# ECC-Net Air Passenger Rights Report 2011

- in the aftermath of the 'Volcanic Ash Crisis'

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The European Consumer Centres' Network

ECC-Net

**This publication is available from:**

Elander Sverige AB
Box 137
SE-435 23 Mölnlycke
Sweden

Telefon: +46 31 750 00 00
Fax: +46 31 750 00 10

E-mail: info@elanders.com
www.elanders.com

Also available on the websites of the ECCs.
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**Design**
Malin Nergård, Swedish Consumer Agency

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# Executive Summary

With the number of people who are travelling growing every year, air passenger rights has become one of the most important consumer rights areas. As passengers tend to purchase their tickets directly with the airline company involved, which often may be licensed in another Member State, air transport has for some time remained the primary reason why consumers with cross-border complaints contact the ECC-Net for assistance. It is, therefore, in the interests of the sector to investigate how the existing legislation is functioning at a pan-European level and to highlight possible problems in the market.

Problems were exacerbated last year, with the closure of air space due to the volcanic ash cloud, which saw thousands of passengers stranded across Europe, and beyond. In keeping with the ECC-Net's tradition of analyzing and reporting the complaints received from air passengers throughout Europe, this report seeks to investigate if and how this exceptional circumstance influenced the number of complaints received, the approach adopted by airlines to this situation and the reaction of the National Enforcement Bodies (NEBs) to all of this.

The disruption caused by the ash crisis and the diverse reactions of airlines, tour operators and NEBs to this unforeseen situation resulted in European Transport Commissioner, Siim Kallas, stating that even in very exceptional circumstances, "*it is important to remind passengers and airlines that EU passenger rights do apply*".

Despite this, in 2010, the ECC-Net handled 71,292 cases, of which 44,000 were complaints. Approximately 33% of all recorded complaints were in the area of transport and of those 57% concerned air passenger rights. Of those only 31% could be resolved in an amicable manner, but where they were resolved consumers received on average approximately € 509. In comparison to 2009, 2010 witnessed an increase of 27% in the total number of complaints received by the ECC-Net. Importantly, air passenger rights (APR) complaints increased by 59% on the previous year. This indicates the impact the volcanic ash crisis had on the number of complaints received in 2010.

In the aftermath of the crisis, there was much discussion as to whether the rights outlined in the Regulation were proportional and whether the protection offered to consumers should be lowered. In this regard, ECC-Net would welcome a detailed assessment from the Commission of the costs incurred by the airline industry. In the absence of such an assessment, one can only consider the airlines own financial re-

ports which appear to indicate that despite the volcanic ash crisis, 2010 was a year which saw increased profit margins.

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

- A lack of information regarding their rights
- A lack of assistance
- No reimbursement when alternative transport was arranged.

However, not all complaints received by the ECC-Net arose from the volcanic ash cloud. Others included complaints about lost, damaged or delayed baggage, difficulties in modifying bookings, unclear pricing, flight delays, cancellations, denied boarding, as well as issues with the reimbursement of taxes and charges.

It is widely acknowledged that laws cannot exist in a vacuum, yet currently many difficulties with enforcement still exist in this sector. These problems can be mainly attributed to both a lack of ADRs at a pan-European level and the fact that the NEB Network as a whole is still not functioning in a holistic manner. Whilst, some progress was made with the introduction of the European Small Claims Procedure, there is a need to increase awareness of the procedure, both amongst consumers and the legal profession. These difficulties with enforcement distort competition within the internal market, as some airlines comply whilst others do not.

The need for a strong enforcement mechanism is all the more important given that air passengers are generally unaware of their rights, with the result that there is a strong demand for help and assistance. This demand can be satisfied through a well-functioning system to assist passengers. Better co-operation between the relevant stakeholders and networks would ensure that passengers receive the help and assistance they require.

In conclusion, the purpose of this report is to help build a more secure and improved climate for consumers who are travelling by air to, from and within the European market. Consumers should be able to travel safe in the knowledge that airlines will respect their rights and that the rules will apply equally to all airlines. Knowing your rights is good, but being able to exercise them is better. This should be the case for all passengers, regardless of the airline they fly with or the country they depart from.

# Abbreviations

| | |
|---|---|
| ADR | Alternative Dispute Resolution |
| APR | Air passenger rights |
| CJEU | Court of Justice of the European Union. Since the Lisbon Treaty, the name has officially been changed to Court of Justice of the European Union; however; in this report the former name European Court of Justice (ECJ) is used, primarily since the former name is more established among the readers. |
| CPC | Consumer Protection Cooperation |
| CPD | Continuing Professional Development |
| ECC | European Consumer Centre |
| ELFAA | European Low Fares Airline Association |
| ESCP | European Small Claims Procedure |
| FAQ | Frequently Asked Questions |
| IATA | International Air Transport Association |
| NEB | National Enforcement Body |
| PIR | Property Irregularity Report |
| SDR | Special Drawing Rights. The currency value of the SDR is determined by summing the values in U.S. dollars, based on market exchange rates, of a basket of major currencies (the U.S. dollar, Euro, Japanese yen, and pound sterling). The SDR currency value is calculated daily. |

# 1. Introduction

Air travel is a vital part of the transport sector. In 2009, cheap flights enabled more people to travel and during this time 751 million passengers travelled this way within the EU27.[1] During 2010, an upward trend of passenger transport by air was confirmed at EU27 level. 2010 shows an increase of 2.6 % in comparison with 2009.[2]

As such, air travel is a very important part of the travel sector and it is in the interests of everyone involved to investigate how well the existing legislation regarding this sector is being respected by the airlines and to highlight if there are problems in the market.

During April 2010 many passengers were affected by cancelled flights due to the Icelandic volcanic eruption. This incident clearly shows the fragility of the air transport industry and how such events can affect everyone involved. It also illustrates the need for strong consumer protection in this area as the legislation exists but enforcement is lacking. There is a need to ensure that passengers enjoy easier access to information about their rights when travelling by air. The area of air passenger rights encompasses a wide range of issues:

- right to reimbursement, re-routing and compensation for flight delays, cancellations and denied boarding (special rules concerning compensation when exceptional circumstances)
- right to information - airlines are obliged to inform about rights and flight schedules
- right to assistance – air carriers shall offer food, drinks and accommodation as appropriate to passengers waiting for re-routing
- right to appropriate assistance (under certain conditions) for people with disabilities or reduced mobility
- right to compensation for lost or damaged baggage
- right to price transparency[3]
- right to information in advance about the identity of the airline which is operating the flight[4]
- package holidays[5]

In response to the volcanic eruption, the European Transport Commissioner Vice President

1 According to Eurostat Newsrelease, 17/2011 - 31 January 2011 http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/7-31012011-BP/EN/7-31012011-BP-EN.PDF

2 http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Air_passenger_transport_-_monthly_statistics#Further_Eurostat_information

3 Optional price supplements must be shown in a clear and unambiguous manner at the start of the booking process as per Regulation 1008/2008 on common rules for the operation of air services in the Community. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:293:0003:0020:EN:PDF

4 Airlines found to be unsafe are banned or restricted within the European Union. They are listed at: http://air-ban.europa.eu

5 If the cancelled flight has been purchased as part of a package holiday, consumers have more extensive rights, including the right to obtain a refund for the entire package (including e.g. the flight and the hotel) and assistance on the spot if they are stranded. Package tour operators must give accurate information on the holiday booked, comply with contractual obligations and protect passengers in case of the organiser's insolvency. See: Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours. A consultation concerning the review of the Package Travel Directive was completed during 2010. http://ec.europa.eu/consumers/consultations/consultations_en.htm

Siim Kallas quickly issued an important statement saying:

*"This is a situation which is causing immense difficulties for passengers travelling throughout Europe. It can be considered a very exceptional circumstance. Nevertheless, it is important to remind passengers and airlines that EU passenger rights do apply in this situation."* [6]

Therefore, it is imperative that the legislation protecting passengers is robust and that adequate enforcement ensures 100% compliance with the legislation by airlines.

## 1.1 The ECC-Net

The European Consumer Centre Network (ECC-Net) comprises of centres in each of the 27 EU countries, as well as ones in Norway and Iceland.[7] The Network is co-financed by the Health and Consumers Directorate General of the European Commission and by each Member State.

The objective of the ECC-Net is to create consumer confidence in the Internal Market by providing information to consumers on their rights and assisting them with cross-border consumer complaints.

To this end, each ECC has a website, carries out information campaigns, and publishes information and publicity material. The centres give presentations to interested parties and engage in joint reports and surveys with other ECCs. The Network provides important feedback to national consumer agencies, national authorities, the European Commission and other stakeholders on problem areas requiring action.

As the ECC-Net is the only network that deals with cross-border consumer complaints and disputes, it is in a unique position to document the problems consumers face when shopping within the EU.

An EU-Regulation concerning Air Passenger Rights came into force, within the EU, as well as in Switzerland, Norway and Iceland, on 17th March 2005.[8] Due to the fact that the ECC-Net deals with problems within the air travel market on a daily basis, ECC-Net has witnessed an increase in cases relating to this area since the Regulation's introduction. Figures from the Network and the specific experiences provided in this report can give some indication to the National Enforcement Bodies in charge of the above Regulation and the legislature where more work is needed in order for the market to function more effectively.

The legal framework within which air passenger cases are handled by the ECC-Net comprises of two main pieces of legislation, Regulation 261/2004 and the Montreal Convention. Regulation 261/2004 outlines the airlines´ responsibility in cases where a flight is cancelled or delayed, or when a passenger is denied boarding; the Montreal Convention[9] establishes the airline's responsibility when the consumer suffers economic damage due to a flight delay or when their baggage is lost, damaged or delayed.

71,292 cases were handled by the ECC-Net during 2010 and of those 12,622 related to air passenger rights.[10] This is in comparison to

6 Air travel: volcanic ash cloud - EU passenger rights continue to apply, MEMO/10/131 Date: 15/04/2010 http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/131&format=HTML&aged=0&language=en

7 http://ec.europa.eu/consumers/ecc/index_en.htm

8 Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0261:EN:HTML

9 Convention for the Unification of Certain Rules for International Carriage by air, done at Montreal on 28 May 1999 http://www.icao.int/icao/en/leb/mtl99.pdf

10 See chapter 5, section 5.2.2.3


the 7,912 complaints which were dealt with in 2009. This represents a sharp increase in the number of complaints. The fact that ECC-Net deals solely with cross-border problems means that, in terms of problems experienced by consumers; these figures are likely to be only the 'tip of the iceberg'.

In the 2010 Report on the Evaluation of Regulation 261/2004 it is mentioned that:

*"Although airlines were unwilling to provide information on their on-time performances, some were willing to share data on the number of complaints received that related to the Regulation. On the basis of the very limited information provided to us, and assuming that the carriers providing information were representative of other carriers, there were approximately 1.0 million complaints to EU carriers in 2008, of which around 30% related to the issues covered by the Regulation; this compares to approximately 550 million journeys on flights from or within the EU and approximately 22 million on flights which are either delayed over 2 hours or cancelled. The combined NEBs received approximately 28,000 complaints in total over a similar period; it is clear that NEBs only receive a small fraction of potential complaints."* [11]

The analysis of complaints received by ECC-Net relating to air travel should, therefore, be read within a wider context as it is likely that the complaints received by the ECC-Net represents only a fraction of the number of problems experienced by consumers in this sector. Other parties dealing with air passenger rights include the National Enforcement Bodies (NEBs), consumer agencies and Ombudsmen, Alternative Dispute Resolution Bodies (ADRs) and also the courts.

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

| | |
|---|---|
| *ECC Belgium* | *ECC Ireland* |
| *ECC Denmark* | *ECC Sweden* |

11 Evaluation of Regulation 261/2004, Final report, Main Report Steer Davies Gleave, February 2010, Page 28-29

# 2. Scope

The purpose of this report is to analyse the air travel related complaints which were lodged with the ECC-Net in 2010 and to examine whether air carriers complied with EU legislation, regarding information and assistance, particularly during the volcanic ash disruption. Statistics deriving from January to June 2011, are also presented and assessed. The objective is to see if the air carriers informed the consumers about their rights and furthermore whether the provided information was correct.

The report will provide comments on the problem areas seen by the ECC-Net and describe the related work done by each centre during the period in question. It will also make several recommendations for those areas which need to be improved.

All the statistical data, statements and conclusions contained in the report are based on the data gathered by the local ECC offices.

The following report may contain opinions that do not necessarily reflect those of the European Commission or national funding bodies.

# 3. Research methodology

## 3.1 Organisation, planning and questionnaire

The working group had its first meeting on 12th and 13th May 2011 at ECC Sweden's office in Karlstad. At the meeting the working group discussed and determined the layout for the overall project process and determined the distribution of tasks amongst the working group members.

In order to obtain important information, questionnaires were sent out to each of the ECC offices requesting statistics, questions concerning the National Enforcement Bodies (NEB), Alternative Dispute Resolution bodies (ADR), as well as a special section pertaining to volcanic ash related cases. This questionnaire is submitted as Appendix 2 to this report. The questions 1-9 in the questionnaire have been answered by the ECC-offices as "*Consumer ECC*".[12]

Most of the quantitative data was collected from an internet based case handling system, IT-tool, which was developed by the European Commission for use by the ECCs in the logging of all cases. The Commission has assisted the working group with the preparation of spreadsheets and tables.

The data from the questionnaires is analysed in this report to help identify relevant issues or concerns.

The questionnaires were sent out in April 2011.

The analysis and drafting of this report took place from May to August 2011.

[12] The term "*Consumer ECC*" means the ECC office in the country in which the consumer is residing.

# 4. Legal framework

The area of air passengers´ complaints is covered mainly[13] by two pieces of legislation: EC Regulation 261/2004 and the Montreal Convention. In addition, principles of contractual law may apply.

## 4.1 EC Regulation 261/2004

The Regulation came into force within the EU Member States in February 2005 and governs air passengers' rights when flights are either cancelled or delayed or when passengers are denied boarding. It applies to all flights departing from a Member State[14] airport and all flights arriving in these countries if the airline has a licence issued by an authority in a Member State.

The Regulation states that if a flight is cancelled or a passenger is denied boarding, airlines must offer the passenger the choice between being re-routed or reimbursed. If the passenger chooses re-routing to the final destination at the earliest opportunity, the airline must provide care until he reaches his final destination. This includes providing meals, refreshments, communication facilities, and in those cases where a re-routing cannot occur on the same day, the airline must provide hotel accommodation and transportation between the hotel and the airport. If the passenger chooses to be reimbursed, the airline no longer has a duty to provide care and the passenger must make other travel arrangements himself.

When a flight is delayed, the level of care is determined by the length of the delay (in hours) and the distance of the flight (in kilometres), but will concern the same services as mentioned above. It is important to note, that there are no exemptions or/and time limits from the right to care, which also applies under extraordinary circumstances.

If a flight is cancelled less than 14 days prior

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

14 All EU Member States plus Switzerland, Norway and Iceland.

to the scheduled departure and no suitable alternative[15] is offered, or if a passenger may be denied boarding, the passenger is entitled to claim compensation. However, if the air carrier can prove that the cancellation was due to extraordinary circumstances, they can be relieved of the obligation to pay.

The compensation payable is set at a fixed amount, which is determined by the length of the flight in question. Its aim is to make up for the inconvenience suffered by the passenger, and as such it has no connection to the economic loss suffered by the passenger.

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

The Regulation obliges Member States to designate "*National Enforcement Bodies*", whose role is to ensure that transport operators are treating all passengers in accordance with their rights. Passengers who believe they have not been treated correctly should contact the relevant body in the country where the incident (delay, cancellation, denied boarding) took place.[16] These bodies will be referred to as NEBs or "*National Enforcement Bodies*" throughout this report.

## 4.2 Clarification from the Court of Justice of the European Union

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

In the C-344/04 case[17], IATA[18] and the ELFAA[19] contested the validity of Regulation 261/2004 on several grounds; including that the Regulation was in direct contradiction with Article 29 of the Montreal Convention, which provides that any claims for damage can only be brought under the provisions Convention. Moreover, it was argued that the Regulation was disproportional, as whilst Article 19 of the Montreal Convention provides that airlines are liable to pay damage for delay unless the delay is caused by factors outside their control, under the Regulation airlines would remain liable even in extraordinary circumstances.

In its decision, the ECJ upheld Regulation 261/2004 by making a distinction between damages caused by delay which would depend on the individual circumstances of the passenger, and is therefore in the scope of Montreal, and standard damage which would be applicable to all passengers and would therefore fall under the scope of Regulation 261/2004.[20] The Court went on to hold that the Regulation's main objective was to strengthen protection for passengers whose flights were cancelled, delayed or denied boarding and that in this context Articles 5-7 of the Regulation could not be deemed to be disproportional.[21]

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

16 National Enforcement Bodies, http://ec.europa.eu/transport/passengers/air/doc/2004_261_national_enforcement_bodies.pdf

17 C-344/04 IATA v Department of Transport
See: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62004J0344:EN:HTML

18 IATA or the International Air Transport Association is an association comprising of airline companies, which carry approximately 98% of scheduled international air passengers worldwide.

19 The ELFAA or European Low Fares Airline Association was established as an unincorporated association in January 2004 and represents the interests of low-fare airlines from European countries.

20 See paragraphs 43 – 45 of judgment.

21 See paragraphs 78 – 92 of the judgment.

In 2008 the ECJ was presented with a case where the airline refused to pay compensation on the grounds of extraordinary circumstances.[22] The Court found that a technical error is not necessarily an extraordinary circumstance unless *the problem stems from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control*. The Court dismissed the proposition that the frequency of the technical problems experienced by an air carrier was in itself a deciding factor, and also rejected the argument that an air carrier's mere compliance with the minimum aircraft maintenance rules could in itself suffice to establish that that carrier had taken *all reasonable measures* necessary. Moreover, the Court noted that when defining an extraordinary circumstance the similar, but not identical term, in the Montreal convention is not decisive.[23] Finally, in this ruling the Court also made clear that the burden of proof rests upon the air carrier who is claiming extraordinary circumstances, and that terms, not previously defined in EU law, must be interpreted strictly when they appear as an exception to a main rule. This is especially the case when it concerns consumer protection.

In 2010[24] the Court established that the definition of *a flight* is to be understood as only concerning either the outward or homeward journey, not the two combined, and this is so even if both are booked at the same time. In practice, this means that an incident which happened in a country outside the EU is not covered by the Regulation if the air carrier was not licensed within the EU.

In May 2011[25], the Court ruled that in cases of delay, the airline should make sure that the necessary resources are available, so that when the reason for the delay ceases, operations may be resumed as soon as is possible. However, it is not possible to set a fixed timeframe, as each situation must be taken on a case by case basis.

The most noteworthy interpretation of the Regulation came in 2009 in the so called Sturgeon-case.[26] Here, the Court stated that if a delay causes passengers to arrive at their final destination later than three hours after the scheduled arrival, the passengers may be entitled to compensation. This ruling has been widely discussed because the articles in the Regulation only mention compensation with regards to cancellations and denied boarding. So far, not all airline companies have decided to follow the ruling, and the High Court in the United Kingdom has challenged it, asking the ECJ to reconsider the matter.[27] In the meantime, the UK NEB is not allowed to apply the Sturgeon decision to complaints received regarding delays of this nature.[28]

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

23 Whilst the Regulation 261 talks about "*extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken*", the Montreal Convention exonerates the airline when it can prove that, "*it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.*"

24 25 C-173/07 (Emirates Airlines vs. Schenkel)

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

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

27 Case CO/6569/2010 Tui Travel, BA, Easyjet, IATA vs. Civil Aviation Authority

28 The following is a response received as a result of a Q&A which was put before the Commission by Brian Simpson (MEP): The CAA has advised the Commission that the Order made by the High Court only applies to the judicial review proceedings taken against it and is not a legal general stay of unrelated proceedings in respect of compensation for delay. Therefore, the NEB is still allowed to take enforcement measures for non-compliance with the Sturgeon ruling. However, since the penalty scheme adopted in the United Kingdom under Article 16 requires sanctions to be imposed through judicial process, the NEB would de facto have difficulties in enforcing sanctions against an airline that did not provide compensation to qualifying passengers in delay situations. This is because, according to the information received, United Kingdom Courts would be likely to suspend any prosecution the NEB brought in this regard until the ECJ and the High Court have given a ruling.

For this report all 28 ECC-offices were asked about their national airline's compliance with the Sturgeon interpretation, only 7 countries responded that the national airline followed the ruling. The ECC-office of Greece closed down during 2010, is currently not operating and has therefore not been able to be part in this report.

Regarding non-material damage, the pdf-version of this report is updated with the Court of Justice of the European Union press release for the judgment in case C-83/10 from October 13th 2011. The press release is attached to this report as appendix 3.

## 4.3 Clarification from the European Commission[29]

Since the Regulation's introduction, the Commission has issued two interpretative documents[30] in order to facilitate a more homogenous application of the Regulation. Furthermore, the Commission has maintained a close dialogue with both airlines and NEBs so as to coordinate the understanding and enforcement of the Regulation.

During the Icelandic volcanic eruption much disruption was caused to the air transport industry. Many of the airlines seemed confused about how the rights outlined in the Regulation were to be applied and some even stated that the event was so extraordinary that the Regulation would not apply, as it was not designed to cover cancellations and delays in those circumstances.

The Commission therefore issued a FAQ on the Regulation stating that all rights would still apply except, of course, the right to compensation.[31]

One important issue which arose was the right to re-routing. Normally, passengers would have the option to be rebooked on to the next scheduled departing flight, but as almost all air fleets were grounded this possibility was not available. Naturally, the question arose as to whether other means of transportation were included under the right to re-routing, but many airlines dismissed this. The Commission, however, emphasised that re-routing could also be done by trains, buses and other collective means of transport. In a Communication to the Parliament and Council from April 2011, the Commission definitively stated, that re-routing could also be done via another mode of transportation.

Another issue clarified by the Commission is that a rebooking can also be done via another airline, and not – as many airlines believe – only through their own flights.[32]

The Regulation is currently up for revision and it is expected that the Commission will adopt a proposal in 2012. European Transport Commissioner Vice President, Siim Kallas, has already announced that one key area will be tougher enforcement, but he will also look into limiting the liability of air carriers in cases of extraordinary circumstances.[33]

As previously mentioned, there are currently no exceptions to the right to care. As a result, air carriers have complained that due to the volca-

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

30 Directorate for Energy and Transport Information Document FAQ "Answers To Questions on the application of Regulation 261/2004, 17 February 2008", P. 11 Question 21.
See: http://ec.europa.eu/transport/air_portal/passenger_rights/doc/2008/q_and_a_en.pdf

31 Volcanic Ash Crisis: Frequently Asked Questions, MEMO/10/143 Date: 20/04/2010,
See: http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/143&format=HTML&aged=0&language=en

32 Directorate for Energy and Transport Information Document FAQ "Answers To Questions on the application of Regulation 261/2004, 17 February 2008", P. 11 Question 21.
See: http://ec.europa.eu/transport/air_portal/passenger_rights/doc/2008/q_and_a_en.pdf

33 Communication from the Commission To The European Parliament and the Council, April 11th 2011.
See: http://ec.europa.eu/transport/passengers/doc/com_2011_174_communication_en.pdf

nic ash cloud incident and the heavy snow falls in December 2010 they had to pay for the cost of unforeseen circumstances.

There may be reasoning to limiting the liability for air carriers in situations such as volcanic ash disruption, but it must also be noted that many delays and cancellations experienced during the heavy snow falls in December were caused by airports not being sufficiently prepared or equipped to handle such situations. In these instances it would, therefore, seem more appropriate to advise the air carriers to avail of the option under Article 13 of the Regulation, which states that the air carrier can seek redress from contractual parties.

## 4.4 The Montreal Convention

The Montreal Convention (1999), which came into force in November 2003, has been ratified by around 130 countries, including all the EU Member States, and regulates the delay of passengers, as well as the delay, damage or miscarriage of their baggage.

The Convention is applicable on international flights, in those instances where both the country of departure and arrival have ratified the Convention. It has been transposed into EU law by Regulation 889/2002 and is therefore applicable to all flights within the EU, both domestic and international.

The main rule set out in the Convention is that the air carrier is liable for losses suffered by passengers unless the air carrier can prove that it or its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for them to take such measures.

Liability may be avoided if it can be shown that the air carrier took all reasonable measures to avoid the loss suffered by the passenger. Thus, the exception pertains to the damage suffered as a result of the delay, and not the reason for the delay itself.

If the air carrier is liable, claims are limited so that passengers whose baggage is delayed, damaged or lost can claim up to 1,131 SDR, whereas passengers, who suffer a delay, can claim up to 4,694 SDR per passenger.[34]

As a general rule when dealing with claims for damages, the claimant must try to limit their claim against the tortfeasor and must at all times look after the interest of his or her contractual party. Therefore, passengers cannot go on shopping sprees at the air carrier's expense, but can only purchase necessities. Some airlines even demand that the purchased items be returned, if they are to cover the expense. This is because getting both the items and the reimbursement of the expense would result in ineligible gain for the passenger.

There are set time restrictions outlined in the Convention and these specify the timeframe within which passengers must make their claim. For damaged baggage this is seven days from the moment of delivery. For delayed baggage the claim must be made within 21 days of the passenger receiving the baggage back.

Even if the carrier does not admit to the loss of the baggage, the passenger is entitled to make a claim for his/her loss if the baggage does not arrive 21 days after it should have. Under Article 35 of the Convention, any legal action should be brought to the court within two years after the baggage's arrival or scheduled arrival of

[34] The Convention was updated in the end of 2009 resulting in an increase of the limits for claims. An SDR or "*Special Drawing right*" is a currency unit used by the IMF and its exchange rate is around € 1.4 in June 2011. See: http://www.imf.org/external/np/fin/data/rms_sdrv.aspx

[35] http://www.imf.org/external/np/fin/data/rms_sdrv.aspx

[36] C-69/09 (Walz vs. Clickair SA)

the baggage. Therefore, passengers need to be aware of these timeframes and respect them when contacting the airlines.

In 2009 the ECJ established that the concept of 'damage' under the Convention pertained to both material and non-material damage. This means that the maximum amount set out in the Convention – 1,131 SDR[35] – must contain both types of damages.[36]

## 4.5 Contract law

When a passenger decides to purchase a flight from an airline, the flight from A to B, the agreement is governed by contract law just like any other type of contract. There are no common rules on the purchase of services, so in each instance it will be the domestic national legislation that will apply and which will determine the remedies in case of breach of contract. If the passenger is a consumer, EC legislation on unfair commercial practices and unfair terms[37] will also apply to these agreements.

37 Directive 2005/29/EC of the European Parliament and the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

# 5. General results

In this chapter, the report gives an overview of the type of air passenger complaints experienced by passengers in Europe based on data from two sources. Most of the quantitative data was collected from an internet based IT-tool, which was developed by the European Commission to be used by the ECCs in the recording of all cases received, and for sharing complaints which need to be handled by two ECCs (the ECC in the country of the consumer and the ECC in the country of the trader).

In addition to the data retrieved from the IT-tool, data was also gathered from a questionnaire. It is important to remember that the cases handled by the ECCs only concern cases which have a cross-border element, that is to say where the trader and the consumer are based in different countries within the EU Member States, Iceland or Norway.

As such, it is estimated that the statistics in this chapter account for only a small portion of the overall number of problems experienced by air passengers in Europe. In 2008, only 25% of Europeans purchased goods or services from traders in other Member States.[38] According to the Eurobarometer, only 16% of those consumers who experienced problems involved public authorities or consumer organizations in 2010.[39] Moreover, according to a survey conducted in 2008, only 15% of European citizens have heard of the ECC-Net.[40]

As mentioned above, the complaints received by the ECC-Net represent only a small segment of the problems experienced by air passengers. Nevertheless, the volume of cases handled by the ECC-Net is large enough to gain an insight into the problems which air passengers in Europe are confronted with.

38 Consumers in Europe, 2009 edition, Eurostat, p.55.

39 Special Eurobarometer n° 342, p.190

40 Special Eurobarometer n° 298, p.96

## 5.1 Total volume of cases handled by the ECC-Net

In 5 years, the volume of cases[41] handled by the ECC-Net has increased 65%, from 43,115 cases in 2005 to 71,292 cases in 2010 (See table 5.1). This could be explained by the fact that the number of ECCs has increased and that some ECCs are better known in their country now in comparison to 2005. In addition to this, there is a continuous increase in the number of consumers engaging in cross-border shopping. In 2006, 26% of the consumers made at least one cross-border purchase, whilst in 2010, this number increased to 30%.[42]

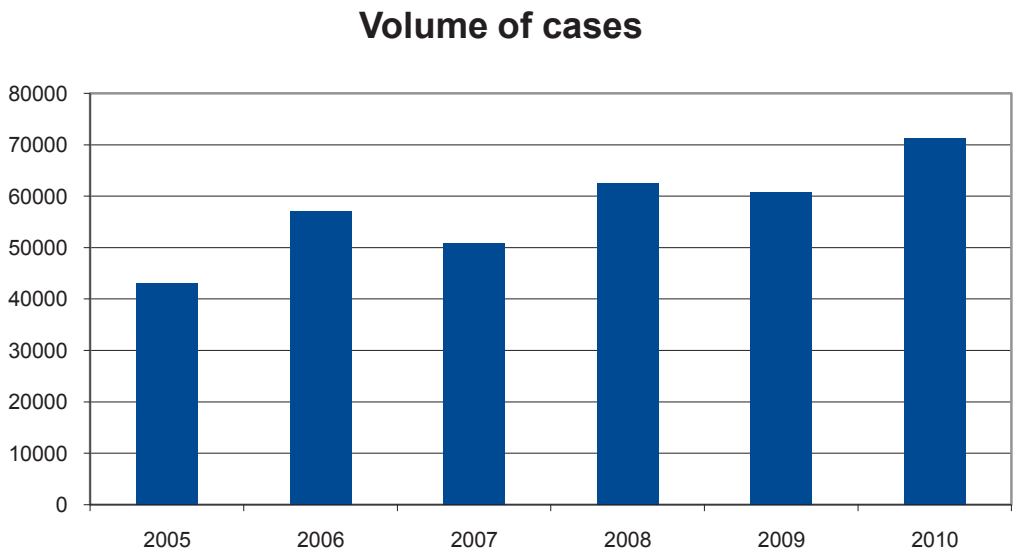



*Table 5.1: Evolution in the number of cases handled by the ECC-Net (2005-2010).*

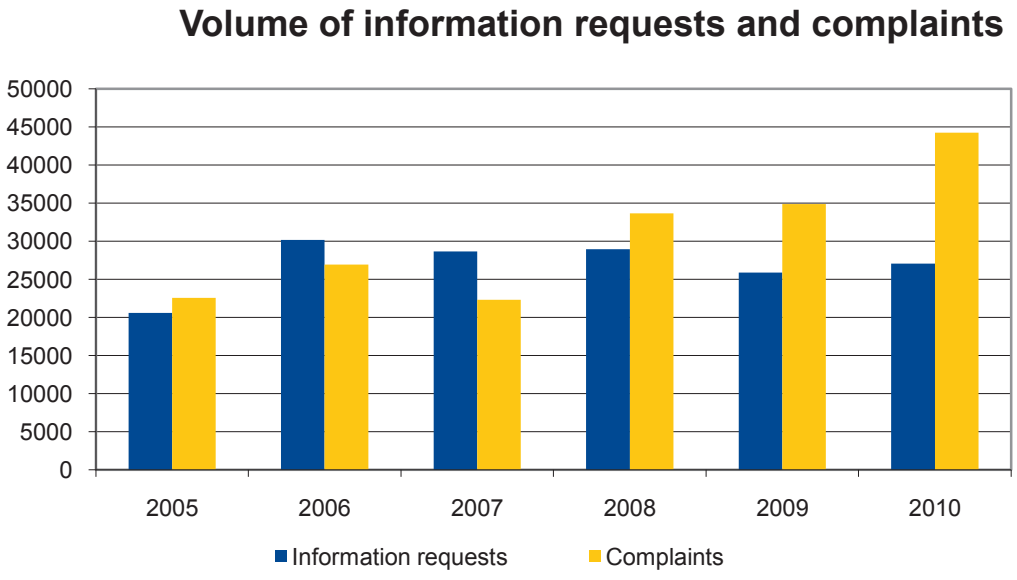



*Table 5.2: Evolution in volume of information requests and complaints handled by the ECC-Net (2005-2010).*

41 A "*case*" can be an information request or a complaint (see p.20)

42 Consumer Conditions Scoreboard, 5th edition, March 2011

Importantly, the number of complaints received has increased 96%. In comparison, the number of information requests received has remained at a steady rate (see table 5.2).

In 2010, the ECC-Net handled 71,292 cases. Of these, 62% cases were classified as a complaint and 38% as information requests.

The ECC-Net receives cases from consumers which it categorises as requests for information or complaints. A distinction is made between those 3 notions[43]:

- A "*request for information*" means any query by a consumer regarding a national or cross-border consumer issue not related to a complaint.
- A "*complaint*" means a statement of dissatisfaction by a consumer concerning a cross-border transaction with a seller or a supplier.
- A "*case*" means any request for information and/or complaint registered by a European Consumer Centre in relation to a specific consumer matter.

## 5.2 Cases on air transport

### *5.2.1 Volume of air transport cases*

Looking at the volume of information requests and complaints received by ECC-Net from air passengers, we see a dramatic increase in the number of cases in 2010, when the ECC-Net handled 12,622 cases. This is in comparison to the 7,955 cases received in 2009 and represents an increase of 59%.

Even taking into account the yearly increase in complaints received by the ECC-Net, the increase in air passengers' complaints in 2010 is substantial. This can be attributed to the volcanic eruption in Eyjafjallajökull which occurred on April 14th 2010 and affected a large number of passengers. The increase in information requests is less impressive than the increase in complaints. In the immediate aftermath of the volcanic eruption, consumers contacted the ECC-Net to receive information on their rights and on how they should act to preserve those rights. A few days later, a lot of information was spread by the European Commission, the media and the ECC-Net via each of the ECC-centres' websites.

After some time a large number of consumers began contacting the ECC-Net with their complaints, either because the airlines did not respond to their complaints or because they denied their claim, in some instances stating that the legislation on air passenger rights did not apply.

As the increase in complaints received pertained to the transport of passengers and not the transportation of baggage, which remained stable, an assumption can be made that a large part of this increase in complaints is due to the volcanic ash crisis.[44] Furthermore, the snow chaos in December 2010 along with better awareness of the ECC-Net among consumers contributed to this increase.

[43] These definitions are extracted from the "*Vademecum*", an internal document on the objectives of the ECC-Net.

[44] See Table 5.6

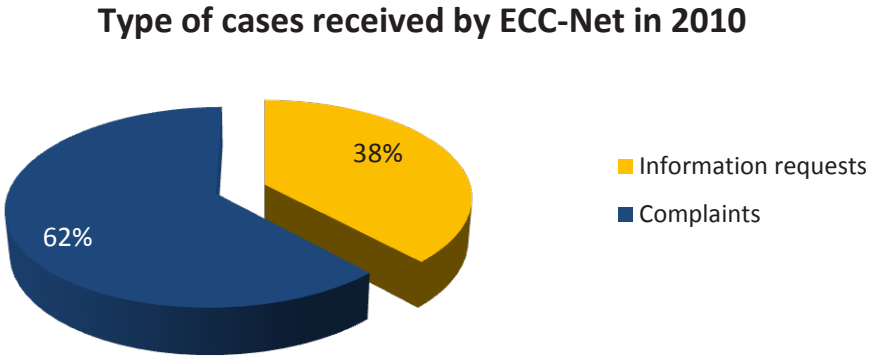



*Table 5.3: Type of cases handled by the ECC-Net in 2010.*

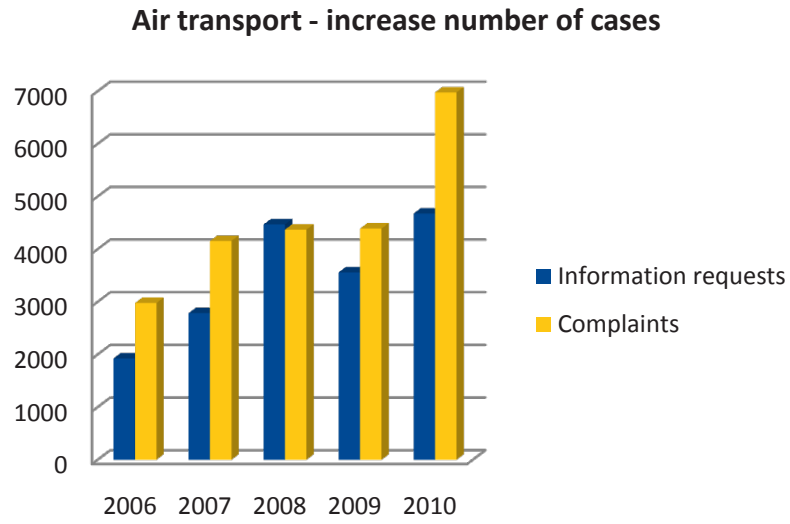
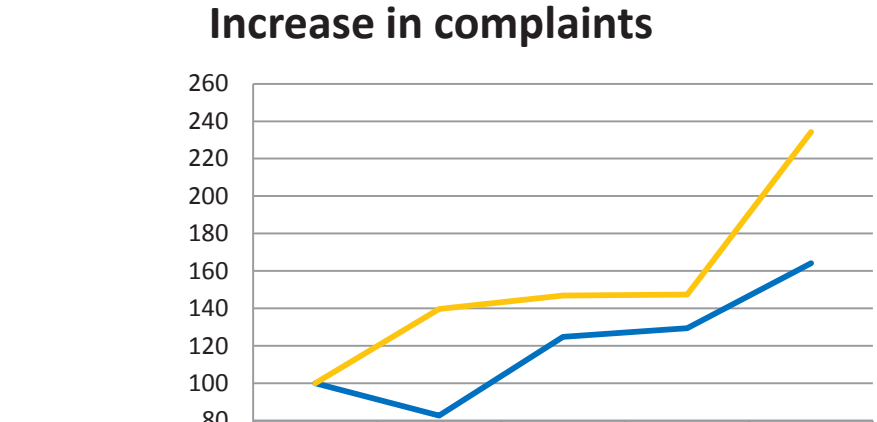



*Table 5.4: Evolution of air transport cases handled by the ECC-Net (2006-2010).*




| | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|
| total complaints | 100 | 83 | 125 | 129 | 164 |
| Air passenger complaints | 100 | 140 | 147 | 147 | 234 |

*Table 5.5: Increase in air transport cases compared to increase in total volume of cases handled by the ECC-Net (2006 = index 100).*

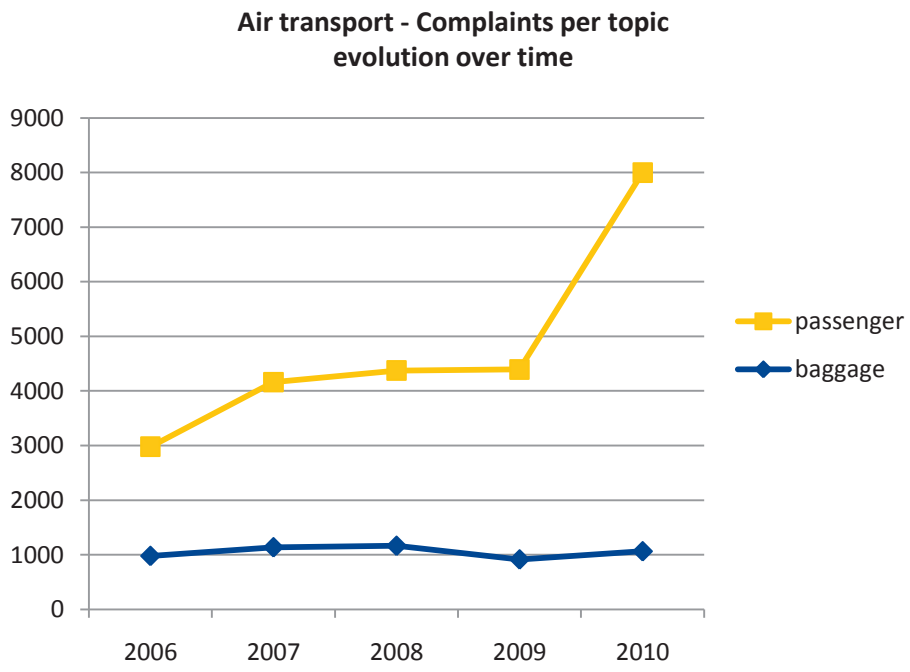



*Table 5.6: Increase of complaints concerning air passenger transport and increase of complaints concerning the transportation of baggage by air received by the ECC-Net (2006-2010).*

### 5.2.2 Details of the 2010 air transport cases.

#### 5.2.2.1 More complaints than information requests

Of all the air transport cases received by the ECC-Net in 2010, 60% were complaints and 40% were information requests. These figures are broadly in line with the breakdown of cases in other sectors, with 62% of all cases received pertaining to complaints and 38% relating to information requests (see table 5.3).

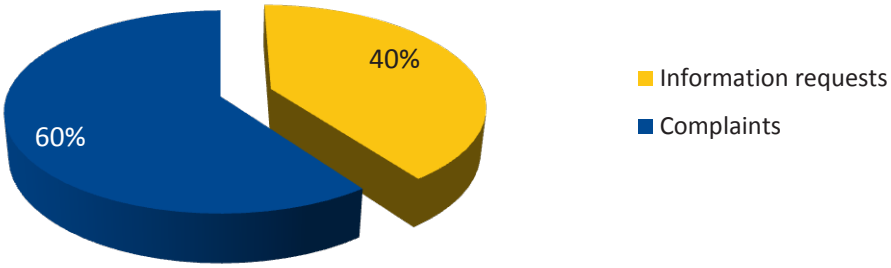



*Table 5.7: Type of air transport cases handled by the ECC-Net in 2010.*

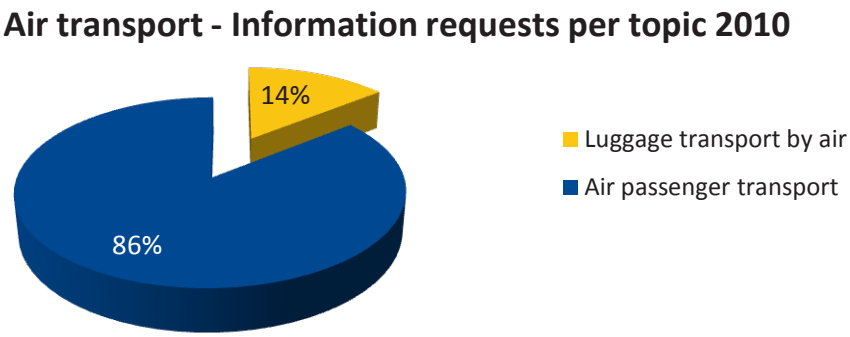



*Table 5.8: Distribution of the air transport information requests received by the ECC-Net in 2010.*

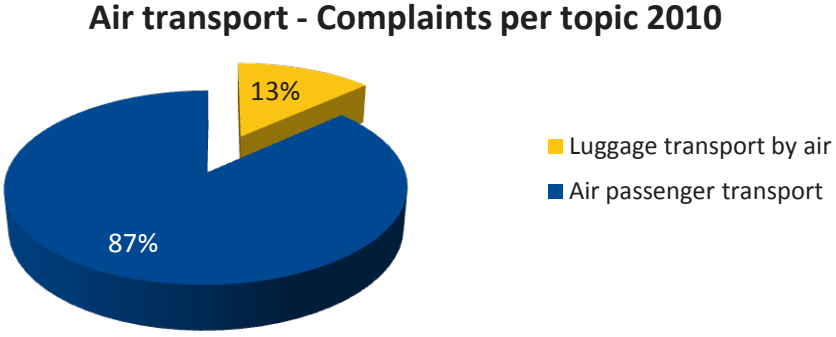



*Table 5.9: Distribution of the air transport complaints received by the ECC-Net in 2010.*

Whilst most consumers request information or have a complaint about their rights as an air passenger, less than 15% have a question or a complaint about the transportation of their baggage. In 2008 and 2009, the percentage of information requests and complaints received pertaining to baggage was 21% and 22% respectively.

This change in ratio is in line with the evolution depicted in table 5.6 and can be attributed to the increase in complaints received by the ECC-Net after the closure of air space caused by the volcanic ash cloud, as the majority of these complaints concerned air passenger rights and not baggage problems.

### *5.2.2.2 Importance of air travel complaints for the ECC-Net*

In 2010 approximately 33% of all recorded complaints were in the area of transport and of these 57% concerned air passenger rights.[45] With 18% of all cases (complaints and information requests) received relating to air transport, this makes cases of this nature a major reason why consumers contact the ECC-Net. In some countries, like Portugal and Romania, they account for more than a third of all cases.

In 2006 and in 2008, air travel related complaints were also the most frequent subject of consumers' cross-border complaints at 14% and 16% respectively. In 2010, the number of air travel complaints rose to 33% of the total amount received and this illustrates the impact of the volcanic ash cloud crisis on the ECC-Net's activities.

**Proportion of air travel related cases per ECC 2010**

| ECC | Total cases | Air transport cases | % Air transport cases |
|---|---|---|---|
| Portugal | 1157 | 445 | 38% |
| Romania | 794 | 263 | 33% |
| Slovenia | 827 | 239 | 29% |
| Lithuania | 1029 | 283 | 28% |
| Latvia | 709 | 191 | 27% |
| Sweden | 4137 | 1103 | 27% |
| Bulgaria | 531 | 141 | 27% |
| France | 6500 | 1644 | 25% |
| Poland | 2026 | 499 | 25% |
| Finland | 1294 | 317 | 24% |
| Denmark | 2097 | 500 | 24% |
| Hungary | 1994 | 462 | 23% |
| Estonia | 623 | 140 | 22% |
| Italy | 5933 | 1304 | 22% |
| Belgium | 4648 | 962 | 21% |
| **ECC-Net** | **71292** | **12622** | **18%** |
| Spain | 2927 | 480 | 16% |
| The Netherlands | 4128 | 660 | 16% |
| Ireland | 4086 | 570 | 14% |
| Iceland | 123 | 17 | 14% |
| Cyprus | 540 | 70 | 13% |
| Greece | 501 | 64 | 13% |
| Germany | 6576 | 759 | 12% |
| Great Britain | 8244 | 856 | 10% |
| Czech Republic | 776 | 77 | 10% |
| Norway | 1469 | 130 | 9% |
| Malta | 1014 | 81 | 8% |
| Austria | 2966 | 151 | 7% |
| Slovakia | 409 | 26 | 6% |
| Luxembourg | 3234 | 142 | 4% |

*Table 5.10: Importance of air travel related cases for the ECC-Net in 2010 .*

[45] The European Consumer Centers' Network, 2010 Annual Report, prepared by the European Commission's Directorate-General for Health and Consumers.

### 5.2.2.3 Country of the air passenger

The largest number of air travel cases in 2010 was received by the ECC centres in France, Italy, Sweden, Belgium, the United Kingdom and Germany. Together they represent 53% of the complaints.

In 2008, the largest numbers of cases were received by the ECCs centres in Spain, Belgium, Germany, Sweden, Poland and Italy.

There is no obvious explanation to be found for this result, as the countries vary in both size and the number of potential air passengers. A partial explanation for this could be attributed to differences between Member States (size, number of air passengers, structure of the consumer protection in place, integration of the ECC) or to the differing publicity campaigns on air passenger rights undertaken by several ECCs.

### 5.2.2.4 Complaints: country of the air carrier

80% of all the complaints related to air carriers from only 6 countries: Ireland, the United Kingdom, Germany, Spain, the Netherlands and Hungary.

This remains broadly in line with previous years, with only minor changes as regards the position.

| TOP 6 | | |
|---|---|---|
| **2006** | **2008** | **2010** |
| Ireland | Spain | Ireland |
| Spain | Ireland | UK |
| UK | UK | Germany |
| Italy | Italy | Spain |
| Germany | Germany | Netherlands |
| France | France | Hungary |

| Country of the consumer 2010 | | | |
|---|---|---|---|
| | **Cases baggage transport by air** | **Cases air passengers transport** | **Total cases air transport** |
| France | 73 | 1571 | 1644 |
| Italy | 417 | 887 | 1304 |
| Sweden | 25 | 1078 | 1103 |
| Belgium | 93 | 869 | 962 |
| United Kingdom | 26 | 830 | 856 |
| Germany | 74 | 685 | 759 |
| The Netherlands | 72 | 588 | 660 |
| Ireland | 79 | 491 | 570 |
| Denmark | 25 | 475 | 500 |
| Poland | 211 | 288 | 499 |
| Spain | 127 | 353 | 480 |
| Hungary | 36 | 426 | 462 |
| Portugal | 166 | 279 | 445 |
| Finland | 19 | 298 | 317 |
| Lithuania | 48 | 235 | 283 |
| Romania | 24 | 239 | 263 |
| Slovenia | 45 | 194 | 239 |
| Austria | 19 | 178 | 197 |
| Latvia | 19 | 172 | 191 |
| Luxembourg | 10 | 132 | 142 |
| Bulgaria | 26 | 115 | 141 |
| Estonia | 26 | 114 | 140 |
| Norway | 6 | 124 | 130 |
| Malta | 5 | 76 | 81 |
| Czech Republic | 17 | 60 | 77 |
| Cyprus | 13 | 57 | 70 |
| Greece | 15 | 49 | 64 |
| Slovakia | 4 | 22 | 26 |
| Iceland | 2 | 15 | 17 |
| **TOTAL** | **1722** | **10900** | **12622** |

*Table 5.11: Distribution of air passenger's complaints per country and ECC in 2010.*

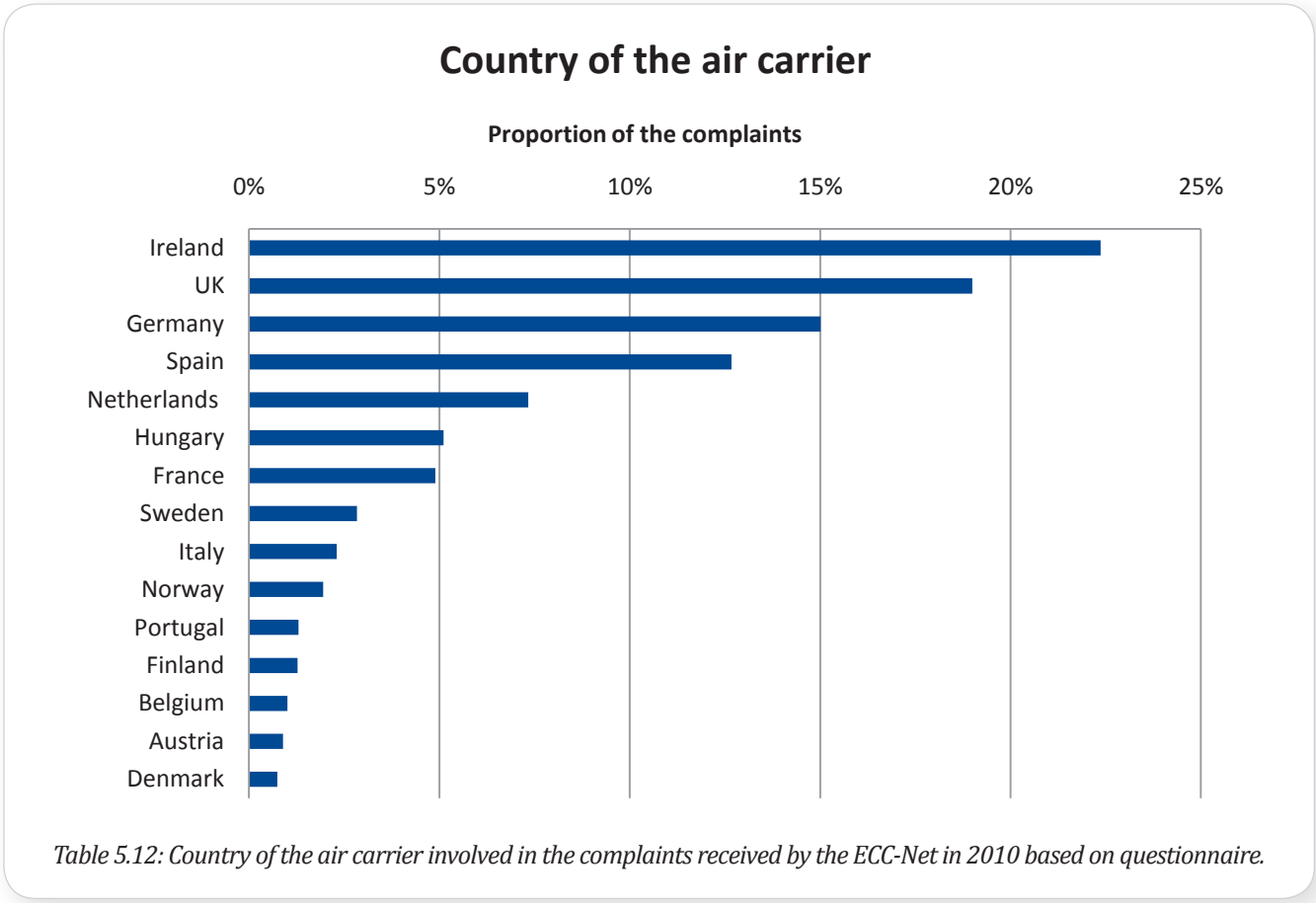



*Table 5.12: Country of the air carrier involved in the complaints received by the ECC-Net in 2010 based on questionnaire.*

### *5.2.2.5 Only 31% of complaints resolved by amicable settlement*

When a complaint reaches the ECC-Net, the ECC in the country of the consumer will make an initial assessment on whether the complaint is valid, and if necessary, will share the case with the ECC in the country where the airline is licensed, in order to solve the complaint in an amicable way. In 2010, in about 35 % of the complaints received, the Consumer ECC asked another ECC to contact the airline directly in order to find a solution.

If the airline does not react positively to this request or does not respond at all, the ECC will generally forward the case to an Alternative Dispute Resolution body (ADR) if such an out-of-court body is available. If no ADR exists, as is often the case, as ADRs that pertain to air passenger complaints are scarce, the ECC may send the case to a National Enforcement Body (NEB)[46] if it relates to Regulation 261/2004.

The case handling procedures amongst the ECCs vary, and not all ECCs pass the case on to the NEB when the intermediation-procedure of the ECC fails. Some ECCs may pass on Regulation 261/2004 complaints directly to the NEB on behalf of the consumer. This is due to the fact that some airlines may refuse to deal with ECCs in Regulation 261/2004 complaints.

The ECC-Net tried to help the consumers by either contacting the airlines to intermediate and/or send the cases to the NEBs for a decision. However, only one third of those cases received could be resolved amicably. 19% of the cases were transferred to another organisation

[46] NEBs are bodies designated by the Member States (as well as Switzerland, Norway and Iceland) to supervise and ensure compliance by the air carriers with Regulation 261/2004. However, not all NEB's seek redress to individual complaints, which means that even If such a NEB intervene and for example sanctions the airline, the consumer will still not be reimbursed.

or agency, such as an ADR-body or a NEB. In the majority of these cases, the ECC-Net is unaware of the outcome, as once a case is transferred it is very hard to monitor its progress due to lack of feedback from i.e. the NEBs and consumers.

In almost half of the cases (47%) received by the ECC-Net, the consumers did not receive the assistance and/or reimbursement they were entitled to under European legislation, although they in the opinion of the ECC-Net had a valid claim. These consumers then had to decide whether to abandon their claim or pursue it further by going to court. The latter is often not viewed as a viable or desirable option by the consumer, given its cross-border nature. However, the European Small Claims Procedure (ESCP) was introduced in 2009.[47] This procedure is designed so as to be effective, efficient and cheap. Despite this, awareness of the ESCP is low even though this procedure, in a few cases, has shown to be effective.[48] More energy will have to be spent in increasing both the courts' and consumers' awareness of this procedure. Legal procedures can force businesses to comply with the legislation and lead to a better application of the legislation in general. But in order to avoid legal procedures, it is the ECC-Net's opinion that a European wide ADR system with binding decisions should be put in place. The functioning of this ADR should be strengthened by an efficient enforcement carried out by the NEB's.

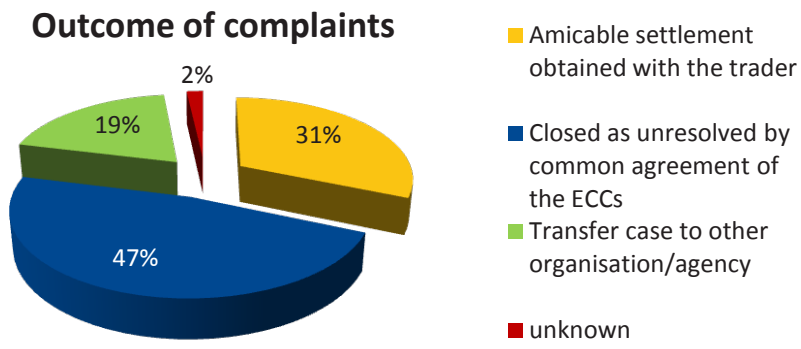



*Table 5.13 Outcome of complaints during 2010 within the ECC-Net*

### 5.2.2.6 Value of the claims involved

There is no doubt that the volcanic ash cloud crisis resulted in both passengers and airlines alike suffering economic loss. Airlines were confronted with tens of thousands of stranded passengers.[49] They were stranded for several days, often without information on what would happen next. Often they had to bear unexpected and increased costs such as extra meals and nights at hotels. Those who tried to make alternative transport arrangements on their own initiative were later told by several airlines that they had no grounds to reclaim the costs incurred.

During the volcanic ash cloud crisis, there were calls to lower the protection offered by the European legislator on the grounds that it was too expensive for this already troubled sector to bear.[50] As quoted earlier in this report, Commissioner Siim Kallas made a clear statement that, "*EU passenger rights do apply in this situation*",

47 See further information regarding this under chapter 7.3

48 European Small Claims Procedure, first year of operation in Ireland. p. 19
See: http://www.eccireland.ie/downloads/ESCP.pdf

49 http://www.timesonline.co.uk/tol/travel/news/article7100314.ece

50 http://www.guardian.co.uk/world/2010/apr/21/airlines-laws-costs-stranded-passengers

referring to the right to care, one of the most important measures in Regulation 261/2004 which is supposed to protect passengers confronted with uncomfortable situations.

In its Communication to the European Parliament and the Council on the application of Regulation 261/2004[51], which was issued in 2011, the European Commission made an initial assessment of the application of EU law on APR during the volcanic ash crisis. This stated that "*the vast majority of airlines, airports and other travel operators worked effectively to minimise the impact on travellers. There is no doubt that, without the Regulation, the chaos and cost for both European citizens and society as a whole would have been much bigger. The NEBs now have to take the necessary measures against those few carriers which have refused to comply with the Regulation.*" Nonetheless, "*The proportionality of some current measures, like the unlimited liability regarding the right to care under major natural disasters, may merit assessment.*"

Recently two more pieces of European legislation on passenger rights in bus and coach transport and when travelling by sea and inland waterway have limited the right of care as regards hotel accommodation to two[52] or three[53] nights. While reviewing Regulation 261/2004, the Commission, in its above mentioned Communication, raised the question of the proportionality of the existing measure of the unlimited liability concerning the right to care under major natural disasters, like the volcanic ash crisis. The Commission underlined that, "*A full assessment of reliable figures, current provisions and possible future measures is required*". The ECC-Net looked for available data which could help to make this assessment.

Consumers complained to the ECC-Net about the detriment they suffered and asked the ECC-Net to help them to recover the costs which they had incurred. In those APR cases where an amicable solution was found by the ECC-Net, consumers recovered on average about € 500.[54] This amount does not always accurately represent the true loss suffered by the complainants, as the amicable solution in general does not cover the total costs involved. For example, when less hotel nights were reimbursed than the number of nights the passengers had to wait for a new flight. Still, it gives a view on the financial detriment per complaint received by the ECC-Net.

During the ash cloud crisis the question was raised whether the protection offered by the Regulation 261/2004 should be lowered. Airlines complained about having to comply with Regulation during the ash cloud and how costly this was, hurting their financial results. The ECC-Net does not have the exact data on the costs incurred by the air transport sector as a result of assisting their stranded passengers. However, the annual financial reports from several major airline companies available on the internet show that the volcanic ash crisis as a whole did not prevent some companies from achieving good results in 2010.

The annual financial reports published by several major airline companies illustrate the companies' view of 2010:

*Last year was one of the most remarkable years in the long and colourful history of Iceland air Group. ...The operating results turned out to be exceptional...In spite of the severe disruption caused by the volcanic eruption in Eyjafjallajökull. As a result, the Company finds itself on a much sounder*

51 Communication from the Commission to the European Parliament and Council on the application of Regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, Brussels, 11.4.2011, p. 4

52 Regulation (EU) No 181/2011 of the European Parliament and of the Council of February 16th 2011 concerning the rights of passengers in bus and coach transport.

53 Regulation (EU) No 1177/2010 of the European Parliament and of the Council of November 24th 2010 concerning the rights of passengers when travelling by sea and inland waterway.

54 Based on the values encoded in the IT Tool, in 86% of the complaints received by the ECC- Net the average amount involved is approximately € 509.58. For the remaining 14%, no value was encoded.

*footing than a year ago. The results of the Company in 2010 were the best in its history, with the Group's profits amounting to ISK 4.6 billion. The Company's total turnover increased by 10% over the year, amounting to ISK 88 billion at yearend. Earnings before financial items taxes and depreciation amounted to ISK 12.6 billion, as compared to ISK 8.1 billion in the preceding year. The improved performance was primarily a result of significant increase in Icelandair's passenger revenues.*
Sigurdur Helgason, Chairman of the Board of Iceland air Group[55]

*Operating profit came to EUR 876m, which is more than five times higher than in the previous year. Net profit also did extremely well in 2010, amounting to about EUR 1.1bn. This impressive performance results from strong sales and revenue development in international passenger traffic and in cargo, from the positive effects of our cost-cutting measures and from realising further synergy potential in our airline group.*
Christoph Franz, Chairman of the Executive Board of Deutsche Lufthansa AG[56]

*We were pleased to deliver a 26% increase in profits and 8% traffic growth, despite higher oil prices, the global recession, and volcanic ash disruptions in Q1 last year. Revenues grew 21% to €3,630m as av. airfares rose 12% (almost in line with the 10% increase in sector length) while traffic grew 8% to 72m.*
Ryanair's CEO, Michael O'Leary[57]

*We have seen a contrasted year, with on the one hand a more favourable economic environment, but on the other a number of exceptional events affecting our operations. Nevertheless, the strategic actions launched last year enabled us to profit in spite of a one billion euro rise on our fuel bill and the impact of the various crises. The improvement of some 1.4 billion Euros in our operating result required a significant mobilization by all the group's employees, and Peter Hartman and myself thank them for their effort and commitment.*
Pierre-Henri Gourgeon, Chief Executive Officer Air France KLM[58]

*This has been an exciting, eventful and challenging period for British Airways. A recovery in our key market segment, premium travel, enabled us to record an operating profit after two difficult years of losses.*
Keith Williams, Chief Executive British Airways[59]

*The Group's performance was positive and income before tax and nonrecurring items, adjusted for the ash cloud, was MSEK 265, where net income for the year was MSEK –2,218. Significant nonrecurring items charged to income during the year were mainly expected events. By leaving these nonrecurring items behind us, we can now look forward and focus on core operations that show a stable positive trend.*
John S. Dueholm, Acting President and CEO (until January 31, 2011) SAS[60]

*Easy Jet has delivered a robust financial result against a difficult backdrop. Reported pre-tax profit grew by £99.3 million to £154 million driven by a strong revenue performance as total revenue grew by 11.5% to £2,973.1 million. Return on equity grew by 3.1 percentage points to 8.6%. Easy Jet also generated significant positive cash flows in the period with cash and money market deposits at 30 September 2010 totalling £1,171.9 million (30 September 2009: £1,074.9 million).*
Carolyn McCall OBE, Chief Executive easy Jet[61]

55 http://www.euroland.com/omx_attachments/2011-03/423662-0-is.pdf

56 http://reports.lufthansa.com/2010/ar/toourshareholders/lettertotheshareholders.html

57 http://www.ryanair.com/doc/investor/2011/q4_2011_doc.pdf

58 http://www.klm.com/corporate/nl/newsroom/press-releases/archive-2011/Financial_Year_2010-11.html

59 http://www.worldreginfo.com/wdoc.aspx?file=British_Airways/1/E0001B3F-0083-4AE6-85C4-C961D-4D7E731/165475_rfa_2010_en_gb0001290575.pdf

60 http://sverigesradio.se/diverse/appdata/isidor/files/83/10076.pdf

61 http://2010annualreport.easyjet.com/chief-executives-statement.asp

*Austrian Airlines achieved its target results in the 2010 financial year. The company reduced its loss from operating activities by 72 percent – from minus 230.9 million Euros in 2009 to minus 64.7 million Euros in 2010 – and achieved a positive EBITDA of 170 million Euros (2009 figure: minus 71.9 million Euros). The company's total revenues from operating activities rose by 3.3 percent to reach 2,150.7 million Euros (2009 figure: 2,082.7 million Euros).*
Andreas Bierwirth and Peter Malanik, members of the Austrian Airlines Executive Board[62]

*In the fiscal year ending 31 December 2010, the Alitalia Group recorded revenues of 3,225 ml. € (+14.1%), 23.4 million passengers carried (+7.4%) and an operating result of - 107 ml. €, up by 167 ml. € compared to 2009. The net result, after accruals and extraordinary charges, is equal to -168 ml. €, up 159 ml. € compared to last year. Therefore, the objective of cutting operating losses in half was amply exceeded.*
Rocco Sabelli, CEO Compagnia Aerea Italiana SpA[63]

In the light of this, it would appear that the costs for assisting stranded passengers and in particular the hotel charges which were borne, did not detrimentally affect airlines viability and profit margins as much as one might think.

The ECC-Net looks positively towards the engagement of the Commission to make an assessment of the financial impact of the assistance rendered to stranded passengers before proposing an amendment of this particular aspect of the Regulation 261/2004. It is the hope of the ECC-Net that this will result in European consumers will being able to receive the same or better care in the future, even under exceptional circumstances.

## 5.3 Development comparison 2010-2011, January to June

As shown in the tables below, there is an increase in the number of cases received by the ECC-Net during 2011, in comparison to 2010, especially regarding cases related to passenger transport. One explanation for this can be the still arriving volcanic cases and also cases related to the snow chaos of December 2010. The ECC-Net thereby notices a minor alteration in the distribution of topics regarding air transport. As illustrated in table 5.15, the alteration relates to the mentioned increase of passenger transport-related cases, while baggage related cases remain about the same as during 2010.

Furthermore, the number of information requests slightly increased during the first half of 2011. One explanation for this, amongst others, could be the increased amount of information provided by the ECC-Net and other authorities on their different websites, as this information often encourages consumers to contact the ECC-Net regarding aspects in their specific situation.

62 http://www.austrianairlines.ag/Press/PressReleases/Press/2011/03/034.aspx?sc_lang=en&mode=%7B57E10D62-182E-4A98-837E-6032A0EE881A%7D

63 http://www.airtransportnews.aero/article.pl?id=28496

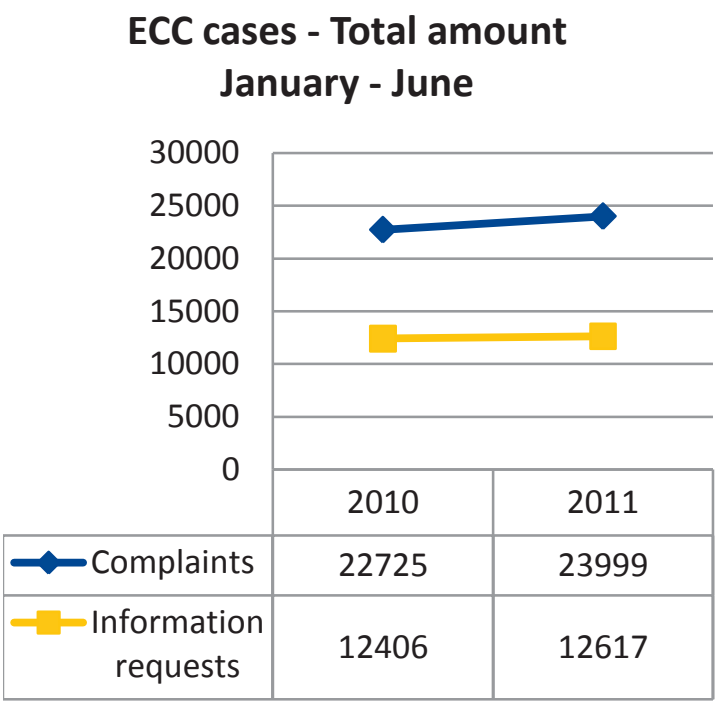



*Table 5.14 Total amount of cases within the ECC-Net during January – June 2010 & 2011.*

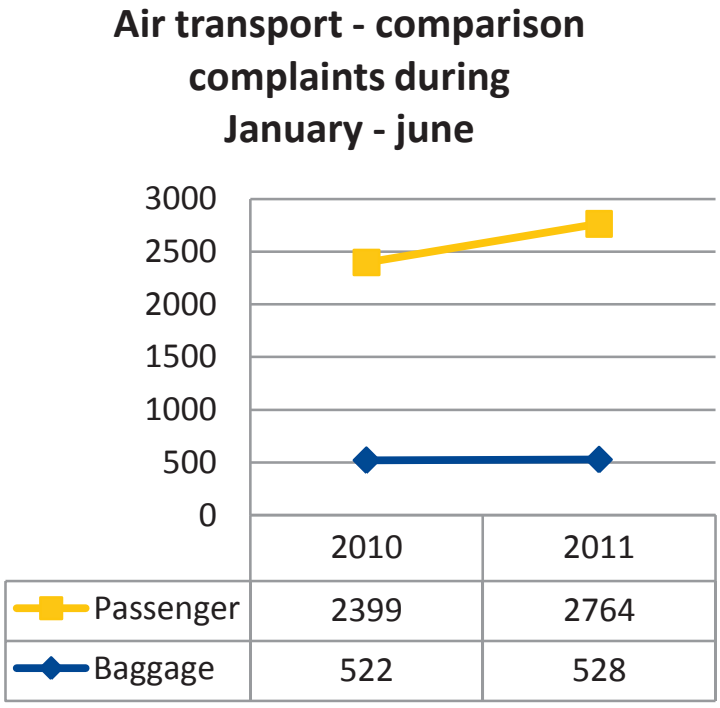
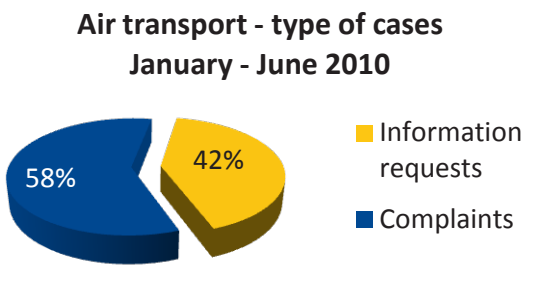



*Table 5.15 Increase of complaints concerning air passenger transport and increase of complaints concerning the transportation of baggage by air received by the ECC-Net (comparison January – June 2010 & 2011).*



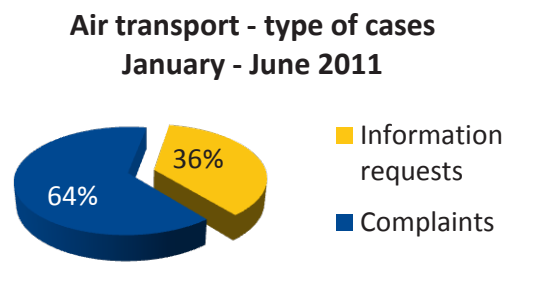
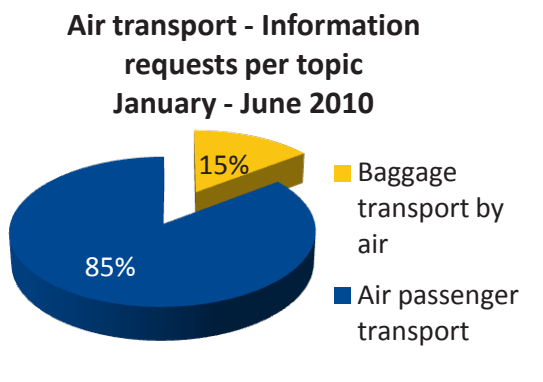




*Table 5.16/5.17 Type of air transport cases handled by the ECC-Net in January – June 2010 & 2011.*



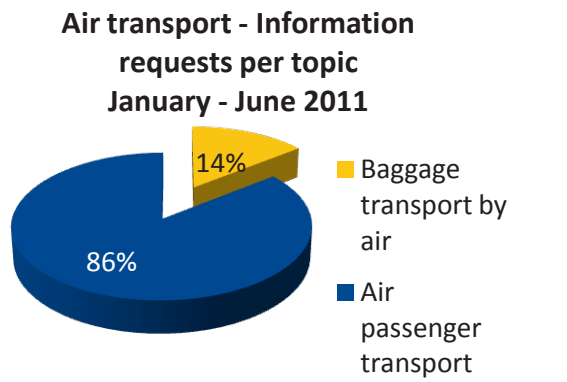
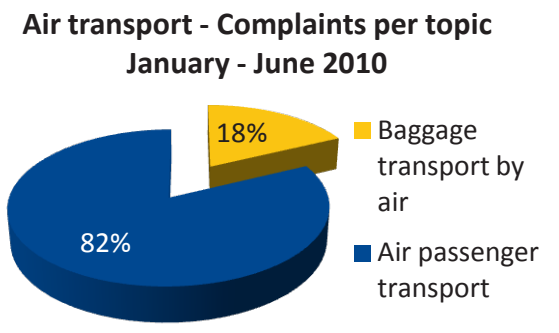




*Table 5.18/5.19 Distribution of the air transport information requests received by the ECC-Net in January – June 2010 & 2011.*



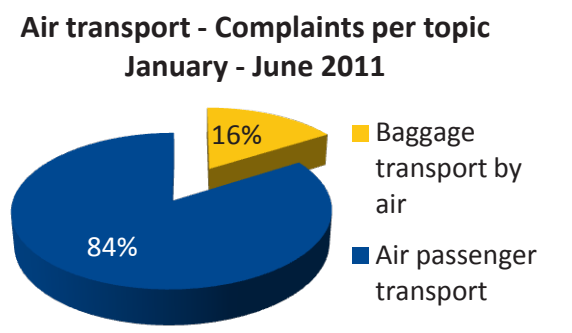




*Table 5.20/5.21 Distribution of the air transport complaints received by the ECC-Net in January – June 2010 & 2011.*

The statistics from 2011 show that the distribution is quite similar between the first six months of 2010 and 2011 but the complaints part increased compared to information part.

This shows that Air passengers' rights are still of great concern both to passengers and to the ECC-Net which is important in the view of the review of Regulation 261/2004.

# 6. Impact of the volcanic ash cloud

Following the eruption on the 14th of April of Iceland's Eyjafjallajökull volcano, a massive ash cloud disrupted Europe's air traffic and grounded over 100,000 flights. An estimated 10 million passengers were unable to fly.[64] The ash in the atmosphere caused problems because it contained substances that were detrimental to aircraft engines. This issue led to a lot of discussions, as later test flights in areas adjacent to the ash cloud seemed to prove that the decision to close down the entire airspace might have been somewhat hasty.[65]

European Transport Commissioner Vice President, Siim Kallas, stated:

*"We are working with preliminary figures taken from different stakeholders and organisations ranging between € 1.5 and € 2.5 billion, but of course we need to carefully assess the content of these numbers."* [66]

These figures are based on various estimates by airlines, airports, ground handling, tour operators and other service providers affected by the weeklong disruption.[67]

The Vice President also stated:
*"But even in exceptional circumstances EU passenger rights continue to apply and air travellers should speak up to claim their rights."*

64 http://www.businessweek.com/globalbiz/content/apr2010/gb20100427_110426.htm

65 Ibid.

66 European Transport Commissioner Siim Kallas quote during a press briefing in Brussels (Tuesday, 27 April 2011).

67 http://www.businessweek.com/globalbiz/content/apr2010/gb20100427_110426.htm

With regard to passenger rights, the Vice President added:
*"This is a situation which is causing immense difficulties for passengers travelling throughout Europe. It can be considered a very exceptional circumstance. Nevertheless, it is important to remind passengers and airlines that EU passenger rights do apply in this situation."*

As stated by the Commission[68], these rights include:

- the right to receive information from airlines (e.g. on their rights, on the situation as it evolves, cancellations and length of delays),
- the right to care (refreshments, meals, accommodation as appropriate),
- the right to choose between reimbursement of fares or be re-routed to final destination.

However, in exceptional circumstances such as this, passengers are not entitled to additional financial compensation as would be the case if the delays or cancellations were the fault of the airline.[69]

As a result of the volcanic ash disruption, the main problem which emerged pertained to those people who chose to be re-routed after their initial flight was cancelled, only to find that the flight upon which they were to be re-routed was also cancelled. Many cases were reported to the ECC-Net were consumers incurred reasonable costs in the belief that they would be re-routed home. Upon receiving this news, the consumers arranged alternative transport by themselves. However, some airlines refused to reimburse such expenses stating only that since the consumer had made alternative transport arrangements home they were not liable.

In general, airlines agreed to refund the cost of cancelled flights when the passengers involved chose not to be re-routed. However, initially the majority of airlines refused to apply the provisions of the Regulation pertaining to assistance for those consumers who were stranded and wished to be re-routed. Their argument was that it was never envisaged that the Regulation was adopted to cover such an event. Many only proposed a good-will gesture instead, such as a refund of one night's accommodation and one meal, even if the consumer incurred more expenses than this. However, after several months, some of the airlines changed partially their policy and refunded consumers their subsistence costs. A number of airlines refunded consumers the total subsistence costs.

Some airlines proposed an alternative flight a week or two weeks after the intended scheduled flight resulting in costs incurred (for the lack of assistance incumbent upon the air carrier), when the consumer spent several nights stranded abroad. In some instances, some of these airlines which had offered such re-routing opportunities on a very far date had in fact available seats on earlier flights. In a number of cases consumers reported that flights with identical flight numbers left before the proposed alternative date. However, if consumers asked to be re-booked on these earlier flights, companies often asked for supplementary charges. The airlines should have rebooked passengers to available seats on other airlines, in cases where they had no own seats left.[70] Consumers often felt pressured into finding alternative means of transportation home and, having accepted reimbursement rather than re-routing. even at a much later date, were no longer entitled to assistance and care. Airlines argued that, according to the Regulation, they

68 Air travel: volcanic ash cloud - EU passenger rights continue to apply MEMO/10/131 Date: 15/04/2010

69 Ibid.

70 Directorate for Energy and Transport Information Document FAQ "Answers To Questions on the application of Regulation 261/2004, 17 February 2008", P. 11 Question 21.
See also: Evaluation of Regulation 261/2004, Final report, Main report Steer Davies Gleave, February 2010, Page 36 p 3.71
See: http://ec.europa.eu/transport/air_portal/passenger_rights/doc/2008/q_and_a_en.pdf

71 Volcanic Ash Crisis: Frequently Asked Questions, MEMO/10/143 Date: 20/04/2010, http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/143&format=HTML&aged=0&language=en

were then not entitled to reimbursement for any subsistence costs incurred. In fact, the FAQ issued by the Commission stated that other means of transportation, such as train and bus, can be used when rebooking.[71]

Based on the answers provided in the questionnaire, the main questions or problems that consumers reported to the ECC-Net were:

- *Lack of information, Article 14 Regulation 261/2004*
  Some ECCs received complaints regarding lack of information to passengers in general, as well as discrepancies between information given by airport staff and those in the customer relations departments. In some cases passengers had received information from the air carrier's staff saying that they could take alternative transportation home and be reimbursed afterwards, but later this did not occur.

- *Difficulties for passengers trying to prove that no information was given or wrong information was given.*
  In many cases consumers were told to seek compensation from their travel insurance company. There was also a problem as regards the provision of correct information and care at the airport as well as assistance with rebooking.

- *Lack of service and assistance, Article 9 Regulation 261/2004*
  Part of the questionnaire sent out to the ECC-Net, asked the centres to estimate what percentage of the volcanic ash cases which they had received involved an air carrier not providing assistance to passengers in accordance with Article 9 of Regulation 261/2004. The responses from the ECC-Net varied considerably, but the general consensus clearly pointed to a lack of assistance from the air carriers throughout the EU, during this period. Half of the ECCs experienced complaints (>50 %) regarding lack of assistance during the ash cloud crisis. There are, of course, a large number of variables to take into consideration when making such estimates and this can therefore only be used for indicative purposes; nevertheless it can illustrate both consumers' general lack of knowledge concerning their rights, as well as the air carriers' initial inability to ensure the application of Regulation 261/2004.[72]

- *Alternative transportation to final destination – obligation for the air carrier?*
  Some air carriers encouraged passengers to arrange alternative transportation by themselves, giving the impression that they would reimburse the costs incurred afterwards. However, subsequently not all of them reimbursed consumers. The majority of the ECCs confirmed that passengers were not reimbursed for alternative transportation costs.

  Some ECCs did not contact the airline but rather sent cases to the NEB straight away. In various cases this was partly due to the uncertainty as to whether air carriers were obliged to arrange alternative transportation for passengers by means other than just air transport. Nevertheless, several ECCs have knowledge of cases where the air carriers have reimbursed the costs for alternative transport. It is also worth noticing that in several subsequent cases, the Swedish ADR decided that air carriers should reimburse adequate and reasonable alternative transportations.

- *Special policies/ad hoc policies for ash cases*
  In some cases passengers received information that reimbursment/assistance only could be provided for the first two days. Later on, a large number of the air carriers changed this position and reimbursed the passengers, or at least those passengers that pursued their complaint.

[72] Press release, 7th July 2011,
See: http://www.eccireland.ie/topic_related.php?type=16&topic=1&typex=article&article=113

Some airlines imposed declarations on consumers, which not only asked that they waive their rights, but also sought to impose conditions on them as regards how to obtain redress or the time limits available for assistance. Nearly half of the ECCs (13 out of 28) received complaints from consumers regarding special/ad hoc policies adopted by the air carriers during the crisis. In the beginning some air carriers, like Finnair, Lufthansa, and Transavia sought to use written declarations to limit consumers´ claims, but, due to the intervention of the competent NEBs, later changed their policy. It is remarkable that these air carriers even tried to use these types of agreements since Article 15 of the Regulation expressly forbids the wavering of rights, and passengers who accept a limitation of their rights due to false information being provided by an air carrier are free to pursue additional compensation.

Some air carriers, such as Ryanair and Finnair, also introduced a special form on their website which could be used afterwards by passengers in order to claim reimbursement. This development is to be welcomed, as regarding the special form for complaining. Any action taken by the air carrier in order to facilitate complaint handling and reduce time for handling complaints will benefit the passenger.

- *Special arrangements between airlines and NEBs*
  Only one ECC, ECC Finland, could report some kind of formal agreement between their NEB, the Finnish Consumer Agency, and their national air carrier Finnair, who first limited the assistance and then changed its policy. The level of reimbursement payable for accommodation was based on the Hotel Price Index and there was a fixed amount for food and telephone costs. It was also possible to claim compensation for alternative transportation costs (train, bus).

  Agreements like this can facilitate the complaint handling procedure and increases the possibility for passengers to receive the reimbursement for the extra costs incurred that they are entitled to, especially for food and telephone expenses. For example, there have been several cases where the passengers lost receipts, which otherwise would have proved the amount incurred, and the air carrier refused to pay compensation, even though it is reasonable that the passenger would have had some form of food for instance.

  4 ECCs out of 28 claimed that they have good relations with their national air carriers and therefore did not see the need for special agreements concerning passenger compensation.

- *Experiences with travel agents charging fees*
  Some ECCs had cases were the travel agents charged a fee for handling cancellations or refunds. ECC Sweden had a lot of questions from consumers, who had booked the tickets through a travel agent, where the air carrier had referred the consumer to the

travel agent in order to issue the refund of the unused ticket. Since almost all of the Swedish travel agents charged fees for issuing the refund, this prevented consumers from receiving a full refund of the ticket price. In these cases, ECC Sweden argued that the consumer should later complain to the air carrier and ask for a reimbursement of the charged fee.

- *Length of time elapsed*
  Often, the complaint handling procedure took several months or the airlines did not respond at all.

  The questionnaire also asked the ECC-Net to what extent air carriers reimbursed or compensated the passengers afterwards for alternative transportation costs. Here also, the consensus of the ECC-Net seemed to be that in the majority of cases, air carriers did not reimburse or compensate the passengers. It is submitted that Article 8 of Regulation 261/2004 should apply when passengers, who would otherwise be offered the option of re-routing, arrange themselves an equal, but more suitable, alternative means of transportation. Indeed, as one ECC-office pointed out, some air carriers argued that they did not consider Article 8 of the Regulation applicable to alternative means of transportations.

## 6.1 ADR cases regarding the volcanic ash cloud

According to answers received through the questionnaire, one of the most active ADR bodies which dealt with cases deriving from the ash cloud was the Swedish National Board for Consumer Disputes. The board is a public authority, which also handles cross -border cases. When cases are tried before the Board, they are done so before a judge, two representatives from industry and two consumer representatives. The procedure is a written one, that is to say the proceedings are based only on the written documentation and no oral hearings are held. The Board then submits a recommendation on how the dispute should be resolved. When it comes to air travel cases, the Board can try cases involving Regulation 261/2004, the Montreal Convention and claims related to contractual law. Regarding Regulation 261/2004 and volcanic ash related cases, the Board, amongst other things, confirmed the airlines' responsibility to provide accommodation and food where needed, and that a consumer could claim for reimbursements of these costs if the airline had not fulfilled its obligations . In some cases this was also based on contractual grounds, rather than the Regulation (when the Regulation was not applicable).

By May 2011, the Swedish National Board for Consumer Disputes had received 492 volcanic ash related cases, of which 309 have been handled so far.[73] Of these cases, about 150 cases were a result of referrals from consumer advisors and ECC Sweden. Of the 69 cases rejected by the Board, the foremost reasons were incomplete documentation provided by consumers and the failure to comply with the submission time limit of 6 months after the incident. Furthermore, it is worth mentioning that in 118 of these cases, settlements reached outside the Swedish National Board for Consumer Disputes allowed for the case to be dismissed.

Below are some examples regarding ash cloud-related assistance/reimbursement cases which were handled by the ECC-Net:

*A French family was due to fly back from Dubai to Paris on April 16th, 2010. It was impossible to travel before April 27th, 2010, a delay of 11 nights. Not being provided care & assistance, hotel and living expenses arose to £2564. The French airline first refused to reimburse the consumers. The French NEB sent the case to the*

[73] According to their annual report, the volcanic ash cloud accumulated 436 cases received by the Board during 2010 resulting in a total increase of 7.8 % in their travel-related cases.
See: http://www.arn.se/upload/Allmänna%20reklamationsnämndens%20årsredovisning%202010.pdf

*French Volcano ADR which informed the consumers to contact the ECC-Net. After the intermediation of the ECC-Net, the French airline accepted to cover the hotel nights, food, taxi and two communications; in total £2370.*

*A Norwegian consumer was stranded in Italy because of the volcanic ash crisis. Due to unclear information received at the airport, the consumer decided to travel back home by train and then by car. The consumer tried to claim the expenses he had incurred back from a Norwegian airline, but they challenged that by stating that there was no agreement on re-routing. The insurance company finally covered the consumer's expenses.*

*Two Austrian consumers booked a flight with a German airline to Madeira via a tour operator. The return leg of the flight was cancelled due to the volcanic ash disruption. One of the consumers talked to the tour operator and it was agreed that the consumer would organize an alternative flight herself. She managed to book a flight with the same airline. The tour operator refunded the costs of the cancelled flight but the German airline refused to reimburse the additional costs the consumers had incurred as a result of booking the alternative flight. Their airline's argument was that the tour operator with whom the flight had been booked cancelled the contract with the consumers due to force majeure. Thus, the German airline claimed there was no contract between them and the consumers, and so the airline would not owe the consumers any duties under Regulation 261/2004 anymore. the German airline was not willing to offer any reimbursement.*

*A British airline cancelled a return flight (4 people informed of the cancellation at check-in) from Rome to Lisbon on April 18th 2010.The consumers were re-booked on another flight on the April 21st, although no one could guarantee that the flight that day to Portugal would be operational. The consumers were told they could cancel the flight if they found flights with another air company. Ultimately, the consumers decided to return to Lisbon with another company and bought new tickets for the April 19th at 22:00. When they tried to cancel the flights at the airlines' counter, they were told that it could only be done via the internet. The consumers tried to cancel several times over the telephone, as per the company's cancellation policy, but it was impossible to get in touch with the British airline as the phone line was always busy. An e-mail was sent, but no response was received. Whilst the passengers were in Rome waiting for an alternative flight, the British airline did not provide them with any assistance towards food, accommodation, or communication costs. In a response received a month later, the British airline stated that the delayed response was due to the many requests which they received. The consumers sought reimbursement for covering the costs incurred (meals, beverages, and transport to the airport and accommodation expenses). After the intervention of the ECC-Net, they were reimbursed the following amounts: € 190.70, to cover the cost of the hotel and meals and € 118.96 refund of unused flight .*

*A German consumer booked a flight from Rome to Hamburg, via Vienna, with an Austrian airline for April 19th 2010. The flight from Vienna to Hamburg was cancelled due to the volcanic ash cloud. The airline could not tell the consumer when the next flight to Hamburg would take place and advised him to use other means of public transport to get back to his home town. He was advised that he should subsequently contact the Austrian airline and request a refund of the additional costs incurred. The consumer, therefore, took the airport shuttle bus to the main train station in Vienna and was able to buy a train ticket to Hamburg for € 137. He then requested a refund of the additional costs he had incurred, which amounted to € 100.32. The airline, however, only refunded him € 36.68. The consumer complained to ECC Germany who shared the case with ECC Austria. Due to ECC Austria's intervention the consumer was refunded the total cost of the train ticket.*

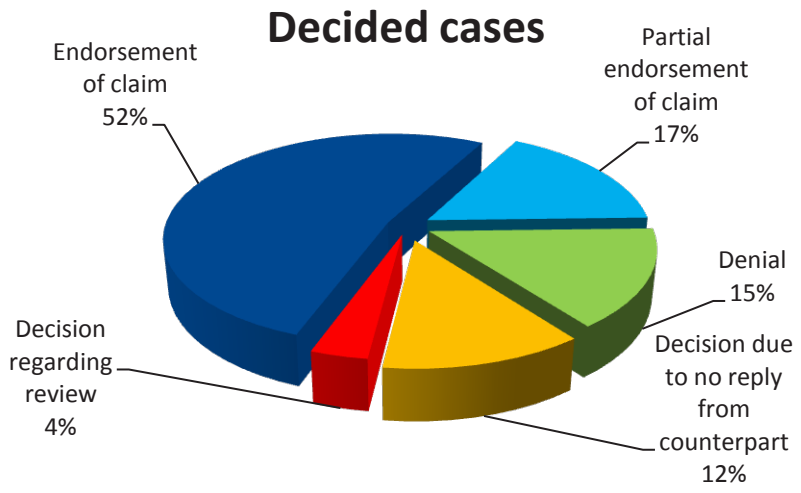



*Table 6.1 Distribution of volcanic ash cases decided by Swedish ADR*

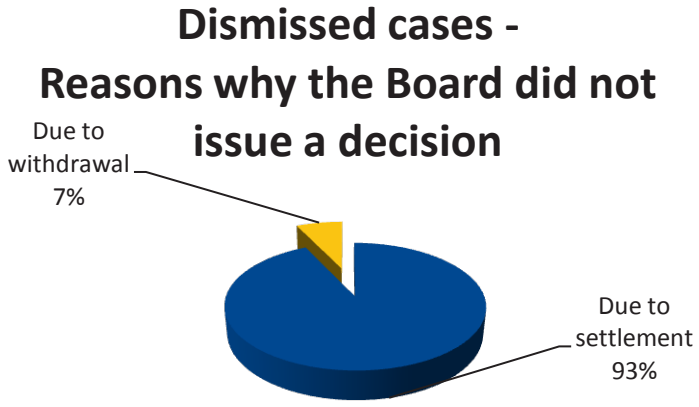



*Table 6.2 Distribution of volcanic ash cases dismissed by Swedish ADR*

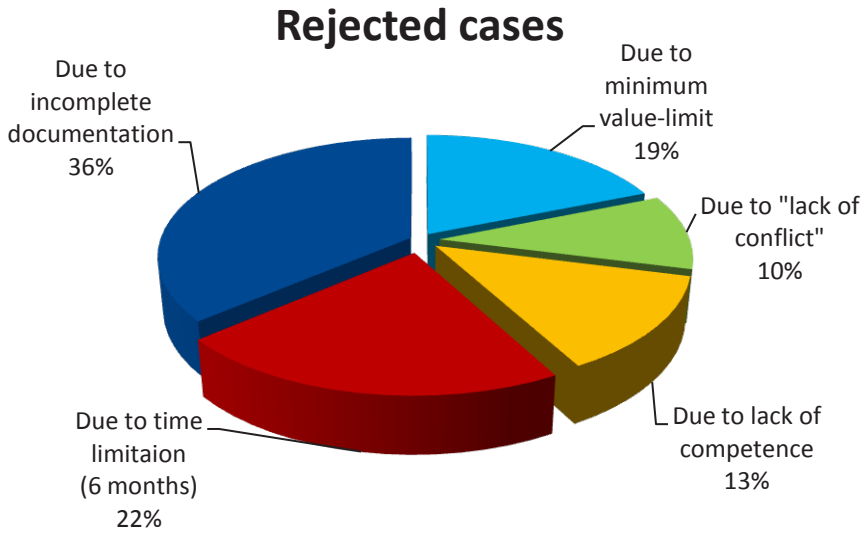



*Table 6.3 Distribution of volcanic ash cases rejected by Swedish ADR*

## 6.2 Specific problems experienced during the ash cloud crisis; Impact on passengers' rights

Most of the cases related to the ash cloud only emphasized pre-existing difficulties which consumers had already been encountering for years and some of these problems do not only relate to "*exceptional circumstances*".

- Lack of information contrary to Article 14 (2) Regulation 261/2004.
  - Either no staff at the airport or lack of assistance by phone/email.
- Wrong information given to passengers.
  - Staff providing misleading information.
  - Passengers informed to take alternative transportation to their destinations and later request reimbursement for the expenses incurred. When consumers did so, air carriers later denied these requests.
- Long handling times at customer service.
- Lack of enforcement.
  - Lack of human resources prevented NEBs to enforce all cases under the volcanic ash situation. Referring to the sanctions which NEBs may impose on carriers infringing the Regulation. The NEB can intervene when passengers actually complain to the NEB. Even then, if an individual case is taken up for enforcement, the individual consumer might not recieve compensation/reimbursement. The consumer has to go to court or use alternative out of court proceedings to obtain individual redress.
- Air carriers refuse to comply with NEB/ADR decisions.
  Italy's civil aviation authority, ENAC, fined airline Ryanair three million Euros for failing to honour its obligations to assist passengers after cancelling their flights over volcanic ash. ENAC imposed the fine after an investigation revealed that it had on 178 occasions violated its legal obligations to assist passengers in cases of flight cancellations between April 17th and 22nd at Rome's Ciampino airport.[74] Ryanair has appealed the ruling.[75]

In the aftermath of the volcanic ash crisis, one of the key recommendations from the relevant Ministers of the Transport Council, was that the Commission would ensure uniform application of the legislation on passenger rights. The ECC-Net can strongly agree with this requirement. It is important to ensure that passengers across Europe can enjoy their rights and that the industry can rely on the law being interpreted in a consistent manner throughout Europe.[76] The need for such a consistent approach is clearly shown throughout this report.

In its Memo, "*Volcanic ash disruption: One year on and Crisis Preparedness*", the Commission stated that it is:

*"...the Commission's assessment that the large majority of airlines took their responsibilities seriously during the ash crisis. Claims for reimbursement for cancelled flights were dealt with in a reasonable period of time, as were many claims for re-routing and short- term care."* [77]

Unfortunately, based on ECC-Net's case handling experiences, the ECC-Net cannot agree with the assessment above, as our case handling experience shows another picture.

74 http://www.enac.gov.it/Servizio/Info_in_English/index.html

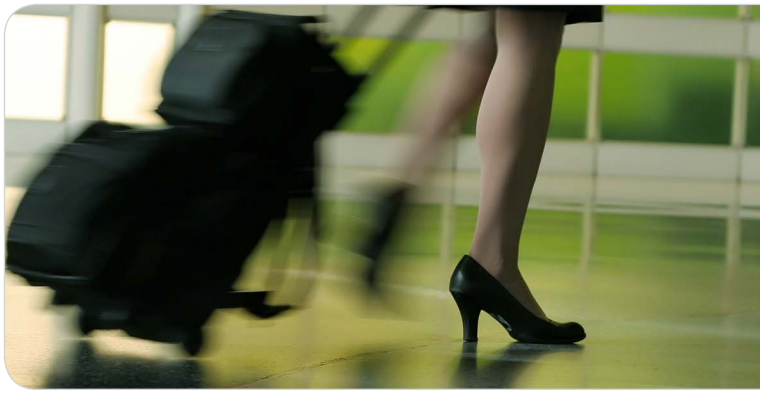
75 News release 2010-05-18, http://www.ryanair.com/en/news/ryanair-dismisses-enac-s-false-claims-of-178-violations-of-eu261-and-their-3m-euro-fine

76 Memo from the European Commission "*Volcanic ash disruption: one year on and crisis preparedness*", MEMO 11/235, Brussels, 12 April 2011.
See: http://ec.europa.eu/transport/passengers/doc/sec_2011_staff-working-paper.pdf

77 Ibid.

# 7. Other agencies involved in resolving air passenger complaints

## 7.1 Collaboration with National Enforcement Bodies (NEBs)



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

Territorial competence means that the NEBs are responsible for flights departing from airports in their country and flights from countries outside the EU, destined for the NEB country and operated by an EU licensed airline.

The NEBs are tasked with enforcing the Regulation both by addressing any potential infringements, and responding to individual complaints filed by passengers.[78] The individual Member States are responsible for determining which body is the most suitable for monitoring and enforcing the Regulation, as well as setting out the parameters of the NEBs competency and powers. As a rule, the NEBs can ex officio check one or several airlines' compliance with the rules as set out in the Regulation. That aside, however, it seems reasonable to assume that complaints from air passengers would act as an important indication to the NEB as to how and where their resources could be used most effectively. Therefore, it was imperative that passengers affected by the ash cloud complained to the NEBs, so that they could gain insights in to how the situation was dealt with. Only then could the NEBs make a determination as to whether to impose sanctions on those airlines not in compliance with the Regulation.

In 21 of the 27 EU Member States, the NEB has been placed with the aviation authority or government ministry.[79] The Civil Aviation Authorities have both the relevant expertise and sectoral knowledge to deal with such complaints and the ECC-Net would look positively on a development where their decisions would further highlight this. Some countries have instead placed the NEB within a consumer authority.[80] Four Member States have divided the tasks so that enforcement and complaint handling are managed by different agencies.[81]

In 2006 the Commission set up an external evaluation of the functioning of the Regulation and

78 "*The NEBs in most of the 15 case study-states follow a broadly similar approach to complaint handling. The main exception to this is Sweden, where complaints are handled by an alternative dispute resolution body, Allmänna reklamationsnämndens (ARN). ARN is not designated as an NEB, and does not consider that it should follow the NEB-NEB agreement, but no other organisation is designated in Sweden to handle complaints except with regard to Article 14 and therefore ARN is the only authority to which passengers can complain.*" Evaluation of Regulation 261/2004, Final report, Steer Davies Gleave, February 2010 page 51. See also: Ibid. page 1, p.4

79 The Commission Staff-working Paper, Brussels, 11.4.2011 SEC(2011) 428 final p. 14 says 18 Member States, but the Review Of Regulation 261/2004, Final Report from Steer Davis Gleave p. 39-41 says 21 Member States.

80 The Commission Staff-working Paper, Brussels, 11.4.2011 SEC(2011) 428 final p. 14

81 Review Of Regulation 261/2004, Final Report from Steer Davis Gleave p. 39-41

the NEBs. This evaluation found that there was a need for improvement in the case handling techniques by the NEBs, and hence the Commission prioritised this area, promising improvements. Two informal agreements on how the NEBs should handle complaints were reached, one between the appointed NEBs and one between the NEBs and the airlines. The Commission also issued a Q&A on the content of the Regulation. All of these materials are available on the Commission's website.[82]

In 2010 the Commission issued a new report on the Regulation,[83] and though major improvements had been made, the functioning of the NEBs still leaves much to be desired. The majority of the Member States have bodies which handle complaints from passengers, who believe they have not been treated correctly.[84] However, despite the Commission's attempt to coordinate the work, there still seems to be differences in the manner in which each of the NEBs handle passenger complaints, both as regards the individual/collective approach of a complaint, the time it takes, the level of investigation carried out, the communication with the passenger and the result of the efforts obtained, or even on a more basic level whether they assist the individual passengers in obtaining redress.

In a survey carried out by the Commission, most of the ECCs answered that the general response time from the NEBs ranged from a few days (sending an acknowledgement to the passenger) to a couple of months. However, three ECCs reported that their NEBs took more than 6 months to respond, and of these, one of them requested passengers to refrain from contacting them in the 12 months following the submission of their complaint.[85]

A major source of contention is the concept of "*extraordinary circumstances*" which exempts the air carriers of the obligation to pay compensation in accordance with Articles 5 and 7 of the Regulation. Indeed, of the 28 centres in the ECC-Net which responded to the questionnaire, 16 list the usage of extraordinary circumstances by the airlines as one of the two largest obstacles in solving air passenger rights complaints. Though the ECJ has already ruled on the matter, there is still no sufficient definition of what exactly constitutes such circumstances. Various interpretations adopted by the Member States and the different requirements for documentation faced by air carriers depending on which NEB is competent does not assist matters.

Difficulties with NEBs (and ADRs) are considered to be the second largest obstacle. This concern is most likely due to the lack of assistance consumers will receive whilst trying to obtain redress if such schemes are not in existence. Though most of the NEBs will provide an assessment of the complaint filed by the passenger, many passengers will have to go to court in order to obtain redress.

Many ECCs responded that they will try to mediate with the airline, before sending a case to the NEB. It would appear that the NEBs are not always the preferred method of solving these types of air passenger rights complaints.

The differences in NEB practices may result in passengers having different legal positions depending on where their flight was cancelled or delayed, and unless the NEBs insist on air carriers proving the presence of extraordinary circumstances, as stated in the NEB-Air carrier agreement, the burden of proof is in reality put

82 Neither the agreements, nor the Q&A are legally binding documents.

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

84 Based on evaluations from the ECCs, one NEB refuses individual complaints, one NEB investigates such complaints but does not work properly and one NEB requires several complaints regarding the same flight in order to intervene.

85 "*ECC experience about the NEB case-handling practices as regards Regulation 261/2004. Results of questionnaire July-August 2010*"

on the consumer, who will have to contest the statement provided by the airline.[86]

In addition to this, inconsistent interpretations of the Regulation weaken the authority of the NEB network and lessen the air carriers' incentive to comply with decisions; let alone the Regulation as a whole.

Due to the experiences of the ECC-Net, the network has taken it upon itself to assist consumers with claims under the Regulation; instead of just referring them to the competent NEB. The rationale in doing so is mainly to offer the consumers the support needed when going up against both a stronger contractual party and a limping complaint handling scheme. However, it also allows for the collection of data as regards the functioning of the NEB network, the air carriers involved in complaints and the countries where incidents occur.

With regards to the enforcement of the Regulation, the NEB's position is undermined by major differences in the manner in which the Member States and even other NEB's have implemented the rules. When the Regulation speaks of effective, proportionate and dissuasive sanctions, it must mean financial consequences such that air carriers have an economic incentive to comply with the Regulation.

Currently, however this does not seem to be the case; either because the fines, which can be imposed, do not act as a deterrent[87,] or because the risk of the fines being collected is low.

It appears that the NEBs neither command the necessary respect nor the authority to set out the interpretation of the Regulation, as the ECC-Net has seen examples of airlines simply disregarding the decision of a NEB; thereby forcing the passenger to go to court, maybe outside his country of residence.

Another difficulty for passengers who want to complain about an airline to an NEB has been the EU complaint form. Designed as a simple tick-off-the-box exercise, so as to be easy for consumers, this format has in some instances made it difficult for the passengers to accurately report the sequence of events. As mentioned previously, in cases of cancellation, the airline is obliged to offer the passengers the choice between re-routing or reimbursement. However, in some cases airlines either refused to re-route resulting in that the passengers had to buy other tickets themselves. It could then be argued that the passenger had actually done the airlines job by arranging the re-routing, and should then be entitled to have the expenses for this and meals etc refunded. However, the airlines would then automatically reimburse the cost of the original tickets back to the original means of payment used, usually a credit card used when booking. When entering this into the complaint form, the passenger would tick yes under question 5, which asked whether they had been refunded. This would lead to the NEBs dismissing the case, as the right to care and rerouting would no longer apply.

Only a very small proportion of passengers complain to either airlines or NEBs. The Regulation creates obligations for carriers in relation to about 4% of flights. If delayed or cancelled flights have the equivalent numbers of passengers to other flights, this equates to approximately 22 million passengers per year. However, only around 0.05% of passengers complain to carriers, whilst 0.005% complains to NEBs. This implies that the NEB receives one complaint for approximately every 800 passengers on flights for which the Regulation creates obligations.[88]

86 This consideration may also apply to other claims than compensation, such as whether the passenger was actually offered the choice between re-routing and reimbursement, whether the services of care were provided, whether the passenger was informed correctly of his rights, etc.

87 In some countries the fines issued are lower than the cost of compliance.

88 Evaluation of Regulation 261/2004, Final report, Steer Davies Gleave, February 2010, page 38.

Unfortunately, many NEBs do not have exact figures regarding the outcome of complaints, and in those instances where there are figures available, the approach to categorisation used by the different NEBs vary, with the result that the figures are not comparable. In 2008, 12 NEBs in the Member States imposed in total around 320 sanctions.[89]

Of those sanctions issued in 2008, 68% were issued in Italy or Poland. There are significant differences between the rates and levels at which NEBs impose sanctions, in comparison to the number of complaints received (table below). In Slovakia, there was 1 sanction issued for every 3 complaints received. Meanwhile, in Spain and France there were 363 and 850 complaints respectively for every sanction issued. Portugal was not in a position to give precise figures for the number of sanctions imposed. In the other 14 Member states, no sanctions were issued in 2008. This was despite the fact that a total of 5,914 complaints were received by the relevant NEBs. Of the States in which no sanctions were issued, the largest number of complaints received was in the UK.[90]

Recognising the fact that the NEBs are established to ensure the application of air passengers' rights

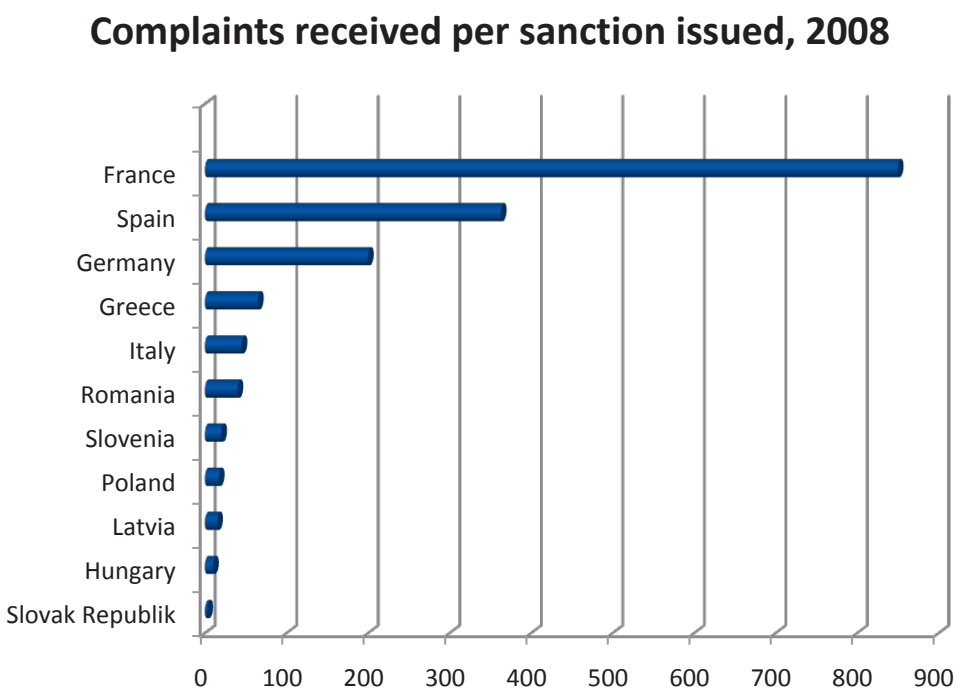



*Table 7.1 Complaints received per sanction issued in 2008.*

89 See above, page 47.

90 Evaluation of Regulation 261/2004, Final report, Steer Davies Gleave, February 2010, page 50. *When preparing this report in June, the ECC working group sent out a questionnaire to all the NEBs, with the help of the Commission, through DG SANCO and DG MOVE. Unfortunately the working group did not receive any response and had to use figures for 2008.*

and the enforcement of Regulation 261/2004, the ECC-Net assists consumers with any language problems which may arise when trying to intermediate with airline carriers, forwarding of complaints etc. With this in mind, the ECC-Net would look positively on an initiative to further define and clarify the role of the ECC-Net regarding air passengers' rights. The ECC-Net also welcomes all initiatives to strengthen the cooperation between the NEBs and the national and relevant international stakeholders – both at a national and international level. The ECC-Net look forward to a more uniform interpretation and enforcement of the Regulation and would appreciate a better cooperation with all the NEBs.

## 7.2 Alternative Dispute Resolution schemes regarding Air Passenger Rights

There are a number of situations, where it may be more favourable for consumers to take their claim to an ADR body, if one exists as their process is considered faster and cheaper or free for the consumer. Such situations may arise where, for example, the national NEB does not provide for individual redress. Furthermore, many consumers find that if the airline does not follow an ADR decision[91] the litigation process which follows may be both too time consuming and potentially too expensive (if their claim is unsuccessful). Currently, when there is no functioning ADR body and no efficient NEBs available, consumers' only alternative to the litigation process is the ECC-Net and any dispute resolution which may be possible between the consumer and the airline.

Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters clearly shows the intent of the Commission and European Parliament to allow mediation and ADR to play a larger role in dispute resolution within the internal market.

The ECC-Net notices, that on a national level 13 of the 28 countries who answered the 2010 questionnaire have ADR bodies capable of handling cases regarding either Regulation 261/2004, the Montreal Convention or both. In comparison, 13 of the 28 countries responded that there is no ADR body in existance dealing with these areas. Comments from the various ECC offices indicate minor or vital limitations amongst these systems, eg. Czech Airlines do not participate in the ADR established in the Czech Republic. Also, in some countries, such as Finland and Portugal, the ADR bodies only deal with either Regulation 261/2004 cases or Montreal Convention cases. The Cypriot legislation regarding ADR has just been adopted and therefore the Board there is not active yet.

The questionnaire also highlights differences regarding competence, which exist at a national level. For example, the ADRs in Belgium and Luxembourg can only deal with package travel, whilst the French ADR body, "*Médiateur Voyage Annulé Volcan*", did not have the capacity to deal with cross-border cases and was only temporal in nature. The permanent French ADR-body has, according to their press release, handled/resolved 1,150 files. The French ADR for cancelled travels due to the volcano has transferred approx. 500 cases to ECC France as they were linked to inter-European travels. The competence of that ADR besides being limited in time has also been limited geographically and cross-border complaints were redirected to the ECC France.[92]

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91 As an example; in the Swedish ADR decision nr. 2010-8597 (regarding a 13 hour delay due to lack of personnel without providing consumers with any service & assistance), Iberia did not follow the decision from the board granting the consumers € 400 in reimbursement each.

92 Conclusions du rapport du médiateur suite à l'éruption du volcan Eyjafjöll
"*Du 1er mai au 17 septembre 2010 la mission de médiation a eu à traiter plus de 13,000 appels téléphoniques, 12,000 courriels et 3,224 réclamations. Parmi 2,370 dossiers estimés recevables, le Médiateur a effectué 1,783 saisines de professionnels, et transmis 587 dossiers au Centre Européen des Consommateurs pour les demandes ayant trait à des voyages intra-européens. En définitive, ce sont 1,150 dossiers qui ont été résolus dans le champ de compétence de la médiation..*"
http://www.minefe.gouv.fr/actus/10/100506dispositif-volcan.html. Information provided by ECC France.

| Country | ADR body | Restrictions |
|---|---|---|
| Czech Republic | Yes | |
| Cyprus | A new law was passed by the House of Representatives on Alternative Dispute Resolution on the 14th of April 2011 ("The Out-of-Court Resolution of Consumer Claims through Arbitration Law of 2011"). It will come into effect in three to four months, as the mechanism needs to be set by the competent national authority. | |
| Belgium | Yes | Only for package travel |
| Denmark | The Consumer Complaints Board | Does not handle Regulation 261 cases |
| Estonia | The Consumer Complaints Committee | Only handles cases regarding national traders |
| Finland | The Consumer Disputes Board | Also functions as the NEB |
| France | A temporary Dispute Board, "Médiateur Voyage Annulé Volcan" , was in place for 5 months during 2010 | Only for volcanic ash cases. No cross-border competence (couldn't handle cases between French Consumers and a foreign company or between an EU consumer (other than France) and a French airline) and was limited In duration. |
| Hungary | 20 notified local ADR-bodies.<br>The ADR Body of Budapest and one ADR Body in each county-capital. | |
| Iceland | The Ruling Committee in Travel Industry Matters | |
| Italy | 4 notified ADR-bodies | Only two can be referred to for any kind of issues. No specialized ADR bodies are available for APRs. ECC Italy normally refers cases to the ODR of the Chamber of Arbitration of Milan (www.risolvionline.com) |
| Latvia | One general ADR body.<br>The National Enforcement Body is also acting as ADR body. | |
| Luxembourg | The CLLV (Commission Luxembourgeoise Litige Voyage) | This ADR Body is only competent for air passenger complaints in relation to package travel |
| Malta | The Malta Mediation Centre and The Malta Arbitration Centre | |
| The Netherlands | The Consumer Complaints Board for Air Travel | Only handles cases were the place of departure is the Netherlands |
| Norway | The Complaints Board for Scheduled Flights | |
| Portugal | Yes. Centro de Arbitragem de Conflitos de Consumo de Lisboa | ADR dealing with passenger complaints under the Montreal Convention. This ADR deals mainly with baggage cases. |
| Sweden | The Swedish National Board for Consumer Disputes (ARN) | |
| The United Kingdom | The Air Transport User's Council[93] | |

*7.2 Table based on answers in the questionnaire.*

The organisation of the ADRs structure differs amongst the various Member States, although, the ADRs in the Scandinavian countries all have a similar structure with one centralised ADR body. This is different to the system of regional/ local ADRs in Hungary, where there are 20 notified ADR bodies in different regions.

ECC-Net strongly believes that strong, efficient ADR bodies must be established in all Member States in order to ensure the protection of air passengers´ rights in the future. It is, however, important to note that the number of ADR bodies currently in existence represents an improvement since the last report was carried out by the ECC-Net in 2006. At that point, only 9 of the Member States had ADR bodies functioning in this field.[94]

Within the ECC-Net, 19 % (491) of air passenger rights complaints[95] were referred to an ADR body during 2010[96], this number could, however, include cases which were sent to a NEB. At present, it is not possible to obtain reliable statistics on the outcome of those cases which were referred.

Nevertheless, the overall view within the ECC-Net is that ADR-bodies could assist consumers in upholding their passenger rights and are, therefore, necessary. There is still a great discrepancy between countries which have either a functioning NEB or ADR and countries which have neither.[97]

93 With effect from March 9th 2011, the Air Transport Users Council (AUC) ceased to exist. The AUC's complaints handling function is now part of the Civil Aviation Authority, and consumer representation will be undertaken by a new body, the Aviation Consumer Advocacy Panel. This move follows a review by the CAA of passenger representation in the UK. See: http://www.auc.org.uk/

94 For further reference; see Air Passenger Rights: Consumer Complaints 2006, 5.2.

95 Refers to "*normal complaints*"

96 Statistics from the IT-Tool

97 ECC-Net report Cross Border Dispute Resolution Mechanisms in Europe – Practical Reflections On the Need And Availability, 2009

## 7.3 Legal action

There is no obligation on consumers to use an ADR or the NEB network. Any passenger can start legal proceedings against an airline claiming that their rights as outlined in the Regulation have been ignored.

Due to the complexity of the Regulation and the perception of the court system, many passengers will choose to use the free complaint handling service offered by the NEBs, which is in many countries also paired with expertise on air traffic and technical matters; expertise which the courts most likely lack. Unfortunately, it is not uncommon for airlines to refuse to comply with a decision from the NEB, and then court may be the only option left for the passenger.

The Regulation does not contain rules on jurisdiction, but the ECJ[98] has established that in cases concerning the Regulation of air passenger rights; jurisdiction can be either at the place of departure or the place of arrival, depending on the passenger's choice.

In 2009, the EU Small Claims Procedure entered into force.[99] Its purpose was to provide EU citizens with easier access to dispute resolution mechanisms in cross-border cases. This was to be done by minimizing both the handling time and the costs involved. The European Small Claims Procedure is a simplified version of a normal court case, where the case is filed by using a standard form and lawyers are removed from the preliminary steps of the case.

It is the experience of the ECC-Net that the European Small Claims Procedure has not had a wide-reaching effect yet, due to a lack of awareness about the procedure and the rules governing it. Indeed, many consumers refrain from using the system in any form to settle disputes, simply because it seems to be too complicated. In some countries, consumers need to be provided with the legal basis upon which they can file in their national court as their applications have been rejected since the Registrar felt they do not have the relevant jurisdiction to deal with the matter.

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

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

# 8. Overall issues

## 8.1 Baggage claims

In 2009 – 2010, 14 -15% of all information requests and 13% of all complaints and disputes relating to air travel pertained to issues concerning baggage. These difficulties can be categorised mainly into damaged, delayed or lost baggage.

Under the Montreal Convention, consumers are entitled to compensation of up to 1,131 Special Drawing Rights (SDR) when baggage is damaged, delayed or lost. This is the maximum amount that a consumer can claim and this compensation is not awarded automatically, meaning that consumers have to prove the extent of their loss.

Essentially, the attempted resolution of baggage complaints will involve two components:

- *Property Irregularity Report*
  If an individual is experiencing difficulties with his/her baggage, whether it is damaged, delayed or lost, the first step is to report the matter, usually to a representative of the airline or more commonly a handling agent, and complete a Property Irregularity Report. Generally, these desks are located at the baggage pick up point. Upon completion of the report, consumers should be given a copy of it. Airlines may request a copy of the report upon receiving the complaint, however this is not a legal requirement and failure to produce a PIR alone should not prove fatal to a consumers claim.[100]

[100] From UK NEB website (and ECC Ireland): When a passenger contacts the airline in relation to a luggage complaint, the airline will often request to see a copy of the Property Irregularity Report. However, as the completion of the Property Irregularity Report does not constitute a formal complaint, it is not a legal requirement to have one and an airline should not simply dismiss your claim without one.

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

Time limits are as follows:

1 For damaged baggage and items which are missing from bags, the time limit is seven days.
2 For delayed baggage, the time limit is 21 days from the date of delivery of the bag.
3 For lost baggage, there is no set time limit but it is advisable to do so as soon as possible.

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

### *8.1.1 Quantifying the value of the claim*

Since the Montreal Convention does not provide detailed rules on how to calculate the amount of compensation payable, airlines´ methods of determining the value of the claim often differ.

Earlier, when consumers had no means available for them to assess the value of their claim, airlines had the possibility to base a payable sum on the weight of the baggage.[101] In many cases, this was not a true reflection of the actual value of the loss suffered by the consumer. The Warsaw Convention was later replaced by the Montreal Convention which, unfortunately, does not address this at all. Some companies, however, still uses this practice indicating the need for a more uniform approach towards this issue by the airlines.

Where baggage is damaged, airlines will generally request proof of purchase for the baggage itself. Depending on how old the baggage is, this may in itself present obstacles in trying to recoup compensation as the older the baggage is the less likely that consumers will have the requisite proof, such as receipt/credit card statement. If proof of purchase can be adduced, the next issue to be addressed is whether or not the suitcase is still in useable condition or whether it has been irreparably damaged. Thus, it is often extremely difficult to obtain full compensation in those instances where minor damage has occurred (e.g. where zippers, handles or wheels have been damaged).

*An Irish consumer's baggage was torn and stained whilst being transported by a Spanish airline. The consumer contacted the manufacturer who examined the baggage and stated that the staining was irreparable. ECC Spain contacted the airline on the consumer's behalf and the airline ultimately offered to replace the wheels on the suitcase with new ones and dismissed the staining element of the consumers claim. This was not acceptable to the consumer who wanted the cost of the suitcase to be refunded.*

In some instances, an alternative piece of baggage may be offered by the airline in lieu of monetary compensation. Depending on numerous features, such as brand, quality or price this may or may not constitute a satisfactory form of compensation.

In those instances where baggage is delayed, consumers obviously incur expenses as a result of the absence of their property. Depending on the situation, this may vary from basic toiletries to exceptional expenses. In these situations, some airlines offer immediate once-off cash

[101] The practice of compensating consumers based on the weight of the bag lost was established under the Warsaw Convention.

payments at a set amount to cover emergency purchases until the delayed bag is delivered, whilst others will pay a set amount per day, up to a maximum number of days. Other airlines do not make immediate cash payments, but prefer to reimburse a passenger's expenditure on essential purchases, and will often therefore insist on seeing receipts. As mentioned earlier, the consumer must try to mitigate their losses by only purchasing necessities.

Where baggage is lost, most air carriers will request receipts, not only of the suitcase itself but also for all of its contents. This requirement is very onerous as often consumers will not have receipts available for every single item which was in their suitcase. Even where receipts are provided, airlines will usually apply a depreciation rate when calculating compensation, with the rationale being that as the consumer had the item for a certain period of time they had received some beneficial use from the item and, therefore, are not entitled to its full value.

It is also worth bearing in mind that most airlines advise consumers in their terms and conditions not to include certain items such as money, jewellery, keys, cameras, spectacles etc in their checked in baggage. This means that should these items be contained in checked in baggage that the airlines will accept no responsibility for their damage or loss, even though article 47 of the Montreal Convention prevents the airline from limiting their responsibility.

*An Irish consumer was travelling with a German airline, when her baggage was lost. The airline assessed the consumer's losses to be approximately £454 based on receipts provided. The airline then deducted 10% depreciation and so with the currency conversion rate etc, the consumer was ultimately offered € 396. The consumer was not happy with this as she had jewellery in the bag amounting to € 1,562.24 (£1,389), but in the end accepted the amount offered as the airlines terms and conditions stated that jewellery should not be placed in checked in baggage.*

*Successive Carriage*

Particularly problematic are those instances where baggage is damaged, delayed or lost in what is known as a successive carriage contract (where two or more airlines work together to fulfil contractual obligations). Often in these cases, both airlines will refuse to accept responsibility for the loss incurred, instead directing that the consumer seek compensation from the other airline involved. This is obviously extremely frustrating for consumers and the ECC-Net considers this aspect to be an important issue for an area where air carriers need to follow the Montreal Convention, which addresses this issue in article 36 p.3 and article 40.

*Items going Missing from Baggage*

In the event of any items going missing from baggage, it can be very difficult to get any compensation; primarily because it is almost impossible to prove that the items were present in the baggage in the first place.

## 8.2. Flight delays and cancellations

Introduced in February 2005, Regulation 261/2004 governs both flight delays and cancellations. In the case of delay, the Regulation stipulates that passengers are entitled to free meals or refreshments and telephone calls as appropriate. Furthermore, if the delay necessitates an overnight stay the airline should also provide free hotel accommodation and transportation to the hotel. Once the delay is more than five hours, consumers also have the option of not flying and obtaining a full refund.

In the recent ECJ C-402/07 and C-432/07 decision, commonly referred to as the Sturgeon case, it was held that passengers whose flights are delayed by more than three hours are affected in the same way as those passengers whose flight is cancelled, as both will arrive late at their destination. The court held that in such circumstances a flat rate of compensation should be

payable[102], unless the delay is caused by extraordinary circumstances.

Under Article 14 of the Regulation, airlines are obliged to provide consumers with information about their entitlements in the case of flight delay, cancellation or denied boarding.[103] This would seem to happen very rarely, based on the experience of the ECC-Net.

*A group of Austrian consumers returnflight from London Gatwick to Vienna with an Irish airline was cancelled. The airline failed to comply with a number of the Articles set out in Regulation 261/2004, including Article 5(2), which requires that in the event of a cancellation the airline must provide passengers with information concerning alternative transportation, and Article 14(2) which requires airlines to provide each passenger with a written notice setting out the rules for compensation and assistance in line with the Regulation. The airline also failed to offer the consumers the choice between either a refund or re-routing. As a result of this the consumers were not aware that they could have been re-routed and booked other flights with a different airline, which were more expensive than the tickets which they originally had. Whilst the airline eventually refunded the consumers the price of their original tickets, they refused to reimburse them the difference in cost between their new tickets and old tickets.*

One of the main problems consumers experience in these instances, is that many airlines fail to provide the requisite assistance up-front, instead offering a refund of expenses incurred at a later stage. Many consumers may question whether it is worthwhile to complain when the reimbursement of refreshments/the cost of a telephone call is involved and for those who do complain the airline may request receipts.[104] It is important, therefore, to remember that the "*right to care*" is concerned with the provision of assistance at the time of the incident, as opposed to reimbursement at a later date. If this is the case, many of these difficulties can be overcome.

In the aftermath of the Sturgeon case, it would appear that few, if any, airlines are paying compensation for delays of more than three hours. Extraordinary circumstances are often cited as a defence by the airline. However, in such circumstances the burden of proof is on the airline to prove what the extraordinary circumstances were and so it should not be used as a blanket defence. Therefore, the experience of ECC-Net is that in practise obtaining compensation in cases of delay can be very difficult. A number of questions on this matter have been referred from national courts to the ECJ for clarification and it remains to be seen how this will affect the treatment of passengers in the future.

As regards cancellations, Regulation 261/2004 states that consumers should be notified of the cancellation and offered either the option of a refund of the price of the ticket not used or alternatively re-routing to their final destination. Where consumers chose to be re-routed this must be done at the earliest opportunity and the airline will owe them a duty of care for expenses such as meals and accommodation costs, if applicable.

Cases were reported where consumers were re-routed some or several days after the cancellation, but left without any assistance concerning hotel nights and food. When later submitting to the airline receipts of the costs incurred during the wait,

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102 The rate of compensation payable is determined by the distance of the flight (in kilometers) (a) € 250 for all flights of 1500 kilometers or less, (b) € 400 for all intra-Community flights of more than 1500 kilometers, and for all other flights between 1500 km and 3500 kilometers (c) € 600 for all flights not falling under (a) or (b).

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

104 See: Chapter 6.1 regarding special arrangements between airlines and NEBs

the airline would reject their claim but instead refund the consumers the cost for the original ticket. This amount was almost always substantially lower than the costs the consumer had incurred. Such a practice is clearly unacceptable.

Certain stakeholders have been critical of the fact that passengers were focusing too much on the financial entitlements outlined in the Regulation, and less on the other rights provided in the Regulation. The ECC understands this point of view, but must also stress that compensation is often the only claim left if the airline does not provide meals, beverages, and communication facilities or rebooking, as it is often hard for the passenger to have the full costs of these expenses successfully reimbursed. They will have to pay for the services, save receipts, send copies to the airline and then to the NEB, and last but not least, prove that they are entitled to have it reimbursed. It happens that when the passenger subsequently claim reimbursement of expenses, the airline rejects the claim arguing either that care was provided in connection to the incident but the consumer didn't accept it, or that the passenger was not entitled to care at all because he/she asked to have the ticket refunded. In both these situations the passenger is stuck with a burden of proof impossible to satisfy.

In addition to those rights, outlined monetary compensation may be payable. The level of compensation payable will be determined by the distance of the flight. However, it is important to note that compensation will not be payable where:

1. The cancellation was a result of extraordinary circumstances or 2. The consumer was notified of the cancellation more than two weeks in advance of the flight departure.

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

As stated earlier in chapter 4, the ECJ decision of C 549/07[105] held that for an event to be characterized as "*extraordinary*" it must be one which, "*is not inherent in the normal exercise of the activity of the air carrier concerned and is beyond the actual control of that carrier on account of its nature or origin.*"[106] In considering this definition of extraordinary, the ECJ ruled that as aircrafts regularly experience technical problems through natural usage, it followed that the resolution of technical problems, which came to light during maintenance of the aircraft or as a result of a failure to carry out maintenance, could not amount to an extraordinary circumstance. However, the court went onto state that not only must extraordinary circumstances be present, but the airline must also be able to show that the circumstances, "*could not have been avoided even if all reasonable measures had been taken*".

As regards whether the circumstances could have been avoided if reasonable measures had been taken by the airline, the recent ECJ decision C-294/10[107], is very instructive in this regard. Following on from its reasoning in Wallentin, the ECJ held that Article 5(3) of Regulation 261/2004 must be interpreted as meaning that an air carrier must take account of the risk of delay as a result of the possible occurrence of extraordinary circumstances. It must, consequently, provide for a certain reserve time to allow it, if possible, to operate the flight in its entirety once the extraordinary circumstances has ceased. The result is that airlines should be utilising all reasonable measures such that once the extraordinary circumstances has ceased to exist, they will be in a position to minimise the damage suffered to consumers.[108] What will constitute "*reasonable measures*" will vary depending on the situation and ultimately it is for the national court to determine.

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

## 8.3 Denied boarding

Whilst the number of denied boarding complaints received by ECC Net is substantially lower than those received as regards flight delays and cancellations, there is no doubt that in those instances where it occurs the effects can be just as substantial.

Denied Boarding is governed by Regulation 261/2004 and occurs when there are not sufficient seats for all the passengers which are booked on the flight.

Article 4 sets out the procedure to be followed in such circumstances. The air carrier must call on passengers to volunteer their seats to other passengers. If volunteers come forward they are entitled to a sum of money or other benefits to be agreed between the air carrier and the passenger. They must also be assisted in accordance with Article 8, which means a choice between reimbursement and re-routing.

However, if not enough people volunteer their seats, the airline may deny passengers from boarding the flight against their will. In this case, consumers are entitled to reimbursement of the ticket price or re-routing. If the consumer chooses the latter, the airline should provide them with adequate care such as meals, refreshments, telephone calls and overnight accommodation if required, in accordance with Article 9. In applying this article, the operating air carrier

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

106 See: C-549/07 at pg. 14

107 C-294/10 (Eglitis/Ratnieks vs. the Latvian Ministry of Economics and Air Baltic Corporation AS)
See: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62010J0294:EN:HTML

108 Ibid.

shall pay particular attention to the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied children. In both cases, the consumer will be entitled to monetary compensation according to Article 7, the amount of which is determined by the distance of the flight.

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

The legal term "*denied boarding*" can sometimes create confusion, at least for the passengers who are not allowed to board their flight for reasons other than overbooking. According to the Regulation, a passenger has to be on time for the announced check-in time in order for a denied boarding to be possible. The passenger must also be able to provide adequate travel documentation.

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

It is clearly stated in the terms and conditions of most air carriers that it is entirely the passenger's responsibility to ensure that they are in possession of the necessary documentation. This includes items such as acceptable forms of photographic ID, passports, visas, and transit visas. Consumers should be aware that whilst certain ID may be acceptable for those public authorities in charge of border control, it is possible that particular forms of ID will not be accepted by the airlines on which they intend to fly. This is because the checks carried out by both differ in their objectives and the technical means available. It is advisable that consumers read the terms and conditions carefully to see what forms of identification are specified by the airline.

*A Danish consumer purchased tickets for him and his family for a flight between Copenhagen-Riga-Tel Aviv with a Latvian airline. The family checked in for the entire trip and boarded the plane in Copenhagen, but at the gate in Riga, they were denied boarding for the plane to Tel Aviv. The stewardess at the gate explained that according to Israeli rules a foreigner's passport had to be valid more than six months after leaving the country again. As the consumers' son's passport was only valid for four months after their expected departure, they would be denied entry into Israel. Therefore the consumer and his family had to go back to Copenhagen to renew the son's passport and then purchase new tickets for the entire trip. The consumer argued that as it had not been emphasized in the long list of terms, he had not noticed that he was supposed to check which travel documents were necessary. The stewardess at the gate in Riga had said that it happened all the time, so obviously the airline knew about the issue. Therefore they should have informed him at check-in in Copenhagen, where he had the possibility to solve the problem by contacting the police, who could prolong his son's passport and not have let him fly to Riga, where nothing could be done. The airline only referred to their terms and rejected his claim for reimbursement of new tickets – € 2800.*

However, passengers are occasionally denied boarding due to errors by ground staff in checking their travel documents. Whilst such incidents will undoubtedly be an honest mistake, a passenger with valid documentation who is denied boarding is entitled to the provisions regarding compensation in the Regulation. The Regulation does not apply if the airline has reasonable grounds to refuse boarding. It is the experience of the ECC-Net that the wording "reasonable grounds" gives pretext to airlines to interpret this as a margin for personal judgment on the part of ground staff and thus for an honest mistake.[109] It is the opinion of the ECC-Net is that mistakes are not a reasonable ground to refuse boarding.

[109] http://ec.europa.eu/transport/air_portal/passenger_rights/doc/2008/q_and_a_en.pdf, page 5. "*Non-compliance with entry/transit requirements can results fines for the transporting carrier and/or deportation to country of origin with detention costs at carrier's expense*".


*A Belgian consumer and his wife wanted to fly to Hong Kong with a Finnish airline. When they presented their documents at the check-in, his wife was refused boarding. They said that his wife, who has the Chinese nationality, couldn't fly to Hong Kong as final destination. This was a mistake as the regulation had changed. They were forced to buy a new ticket to Hong Kong for the next day and another ticket for another destination in China as so-called final destination. The consumers complained to ECC Belgium and with the help of ECC Finland, the Finnish airline agreed to reimburse the extra charges the consumers had to pay for the new tickets and they paid the compensation of € 600 the consumers were entitled to.*

*A Danish consumer, who had married a Latvian girl, travelled with a Latvian airline. They checked in at Copenhagen airport – he on his Danish passport and she on her Latvian passport – and travelled to Riga. However, when going home again, they were denied boarding because in Latvia her passport was no longer valid. Apparently a law had been passed obliging citizens to have their old passport exchanged for new ones, but as C's wife was not living in Latvia, she was of course not aware of this. C's wife was denied exiting the country until she had her passport renewed, so C had to pay a fee for an express renewal of his wife's passport and a fee for having the tickets postponed. The consumer argued that since the couple had return tickets, it had to be known to the airline that they would also be going back, and as the airline was in the business of checking travel documents, they should have been aware. If they had been informed at check-in on the outward journey they would have had the option not to travel thereby avoiding the extra costs. The airline rejected the claim with reference to their terms.*

*A Spanish consumer was not allowed to board an Irish airline flight at Valencia airport as airline staff refused to accept the consumer's residence permit card as a valid document for the purposes of identification. As a result, the consumer had to travel by bus to Madrid that day. Under the airlines terms and conditions, the consumer should have*

*presented either a passport or a national ID card. The case was closed as a resident card (NIE) cannot be used as a national ID card (DNI), even if both are issued by the relevant authorities and accepted for many purposes in public and private affairs.*

## 8.4 Claims for consequential camages

In the ECJ's preliminary ruling C-344/04[110] it is distinguished between individualised and standard damage as a result of delays; with the Court holding that whilst excessive delay will cause damage that is almost identical for every passenger, passengers are liable to suffer individual damage inherent in the reason for travelling. Redress for individual damage requires a case-by-case assessment of the extent of the damage caused.

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

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

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

## 8.5 Other air-related queries (booking issues, names changes, fees related to refunds)

### *8.5.1 Pricing issues*

Regulation 1008/2008 on air services in the Community[111] requires that the final price to be paid is indicated at all times, including the air fare as well as all applicable taxes and charges, surcharges and fees which are unavoidable and foreseeable at the time of publication. Any optional price supplements must be communicated in a clear and unambiguous manner at the start of the booking process and their acceptance by the customer must be on an 'opt-in' basis.

Not all consumers understand, or even are aware of the basic principles of air fares and ticketing, even though the rules are (or at least should be) stipulated in the terms and conditions. Flexibility is a commodity that airlines will only offer for a price. The "*full fare*" tickets traditionally had no restrictions attached as to flight dates or minimum length of stay attached, and unused tickets of those fare types were generally fully refundable. Usually, cheaper fares are only made available a long time in advance. It follows that discounted tickets will not allow the passenger to switch from the originally reserved flight to another one. The name on the ticket also needs to be the same as the name on the reservation. Passengers are not allowed to pass the ticket on to another person.

The Consumer Protection Cooperation Networks' (CPC) Report on Airlines' Taxes, Fees, Charges, and Surcharges found that:

110 C-344/04 IATA v Department of Transport
See: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62004J0344:EN:HTML

111 Regulation 1008/2008 on common rules for the operation of air services in the Community. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:293:0003:0020:EN:PDF

*"Although most airlines provided some information on the different price elements, the information was in many cases inaccurate and incomplete. Some of the airlines surveyed stated that it was impossible to provide precise information on the size of the different TFCs (Taxes, Fees, and Charges) on particular flights. In addition, one airline provided information that differed to the information presented by the same airline online."*[112]

Some airlines do not provide for a breakdown of prices as required under Article 23 of Regulation 1008/2008. According to Article 23, government taxes and airport charges must be clearly distinguished from other charges and correspond with the actual amounts levied by airports and governments.[113] Many airlines now have a policy whereby they separate the cost of the ticket into component parts so that they advertise cheaper tickets. Thus, items like landing charges, insurance levies, fuel surcharges, as well as airport and government taxes are grouped under the separate miscellaneous title "*Taxes*" or "*Taxes and Charges*". As the cost of flying seems lower to the consumer, this gives airlines with high supplementary charges an unfair competitive advantage.

It is essential, therefore, that the prices of tickets displayed in advertisements and on websites include all applicable taxes, charges and fees.[114] False or otherwise misleading information, which is likely to induce a consumer into making a transactional decision which they otherwise would not make, is contrary to Article 6 of the Unfair Commercial Practices Directive.

The Commission Directorate for air transport have, in the beginning of 2011, issued a fitness check roadmap aiming to address a number of issues in the aviation market. The ECC supports the Commission's notion that practices that discriminates pricing for consumer based on their place of residence violate the Regulation 1008/2008 and that this remains an issue which needs to be addressed. [115]

### 8.5.2 Modifying or cancelling a booking, booking online & "taxes, fees and charges"

Even the best made plans can come undone and even the most organised of consumers may have to cancel their flights. In the airline industry, flexibility is a service which consumers pay additional money for and so in the main most consumers purchase non-refundable tickets. When a consumer cancels a non-refundable ticket all he/she are entitled to reclaim is those fees which are only charged when the consumer uses the flight, such as third party fees.

Thus, items like landing charges, insurance levies, fuel surcharges etc which are often grouped under the miscellaneous title "*Taxes and Charges*" are not refundable.

Frequently, consumers are not aware of this distinction and as a result of the above practice, ECC-Net receives many complaints from consumers who having cancelled their flight, seek to recoup the amount they paid under the heading taxes and charges, only to find that the actual amount refunded by the airline is not as they expected. This problem is further compounded by the fact that frequently no breakdown is given to the consumer to show them how this figure was actually reached and consumers who may not be aware of the above practice are left in confusion as to why the whole amount is not refunded.

112 As identified in the CPC Report on Airlines' Taxes, Fees, Charges, and Surcharges See: http://ec.europa.eu/consumers/enforcement/docs/airline_charges_report.pdf

113 See the report from the CPC on airline charges published recently after a sweep of 281 flights between 34 airports by 24 airlines. See: http://ec.europa.eu/consumers/enforcement/docs/airline_charges_report.pdf

114 The European Commission has launched an inquiry into airlines' controversial "add-on" charges that allow them to offer low prices bearing little resemblance to what ticket buyers end up having to pay.
See: http://www.guardian.co.uk/business/2011/aug/08/airline-cheap-ticket-offers-investigated
See: http://ec.europa.eu/transport/air/internal_market/doc/2011_fitness_check_roadmap_def.pdf p.3

115 Ibid.

Furthermore, some airlines then charge an administrative fee for handling the refund and often this either negates the refund payable completely or reduces it substantially. It is arguable that such fees should only apply per booking, rather than per person, as this makes a significant difference when a booking is for a larger group of passengers, and the actual work needed should not differ much. Bear in mind that if the airline cancels the ticket, they are not entitled to any fee, as they are in breach of contract.

Even slight modifications to a booking, such as the correction of name misspellings are subject to an unreasonably high handling fee, often ranging from € 35 to € 150.[116] These fees are also generally applied per person and thus substantial costs may be incurred in those instances where one booking is made for a large number of passengers.

*A Finnish consumer tried to book return flights from Tampere to Alicante for six people with an Irish airline. During the booking process, however, it appears that there may have been some undesirable action between different browser pages as the wrong details were processed. ECC Ireland contacted the airline and requested that, given the difficulties experienced by the consumer whilst making the booking, the six names be changed free of charge. However, the airline refused to do so, citing their terms and conditions to the effect that the names of each passenger could be changed for a fee.*

Another issue which ECC-Net regularly receives complaints about concerns the additional charges[117] that airlines impose on consumers for using a credit card. This payment method is often the only means for carrying out the transaction. Given that payment by credit card is the recommended method of payment for all e-commerce transactions, this charge has a particularly wide-ranging effect.

A court ruling in Germany has stated that Ryanair put customers at a disadvantage by charging them a fee for using a credit or debit card to pay for tickets. Berlin's Superior Court of Justice deemed that the charge was "*inadmissible*" unless the airline also offered a charge-free method of payment.[118]

116 In cases involving international travel, it may not even be possible to change names or spellings of names.

117 Since August 1st 2010, additional charges incurred merely because the method of payment is a credit card are forbidden in Sweden. In Sweden, domestic legislation applies, even when buying on the internet from a company in another country, if that company directs their activities towards Swedish consumers. However, special rules apply to the purchase of travel from airline websites. It may therefore be permissible for airlines to charge a card fee when a consumer chooses to pay by card, for example, if the airline has made a jurisdictional choice in their service conditions. Then the chosen country's laws apply, thus the case for Swedish card customers purchasing travel from Ryanair and Norwegian air. The countries within the EU and EEA that currently have no prohibition against charging card fees are: UK, Czech Republic, Hungary, Belgium, Ireland, Netherlands, Slovenia, Estonia, Norway, Malta and Spain.

118 Aktenzeichen: Xa ZR 68/09. http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2010&Sort=3&nr=52033&pos=0&anz=107 http://www.tagesschau.de/wirtschaft/ryanair132.html. Kostenrelevante Voreinstellungen bei der Buchung per Internet sind unzulässig. (Aktenzeichen: Kammergericht Berlin 23 U 243/08) http://www.welt.de/reise/article3935510/Ticketkauf-per-Kreditkarte-darf-nicht-extra-kosten.html. Germany's leading consumer organization brought the case against the Irish budget airline for charging a fee of between € 1.50 and € 4 per passenger, saying Ryanair did not offer consumers any way to pay for flights without paying an additional fee. However, no fee was charged for paying with a Visa Electron card, a sister card to the Visa Debit card. Ryanair had argued that it was simply passing on to consumers the fee banks charge for credit card payments.

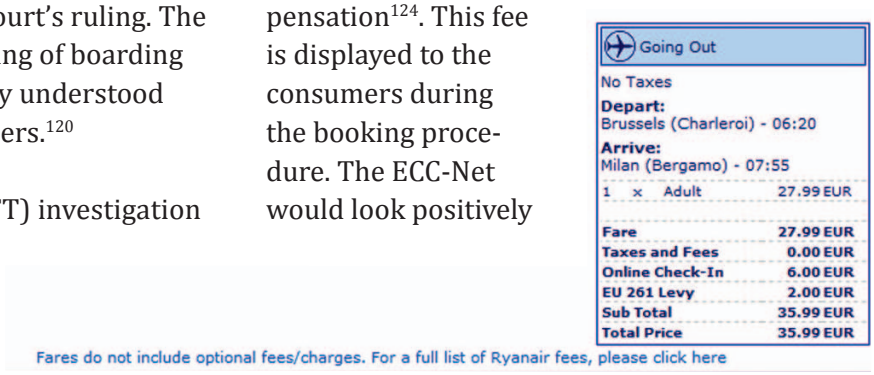
In the Netherlands an appeals court has confirmed a decision by the Dutch Advertising Code Committee, who had previously found that Ryanair did not inform customers of a large number of additional costs which had to be paid, apart from the ticket price, when paying by credit card. The Committee decided that as the additional costs incurred when using a credit card are neither optional nor avoidable, they have to be included in the advertised ticket price. It ruled that Ryanair was in breach of the Dutch Advertising Code and recommended that the airline should stop advertising in this manner. Ryanair appealed.[119]

A judge in Barcelona Court in Spain has ruled that Irish low-cost airline Ryanair is acting illegally by forcing passengers to print their own boarding passes or face a € 40 boarding card fee. This based on the grounds that this is not permitted under international air travel conventions. Ryanair can't demand passengers to arrive at the airport with their boarding pass and charge them € 40 for failing to do so. Ryanair is to appeal against the Spanish court's ruling. The airline maintains that the printing of boarding passes by passengers is a clearly understood part of its contract with customers.[120]

The Office of Fair Trading's (OFT) investigation into the issue, which focused on the passenger transport sector, found considerable evidence of companies using 'drip pricing' practices for surcharges online. This practise occurs where the trader adds payment charges to the total price only after consumers have filled in a number of web pages during their purchase. This practice is particularly prevalent in the airline sector[121] where the OFT is estimating that UK consumers spent £300 million on payment surcharges in 2009.[122]

Under the Consumer Rights Directive, as it is currently envisaged, traders will not be able to charge consumers more for paying by credit card (or other means of payment) than what it actually costs the trader to offer such means of payment.[123] In the opinion of the ECC-Net, this development is to be warmly welcomed.

This year, a new surcharge on fares of € 2 was introduced by Ryanair to cover EU APR legislation rules on compensation[124]. This fee is displayed to the consumers during the booking procedure. The ECC-Net would look positively




***Excerpts from the Ryanair website.***

119 Ruling dossier: 2011/00073, June 9th 2011. The customer could only avoid having to pay these additional costs by making use of one specific type of prepaid debit card, which was hardly available in the Netherlands. Ryanair failed to notify the customer of the lack of availability of this specific card. http://www.reclamecode.nl/webuitspraak.asp?ID=51558&acCode

120 Article http://www.guardian.co.uk/business/2011/jan/14/ryanair-spanish-court-boarding-pass

121 Articles, http://www.mirror.co.uk/news/top-stories/2011/05/12/add-ons-to-airline-prices-could-be-banned-across-europe-115875-23125426/ and http://www.mirror.co.uk/news/top-stories/2011/06/29/ryanair-on-collision-course-with-oft-over-card-fees-115875-23233944/

122 OFT to take action over passenger travel sector payment surcharges. Press release, 28 June 2011. http://www.oft.gov.uk/news-and-updates/press/2011/76-11

123 On Thursday, June 23rd, the European Parliament voted on the proposal for a formal approval of the draft directive in the EU Council of Ministers is expected for September of this year, and Member States will have to transpose it into national legislation before the end of 2013.

124 News release from Ryanair March 30th 2011. http://www.ryanair.com/en/news/ryanair-to-introduce-eu261-compensation-levy-of-2-euro

on any future discussion as to whether consumers have to pay an extra fee to the air carrier in order for them to fulfil their obligations to apply the law. It is the opinion of the ECC-Net that the law should be respected in any situation without the need for additional charges. According to sources in the media, the Commission is considering taking action against the usage of such charges and has launched an inquiry into the controversial area of "add-on" charges which enable airlines to advertise low prices which bear little resemblance to what the purchaser will ultimately have to pay. This study will assess whether EU rules need to be amended and the results from the inquiry will be reported during autumn 2011 with eventual legislative action expected in 2012. [125]

## 8.6 Connecting flights and return/one way flights

During the volcanic ash disruption missed flight connections, delays or cancellations were a common problem. It is important that consumers are aware that their entitlements in such situations will differ depending on whether the two flights were made as one booking or not.

Many of the low cost airlines operate as "*point to point*" airlines such that consumers may not book two consecutive flights during one reservation. As such two separate contracts are in existence and if consumers miss their subsequent flight, the airline is not obliged to ensure that they reach their final destination.

In contrast, however, if both flights are from the one booking, the consumer should remain under the care of the air carrier until they reach their final destination. In these instances, all of the entitlements derived from Regulation 261/2004 will apply.[126]

Another problematic issue for consumers is the practice whereby airlines insist that the ticket must be utilized in the same manner in which it was booked. For example, it is common that if the outbound ticket of the flight is not used, that the return ticket will become invalid. Airlines claim that such a policy is implemented where the price of return tickets are lower than the price of one-way tickets, so as to prevent consumers from booking flights which they will not actually use. This practice will often form a part of the airlines terms and conditions of transport, or rules attached to the fare paid, and unless the consumer can prove that they were not provided with information prior to purchase, this term will be incorporated into the contract.

Nevertheless, according to Directive 93/13/EEC, on unfair terms in consumer contracts[127], a contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. Terms which are found by a national court, tribunal or competent administrative body to be unfair under the Directive are not binding on consumers.

It is in this context that the Federation of German Consumer Organisations sued both BA, and Lufthansa before the Federal High Court of Justice (the BGH) in case Xa ZR 5/09. Whilst acknowledging that airlines have a legitimate interest in protecting their tariff structures, the Court found that the policy could have been achieved by milder means (e.g. a surcharge for

125 Statement from journalists regarding a letter from Commissionaire Kallas to the Labour MEP Brian Simpson, who is chair of the European parliament transport committee in July 2011. Http://www.guardian.co.uk/business/2011/aug/08/airline-cheap-ticket-offers-investigated,
See also: http://www.airlinenewseurope.com/2011/08/airlines-cheap-ticket-offers-to-be.html#more

126 Regulation 261/2004 of the European Parliament and the Council of February 11th 2004, Art. 2 (H)

127 Directive 93/13EEC of April 5th on unfair terms in Consumer Contracts.
See: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993L0013:en:HTML

not having used a coupon for a flight segment). To completely ban the passenger from further contractual services was disproportionate and against the principle of good faith as the provisions in question made no distinction as to whether the passenger deliberately booked more segments than required or left coupons unused for justified reasons.

In March 2010, an Austrian court found that a similar provision in Iberia's terms and conditions was void as it grossly disadvantaged the consumer. Following an investigation by the UK Office of Fair Trading, IATA has amended its recommended general conditions of carriage, ensuring that reservations are not cancelled if the consumer warns the airline that part of a ticket is not to be used for reasons of 'force majeure'.

Whilst these decisions have no legal value in other countries, they are to be welcomed. As a result, Austrian airlines and Lufthansa changed their terms and conditions; such that passengers may now use the remaining segment of the flight but must pay the difference between the cost of the return flight and a one-way ticket.

## 8.7 Dealing with airlines

ECC-Net regularly receives contacts from consumers seeking advice as to the manner in which to contact airlines or the difficulties they are encountering trying to notify the airline of the problems they experienced.

Methods of communication with airlines vary from airline to airline and often one must go to the airlines website to see what designated forms of communication are accepted by customer service. If a consumer uses the "*wrong*" method, they will likely receive no response to their claim. Particularly problematic is the fact that some airlines still offer customer service only over the phone or by a web based portal, making it difficult for consumers to keep a written record of their complaint. Under the E-Commerce Directive, traders must provide both the geographical address where they are provided, as well as an e-mail address. The ECC-Net would welcome enhanced co-operation and collaboration between the CPCs in the various Member States to better regulate this practice.

Often consumers will have to wait a long period of time before they receive any reply to their complaint. This problem is exacerbated by the fact that frequently the airlines will reply merely with a standardized response which does not seem to have addressed any of the consumers' concerns. Frequently, consumers may have to contact an airline multiple times before receiving any response at all.

In some instances, no response to correspondence will ever be received. 50% of all ECCs cite the lack of response from the air carrier in question as an important reason why a case could not be resolved.

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

# 9. Conclusion and Recommendations


## 9.1 Conclusion

The purpose of this report was to present a statistical overview of the complaints relating to air travel which were received by the ECC-Net in 2010 and the first 6 months of 2011, furthermore assessing how passengers were affected by cancelled flights due to the Icelandic volcanic eruption. It also sought to stress the main problems encountered and suggest recommendations.

The conclusions of this report confirm the findings of previous reports. It is obvious that consumers are still facing many difficulties when travelling by air. In short, the functioning of the air travel market should be improved from a consumer protection point of view.

This is also mentioned in the report Evaluation of Regulation 261/2004 Report:[128]

*"The research found that 39% of carriers' conditions were significantly non-compliant with the Regulation and a further 12% were misleading with regard to carriers' obligations, in that they implied that the carrier had fewer legal obligations than it actually had. This problem arose largely from how the carriers had adapted the IATA's recommended practice on Conditions of Carriage (RP1724), which pre-dates the Regulation and as a result is not consistent with it. 15% described the carriers obligations in detail and broadly accurately, 17% had a general statement that in the event of denied boarding, delay or cancellation, the carrier would comply with the Regulation,*

[128] Evaluation of Regulation 261/2004, Final report, Main report, Steer Davies Gleave, February 2010, Page 31.

*and 2% had a general statement that the carrier would comply with the applicable law".*

The ECC-Net has attempted to point out the following issues:

- existing gaps in legislation
- dubious practices and policies of airlines
- difficulties resulting from the lack of development of an effective ADR system
- the need for a fully functional NEB network
- the need to introduce a simplified way of taking cross-border legal action against airlines, such as the European Small Claims Procedure.

## 9.2 Recommendations

### *9.2.1 Overall recommendations*

It is ECC-Nets experience that when passenger's rights are not respected by airlines, consumers are often reluctant to take court action due to the perception that the process is long and expensive. This is one of the reasons why the ECC-Net suggests that all NEBs are given the power to handle both Regulation 261/2004 and Montreal Convention cases. The NEBs should also have the power to order an airline to compensate a passenger if it has ruled in the passenger's favour. These orders should be enforceable.

If all Enforcement Bodies cannot be given these powers due to current national legislation, there should be an effective and reliable ADR-system available in each country that can try the case. The decision by the ADR body should preferably be binding for both the consumer and the trader.

Consumers seeking help from ECCs say that airlines are not clearly informing them about deadlines within which to submit a written complaint regarding baggage and other limits on the airlines liability. Airlines should be obliged to provide passengers with written information about their entitlements at the airport when encountering baggage problems.

In the case of baggage delay, consumers should receive guidelines as to what sort of replacement items they are entitled to purchase. They should have the option of requesting a fixed amount up-front from the air carrier in order to purchase "*emergency items*".

The ECC-Net suggests that with the PIR, a document should be given to the passenger stating the date of the PIR and asking him to send the document to the airline. If the passenger's baggage is still lost after 21 days and the passenger contacts the airline to confirm his complaint, the date of the PIR can be seen in that case as a start of the complaint, to avoid passing the deadlines.

The completion of the PIR should be seen as a first step towards a claim and in the event of the passenger not being able to produce any proof of purchase of the baggage or its contents; standard figures agreed with insurance representatives should apply. If the consumer proves the value of the item, the full amount should be paid by the air carrier, or in the case of older items, a uniform system of depreciation rates should apply to monetary compensation. Furthermore, the PIR report should have the time limits specified under the Convention printed on them in a clearly visible manner so that consumers can be made aware of them.

A case involving both delayed flights and delayed baggage should be treated as one case and as such should not be addressed by different bodies. Admittedly, there are historical reasons and regulatory trends for this, although this is difficult to explain to consumers. The legislation concerning flight cancellations, delays and denied boarding and the legislation concerning delayed, lost or damaged baggage should be brought together in one piece of EU legislation.

In cases where consumers were not offered any assistance, within the definition of the "*right to care*", and so are forced to seek reimbursement afterwards, a fixed levy should be placed on the airline as the consumer is in practice performing

the responsibilities of the airline. Such a levy should be put into place as to prevent airline companies from a lack of performing care & assistance, since the result of that conduct should result in a higher cost for the airline compared to them actually fulfilling their obligation.

The ECC-Net would recommend fixed amounts for meals and drinks, so that consumers do not have to provide receipts, when care was not offered.

The national NEBs, through a cross-border cooperation effort, need to create a uniform, comprehensive and detailed system of assessing the value of evidence supplied by airlines. This, in order to avoid contradictions as certain ID may be acceptable for public authorities in charge of border control, but will not be accepted by the airlines on which they intend to fly. The checks carried out by both differ in their objectives and the technical means available. IATA Timatic is the industry standard used by airlines and travel agents to be compliant with border control rules and regulations.[129]

When a passenger who was denied boarding produces confirmation from the relevant authority in the country of transit or the final destination country, that the documentation which he/she held was sufficient to enter that country's territory, compensation should be paid by the airline.

The recent volcanic ash cases, encountered by ECCs, concerning repayment of ticket costs illustrated the need for clarification on administration fees. As the Regulation 261 entitles passengers to full refund from the airline in cases of cancellation, the passengers should be able to claim the refund from the airline, even though they may not have purchased the ticket there. If the airlines insist that the refund must be requested from the contractual party, i.e. sometimes from an intermediary, it needs to be clarified that the passenger can seek recourse for the fee from the airline, or that the airlines and the intermediaries should work out a system between them.

It is crucial that an effective and developed ADR system is created, which would cover claims under Regulation 261/2004 and other relevant legislation, such as the Montreal Convention. Penalty charges should be imposed on airlines for not providing passengers with written information at the airport about their entitlements in the case of delay, cancellation or denied boarding.

A good mutual cooperation between the NEBs themselves, as well as and between the ECCs and the NEB of its Member State is necessary. Penalty charges need to be levied by NEBs on air carriers, whose general policy is to refund the expenses incurred rather than offer assistance. The remit of the NEBs needs to be extended and the power of handling claims under the Montreal Convention should be given to them.

A final remark regarding the practice of NEBs is that issue of language as passenger need to complain to the national NEB where the incident took place. NEBs are national authorities and national law usually imposes the use of the national language(s) in dealing with public administrations. Often, NEBs formally cannot accept complaints in any other language than their own national language(s). However, many do so in practice and most of them in principle accept complaints in English. It would be desirable that all NEBs could accept a complaint in English, which would be an excellent service that would substantially ease the procedure for consumers.

The ECC-Net suggests further campaigns to promote the ESCP as the ECC-Net considers the procedure to not be well-known among consumers and courts. Furthermore, some form of continuing professional development training should be given to court staff/judges etc on the procedure, particularly as regards jurisdictional issues, but also as regards the procedures mere existence.

[129] Timatic delivers personalized information based on the passenger's destination, transit points, nationality, travel document, residence country etc. http://www.iata.org/ps/publications/Pages/timaticweb-travel-requirements.aspx

### 9.2.2 Airline related recommendations

It is important that all airlines make their contact details for complaints via telephone, email and post available. Airlines must, within a reasonable period of time, respond when consumers contact them. During the volcanic ash disruption some airlines did not have an accessible customer support service, and stranded travellers called the ECCs. Consumers should also have the option of complaining to the airline in the same language in which they booked the ticket.

There needs to be a reasonable time limit for dealing with complaints outlined in the legislation. The NEBs should levy penalties on airlines which visibly fail to respond to consumers' complaints.

One universal register of recognised travel documentation needs to be created and used by all airlines operating within the EU.

The booking confirmation should include a clear and comprehensive breakdown of all the supplementary charges, indicating what they are for and who they are payable to.

Airlines must respect consumers' rights to compensation for costs incurred due to baggage delay and it should not be conditional on whether it was an inbound or outbound flight.

It would help if all airlines have reasonable and comprehensive lists in their terms and conditions of items they advise consumers not to include in their checked in baggage such as money, jewellery, keys, cameras, spectacles etc. given the fact that the Montreal Convention entitles consumers to compensation of up to 1131 Special Drawing Rights (SDR) when baggage is damaged, delayed or lost. When consumers purchase a ticket, there should be a clear message that the airline accepts no responsibility for certain items which are placed in checked-in baggage, and that a Special Declaration of Interest[130] form should be completed for more expensive items.

Finally, whenever "*extraordinary circumstances*" are invoked, the airline must provide evidence of it. This would be in line with already existing legislation which lays the burden of proof on the airline. All carriers' terms and conditions also need to be totally compliant with the Regulation.

[130] A Special Declaration of Interests is made by the passenger when handing over the baggage to be checked, which specifies a value that is higher than that fixed as the limit of liability under the Convention, in consideration for the payment of a surcharge.

## 9.3 An upgrade of the role of the ECC-Net

The ECC-Net cannot emphasize enough the importance of enforcement and that all Member States act against companies that do not comply with Regulation 261/2004 and the Montreal Convention. It is vital that the national authorities that are legally responsible for overseeing and enforcing EU passengers' rights at national level join forces. This could also aid in developing synergies between ECCs and enforcement authorities.

It is the desire of the ECC-Net that the Commission will in the near future propose to upgrade the network from a support service for cross-border consumer complaints to an effective consumer rights promotion and protection network for European and national consumer policies. On the basis of discussions with the Member States and the results of the evaluation, the ECC-Net would look positively if the European Commission proposed a revised set of objectives for the ECC-Net.

It would be advisable for both ECCs and enforcement authorities to agree on whom to report individual infringements of a given piece of European consumer legislation. An instrument which specifically addresses co-operation and mutual assistance between ECCs and enforcement authorities should be provided. Those companies reported to ECCs which appear to systematically violate European consumer legislation should be notified to the relevant enforcement authorities who would legally act in the case. In order to achieve the best possible results for consumers, there is a clear need for improvement concerning the cooperation between the ECC-Net, the CPC-Net and the NEBs.

Companies and consumers must follow existing rules. We need to keep in mind European Transport Commissioner Vice President Siim Kallas's comment during the volcanic ash crisis:

*"I want to remind passengers that, even in extraordinary circumstances, they have some of the strongest Air Passenger Rights in the world."*

The final conclusion of this report is that some progress has been made in the area of Air Passenger Rights. This report shows that there is still some way to go before these strong rights are actually enforced across Europe.

*Appendix 1*

# Contact details for ECCs

## AUSTRIA
### EUROPEAN CONSUMER CENTRE

***AUSTRIA***
***EUROPÄISCHES VERBRAUCHERZENTRUM***

Mariahilfer Straße 81
1060 Wien
Tel: + 43/1 588 77 0 (general line) and
Europe-Hotline 0810 - 810 225
(only available in Austria)
Fax: + 43/1 588 77 71
info@europakonsument.at
www.europakonsument.at

## BELGIUM
### EUROPEAN CONSUMER CENTRE

***BELGIUM***
***EUROPEES CENTRUM VOOR DE CONSUMENT CENTRE EUROPEEN DES CONSOMMATEURS***

Hollandstraat 13 / rue de Hollande 13
1060 Brussel/Bruxelles
Tel: +32/2 542 33 46 (NL)/ +32/2 542 33 89 (FR)
Fax: +32/2 542 32 43
info@eccbelgium.be
www.eccbelgium.be

## BULGARIA
### EUROPEAN CONSUMER CENTRE

***BULGARIA***

Bacho Kiro street No14
Bg-1000 Sofia
Tel: +359/ 298 676 72
Fax: +359/ 298 755 08
ecc.bulgaria@kzp.bg
http://ecc.kzp.bg/

## CYPRUS
### EUROPEAN CONSUMER CENTRE

***CYPRUS***

c/o Competition and Consumers
Protection Service
(CCPS), Ministry of Commerce,
Industry and Tourism
6, Andreas Araouzos
1421 Nicosia
Tel: +357/2286 7100
Fax: +357/22 375120
ecccyprus@mcit.gov.cy
www.ecccyprus.org

## CZECH REPUBLIC
### EUROPEAN CONSUMER CENTRE

***CZECH REPUBLIC***
***EVROPSKÉ SPOTŘEBITELSKÉ CENTRUM***

Štěpánská 15
120 00 Prague
Tel: +420/296 366 155
esc@coi.cz
www.coi.cz
www.coi.cz/esc

## DENMARK
### EUROPEAN CONSUMER CENTRE

***DENMARK***
***FORBRUGER EUROPA***

Carl Jacobsens Vej 35
DK-2500 Valby
Phone: +45 4171 5000
Fax: +45 4171 5100

## ESTONIA
### EUROPEAN CONSUMER CENTRE

***ESTONIA***
***EUROOPA LIIDU TARBIJA NÕUSTAMISKESKUS***

Rahukohtu 2
10130 Tallinn
Tel: +372/6201 708 and +372/6201 736
Fax: +372/6201 701
consumer@consumer.ee
www.consumer.ee

## FINLAND
## EUROPEAN CONSUMER CENTRE

*FINLAND*
*EUROOPAN KULUTTAJAKESKUS*

Haapaniemenkatu 4, BOX 5
00531 Helsinki
Tel: +358 10 19 46 76
Fax: +358/9 8764 398
ekk@kuluttajavirasto.fi
www.ecc.fi

## FRANCE
## EUROPEAN CONSUMER CENTRE

*FRANCE*
*CENTRE EUROPEEN DES CONSOMMATEURS FRANCE*

c/o Centre Européen de la Consommation (CEC)
Bahnhofsplatz 3
D-77694 Kehl
Tel: +49/78 51 991 48 0 and 0820/200 999 (only accessible from France)
Fax: +49/78 51 991 48 11
info@euroinfo-kehl.eu
www.euroinfo-kehl.eu

## GERMANY
## EUROPEAN CONSUMER CENTRE

*GERMANY*
*EUROPÄISCHES VERBRAUCHERZENTRUM DEUTSCHLAND*

c/o Zentrum für Europäischen Verbraucherschutz (ZEV)
Bahnhofsplatz 3
D-77694 Kehl
Tel: +49/7851 991 48 0
Fax: +49/7851 991 48 11
info@euroinfo-kehl.eu
www.euroinfo-kehl.eu
Adress 2: Kiel Office
Andreas-Gayk-Straße 15
D-24103 Kiel
Tel: +49/431 590 99 50
Fax: +49/431 590 99 77
evz@evz.de
www.evz.de

## GREECE
## EUROPEAN CONSUMER CENTRE

*GREECE*

ECC Greece is currently not operating.

## HUNGARY
## EUROPEAN CONSUMER CENTRE

*HUNGARY*
*EURÓPAI FOGYASZTÓI KÖZPONT*

József körút 6
1088 Budapest
Tel: +36/ 1 459 4832
Fax: +36/1 210 2538
info@magyarefk.hu
www.magyarefk.hu

## ICELAND
## EUROPEAN CONSUMER CENTRE

*ICELAND*
*EVRÓPSKA NEYTENDAAÐSTOÐIN ENA – ECC ICELAND*

Hverfisgötu 105
101 Reykjavik
Tel: +354/ 545 1200
ena@ena.is
www.ena.is

## IRELAND
## EUROPEAN CONSUMER CENTRE

*IRELAND*

MACRO Centre
1 Green Street
Dublin 7
Tel: +353/1 879 76 20
Fax: +353/1 873 43 28
info@eccireland.ie
www.eccireland.ie

## ITALY

### EUROPEAN CONSUMER CENTRE ITALY

*CENTRO EUROPEO CONSUMATORI*

Via Francesco Gentile 135
00173 Roma
Tel: +39/06 442 38 090
Fax: +39/06 455 50 558
info@ecc-netitalia.it
www.ecc-netitalia.it

## LATVIA

### EUROPEAN CONSUMER CENTRE

*LATVIA*
*EIROPAS PATĒRĒTĀJU INFORMĒŠANAS CENTRS*

Kr. Valdemara Street 157-228
1013 Riga
Tel: +371/738 8625
Fax: +371/738 8625
info@ecclatvia.lv
www.ecclatvia.lv

## LITHUANIA

### EUROPEAN CONSUMER CENTRE

*LITHUANIA*
*EUROPOS VARTOTOJU CENTRAS*

Odminių g. 12
LT 03224 Vilnius
Tel: +370/5/2650368
Fax: +370/5/2623123
info@ecc.lt
www.ecc.lt

## LUXEMBOURG

### EUROPEAN CONSUMER CENTRE

*LUXEMBOURG*
*CENTRE EUROPEEN DES CONSOMMATEURSGIE LUXEMBOURG*

55 rue des Bruyères
L-1274 Howald
Tel: +352 26 84 641
Fax: +352 26 84 57 61
info@cecluxembourg.lu
www.cecluxembourg.lu

## MALTA

### EUROPEAN CONSUMER CENTRE

*MALTA*

47A, South Street
Valletta, Malta
Tel: +356 21 22 19 01
Fax: +356 21 22 19 02
ecc.malta@gov.mt
www.eccnetmalta.gov.mt

## THE NETHERLANDS

### EUROPEAN CONSUMER CENTRE

*NETHERLANDS*
*EUROPEES CONSUMENTEN CENTRUM*

P.O. Box 487
3500 AL Utrecht, the Netherlands
Tel: +31/(0) 30 232 64 40
Fax: +31/(0)30 234 2727
info@eccnl.eu
www.eccnl.eu

## NORWAY

### EUROPEAN CONSUMER CENTRE

*NORWAY*
*FORBRUKER EUROPA*

P.O. Box 4594 Nydalen
0404 Oslo
Tel: +47 23 400 500
Fax: +47 23 400 501
post@forbrukereuropa.no
www.forbrukereuropa.no

## POLAND

### EUROPEAN CONSUMER CENTRE

*POLAND*
*EUROPEJSKIE CENTRUM KONSUMENCKIE*

Plac Powstańców Warszawy 1
00 950 Warsaw
Tel: +48/22 55 60 118
Fax: +48/22 55 60 359
info@konsument.gov.pl
www.konsument.gov.pl

## PORTUGAL
### EUROPEAN CONSUMER CENTRE

***PORTUGAL***
***CENTRO EUROPEU DO CONSUMIDOR***

Praça Duque de Saldanha, 31-1°
1069-013 Lisbon
Tel: +351/21 356 47 50
Fax: +351/21 356 47 19
euroconsumo@dg.consumidor.pt
http://cec.consumidor.pt

## ROMANIA
### EUROPEAN CONSUMER CENTRE

***ROMANIA***
***CENTRUL EUROPEAN AL CONSUMATORILOR ROMANIA***

Bd. Nicolae Balcescu nr. 32-34, etaj 4,
cam. 16
Sector 1, Bucharest,
RO-010055
Tel: + 40/ 21 3157149
Fax: + 40/ 21 3157149 / + 40/ 21 3110242
office@eccromania.ro
www.eccromania.ro

## SLOVAKIA
### EUROPEAN CONSUMER CENTRE

***SLOVAKIA***
***EURÓPSKE SPOTREBITEĽSKÉ CENTRUM***

Mierová 19
827 15 Bratislava
Tel: 00421/2 4854 2019
Fax: 00421/2 4854 1627
ecc@economy.gov.sk
www.economy.gov.sk/ecc

## SLOVENIA
### EUROPEAN CONSUMER CENTRE

***SLOVENIA***
***EVROPSKI POTROŠNIŠKI CENTER***

1000 Ljubljana
Frankopanska 5
Tel: +386 1 432 30 35
Fax: +386 1 433 33 71
epc@epc.si
www.epc.si

## SPAIN
### EUROPEAN CONSUMER CENTRE SPAIN

***CENTRO EUROPEO DEL CONSUMIDOR EN ESPAÑA***

Principe de Vergara 54
28006 Madrid
Tel: +34/ 91 822 45 55
Fax: +34/ 91 822 45 62
cec@consumo-inc.es
http://cec.consumo-inc.es

## SWEDEN
### EUROPEAN CONSUMER CENTRE

***SWEDEN***
***KONSUMENT EUROPA***

Tage Erlandergatan 8A
Box 48
652 20 Karlstad
Tel: +46/54 - 19 41 50
Fax: +46/54 - 19 41 59
info@konsumenteuropa.se
www.konsumenteuropa.se

## UNITED KINGDOM
### EUROPEAN CONSUMER CENTRE UK

1 Sylvan Court, Sylvan Way,
Southfields Business Park
BASILDON Essex UK SS15 6TH
Tel: +44 (0)8456 04 05 03
Fax: +44 (0)8456 08 96 00
ecc@tsi.org.uk
www.ukecc.net

*Appendix 2*

# Air Passenger Report 2011 Survey

## AIR PASSENGERS REPORT 2011

ANSWERS FROM ECC _____

| Part 1. Please answer questions 1 to 9 as Consumer ECC. If you have any questions, please contact the working group as soon as possible. | |
|---|---|
| **1. How many information requests did your ECC receive in relation to the following categories in 2010?** | |
| Delay | *Provided by the Commission* |
| **Delay related to volcanic ash cloud. Please estimate how many % of your cases from 14th April. (The date of the volcanic eruption.)** | |
| Cancellation | *Provided by the Commission* |
| **Cancellation related to volcanic ash cloud. Please estimate how many % of your cases from 14th April. (The date of the volcanic eruption.)** | |
| Denied boarding | *Provided by the Commission* |
| Luggage related e.g. lost, delayed, excess baggage etc., | *Provided by the Commission* |
| Price, advertisment, contractual terms | *Provided by the Commission* |
| Problems with booking through Internet, for example technical problems, incorrect price etc. | *Provided by the Commission* |
| **TOTAL** | |
| **2. How many simple complaints did your ECC receive in relation to the following categories in 2010?** | |
| Delay | *Provided by the Commission* |
| **Delay related to volcanic ash cloud. Please estimate how many % of your cases from 14th April. (The date of the volcanic eruption.)** | |
| Cancellation | *Provided by the Commission* |
| **Cancellation related to volcanic ash cloud. Please estimate how many % of your cases from 14th April. (The date of the volcanic eruption.)** | |
| Denied boarding | *Provided by the Commission* |
| Luggage related e.g. lost, delayed, excess baggage etc., | *Provided by the Commission* |
| Price, advertisment, contractual terms | *Provided by the Commission* |
| Problems with booking through Internet, for example technical problems, incorrect price etc. | *Provided by the Commission* |
| **TOTAL** | |
| **3. How many normal complaints/disputes did your ECC receive in relation to the following categories in 2010?** | |
| Delay | *Provided by the Commission* |
| **Delay related to volcanic ash cloud. Please estimate how many % of your cases from 14th April. (The date of the volcanic eruption.)** | |
| Cancellation | *Provided by the Commission* |
| **Cancellation related to volcanic ash cloud. Please estimate how many % of your cases from 14th April. (The date of the volcanic eruption.)** | |
| Denied boarding | *Provided by the Commission* |
| Luggage related e.g. lost, delayed, excess baggage etc., | *Provided by the Commission* |
| Price, advertisment, contractual terms | *Provided by the Commission* |
| Problems with booking through Internet, for example technical problems, incorrect price etc. | *Provided by the Commission* |
| **TOTAL** | |
| **4. a) What proportion in % of your total contacts in 2010 related to air travel information requests?** | |
| **b) What proportion in % of your total contacts in 2010 related to air travel complaints (simple and normal) / disputes?** | |
| **5. Country of the air carrier** (Please add to the list of countries where required) | |
| *Please enter the country of the air carrier involved in each air travel related complaint (simple and normal) / dispute handled by you as consumer ECC during 2010.* | |
| Austria | |
| Belgium | |
| Canada | |
| Danmark | |
| Finland | |
| France | |
| Germany | |
| Hungary | |
| Italy | |
| Ireland | |
| Lithuania | |
| Netherlands | |
| Norway | |
| Poland | |
| Portugal | |
| Spain | |
| Sweden | |
| Switzerland | |
| UK | |
| USA | |
| other: | |
| other: | |

| **6. Country of the incident** (Please add to the list of countries where required) | |
|---|---|
| *Please enter the country of the air carrier involved in each air travel related complaint (simple and normal) / dispute handled by you as consumer ECC during 2010.* | |
| Austria | |
| Belgium | |
| Canada | |
| Danmark | |
| Finland | |
| France | |
| Germany | |
| Hungary | |
| Italy | |
| Ireland | |
| Lithuania | |
| Netherlands | |
| Norway | |
| Poland | |
| Portugal | |
| Spain | |
| Sweden | |
| Switzerland | |
| UK | |
| USA | |
| other: | |
| **7. How many normal complaints were by the end of 2010** | |
| Resolved | *Provided by the Commission* |
| Unresolved | *Provided by the Commission* |
| Still open | *Provided by the Commission* |
| Still open ash cloud cases. Please estimate in % if possible. | *Provided by the Commission* |
| Invalid claim | *Provided by the Commission* |
| **TOTAL** | |
| **8. How many disputes were by the end of 2010 (Dispute=referral to ADR/NEB)** | |
| Resolved | *Provided by the Commission* |
| Unresolved | *Provided by the Commission* |
| Still open | *Provided by the Commission* |
| Invalid claim | *Provided by the Commission* |
| **TOTAL** | |
| **9. For those complaints / disputes that were partially resolved or unresolved what were the reasons?** | |
| *Please choose the reason most suitable for each complaint/dispute.* | |
| **Partially resolved:** | |
| Airline **met responsibilities** under **261/2004**, but **not** a claim for damages/expenses **under the Montreal Convention** | |
| Airline agreed to **make payment** in relation to expenses **under Montreal Convention,** but **not** responsibilities **under 261/2004** | |
| Declaration imposed on consumers to give up their rights. Consumer had to sign an agreement before receiving help. | |
| Due to lack of written documentation and receipts, the consumer only received a limited part of the requested amount. | |
| Other: goodwill - the airline refers to goodwill in their answer to the consumer. | |
| **TOTAL:** | |
| **Unresolved:** | |
| Airline claimed "extraordinary circumstances" | |
| Airline did not respond | |
| Declaration imposed on consumers asking them to give up their rights. Consumer refused to sign an agreement. | |
| Total lack of written documentation, receipts etc. | |
| **TOTAL** | |

**10. During 2010 how many cases did you pass to your NEB for their involvement to resolve and did you receive any feedback information?**

**11. Do the NEB handle individual complaints? If yes, what sanctions can the NEB impose on the airline?**

**12. Please describe your relationship/collabration with your country's NEB? (Are Reg 261 cases passed directly to your NEB or do you handle some by contacting the airline first, before sending the case to your NEB?)**

**13. a) Do you have an ADR in your country that can deal with air passenger complaints (261, Montreal)? If so, please name the ADR body:**

**b) How many disputes have you referred to that body?**

**14. What in your opinion when trying to resolve consumer complaints / disputes in your case handling, the main areas that prevent them being resolved?**

| *Give a number from 1 to 7 depending on its importance (7: very important - 1: not important)* | |
|---|---|
| enforcement body coverage (NEB does not handle indivudual complaints) | |
| lack of ADR | |
| non-response from airlines | |
| proving the value of luggage | |
| airline claims "force majeure"/ extraordinary circumstances | |
| proving the damage when delay (in Montreal Convention) | |
| other: | |

**15. Please list any initiatives/work/meetings that your ECC has been involved with in relation to air passenger rights in 2010 and also mention the outcome :**

**16. Do you have any case studies that highlight particular problems consumers in your country have encountered in relation to air travel? If so please note them here:**

**17. Do airlines that domicile your country comply with the outcome in the Sturgeon case?**

## Part 2. Volcano ash cases

**1. Was information was given by airlines about special policies/ad hoc policies for ash cases? For example : Declarations imposed on consumers asking them to give up their rights, administrative difficulties – conditions imposed by airline to obtain redress or timelimits concerning offered assistance. If so, please give some examples and estimate how many % of our cases.**

**2. Was there discrepancies between information given by airport staff and customer relations departments? If so, please estimate how many % of our cases.**

**3. Please estimate the percentage of cases where the air carriers didn't provide assistance according to article 9, reg. 261?**

**4. a) Was alternative transportation offered by bus or train? If so, please estimate how many % of our cases.**

**b) If the passenger wasn't offered alternative transportation, did the air carrier compensate the passenger for alternative transportation costs afterwards? If so, please estimate how many % of our cases.**

**5. Did your enforcement authority reach a special agreement with your national airlines? As for example in Finland between The Finnish Consumer Agency and Finnair.**

**6. Have you any experience in travel agents charging fees of consumers in order to manage cancelations/refunds, if so, are these fees regulated in your country? And if regulated, in which form?**

**7. Please give us some examples from your case handling of worst case scenario vs. best case scenario regarding assistance/compensation etc.**

Court of Justice of the European Union
**PRESS RELEASE No 111/11**
Luxembourg, 13 October 2011

Press and Information

Judgment in Case C-83/10
Aurora Sousa Rodríguez and Others v Air France SA

# In the event of cancellation of a flight, passengers may claim, under certain conditions, compensation for non-material damage in addition to that awarded for material damage suffered

*Further, a passenger may claim compensation for cancellation of a flight where his aeroplane took off but, for whatever reason, was subsequently forced to return to the airport of departure and that passenger was transferred to another flight*

The regulation on the compensation of air passengers[1] lays down **standardised measures** that airline companies must put into effect in respect of their passengers in the event of denied boarding, cancellation or long delay of a flight. The regulation states, however, that it applies without prejudice to passengers' rights to further compensation. Thus, compensation awarded pursuant to the regulation may be deducted from possible further compensation which passengers may claim.

Among the standardised measures prescribed by the regulation in the event of cancellation of a flight, passengers may have their ticket reimbursed or be re-routed. Moreover, during the wait for a later flight, the airline company must offer them adequate care (for example, accommodation, meals and the chance to make telephone calls). Finally, where the flight is cancelled without notice or with very short notice and there are no extraordinary circumstances, passengers also have the right to a flat-rate compensation, the amount of which varies depending on the distance of the scheduled flight.

In parallel, the **Montreal Convention**[2] sets out the conditions in which passengers may bring actions for damages, **by way of compensation on an individual basis**, against carriers as a result of the cancellation of a flight. In particular, the Convention limits the liability of the carrier in the event of cancellation to the amount of 4 150 special drawing rights per passenger[3].

The Pato Rodríguez family, the López Sousa family and Mr Rodrigo Manuel Puga Luiero were booked on an Air France flight from Paris (France) to Vigo (Spain) on 25 September 2008. The flight took off at the scheduled time but returned to Charles de Gaulle airport a short time later due to a technical problem with the aircraft. Those seven passengers were re-booked onto other flights the following day but only Mr Pugo Luiero was offered assistance by the airline company in the meantime. The Pato Rodríguez family were re-routed to Porto (Portugal) and, from there, had to take a taxi to Vigo, where they lived.

[1] Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).
[2] Convention for the unification of certain rules for international carriage by air, adopted in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 and approved on behalf of the European Community by Council Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 39). That Convention is implemented by Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air (OJ 1997 L 285, p. 1), as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 (OJ 2002 L 140, p. 2).
[3] The special drawing rights in the Montreal Convention are considered to relate to the special drawing right as defined by the International Monetary Fund (IMF). Thus, those amounts must be converted into the national currency. At 15 September 2011, 4 150 SDR corresponded to approximately €4 750.

The seven passengers in question brought a legal action for €250 each in respect of the cancellation of the flight. Furthermore, the Pato Rodríguez family claims €170 to cover the cost of the transfer by taxi and €650 per person as compensation for non-material damage. The López Sousa family also claim €650 per person as compensation for non-material damage and the reimbursement of the cost of meals taken in the airport and an extra day for their dog in kennels. Mr Pugo Luiero claims €300 in compensation for non-material damage suffered.

In that context, the Juzgado de lo Mercantil No 1 de Pontevedra (Commercial Court No 1 of Pontevedra, Spain), to which the matter was referred, asked the Court of Justice to clarify whether this case can be considered as a flight 'cancellation'. In addition, the Spanish court seeks to ascertain whether the 'further compensation' that passengers can claim covers all types of damage – including non-material damage – and whether that compensation also refers to costs incurred by passengers due to the failure of the air carrier to fulfil its obligations to assist and take care.

**In the judgment handed down today, the Court explains, firstly, its interpretation of the concept of 'cancellation' as meaning that is does not refer exclusively to the situation in which the aeroplane in question fails to take off at all. That concept also covers the case in which an aeroplane took off but, for whatever reason, was subsequently forced to return to the airport of departure where its passengers were transferred to other flights.**

On that point, the Court holds that the fact that take-off occurred but that the aeroplane then returned to the airport of departure without having reached the destination in the itinerary means that the flight, as initially scheduled, cannot be considered as having been operated.

Moreover, the Court states that **in order to examine whether there has been a 'cancellation', it is necessary to examine the individual situation of each passenger transported,** that is to say to examine whether, in relation to the passenger in question, the original planning of the flight had been abandoned. In so doing, in order to find that a flight has been cancelled, it is not at all necessary that all the passengers that had booked a place on the originally scheduled flight were transported on another flight.

Thus, since the seven passengers in this case were transferred to other flights, scheduled for the day after the expected departure date, to reach their final destination (Vigo), the Court concludes that 'their' originally scheduled flight must be classified as 'cancelled'.

**Secondly, the Court explains that the concept of 'further compensation' allows a national court to compensate non-material damage arising from breach of a contract of carriage by air under the conditions provided for by the Montreal Convention or national law.**

The Court holds that 'further compensation' is intended to supplement the application of the standardised and immediate measures provided for by the Regulation. Therefore, that 'further compensation' allows passengers to be compensated for the entirety of the material and non-material damage they suffered due to the failure of the air carrier to fulfil its contractual obligations under the conditions and within the limits provided for by the Montreal Convention or by national law.

Thirdly, the Court adds that **where a carrier fails to fulfil its obligations to assist** (reimbursement of ticket or re-routing to the final destination, taking into account the cost of transfer between the airport of arrival and the originally scheduled airport) **and to take care of costs that fall to it pursuant to the regulation** (meal, accommodation and communication costs) **air passengers are entitled to claim a right to compensation. Nevertheless,** insofar as that compensation arises directly from the regulation, it **cannot be considered as falling within 'further' compensation.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the

dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

## Notes

*"I want to remind passengers that, even in extraordinary circumstances, they have some of the strongest Air Passenger Rights in the world."*

Siim Kallas, European Transport Commissioner Vice President


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*ECC Belgium* *ECC Denmark* *ECC Ireland* *ECC Sweden*