  
REGULATIONS**



## **4.1 U.S.**

**4.1.1** It has been argued that, while the so-called “DOT Tarmac Delay Rule” has nearly eliminated tarmac delays of 3 hours or more, the enactment of this rule has coincided with a greater likelihood of flight cancellations.<sup>23</sup> Available data tends to support the view that this rule did not have such counter-productive effects. Judging from official figures based on information from the largest U.S. airlines, on-time arrivals have increased from 73.4 per cent in 2007 to 83.4 per cent in 2012. In the same interval, cancellations have decreased from 2.16 per cent to 0.9 per cent.

**4.1.2** The same positive trend can be observed for mishandled baggage reports, which have decreased from 7.05 per cent to 2.77 per cent. In the month of June 2012, no domestic flights with tarmac delays over 3 hours were recorded, and there was just one international flight with a tarmac delay of more than four hours.

## **4.2 EU**

**4.2.1** According to data on ERA airlines, in 2005, the year of implementation of Regulation 261/2004, 22 airlines were responsible for 46 per cent of primary delays, excluding reactionary ones. According to the French DGAC, airlines are responsible for 36 to 44 per cent of primary delays.

**4.2.2** There is no evidence that, following the introduction of Regulation 261/2004, the proportion of delays for which airlines are responsible has changed from its historical average of 40 per cent. Furthermore, information available as of today suggests that Regulation 261/2004 has had a limited impact on the occurrence of long delays, or on the number of cancellations. Conclusive evidence for carriers reclassifying cancellations as long delays to avoid the application of the Regulation does not appear to exist.

### **4.3 An interesting paradox: delays are down, but complaints are on the rise**

**4.3.1** Contrary to expectation, and surprising to note is the fact is that, even when delays decrease, satisfaction does not necessarily increase. While the largest U.S. airlines set a record for on-time performance during the first half of 2012, during the same period passenger complaints regarding airline service increased 24 per cent as compared to the previous year.

**4.3.2** In light of this apparent contradiction, care should be taken not to attempt to pursue an elusive objective of *absolute* passenger satisfaction, which may well be unachievable. No matter how timely, cheap, comfortable, safe and secure the flight is, there will probably always remain irrational factors for passengers' dissatisfaction.

**4.3.3** Increased passenger satisfaction may be achieved by enhancing consumer education, as further explained in the conclusion to this paper. Broad and high-level agreement on a set of simple criteria characterizing what constitutes a normal flight may also contribute to raising public awareness on simple truths, such as the correlation between price and service. It may contribute to limiting unreasonable expectations and ultimately increase satisfaction.

**CHAPTER 5**

**COSTS OF COMPLIANCE WITH CONSUMER  
PROTECTION REGULATIONS**

**5.1** According to a survey on the costs incurred by carriers associated with compliance of Regulation 261/2004, such costs were in the range of 0.1 per cent to 0.5 per cent of airline revenue.

**5.2** The events of 2010, most notably the volcano ash crisis and the severe weather disruptions in Europe, are examples of occurrences likely to trigger ripple effects across the air transport system. These events highlight the need to consider the air transport value chain as a whole. In cases where the responsibility for the delay rests with third parties such as airports, air navigation services providers, ground-handlers, and tour operators, air carriers can seek compensation. Article 13 of Regulation 261/2004 explicitly mentions the right of the carrier to seek redress from third parties:

**a) Right of redress**

In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a tour operator or a third party, other than a

passenger, with whom an operating air carrier has a contract, to seek reimbursement or compensation from the operating air carrier in accordance with applicable relevant laws.

**5.3** During the December 2010 disruption, European airlines had to cancel a significant number of flights because airlines could not de-ice aircraft as a result of the ground-handlers shortage of de-icing fluid. In such cases, when a carrier cannot invoke extraordinary circumstances, it is liable to pay compensation to passengers. Carriers whose aircraft had been grounded due to the ground-handling companies' failure to de-ice airplanes may consider seeking compensation from such companies in order to recover the cost of compensatory claims from passengers, as well as for loss of profit.

**5.4** In economic terms, it appears that the most burdensome set of obligations for airlines is the duty of assistance, particularly in cases where assistance is in the form of hotel accommodations.

**5.5** The question has been raised as to whether the principle of shared responsibility, or "Burden Sharing," should be explored. Considering the significant differences in the levels of profitability among various components of the air transport value chain, the argument was made that, in cases where compensation must be paid for reasons unrelated to airline performance, whole or part of the financial burden for the passenger compensation should be reimbursed to the airline by the responsible third party.

## APPENDIX A:

### How DOT Handles Aviation Consumer Complaints

When DOT receives a consumer complaint about an airline, it sends a copy to the airline and asks it to reply directly to the customer. If it is a complaint about a subject covered by DOT rules, DOT requires the airline to send DOT a copy of its response to the consumer, which DOT may evaluate to determine if the reply complies with DOT rules. A pattern of violations of a rule as reflected in complaints can lead to enforcement action. Even where no rule applies, if DOT determines an airline's practice, as reflected in complaints, to be deceptive, it may conduct an investigation, initiate a rulemaking, or commence enforcement action. This possibility gives airlines an incentive to monitor complaints made to DOT.

On the other hand, airlines often receive complaints directly from customers. The number of consumer complaints submitted directly to the air carriers is believed to be much higher than the number filed with DOT. However, airlines are not required by law to report consumer complaints to DOT, except those related to treatment of disabled passengers. The Air Carrier Access Act (49 U.S.C. 41705) prohibits discriminatory treatment of persons with disabilities in air transportation. The Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (P.L. 106-181) requires the Secretary of Transportation to "regularly review all complaints received by air carriers alleging discrimination on the basis of disability" and "report annually to Congress on the results of such review."

DOT's annual reports to Congress on disability-related air travel complaints are available on its website: <http://www.transportation.gov/airconsumer/annual-report-disability-related-air-travel-complaints>. In 2013, a total of 25,246 such disability-related complaints were submitted to DOT by airlines, of which 21,965 came from U.S. carriers.<sup>25</sup>



**CHAPTER 6**

**PROTECTION AGAINST SERVICE FAILURE**



## 6.1 EU

**6.1.1** According to a study prepared for the European Commission, between 2000 and 2010, 96 airline insolvencies were identified in Europe, impacting an estimated 1.4 to 2.2 million passengers. Among these passengers, 12 per cent were stranded away from home. Stranded passengers appear to incur the highest costs (of over EUR 796 on average). The costs vary according to the distance travelled:

- a) for scheduled long-haul carriers, the average stranded passenger incurred costs of EUR 1,109;
- b) for short-haul low-cost carriers, the cost was EUR 335.

**6.1.2** The protection available to passengers depends on whether the air ticket was purchased in the framework of a package travel, or on a stand-alone basis.

**6.1.3** The Package Travel Directive provides protection by having the organizers or retailers refund money paid. Under the Directive, passengers who purchase a package tour are protected from events that would lead to a failure to deliver the service, including insolvency of airlines. As a result of the growing popularity of direct bookings made separately for each element of a trip, and “dynamic packages,” where passengers put together the different components of a package

themselves, the proportion of passengers protected by the Package Travel Directive is declining.

**6.1.4** Several means of protection may still be available in cases where the passenger purchased a ticket on a stand-alone basis.

**6.1.5** First, if the purchase was paid with a credit card, and the airline subsequently becomes insolvent and can no longer deliver the agreed service, the passenger may be in a position to claim for a refund from his or her bank.

**6.1.6** Second, when the purchase was made via an International Air Transport Association (IATA) travel agent and the payment has not yet been processed, the interlining system may provide protection. Under the IATA interlining system, travel agents are able to issue tickets involving more than one airline. These tickets contain several coupons (one for each segment).

**6.1.7** Other mechanisms may be available on a national basis. For instance, in the Kingdom of Denmark, the *Rejsegarantifonden* is a fund which provides protection under the Package Travel Directive. The mechanism was extended on 1 January 2010 to offer passengers the benefit of this protection on all flights from Denmark on carriers established in Denmark. In the Kingdom of Belgium, a Decree came into force in 2007 which implemented an extended definition of “tour operator” to include any company having at least one sales outlet in

Belgium which sells tickets to passengers. As a result, airlines must hold insurance guarantee against insolvency.

6.1.8 General bankruptcy laws may also provide some level of limited redress in the event of air carrier insolvency. Depending on the jurisdiction, national laws usually provide that a creditor (in this case, the passenger who has paid for a ticket with the bankrupted airline) must file a claim with a designated authority in order to obtain payment. The actual protection offered by such general mechanism is often not satisfactory, since unsecured creditors are paid from the remaining proceeds of liquidation proceedings once all secured creditors have been paid. In the context of heavily-leveraged airlines, secured creditors likely include aircraft lessors, financial institutions, aircraft manufacturers, labor, in addition to tax authorities, and insolvency procedure officials such as trustees. The likelihood that any monies remain for passengers after secured creditors have been paid is therefore low.

**CHAPTER 7**

**THE NEED FOR REGULATORY CONVERGENCE**

## **7.1 The need for uniform interpretation**

**7.1.1** Different levels of interest and responses to consumer protection issues have resulted in the emergence of regimes with similar aims and objectives on passenger rights but with different approaches in the different regions, as illustrated in ICAO's online Summary of Consumer Protection Rules. A potential consequence of this patchwork of emerging regimes is that carriers with broader networks, especially the ones involved in major markets, could face numerous and sometimes conflicting regulatory and contractual requirements. Several undesirable consequences are likely to result. A fragmented system of consumer protection regimes may make it costlier for airlines to apply consistent internal training and to maintain adequate communication.

Fragmentation may also affect common or compatible industry systems and standards as well as the multilateral interline system.<sup>36</sup>

**7.1.2** The negative impact of divergence in the regulatory frameworks between different States, as well as the benefits of convergence, are well summarized in the text of a Communication from the European Commission<sup>37</sup>:

“These divergences in national legal frameworks, administrative systems and judicial procedures increase costs and legal uncertainty for both the aviation industry, which is heavily reliant on cross-border traffic for business, and passengers. Working with Member States to detect and overcome obstacles in national law hampering proper

application of the Regulation – including, if necessary, the opening of infringement procedures – will improve enforcement at EU level.”

## 7.2 The risks of extra-territorial application

7.2.1 Although existing regulatory measures are applied internationally on the country-of-origin basis, a State may wish to apply them irrespective of the origin or destination of the flights operated by its national carrier(s), or to further extend the scope of application to foreign carriers operating in its territory.

7.2.2 An example can be found in Regulation 261/2004, which applies:

- a) To passengers departing from an *airport located in the territory of a Member State* to which the Treaty applies;
- b) To passengers departing from an *airport located in a third country* to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier [emphasis added].

7.2.3 As previously mentioned, the DOT rule enhancing Airline Passengers Protection applies to U.S. and foreign air carriers that operate passenger service, *to or from* a U.S. airport [emphasis added].

7.2.4 A scenario of possible overlap between these two rules could be the following: a flight from New York (U.S.) to Paris (France) operated

by an EU carrier. Let us assume that a passenger is denied boarding and arrives late at destination. The passenger may be able to request assistance under Regulation 261/2004 and could also invoke the DOT rules to claim denied boarding compensation. Article 3.1(b) of Regulation 261/2004 provides that compensation may be claimed by the passengers “unless they received benefits or compensation and were given assistance in that third country.” Despite this exclusionary language, in practice a passenger could be tempted to resort to the regulation which is more favorable. This possibility would be conducive to additional uncertainty for operators and may generate litigation.

### **7.3 The concept of “Extraordinary Circumstances”**

#### **7.3.1 The *Wallentin-Hermann* Case**

**7.3.1.1** In the case of Friederike Wallentin-Hermann, the European Court of Justice clarified the concept of “extraordinary circumstances”, under which according to Article 5.3 of Regulation 261/2004, a carrier is not be obliged to pay compensation. Recital 14 of this regulation provides that such extraordinary circumstances may, in particular, occur in cases of “political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.”

**7.3.1.2** In the case at hand, delayed passengers were claiming for compensation and the airline invoked the extraordinary circumstances exception. On the night before the flight, during a routine inspection of the aircraft, a defect was found on a turbine, preventing the use of this aircraft. The flight was cancelled and the passengers, re-routed by the airline, arrived at destination around 4 hours and 40 minutes after the scheduled arrival time. The Court ruled that such a problem did not fall under the meaning of “extraordinary circumstances”, unless the problem stems from events which, by nature or origin, are not inherent in the normal exercise of the activity of the air carrier.”

### **7.3.2 The *Sturgeon* Case**

**7.3.2.1** In this case, the European Court of Justice ruled that passengers whose flights are delayed may be treated as passengers whose flights are cancelled when they arrive at a destination 3 hours or more after the scheduled arrival time. As a result, passengers can claim for compensation provided by Article 7 of Regulation 261/2004.

### **7.3.3 The *Elvind F. Kramme* Case**

**7.3.3.1** In his opinion delivered on 27 September 2007, the Advocate General considered that extraordinary circumstances include “technical problems which are neither of a kind typically occurring from time to



time on all aircraft and/or a particular aircraft type nor of a kind known to have affected the aircraft in question before.”

**7.3.3.2** It is informative to look at the underlying circumstances of the case before the European Court. Before the flight in question, the aircraft underwent a B-check, which is carried out after every 275 hours of flying time. On the day before the cancelled flight, the pilot heard unusual noises coming from the nose of the aircraft. Since no other aircraft was available, the flight was cancelled.

**7.3.3.3** In its opinion, the Advocate General delves on the nature of the problem encountered and indicates “regular air travelers know technical problems with aircraft are not infrequent [...] the occurrence of such problems *in general* cannot be considered extraordinary.”

#### **7.3.4 The *Denise McDonagh* Case**

**7.3.4.1** In this case the Court ruled that circumstances such as the closure of part of the European airspace as a result of the eruption of the Eyjafjallajökull volcano constitute ‘extraordinary circumstances’ within the meaning of [Regulation 261/2004] which do not release air carriers from their obligation laid down in Articles 5(1)(b) and 9 of the regulation to provide care.

**7.3.4.2** The above cases illustrate the challenges associated with the interpretation of the notion of “extraordinary circumstances”, as well as

the need for drafting clarity and contractual predictability. It should be noted that in 2011, the European Commission decided to launch a public consultation on the possible revision of Regulation 261/2004.



## **CHAPTER 8**

### **Selected Passenger Air Service Improvement Provisions in 2012 FAA Reauthorization**

The FAA Modernization and Reform Act of 2012 (P.L. 112-95), signed into law on February 14, 2012, included a number of provisions relating to passenger rights.<sup>15</sup> Some of the passenger-rights provisions put forth during the years-long debate over FAA reauthorization were not included in the final bill, as similar protections had meanwhile been implemented through the DOT rulemaking process. Some of the relevant provisions of P.L. 112-95 are summarized below.

### **8.1 Smoking Prohibition**

Section 401 amended the smoking prohibition set forth in 49 U.S.C. 41707 to clarify that the prohibition applies to passenger flights, both domestic and international. It also expanded the coverage to include nonscheduled intrastate, interstate, or international flights if a flight attendant is a required crewmember of the aircraft

### **8.2 Monthly Air Carrier Reports**

Section 402 required airlines to file monthly reports on flights that are diverted from their scheduled destination to another airport and on flights that depart from the originating airport gate but are canceled before takeoff. The Secretary of Transportation is to compile air carriers' reports and publish the information on the DOT website. DOT responded to the law by amending the on time performance reporting

requirements to add data elements for diverted flights and returns to the gate.

### **8.3 Musical Instruments**

Section 403 requires air carriers to permit passengers to stow a musical instrument in the aircraft passenger compartment in a closet or baggage/cargo stowage compartment without charge, if the instrument can be stowed in accordance with the requirement for carriage of carry-on baggage or cargo set forth by FAA and there is space for such stowage on the aircraft. An instrument too large to be stowed in a closet or a baggage or cargo stowage compartment may be stowed in a seat if it fits and if the passenger is willing to pay an additional ticket price for use of the seat. An instrument may be treated as checked baggage if the sum of the length, width, and height, including the case, does not exceed 150 inches, if its weight does not exceed 165 pounds, and if it can be stowed in accordance with the requirements for the stowage of baggage or cargo.

### **8.4 Review of Air Carrier Flight Delays and Cancellations**

Section 406 directs the Inspector General (IG) of DOT to review and assess air carrier flight delays, cancellations, and their causes. Congress also required the IG to update its 2000 report, "Audit of Air Carrier Flight Delays and Cancellations" (report CR02000-112), and submit the

review results to the House and the Senate within one year after enactment. In December 2013, the IG issued a report (report AV-2014-016) titled “More Comprehensive Data Are Needed to Better Understand the Nation’s Flight Delays and Their Causes.”

### **Compensation for Delayed Baggage**

Section 407 required the U.S. Government Accountability Office (GAO) to conduct a study to

- (1) Examine delays in the delivery of checked baggage to passengers and
- (2) Make recommendations for establishing minimum standards to compensate passengers in the case of unreasonable delays in checked baggage delivery.

### **8.5 DOT Airline Consumer Complaint Investigations**

Section 408 directs the Secretary of Transportation to investigate consumer complaints regarding flight cancellations; compliance with federal regulations regarding the overbooking of seats on flights; lost, damaged, or delayed baggage (and problems with air carrier claim procedures); problems with refunds for unused or lost tickets; incorrect or incomplete information on fares, discount fare conditions and availability, overcharges, and fare increases; rights of passengers who

have accumulated frequent flier miles; and deceptive or misleading advertising.

### **8.5.1 Cell Phone Use Study**

Section 410 required FAA to conduct a study on the impact of the use of cell phones for voice communications in an aircraft during a flight in scheduled passenger air transportation where currently permitted by foreign governments in foreign air transportation.

### **8.5.2 Advisory Committee for Aviation Consumer Protection**

Section 411 requires the Secretary of Transportation to establish a four-member committee for aviation consumer protection to advise the Secretary in carrying out passenger service improvements. The Secretary of Transportation established this advisory committee on May 24, 2012. It is to terminate on September 30, 2015.



## **8.6 Disclosure of Seat Dimensions to Facilitate**

### **8.6.1 Use of Child Safety Seats**

Section 412 required FAA to prescribe regulations for posting on air carrier websites the maximum child safety seat dimensions that will fit into a seat on an aircraft, within one year of enactment. An FAA rulemaking on this subject is pending.

### **8.6.2 Airline and Airport Emergency and Contingency Plans**

Section 415, which generally codifies a DOT rule adopted in 2010 (see below), required covered air carriers and commercial airports to submit to DOT a proposed contingency plan to address tarmac delays within 90 days of enactment. DOT was directed to establish minimum standards for these plans to ensure that they address long tarmac delays and provide for the health and safety of passengers and crew. The air carrier plans are to require each air carrier to provide essential services, including adequate food, potable water, restroom facilities, cabin ventilation, cabin temperatures, and medical treatment. DOT has completed review of the contingency plans and has required each covered carrier to post its plan on its website. Air carriers are required to update each emergency plan every three years and submit the update to DOT for review and approval; airports are required to update and submit their plans every five years.



### **8.6.3 Consumer Complaint Hotline**

Section 415 also requires DOT to establish a consumer complaint hotline telephone number for use by airline passengers. Carriers using aircraft of 30 seats or more would need to include on their websites, ticket confirmations, or boarding passes the hotline number; the email address, telephone number, and mailing address of the air carrier; and the email address, telephone number, and mailing address of the Aviation Consumer Protection Division of DOT.

### **8.6.4 Use of Insecticides in Passenger Aircraft**

Section 415 also required the Secretary of Transportation to establish a public website that lists countries that may require an air carrier to treat an aircraft passenger cabin with insecticides. Air carriers or ticket agents selling tickets in the United States for a foreign destination listed on the DOT website shall disclose on their own websites or through other means that the destination country may require the carrier to treat the cabin with insecticides.



# FAA Aviation Safety

**CHAPTER 9**

**RECOMMENDATION  
AND  
CONCLUSION**

### **Recommendation 2.3/1—Consumer protection**

- a) ICAO should continue to monitor consumer protection developments and to play a leadership role in developing policy guidance, taking into account the interests of States, the industry, air travelers and other aviation stakeholders;
- b) ICAO should, in particular, develop, in the short term, a set of high-level non-prescriptive core principles on consumer protection which strike an appropriate balance between protection of consumers and industry competitiveness and which take into account the needs of States for flexibility, given different State social, political and economic characteristics; these core principles should be consistent with existing instruments, in particular the Convention for the Unification of Certain Rules for International Carriage by Air, adopted in Montréal on 28 May 1999;
- c) ICAO should establish a dedicated ad hoc group drawn from existing bodies such as the Air Transport Regulation Panel (ATRP), including experts designated at ICAO's invitation by States or regional bodies, with a view to facilitating the development of the core principles in an efficient and expedient manner;
- d) ICAO should continue to play a leadership role in consumer protection in air transport and should cooperate with other international organizations, including UNWTO, in areas of common interest with a view to, inter alia, avoiding duplication of efforts;

e) States should foster the adoption and implementation of consumer protection measures aimed at increasing the connectivity provided by air transport; and

f) ICAO should take necessary action, possibly through the involvement of adequate bodies such as the Aviation Security Panel (AVSECP) and the Facilitation Panel (FALP), for subsequent work on cost-benefit analysis related to air transport connectivity.

## CONCLUSION

9.1 It is difficult to draw a general worldwide conclusion on the effect of consumer protection regulations on the quality of air transport services, including timeliness. The consumer protection regimes implemented in different regions are strongly influenced by the specific features of the region or State concerned, whether they are of a regulatory, commercial or operational nature. As already mentioned, most of the readily available analysis focuses on passenger protection regulations issued in the EU and the U.S. Based on the information available, it is possible to make the following findings:

a) In the U.S., a general decrease in the frequency of delays and cancellations can be observed over the past five years. Recent figures tend to show record low levels of delays and cancellations. The question of whether the noted decrease is directly influenced by the introduction of regulations or not remains unanswered. Further study would be beneficial to ascertain the exact causality between regulatory activity

and level of service. Additional research would also be needed to evaluate in more detail the advantages of consumer protection regulations over other initiatives such as airline voluntary commitments;

b) the figures from the EU do not yet show any significant impact of the adoption of Regulation 261/2004 on the frequency of delays or cancellations; and

c) There is no evidence indicating that airlines have reclassified long delays as cancellations.

**9.2** As explained previously, there seems to be an element of passenger dissatisfaction, since irrational factors are involved, including possibly a certain nostalgia of times when the state of the air transport industry allowed for the widespread provision of a level of service nowadays equivalent to business class standards. It should be borne in mind that the cost of air travel has dramatically decreased during the past half-century. It takes 1.7 weeks of the average Australian wage to pay for the lowest Sydney-London return airfare. In 1945, it took 130 weeks.

**9.3** Certain States have undertaken to address consumer protection issues through proactive education of passengers. One example is the Civil Aviation Authority of Singapore, which has been working with the Consumers Association of Singapore (CASE) to educate consumers on the key aspects of air travel, including what to look for when purchasing air tickets and the avenues of recourse in the event of airline service lapses. Consumers increasingly recognize that Singapore's air travel market presents a wide range of choices with different fares, services

standards and contractual obligations during service outage. The gap between consumers' expectations and low-cost carrier service levels seem to have narrowed, as consumers became more familiar with the product and as carriers respond dynamically to their customers' needs in a competitive market. A decline has been observed in the number of complaints against the largest carriers.

9.4 The proactive implementation of a global framework to manage consumer protection issues, whether through the development of guiding principles or under the form of a multilateral arrangement, would be in line with the need for regulators to focus on passenger satisfaction, as recently expressed at the ICAO High-Level Security Conference on Aviation Security (HLCAS, 12-14 September 2012). During this event, a State presented a working paper which stated that: "passenger satisfaction must be the basis of any public policy in civil aviation matters, particularly regarding security. This priority, which is in no way incompatible with the need for security, is split between two complementary objectives: facilitation and quality of service; and that of costs control. The criterion of passenger satisfaction is thus a powerful lever to ensure the sustainability of security systems, requiring in particular a holistic approach focused on efficiency."

9.5 Initiatives have already been inaugurated that aim at providing regulatory convergence in the area of consumer protection: i.e., the *United Nations Guidelines for Consumer Protection* (as expanded in

1999). The substance and format of these guidelines can serve as useful examples in the future development by ICAO of a set of uniform guidelines for consumer protection in air transport. Such future guidelines should be consistent with existing legal instruments such as the Warsaw system of instruments and the Montréal Convention.





APPENDIX B:

SUMMARY OF CONSUMER PROTECTION RULE

Item	Voluntary Commitments by airlines			Legislation/ Regulation*			International Liability
	<u>ATA Airline Customer Service Commitment</u>	<u>European Airline Passenger Service Commitment</u>	<u>IATA Global Customer Service Framework &amp; RP</u>	U.S.A.	EU	Other	
<b>Before the travel</b>							
Inform passengers of identity of carrier					*27	*30	
Offer the lowest fare available	√	√	√	-	-		-
Inform of possible availability of lower fares at web site	-	√	√*1	*3	*13		-
Honour the agreed fare after payment	-	√	√*2	*23	-	*30, *31	-
Allow reservations to be held or cancelled	√	√	√	*23	-	*30, *31	-
Provide prompt ticket refunds	√	√	√	-	-	*30, *31	-
Waive ticket restrictions (non-refundable, sequential use of flight coupons) in special circumstances	-	-	√*2	*4	-		-
Ensure pricing transparency	-	-	-	*5, *23	*13, *14	*26, *29	-
Advise passengers regarding an airline's commercial and operational conditions	√	√	√	*6	*15		*21
Protect passengers against carrier insolvency					*28		
Inform passengers of future flight disruptions						*24, *30	
Publish contingency plans, customer service plans and contracts of carriage (carrier website)				*23			
<b>During the travel</b>							
Ensure good customer service from codeshare partners	√	√	√	*7	*16		*21
Take measures to expedite check-in	-	√	-	-	-		-
Provide notification of delays, cancellations and diversions	√	√	√	*8, *23	-	*30	-
Provide notification of opportunity to deplane if possible				*23		*30, *31	
Assist in case of delay including long on-aircraft delays	√	√	√	*8, *23	*17		-
Handle passengers denied boarding with fairness and consistency	√	√	√	*9	*17		-
Deliver baggage on time	√	√	√	*23	*18	*30, *31	*21
Properly accommodate the disabled and special-needs passengers (i.e. reduced mobility or allergies)	√	√	√	*12	*17, *20	*25, *29, *32	-

Item	Voluntary Commitments by airlines			Legislation/ Regulation*			International Liability
<b>After the travel</b>							
Submit data for regular consumer reports	-	-	-	*11, *23	*19	*29, *33	-
Respond to customer complaints	√	√	√*1	*8, *23	-		-
<b>Passenger compensation</b>							
Support an increase in baggage liability limit	√	-	-	*10	*18		*22
Compensate for lost bags				*23		*29, 30, *31	
Compensate for flight cancellation/denied boarding/delay	-	-	-	*23	*17	*29	*21, *22



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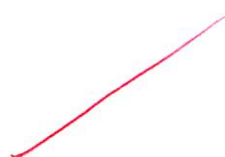
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## APPENDIX

### Abbreviations:

ATRP	Air Transport Regulation Panel
EU	European Union
US	United States
DOT	Department of Transportation
FAA	Federal Aviation Administration
TSA	Transportation Security Administration
CAB	Civil Aeronautics Board
GACA	General Authority of Civil Aviation
ANSP	Air Navigation Services Providers
LACAC	Latin American Civil Aviation Commission
AEA	Association of European
ERAA	European Regional Airlines Association
DGAC	French <i>Direction Générale de l'Aviation Civile</i>
AVSECP	Aviation Security Panel
FALP	Facilitation Panel
ICAO	International Civil Aviation Organization