PASSENGER RIGHTS

The Issue

A small but high-profile number of incidents, often resulting from new model carrier operations or severe weather, have drawn the attention of governments to passenger rights. Governments that have imposed passenger rights regimes typically include provisions relating to passenger assistance and/or compensation in the case of denied boarding, delays, cancellations. Some regimes also include provisions which address passengers with reduced mobility, advertising and baggage.

Over the past decade, national passenger rights regimes have proliferated. There are now over 50 countries that have passenger protections of some kind. The spread of passenger rights legislation, some of which have extraterritorial provisions, creates difficulties for airlines and confusion among passengers. For example, assume a passenger is travelling on an EU carrier from the US to Israel via a European airport. If he is denied boarding at the US airport, potentially three passenger rights regime would apply: the US DOT Consumer Protection Rules, EU Regulation 261 and the Israeli Aviation Services Law.

Certain passenger rights regulations also have unintended consequences. For example, requiring compensation after a delay of a certain number of hours could have the perverse effect of causing more cancellations and more serious disruption to passengers, instead of protecting them, as airlines no longer have an incentive to incur the costs of delaying the flight. A cancellation is a more stressful and uncertain experience for the passenger. If a flight early in the day is delayed, passengers would normally be able to fly once the problem is resolved. If the flight was cancelled instead, passengers on the original flight would only be able to travel if and when seats were available on later flights or on other airlines. According to the US Government and Accountability Office, flights were 24% more likely to be cancelled before leaving the gate after the US tarmac delay rules went into effect, creating longer travel times and a more stressful experience for passengers.

Passenger rights regimes have profound cost implications for passengers and businesses. For example, IATA estimates that compliance with EU Regulation 261-2004 will cost airlines EUR 4 billion annually. As a result, passengers and shippers can expect higher costs, as airline pass costs of compliance with these regimes on to passengers. In a business with thin profit margins, the cost of complying with multiple consumer protection rules can also damage competitiveness and render routes unprofitable, reducing connectivity and its associated benefits on economies and societies. For tourist destinations, this could make competing points more attractive for airlines to operate in and for cost conscious tourists to visit.

In addition, existing regimes are of questionable benefit to consumers. Airlines, already highly incentivized by their own cost consciousness, thin profit margins and the marketplace to avoid delays, make their best efforts to do so. In addition, the majority of delays are outside airlines' control; in Europe for example, 60% of delays can be attributed to weather, air traffic control and other factors. This proportion has remained substantially unchanged since the enactment of EU Regulation 261-2004. Indeed, air transport infrastructure has not kept pace with industry growth, resulting in capacity constraints at an increasing number of locations worldwide. This has led to delays and cancellations due to air traffic control restrictions or other capacity management issues, which can have knock-on effects at hub airports for days after such an event has taken place.
The Vision

A government and industry joined up approach to passenger rights that works for a global business and strikes a balance between ensuring adequate consumer protection and overburdening the industry with the costs of regulatory compliance.

IATA’s Position

• At the recently concluded ICAO Sixth World Air Transport Conference, ICAO received support from member states to develop high-level principles on consumer protection. IATA supports this effort in the hope that it will lead to greater coordination among governments when revising or implementing new consumer protection regimes.

• IATA believes market forces should determine what service carriers provide to passengers and that separate regulations specifically on passenger rights – over and above the general consumer rights regulation that already exists in a particular country – are unnecessary. There exists a variety of different models today in the market – from full service carriers to new model airlines. Consumers have the option of a variety of prices that match a variety of service levels. In addition, the ultra-competitive aviation marketplace incentivizes carriers to find solutions that benefit the greatest number of passengers in the event of a delay or cancellation. People can vote with their feet, and their wallets, to travel on other airlines should their experience on a certain carrier be unsatisfactory. Legislation should not prevent airlines from being innovative in their commercial offer; it should provide the minimum common denominator and competition should allow for additional rights to be extended to passengers.

• Passengers should be correctly informed of their legal and contractual rights to avoid raising expectations. Many claims stem from complaints which have no grounds according to the prevailing passenger rights regime. Passengers should also have clear, transparent access to the following information:
  - fare information, including taxes and charges, prior to purchasing a ticket;
  - The airline actually operating the flight in case of a codeshare service.

• Airlines should assist passengers with reduced mobility in a manner compatible with the relevant safety regulations and operational considerations.

• There must be no compromise between safety and passenger rights protection. Safety related issues, such technical issues with an aircraft, should be excluded from conditions which require airlines to compensate passengers under passenger rights regimes.

• Airlines should employ their best efforts to keep passengers regularly informed in the event of a service disruption. In addition, passenger rights should be fair and reasonable in their cost to airlines and in their application to circumstances within airlines’ control. Today, compensation in some existing regulations is sometimes higher than the entire cost of the ticket paid by the passenger. The definition of “extraordinary circumstances” – e.g. circumstances outside of the airline’s control – should be the one enshrined in Article 19 of the 1999 Montreal Convention: “Nevertheless, the carrier shall not be liable for damage occasioned by delay 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.” The majority of delays – 60% in Europe – are outside the airline’s control, due to weather, traffic control, or other factors.

- Passengers should be treated equally, whatever the transport mode chosen. Equal treatment doesn’t necessarily have to mean identical rights, but comparable ones. Oftentimes airlines are subject to more stringent passenger rights provisions that rail, sea or road operations.

- Legislation should be clear and unambiguous. Certain passenger rights regimes, such as the existing EU regulations, have given rise to a large number of cases under the European Court of Justice, with ECJ interpretation adding more complexity to the existing regulation or interpretation varying across different courts. This creates legal uncertainty for airlines, and consumers.

- Passenger rights regimes must be in accordance with previously adopted international treaties, such as the 1999 Montreal Convention (MC99). Like the 1929 Warsaw Convention before it, MC99 creates an exclusive and uniform legal framework for liability in the international air carriage of passengers and baggage. Articles 19, 22 and 29 of the 1999 Montreal Convention define the circumstances under which, as well as the extent of, damages in the case of flight delays or lost baggage. The Convention also specifies a limitation period of two years for claims involving international air carriage.

- Legislation should recognize the global nature of the aviation industry and not interfere with other members states’ ability to make legitimate policy choices. Passenger rights regimes which apply to events occurring outside a country’s territory, and within the territory of other States, contravenes the 1944 Chicago Convention. Article 1 of the Chicago Convention recognizes that every country has exclusive sovereignty over its airspace. Articles 11 and 12 further stipulate that the laws and regulations of a country may be applied only at the point that an aircraft enters sovereign airspace and must, necessarily, abate at the point and time of departure.