

**Joint Meeting
National Enforcement Bodies
DG TREN
Air Passenger Rights
Regulation [EC] 261/2004**

14 MAY 2009
(9:00 – 18:00)

Berlaymont building, rue de la Loi 200, 1049 Brussels, room: Schuman

MINUTES *Draft*

1. INTRODUCTION

The meeting was opened by Mrs Anne HOUTMAN, Director in DG TREN, and Mr Mattia PELLEGRINI, Member of Cabinet, on behalf of Vice-President Tajani. He emphasised the Vice-President's commitment to making air passenger rights (APR) a reality for all Europeans.

Following the meeting on 2 December 2008 between the European Commission (COM) and national enforcement bodies (NEBs), airline associations and other stakeholders, DG TREN was evaluating application of Regulation (EC) 261/2004¹ and, notably, examining where and why it was still not adequately observed.

The joint morning session on 14 May 2009 focused on the complaints-handling understandings between NEBs and between NEBs and airlines and on other issues where there was still room for improvement. All stakeholders were invited to take part in the morning discussions.

The afternoon session was reserved for NEBs in order to exchange best practice and information.

2. PRESENTATIONS

The future Commission Communication on APR

- **The current evaluation phase** would be concluded by a Commission Communication analysing the progress with application of the Regulation and the best practices that have been developed in order to strike the best balance between the interests of passengers and of the industry. COM also intended to examine other kinds of incidents that were not covered by Regulation (EC) 261/2004, such as rescheduling.

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 (Text with EEA relevance) — OJ L 46, 17.2.2004, pp. 1-8.

- **Preliminary exchange of views and suggestions**

- COM made it clear that it had not yet come to any conclusion regarding the issue of rescheduling which was, however, one of the incidents faced by passengers, which was not covered by the Regulation. ELFAA pointed out that most airlines refunded tickets in cases where the passenger was not satisfied with the new departure time proposed.
- The NL authorities were working on setting up an alternative dispute resolution (ADR) system which should be operational by July 2009. It would be limited to Regulations (EC) 261/2004 and (EC) 1107/2006² and to passengers leaving from a Dutch airport with an air carrier which was a member of BARIN (Board of Airline Representatives in the Netherlands). The ADR system should provide faster and legally binding decisions (within less than 10 weeks). Passengers would be able to choose whether to lodge a complaint with the NEB or with the ADR board, which would be made up of representatives of airlines and consumer associations and chaired by a person with a legal background. COM expressed interest in the system and looked forward to seeing it in action.
- In Norway the ADR board dealt with all kinds of complaints, not only those covered by Regulation (EC) 261/2004. Some associations expressed concerns about legal certainty. COM invited the Norwegian NEB to provide relevant information to the associations to enable them to give their points of view regarding the ADR systems.

The relationship between the NEB and airlines in the complaints-handling procedure

- **Towards a standard response form for air carriers to reply to requests from NEBs for information on individual complaints**

- COM was pleased to see the efforts that had been made following the agreements in 2007 on the understanding between NEBs and between NEBs and airlines and on a standard EU complaint form for passengers. COM thanked the airline associations for encouraging their members to notify DG TREN of their contact points handling passenger complaints. COM was also examining the advantages of creating a similar form to be used by NEBs to request information on incidents from airlines and of making it available in all Community languages in addition to English. Airlines associations insisted that, if such a form was created, they should be part of the exercise.

- **Exchange of views**

- NEB DE presented the standard form which it had produced together with airlines operating in DE. This form enabled the NEB to examine whether extraordinary circumstances applied in the event of a cancellation. NEB DE emphasised the

² Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ L 204, 26.7.2006, pp. 1–9.

efficiency of using standardised forms, which improved and speeded up complaint-handling.

- NEBs PL and PT were also using standard forms to request information from airlines. NEBs UK and CH welcomed the idea, which should facilitate complaint-handling for NEBs and airlines alike.
- Such documents should be kept confidential unless needed for court proceedings.
- COM would propose a standard NEB-airline form covering all the essential aspects of Regulation (EC) 261/2004 and invited NEBs and associations to cooperate. The form would be drafted in English and then translated into all Community languages. Airline associations noted that they had recommended a replacement for the complaint form in November 2007 and again in January 2009, and understood that COM would publish the revised form on their website. Once that was done they would encourage their members to use this common form.

The passenger-airline complaints-handling procedure

- **Towards a standard complaint form for passengers to complain to airlines**

- Many NEBs had their own tailor-made complaint forms, which were more detailed than the EU form. Some of them could be filled in online. This method allowed NEBs to handle complaints faster and better.
- COM thanked the airline associations for their efforts to agree on a common EU complaint form.

- **Exchange of views**

- IATA raised the question of the relevance of the use of different forms by NEBs and would prefer them to use the same form.
- NEBs FR and IT reported on the complaint forms available on their websites, which requested detailed information from passengers. The French form allowed passengers to ascertain whether or not they had a basis for a complaint under Regulation (EC) 261/2004. NEBs emphasised that complaints must be lodged with the airline first, before contacting the NEB, but that it was still sometimes difficult to contact some of them.
- COM considered the EU complaint form a good basis even after adjustments by Member States and encouraged all NEBs and stakeholders to use it.
- COM wanted further improvements in the dialogue between passengers and air carriers. It was therefore essential for passengers to be able to contact the carriers.
- COM promised to publish an updated version of the EU complaint form on its website and to support airline associations with promoting use of the form among their members.

Annual reporting by airlines

- **Towards annual reporting by airlines and airline associations on APR, along the lines of the AEA report on baggage incidents**
 - COM wanted to gather more information on incidents covered by Regulation (EC) 261/2004. The media were showing strong interest in such incidents, which they sometimes tended to over-dramatise. COM therefore believed that a more transparent approach to providing information to passengers was necessary, along the lines of the data provided in the USA.
- **Exchange of views**
 - NEB UK supported the idea of making data available, including blacklists.
 - The AEA published a consumer report on its website twice a year concerning baggage plus data on punctuality. This report attracted considerable interest on the part of the media and the general public. Airlines provided the data on a voluntary basis. Therefore, blacklists would be counterproductive.
 - IATA shared the view on blacklists, but emphasised that it did not collect such data from its members.
 - ELFAA would be happy to publish data on the performance of its members.
 - COM confirmed that the aim of exchanging information was not to name and shame, but to aggregate data covering every aspect of the Regulation. It encouraged the associations to promote measures to improve reporting among their members.

Other business

- Prior to a request from an Airline Association, some Airline Associations expressed their wish to have, under any other business, a discussion of the recent ruling of the European Court of Justice in case C-549/07 disallowing the "exceptional circumstances" defence in case of incidents due to technical reasons in the presence of the NEBs, with a view to identifying differences in understanding. COM took the position that it could not interpret ECJ rulings. At the same time, COM invited associations and NEBs to send written comments on the ruling.

3. CONCLUSIONS

- All the parties agreed that improvements had been made since the discussions in 2007 and that the agreements had proved to be useful tools.
- COM would present a report to the European Parliament and the Council analysing the four years of operation of the Regulation. Data collection and cooperation between COM, NEBs and all other stakeholders were therefore crucial.
- COM would draft an airline reply form to request information on incidents from airlines. NEBs and associations should cooperate with COM to finalise the form.

- The revision of the EU complaint form agreed by the associations would be taken into account in the update of the online form.
- COM encouraged associations to promote use of standard complaint forms and better reporting of data by their members.

The afternoon session was reserved for the NEBs only.
