



Dear Sirs at the Canadian Transportation Agency (CTA),

The Arab Air Carriers' Organization (AACO) welcomes the opportunity to comment on the "Discussion Paper on Air Passenger Protection great importance to AACO, as 9 out of the 33 airlines members¹ in AACO currently operate to Canada while most of the others are under codeshare arrangements or other commercial arrangements with airlines operating to and from Canadian airports. Customer satisfaction is at the core of the airlines' business. AACO's member airlines, as well as other airlines, have a strong incentive to transport their passengers safely and on-time.

We understand that the agency looked at the air passenger rights regulations in the European Union and the United States as best practices in order to constitute similar regulations in Canada. In this regard, we would like to draw your kind attention to the following:

The EU air passenger rights regulation no. 261/2004:

The regulation has proved not to meet its purpose of enhancing passenger experience. It has many shortfalls that the EU regulators are working on amending. There's actually a proposal by the European Commission to amend this regulation. A set of interpretive guidelines was published in 2016 due to a lack of clarity and imprecise wording in Reg.

¹ AACO Member Airlines: AFRIQIYAH AIRWAYS, AIR ALGERIE, AIR ARABIA, AIR CAIRO, BADR AIRLINES, EGYPTAIR, EMIRATES, ETIHAD AIRWAYS, EXPRESS AIR CARGO, FLYDUBAI, FLYEGYPT, FLYNAS, GULFAIR, IRAQI AIRWAYS, JORDAN AVIATION, KUWAIT AIRWAYS, LIBYAN AIRLINES, MAURITANIA AIRLINES, MIDDLEAST AIRLINES, NILE AIR, NOUVELAIR, OMAN AIR, PALESTINAIN, QATAR AIRWAYS, ROYAL AIR MAROC, ROYAL JORDANIAN, SAUDIA, SAUDIGULF AIRLINES, SUDAN AIRWAYS , SYRIAN ARAB AIRLINES, TASSILI AIRLINES, TUNISAIR, YEMENIA

261/2004 combined with a lack of uniformity in its interpretation by the courts and NEBs. These have led to unequal application of the granted rights and numerous court cases. Successive judgements by the European Court of Justice have substantively modified the scope of the regulation further.

We highly urge the Agency not to be guided by the EU 261/2004 due to the above-mentioned facts.

The US Consumer Rules:

The current US Consumer Rules have as well some requirements where the cost has outweighed the benefits. To cite a few²:

- Tarmac delay rule covering non-US carriers: Costs outweighed benefits by \$1.8M
- The requirement of reporting of tarmac delay data to DOT: Costs outweighed benefits by \$0.8M
- The requirement for non-US carriers to post tarmac delay contingency plans, customer service plans and contracts of carriage on websites: Costs outweighed benefits by \$1M
- The requirement that non-US carriers acknowledge consumer complaints within 30 days and a substantive response within 60 days. Costs outweighed benefits by \$1.9M
- High compensation levels including but not limited to the minimum denied boarding compensation limits. Costs outweighed benefits by \$1M

Also, the approach of the DOT in the enforcement of these rules focuses on imposing fines rather than promoting regulatory compliance.

The above, amongst other things, are as well being looked at now by regulators in the US; hence, it can be considered that many lessons have been learnt in the application of US Consumer Rules that we hope that the CTA will take into consideration when formulating the Canadian air passenger rights regulations.

² The cost/benefit analysis was done by the International Air Transport Association (IATA)

General Comments:

Simplicity and non-complexity:

We believe that the simpler the regulations are, the easier it would be in application where passengers would have a clear picture of their rights and airlines a clearer picture of their responsibilities towards the passengers.

Extraordinary Circumstances: In general, out of the experience of the airlines, the most burdensome and unfair requirement by air passenger rights regulations is when the airlines are held liable and have to pay compensation to passengers for delays and cancellations that fall beyond their control and/ or that had to happen in order to secure the safety of the flight. In that area, we would highly recommend that the CTA would take the following extraordinary circumstances into account where airlines wouldn't pay compensation, care would have a limit/ ceiling and all relevant stakeholders would cooperate and be involved.

In our opinion extraordinary circumstances could be manifested in the following:

- natural disasters
- wars and political instability
- Security reasons
- Unlawful acts
- Meteorological reasons
- Airport Closure
- Medical grounds
- Bird strikes
- Lightning Strikes
- Manufacturing defects
- Unexpected flight safety shortcomings
- Industrial Relations Issues
- Air Traffic Management
- labor and union strikes (be it airline's staff or other stakeholder's staff for example ground staff) that make it impossible for the carrier to carry on with its operations

- Technical malfunctions that are out of the airline's control including but not limited to aircraft manufacturer's defect, technical malfunctions in the air navigation system, accidents during towing the aircraft, etc...

Airlines should also have the right of redress in case of negligent act or omission of a third party with regards to care provided, reimbursement, rerouting, and/ or compensation.

Eligibility of Passengers:

To put things in scope, we have developed general prerequisites that we see that passengers need to have for them to be eligible for compensation:

- The passenger is a revenue passenger
- Passenger is in possession of a valid ticket with a confirmed reservation
- The passenger has presented himself at the check-in counter within the stipulated time limits prior to check-in closure
- The passenger is in possession of the necessary travel documents and complying with the company's travel rules and regulations
- The passenger has abided by the airline's lawful instructions and security checks
- The passenger has abided by government and immigration requirements
- The passenger has abided by the health requirements
- The airline could have taken all reasonable measures to avoid inconvenience caused to the passenger and did not do so.
- There should be proof of fault or damage i.e. to avoid automatic compensation
- Passenger needs to submit a written complaint to be eligible for compensation. Complaints are only acceptable if submitted *within 2 years*. (Based on MC99)
- Children are compensated 50% the amount allocated for adults
- Infants are not eligible for compensation

The Discussion Paper:

1- Airlines Obligation to Communicate Clearly

- a. What is the key information that air passengers should receive on the airline's terms and conditions of carriage and the recourse available to them?

Airlines' Conditions of Carriage are a standardized legal document based on best practices and international standards. It would be very difficult to cater for individual states' requirements. Hence, we believe that it would be enough that airlines share with the CTA their conditions of carriage for reference only.

Any future framework for air passenger protection regulations should be aligned with ICAO and IATA Core Principles on Consumer Protection, which establish that airlines should employ their best efforts to inform and communicate clearly and transparently with passengers on their legal and contractual rights.

- b. How should this information be communicated?

Airlines' websites, mobile apps, with copies that could be available at airline counters and ticket offices.

- c. What criteria, if any, should be established to help ensure that the language used to communicate passenger rights is simple, clear, and concise?

We believe that this question could lead to over-regulation which we recommend that the Agency avoids.

- d. Should the regulations give specific direction on the format or length of information documents summarizing passenger rights and recourse?

In questions c and d, we believe that it would be enough to mention that airlines shall use all reasonable efforts to communicate with the passengers clearly.

2- Flight Delay, Cancellation or Denial of Boarding

- According to ICAO Principles on Consumer Protection, passenger protection regimes should reflect the principle of proportionality and should be consistent with existing international treaty regimes on air carrier liability, namely the Warsaw Convention of 1929 and the Montreal Convention of 1999.
- Moreover, as set out in IATA Core Principles on Consumer Protection and in accordance with the spirit of the Chicago Convention, air passenger protection regimes should only apply to events occurring within the territory of the legislating State. In other words, extra-territorial application of national/regional air passenger protection regulations should be avoided.
- Furthermore, entitlements and compensation levels enshrined in air passenger protection regulations should reflect the existence of extraordinary circumstances and consider that there should not be any compromise between safety and passenger rights' protection.
- Finally, the responsibilities imposed on airlines by national/regional regulators, and especially those related to both care and assistance as well as compensation, must be fairly and clearly allocated between different services providers involved.

Please find below a collection of best practices that are currently applied by airlines and which have served their purpose:

Denied Boarding & Downgrading

- If a passenger was denied boarding and the airline did not provide an alternative transportation within (3 to 6)* hours of the original departure time then compensation applies
- Refreshments to be offered after (1 to 3)* hours of the original departure time. Hot meals to be offered between 3 and 8 hours*.
- Cost of hotel accommodation and transportation is offered if the passenger is booked for a flight departing (more than 8 hours*) further to the original departure time.
- In case of downgrading, reimbursement should take place within (21 to 30 days*) of the day of the departure of the flight.
- Denied boarding cannot be done to unaccompanied minors and passengers with special needs.

Delays

- The carrier shall not be liable for damage occasioned by delay if the passenger wasn't able to prove that the airline and its servants and agents didn't take all measures to avoid the damage or if it was impossible for the airline and its servants and agents to take such measures.
- No financial compensation is offered in case of flight delays
- Care is provided to passengers
- Care could be translated into meals, snacks, hotel accommodation, transportation, telephone calls, internet, etc...) depending on the extent of delay.
- Airline should keep the passengers updated on the delay i.e. ETD
- If the delay was due to other stakeholders' faults (fault in navigation systems of the ATC, accident during towing the aircraft, etc...) the liability should be on the source of the fault.
- Flight diversions shall not be treated as delayed flights
- Flight diversions could be treated as a delayed flight in the following cases:
 - Commercial reasons (making a transit stop to load/ off-load passengers before continuing to the original destination)
 - Technical faults resulting from poor maintenance.

Cancellations

- If passengers were notified of the cancellation (more than 7 days*) before departure then no compensation is required.
- If the passenger was re-protected to arrive at the final destination within (6 to 8 hours*) of the original schedule arrival time, having departed the origin no earlier than one hour before the departure time of the cancelled flight then no compensation is required
- Compensation is only required when the flight is cancelled for commercial reasons (e.g. light load) or technical reasons (that are not included in the extraordinary circumstances)
- In the case of force majeure incidents, industry stakeholders must work together to provide care and assistance to stranded passengers

Regarding the question on structure of the compensation levels, we believe that lumpsums rather than percentage of the ticket fare is simpler and more reasonable.

**Indicates a range of what is currently applied by airlines as a best practice*

3- Tarmac Delay

- a. What is the appropriate starting point for calculating a tarmac delay (e.g., the time that the door of the aircraft closes, that the aircraft pulls away from the gate, or that aircraft lands at an airport)?
 - Tarmac delay clock starts when the aircraft door closes
 - Tarmac delay clock stops when carrier begins to return to gate
- b. How frequently should passengers be updated throughout a tarmac delay?
Every half an hour.
- c. What types of information should the airline be required to share?
Reasons of the delay and expected timeframe if the information is clear for the airline.
- d. What should be the minimum standard of treatment for passengers who wait on the tarmac for over three hours? For example:
 - disembarkation
 - water
 - food
 - functioning lavatories
 - medical attention
 - proper ventilation
 - heating, and cooling
 - ability to communicate with people outside the aircraft
 - Should certain airline obligations only kick in after a lengthier delay (e.g., four or five hours)? Yes, for international flights.

4- Lost or Damaged Baggage

In general, the rules of Montreal Convention 1999 to be applicable.

- a. be the minimum compensation that airlines are required to pay when the baggage is lost or damaged?

There should not be a minimum, as passengers bring suitcases of different quality and a different amount/weight of items. For a bag that is damaged due to inherent vice for example, no compensation should be considered. Baggage mishandling has decreased significantly in recent years due to industry investment in new technology and better processes. Any such standards and rules should be globally harmonized.

- b. What criteria should be determining if a bag has been lost or damaged.

We believe that going into such details in a regulation would lead to over-regulation. Airlines already follow international standards and procedures in this area.

- c. What evidence should a claimant have to submit to receive compensation for lost or damaged baggage?

- d. We believe that going into such details in a regulation would lead to over-regulation. Airlines already follow international standards and procedures in this area.

5- Seating of Children Under the Age of 14

- a. How should close proximity be defined in the air passenger protection regulations? Should the maximum acceptable seating distance between the child and parent depend on the child's age?

Overly specific requirements in this area will create disharmony with current policies and practices, particularly for foreign carriers operating in multiple legal jurisdictions. The regulation could include a general directive that says that *Airlines should deploy every effort to assign seats for families with children, while also taking into account safety regulations and operational considerations, which are two factors considered in the IATA Core Principles on Consumer Protection.*

- b. How should an airline facilitate the assignment of the seating? What measures should an airline take to ensure that children are seated in close proximity to a parent or guardian?

Overly specific requirements in this area will create disharmony with current policies and practices.

- c. What steps should an airline be required to take to ensure that its terms and conditions and practices with respect to the seating of children are made readily available to passengers. Should there be any specific obligation in this regard at the time a flight is booked for a child under the age of 14 and/or at the time of check-in?

Overly specific requirements in this area will create disharmony with current policies and practices.

6- Transport of Musical Instruments

What specific elements should an airline be required to address in its tariff provision regarding the transportation of musical instruments?

Airlines should be free to set rules regarding the transport of instruments that suit their aircraft type, protection of staff, etc.

Any framework for air passenger protection regulations that covers the transport of musical instruments should consider ICAO and IATA Core Principles on Consumer Protection, which establish that airlines should employ their best efforts to provide clear and transparent access to information related to additional charges and fees.

However, as set out in IATA Core Principles on Consumer Protection, airlines should be allowed to retain their ability to differentiate themselves through individual customer offerings, and passengers should have the freedom to choose an airline that corresponds with their desired price and preferred service standards.

7- Scope of the New Regulations

Foreign carriers who do not have a base in Canada will be disadvantaged in that they cannot readily replace crew, easily schedule their own alternative flights in case of disruption (meaning they have to divert revenue to other airlines) etc. In this case, certain circumstances that may be classified as “within the airline’s control for a domestic or regional carrier may be classified as not within the airlines’

control for a foreign carrier or low-cost carrier. The goal of these regulations should be to protect consumer rights but still allow airlines using different business models to thrive. Foreign carriers are commonly disadvantaged by country-specific regulations on passenger protections due to the disharmony they create with international standards and the varying legal jurisdictions in which they operate globally. Any new rules and regulations should be fully justified in cost/benefit, should not be overly burdensome or onerous, and should take into full account the difference in impact of rules on domestic vs foreign carriers.

8- Application when Different Airlines are involved

- a. When a single itinerary includes flights with multiple airlines, in which of the following areas should the marketing airline be responsible (regardless of whether an issue arises on one of its flights or on flights operated by one of its partner airlines)? In which areas should the operating airline be responsible?

Global standards already exist to address this question and any country-specific requirements would create disharmony and confusion.

- b. Should the answer to the previous question change for different sorts of cooperation arrangements?

No.

- c. Should the air passenger protection regulations require that marketing airlines explain to passengers which airline is responsible for which issues when selling an itinerary that includes flights with several carriers.

See above.

9- Tariff Availability and Filing

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10- Transportation of Unaccompanied Minors

Recommended to follow existing international standards.

11- Air Services Price Advertising

Airlines should be allowed to publish the original fare before taxes and charges as part of the total fare.

12- Other Tariff Issues

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13- Complaints and Enforcement

- a. What type of guidance would be helpful for passengers on how to make a complaint to the CTA relating to new air passenger protection regulations?

The information can be made available on airline websites through a link.

- b. Should all new obligations established by the air passenger protection regulations also be enforceable through AMPs? If not, please provide a justification.

No. Every incident is unique, and most irregular operations are well outside the control of airlines.