

ECC-Net Air Passenger Rights Report 2015

Do consumers get the compensation they are entitled to and at what cost?



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Executive summary



Number of people travelling grow every year and air passenger rights (APR) have come to be seen as one of the most important set of consumer rights.

A Eurobarometer survey carried out in September 2014 shows¹ that 22%, of passengers had faced disruption in the previous 12 months when travelling by air. The most common forms of disruption were long delays (69%), baggage-related disruptions such as delayed, damaged or lost baggage (21%), or cancellation (15%). Of those respondents who had experienced disruption, 57% were dissatisfied with how this was handled, whether in terms of the general information received about the disruption, assistance (48%) or financial compensation (55%).

In Europe, extensive information campaigns and apps have been launched regarding APR, many passengers are aware that they have rights, but are not necessarily sure what those rights are² and the network of European Consumer Centres (ECC-Net) continues to receive a large number of complaints. It is in the interest of the air transport sector to investigate how the existing legislation is functioning at pan-European level and the main sources of complaints so as to better understand the problems in the market and provide adequate remedies.

In 2014, the ECC-Net handled 37 609 complaints in total, of which 6 834 related to APR. Of those, 46% were resolved in an amicable manner compared to 40.6% in 2010, an increase of 13.3%. ECCs cite a lack of response from air carriers as an important reason why some cases could not be resolved. Of the cases handled in 2014, 24% were transferred to another organisation or agency including Alternative Dispute Resolution (ADR) schemes or National Enforcement Bodies (NEB). The outcome of the majority of these cases, is unknown to the ECCs.

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1 Special Eurobarometer 420, PASSENGER RIGHTS REPORT, December 2014. Page 48-49. This survey was carried out by TNS Opinion & Social network in the 28 Member States of the European Union between 13 and 22 September 2014. Some 28,050 respondents from different social and demographic groups were interviewed face-to-face at home in their mother tongue on behalf of the Directorate-General for Mobility and Transport: http://ec.europa.eu/public_opinion/archives/ebs/ebs_420_en.pdf.

2 The same survey (page 6) shows that 31 % of respondents were aware of their rights and obligations linked to transport contracts: 23% had read, seen or heard information about passenger rights, but 59 % had not; 37% thought that passengers were well informed by airline companies about their rights as passengers; 45% agreed that passengers received correct, complete and transparent information about the full ticket price; 54% agreed that passengers were properly informed by airline companies about the details of their flights.

Methods of communication vary from airline to airline and consumers must often go to the airline's website to see which forms of communication are accepted by customer service. If a consumer uses the 'wrong' method of communication, he/she is unlikely to receive a response.

Particularly problematic is the fact that some airlines do not provide an e-mail address and still only offer customer service over the phone or via a web-based portal, making it difficult for consumers to keep a written record of their complaint. In many cases, consumers report having to wait for long periods before getting a reply or getting a standardised response which does not address their concerns. Consumers often contact airlines several times before receiving a response. ECCs continuously strives to encourage and enhance communication and co-operation with air carriers.

In addition to ECC-Net, several other types of organisation offer free assistance to consumers seeking redress from airlines, including NEBs, consumer agencies and ombudsmen. ADRs and courts may have to be called upon when no amicable solution can be reached. In recent years, private claims companies have also been offering consumers assistance for a fee, usually a share of the compensation they obtain from airlines. However, the business model of these companies is not always very transparent and consumers have to pay attention to their terms and conditions.

This report aims to provide a picture of how all of these organisations and companies operate and help passengers to ensure that their rights are respected. To this end, it will analyse the specific problems experienced by passengers regarding flight delays, cancellations, lost/damaged or delayed luggage, difficulties in modifying bookings, unclear pricing, denial of boarding, as well as issues with the reimbursement of taxes and charges.

Examination of complaints shows that the existing mechanisms to ensure that consumers receive the necessary compensation as foreseen by the Air Passenger Rights Regulation³ or by the Montreal Convention⁴ could still be improved, especially through more vigorous action on the part of NEBs.

The aim of EU law in this area is to provide standardised and immediate compensatory measures. This distinguishes it from any tort law, be it national or conventional. When no immediate compensation can be obtained, there is high demand from air passengers for quick and efficient handling of their claims. This could be satisfied by a well-functioning passenger assistance system based on better cooperation between the relevant consumer bodies. Such a system would mean that consumers would no longer have to turn to expensive private consultancies.

ECC Sweden has led this project in close cooperation with the ECCs in Denmark, France, Ireland and Norway, who formed a working group.

The views and interpretations reflected in this report are solely those of the working group members based on their assessment of the data and questionnaire answers submitted to them by all project participants.

ECC France

ECC Norway

ECC Denmark

ECC Ireland

ECC Sweden

This report is part of the action ECC-Net FPA which has received funding under a grant for an ECC action from the European Union's Consumer Programme (2014-2020). The content of this report represents the views of the working group only; it cannot be considered to reflect the views of the European Commission and/or the Consumers, Health, Agriculture and Food Executive Agency or any other body of the European Union. This Agency does not accept any responsibility for use that may be made of the information it contains.

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3 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/legal-content/EN/TXT/HTML/?uri=CELEX:32004R0261&from=SV>.

4 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>.

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 and this abbreviation will be used throughout the report instead of the former name European Court of Justice (ECJ).
CPC	Consumer Protection Cooperation
ECC	European Consumer Centre
ELFAA	European Low Fares Airline Association
ESCP	European Small Claims Procedure
FAQ	Frequently Asked Questions
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
NEB	National Enforcement Body
PIR	Property Irregularity Report
Q&A	Questions and answers
SDR	Special Drawing Rights. The currency value of the SDR is determined by summing the values in U.S. dollars (USD), based on market exchange rates, of a basket of major currencies (the U.S. dollar USD, Euro EUR, Japanese yen JPY, and pound sterling GPD). The SDR currency value is calculated daily.

1. Introduction



About 870 million passengers travelled by air in 2014 in the EU⁵, which makes air travel a very important sector for consumers.

It is therefore in everyone's interest to investigate how APR legislation is respected by airlines and whether there are problems in the market. The main legislation protecting passengers is as follows:

- Regulation (EC) 261/2004 applies in cases where a flight is cancelled or delayed, or when a passenger is denied boarding;
- The Montreal Convention⁶ establishes that it is the airline's responsibility when a consumer suffers economic loss or damage due to a flight delay or when their baggage is lost, damaged or delayed;
- Regulation (EC) No 2027/97 of the European Parliament and of the Council on air carrier liability in the event of accidents as modified by Regulation (EC) No 889/2002.

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

- a lack of information regarding their rights;
- a lack of assistance;
- a lack of respect for their rights to compensation in cases of delay and cancellation.

Between 19.3.2015 and 10.6.2015, the European Commission carried out a public consultation on the 'Aviation package for improving the competitiveness of the EU aviation sector'. Aviation is a key driver of economic growth, jobs and trade with a major impact on the EU's economy and the life and mobility of its citizens.⁷

5 The Association of European Airlines: <http://www.aea.be/statistics.html>.

6 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/mtl199.pdf>.

7 Public consultation on the 'Aviation package for improving the competitiveness of the EU Aviation sector' Report on the contributions received: <http://ec.europa.eu/transport/modes/air/consultations/doc/2015-aviation-package/synopsis-report.pdf>, Page1.

1.1 The ECC-Net

The European Consumer Centres Network (ECC-Net) consists of 30 centres (one in each European Union (EU) Member State, Iceland and Norway).⁸ It is co-financed by the European Commission Directorate-General for Justice and Consumers and by each of the participating states.

The aim of the Network is to increase consumer confidence in the EU internal market by providing consumers with information on their rights under European consumer legislation, and by giving them advice on, and assistance with the resolution of cross-border complaints. As the ECC-Net deals with cross-border consumer complaints and disputes, it is in a unique position to document issues that consumers face when travelling to another country by air.

ECC-Net is regularly contacted by consumers seeking advice on how to contact airlines or the difficulties they are experiencing in notifying airlines of problems they have experienced. Many passengers tend to purchase tickets directly from airline companies, which are often licensed in another Member State. Online booking portals registered in other Member States also account for a growing part of the market. For these reasons, air transport problems remain one of the main issues about which consumers contact the ECC-Net for assistance with cross-border complaints.

In keeping with the ECC-Net’s tradition of analysing and reporting complaints received from air passengers throughout Europe, this report seeks to investigate how developments have progressed.

In 2014, at least 3.5 million visits were registered on ECC-Net members’ websites⁹, while the network also carries out information campaigns and publishes information and publicity material. The centres give presentations to interested parties and work on joint reports and surveys with other ECCs.

ECC-Net provides important feedback and statistics to national consumer agencies, national authorities, the European Commission and other stakeholders on potential problem areas which may require enforcement. From dealing with problems in the air travel market on a daily basis, ECC-Net has seen an increase in cases related to this area over time. Figures from the network and the experiences detailed in this report give some indication to enforcement bodies and legislators regarding where more work is needed in order for the market to function more effectively. Revision of this Regulation is ongoing and the ECC-Net has issued recommendations for this based on its case handling experience.

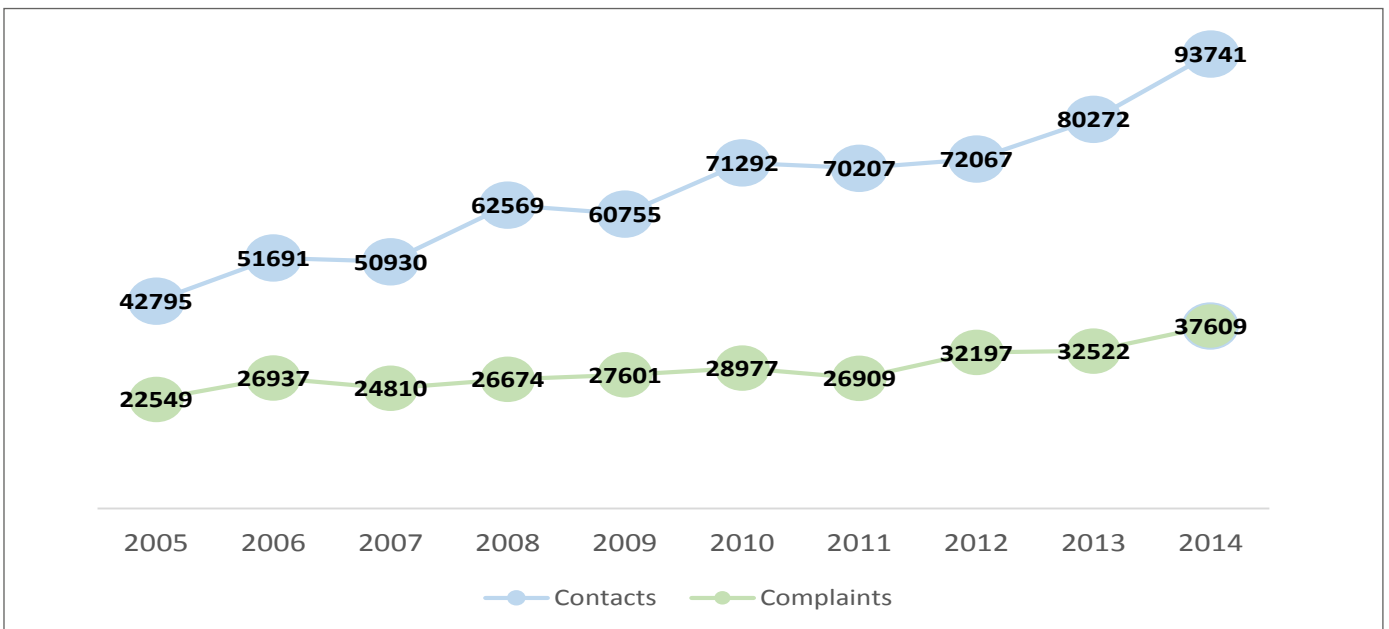


Table 1.1 Between 2005 and 2014, the ECCs had direct contact with consumers on over 650 000 occasions.¹⁰

⁸ http://ec.europa.eu/consumers/ecc/index_en.htm.

⁹ Infographic 10 years serving Europe’s consumers: http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/ecc-net/docs/ecc_net_infographic_en.pdf.

¹⁰ Ibid.

In 2014, 37 609 complaints were handled by ECC-Net and of these, 6 834 related to APR compared to 5 863 in 2013¹¹, an increase of 16 %. The cases handled by the ECCs are cross-border cases in which trader and consumer are based in different Member States, Iceland or Norway. As such, the statistics in this chapter account for only a small proportion of complaints from air passengers in Europe. They should be considered as the tip of the iceberg considering that cancellations and delays in Europe over a given 30-day period numbered 30 454 and 430 805 respectively.¹²

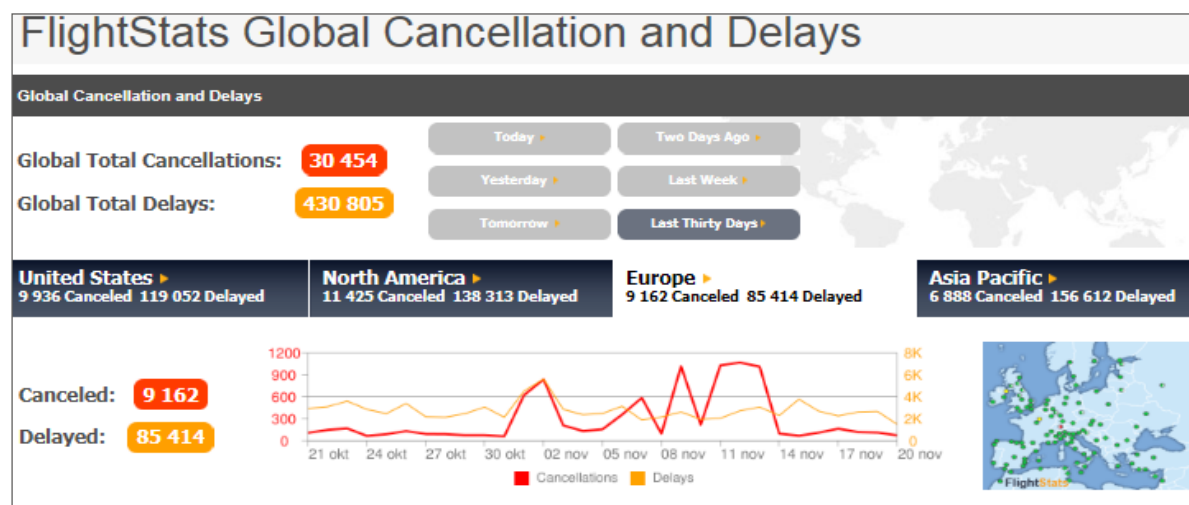


Table 1.2 Statistics for cancelled and delayed flights in Europe the last 30 days (22.10.2015 - 20.11.2015).¹³

However, a European Commission study¹⁴ found that airline data indicates that only between 5 and 10% of passengers entitled to compensation actually claim it. This low “claim rate” can be explained by two factors.

- Low awareness of passengers about their rights; and a perceived failure of airlines to fully inform them about their entitlements.
- Inadequate airline complaint handling procedures discourage many passengers from pursuing claims. Similar shortcomings were reported with regard to NEBs whose role consumers often found confusing.¹⁵

More recent analysis by mode of transport points to an increase in numbers of complaints, revealing that respondents are more likely to complain when they experience air travel disruption (41 %) than for any other mode of transport; ship or ferry (36 %), train (32 %) and long-distance coach (31 %).¹⁶

11 See chapter 5, section 5.2 page 35.

12 Which? The analysis of Civil Aviation Authority (CAA) data found that 9,000 flights, carrying an estimated 900,000 people, were delayed by more than 3 hours between June 2014 and May 2015, potentially entitling passengers on those flights to claim compensation. Research by consumer group Which? found that fewer than 4 in 10 of its members who suffered a delay had claimed. The survey indicates that as many as 558 000 people may have neglected to submit claims and could be owed money. Delayed air passengers could claim millions, see: <http://www.which.co.uk/news/2015/08/delayed-air-passengers-could-claim-millions-411688/>.

13 Flightstats, <http://www.flightstats.com/go/Media/stats.do;jsessionid=F3C5D88F54ED5E00D44A9616E182E239.web3:8009?region=europe&queryDate=last30Days>.

14 Commission working document SWD (2013) 62 final, COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT, Accompanying the document Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delays of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air, page 16. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0062:FIN:EN:PDF>.

15 Ibid.

16 Special Eurobarometer 420, PASSENGER RIGHTS REPORT, December 2014. Page 56. This survey was carried out by TNS Opinion & Social network in the 28 Member States of the European Union between 13 and 22 September 2014. Some 28,050 respondents from different social and demographic groups were interviewed face-to-face at home in their mother tongue on behalf of the Directorate-General for Mobility and Transport. http://ec.europa.eu/public_opinion/archives/ebs/ebs_420_en.pdfA.

Of the respondents, 52 % mentioned that the main reason for not complaining was that they considered it pointless, 22 % thought that the amount involved was too small, 19 % said that the complaint process was too cumbersome and 9 % did not know how or where to complain.¹⁷

Analysis of complaints received by ECC-Net relating to air travel should also take account of the wider context as other parties including NEBs who verify that transport operators respect passengers' rights, consumer agencies and ombudsmen who are responsible for the enforcement of a wide range of consumer legislation, ADRs whose role is to resolve legal disputes without the need to go to court, courts and private legal consultancies are involved in helping consumers to assert their rights.



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17 Special Eurobarometer 420, PASSENGER RIGHTS REPORT, December 2014. Page 58. This survey was carried out by TNS Opinion & Social network in the 28 Member States of the European Union between 13 and 22 September 2014. Some 28,050 respondents from different social and demographic groups were interviewed face-to-face at home in their mother tongue on behalf of the Directorate-General for Mobility and Transport. http://ec.europa.eu/public_opinion/archives/ebs/ebs_420_en.pdfA..

2. The 2015 ECC-Net

air passenger rights report



2.1 Objective of the report

This report is a follow up to the previous APR report from 2011¹⁸ and focuses on *whether or not consumers really get the compensation they are entitled to and at what cost.*

The aim of this report is to check whether passengers receive the compensation which they are due in cases of delay, cancellation, denial of boarding, etc., to investigate what hampers payment of compensation and to recommend measures in order to facilitate the compensation process. The report highlights existing problems based on cases reported to the ECC-Net from 2014 to June 2015.

The aim of EU law in this area is to provide for standardised and immediate compensatory measures. Claiming compensation to which a consumer is entitled in accordance with Regulation (EC) 261/2004 should be free of charge and airlines should not request fees for processing of such claims. However, the emergence of private legal consultancies offering consumers assistance with obtaining compensation for a fee, shows that procedures are often not straightforward.

Regulation (EC) 261/2004 provides for set remedies in clear cut cases. Passengers in such situations should not be obliged to pay in order to have their consumer rights respected, but the ECC-Net is concerned that this is the reality for many air passengers who either need to go to court individually or seek redress through private claims companies in return for a fee which is typically deducted from any compensation the consumer receives. This project looks at the private companies active in this area.

The information provided should contribute to improving airline practices for the benefit of consumers travelling by air to, from and within the EU, Iceland and Norway.

18 ECC-Net Air Passenger Rights Report 2011 – in the aftermath of the ‘Volcanic Ash Crisis’, published in October 2011: http://www.konsumenteuropa.se/globalassets/rapporteur/ecc_net_air_passenger_report_2011.pdf.

2.2 Scope

The scope of this report is:

- Regulation (EC) 261/2004 which applies in cases where a flight is cancelled or delayed, or when a passenger is denied boarding;
- The Montreal Convention¹⁹ which establishes the airline's responsibility when a consumer suffers economic loss or damage due to a flight delay or when their baggage is lost, damaged or delayed;
- Regulation (EC) 2027/97 of the European Parliament and of the Council on air carrier liability in the event of accidents as modified by Regulation (EC) 889/2002;
- ADR complaints;
- Information from the ECC-Net (30 countries) and from NEBs from 2014 until June 2015.

2.3 Research methodology

All statistical data, statements and conclusions contained in this report are based on data gathered by the local ECC offices and provided to the working group in response to the questionnaires circulated. The questionnaires used in the process can be found in Appendix 1 to this report.

The working group sought information about the main areas of complaints, booking intermediaries, NEBs, ADRs and private claims companies.

Most of the quantitative data was collected from the IT system provided by the European Commission for use by ECCs in logging complaints and information requests received.

The data from the questionnaires was analysed in this report to help identify relevant issues or concerns. Questionnaires were sent out in May 2015 and the analysis and drafting of this report took place from August to November 2015.



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19 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/mtl199.pdf>.

3. Legal framework



Air passenger rights are mainly²⁰ governed by two pieces of legislation: Regulation (EC) 261/2004 and the Montreal Convention.²¹ Horizontal consumer protection legislation also applies but falls outside of the scope of this report.

The governing council of the International Civil Aviation Organization (ICAO) has established new global core consumer protection principles for air transport. The principles cover three phases of a customer's experience: before, during and after travel, and will now be considered by ICAO's 191 member states when they develop or review their applicable national regimes.²²

- **Prior to travelling**, passengers should benefit from sufficient levels of advance information and customer guidance, given the wide variety of air transport products on the market and associated legal and other protection which may apply. Product and price transparency is also recommended as a basic customer right.
- **During travel**, passengers should be given regular updates on any special circumstances or service disruptions which arise, as well as due attention in cases of disruption. This could include rerouting, refund, care, and/or compensation. The core principles also call on airlines and other stakeholders to have plans in place to deal major disruptions characterised by multiple flight cancellations, and reiterate the fundamental right to fair access for persons with disabilities.
- **After travelling**, the principles stipulate that efficient complaint handling procedures be established and clearly communicated to customers.

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

21 Regulation (EC) No 2027/97 on air carrier liability in the event of accidents as modified by Regulation (EC) No 889/2002 is also worthy of note. This Regulation lays down the obligations of Community air carriers in relation to liability for death or wounding of passengers if the accident which caused the damage took place on board an aircraft or in the course of any of the operations of embarking or disembarking.

22 ICAO Council adopts core principles on consumer protection and new long-term vision for air transport liberalization: <http://www.icao.int/Newsroom/NewsDoc2015/COM.25.15.EN.pdf>.

3.1 Regulation (EC) 261/2004

Regulation (EC) 261/2004 came into force 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 European Economic Area (EEA) Member State²³ airports and all flights arriving in these countries if the airline has a licence issued by an authority in an EEA Member State.

The Regulation states that if a flight is cancelled or a passenger is denied boarding, airlines must offer passengers a choice between being rerouted/rebooked or reimbursement. If passengers choose to be reimbursed, the airline no longer owes them a duty of care and they must make other travel arrangements themselves. If they choose rebooking, the airline must take care of them until they reach their final destination. This includes providing meals, refreshments and communication facilities in reasonable proportion to waiting time. In cases where a rebooking cannot be made for the same day, the airline must provide hotel accommodation and transportation to the hotel.

When a flight is delayed beyond a certain length of time (depending on the length of the flight), the air carrier is also obliged to provide the level of care and assistance described above. If a flight is delayed and arrives at the final destination 3 hours later than planned, passengers are entitled to financial compensation, unless the delay is caused by extraordinary circumstances beyond the air carrier's control. The amount of compensation depends on the distance of the flight, and is as follows:

- EUR 250 for up to 1 500 km;
- EUR 400 for between 1 500 and 3 500 km;
- EUR 600 for over 3 500 km.

When the delay is at least 5 hours, the airline must reimburse the full cost of the ticket within 7 days for the part or parts of the journey which were not completed, and for the part or parts which were if they no longer served any purpose in relation to the passenger's original travel plan, together with, when relevant, a return flight to the initial point of departure at the earliest opportunity.²⁴

It is important to note, that there are no exemptions from the right to care, regardless of the reason for the disruption.²⁵

If a flight is cancelled less than 14 days prior to the scheduled departure and no suitable alternative²⁶ is offered, or if a passenger is 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 aim is to compensate the passenger for the inconvenience suffered as a result of the disruption. As the amount of compensation is determined by the length of the flight, it has no connection to the actual economic loss suffered by the passenger. The consumer does not need to prove anything.

The air carrier is obliged to inform passengers of their rights at the check-in desk via a clearly legible and visible notice. 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, denial of boarding or a delay of at least 2 hours.

The Regulation obliges Member States to nominate or create NEBs, which are responsible for enforcing the Regulation in their territory. Passengers who believe they have not been treated correctly should contact the NEB in the country where the incident took place.

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23 All EU Member States plus Iceland, Liechtenstein and Norway. It also applies to Switzerland under a bilateral agreement.

24 Article 6 and Article 8(1)(a).

25 See Case C-12/11McDonagh v Ryanair: http://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=uriserv%3AOJ.C_.2013.086.01.0002.01.ENG.

26 Cancellation 7-14 days before departure: The air carrier must offer the passenger the chance to travel no more than 2 hours earlier than and arrive no later than 4 hours after the scheduled times in order to avoid a claim for compensation. Cancellation less than 7 days before: The air carrier must offer the passenger the chance to travel no more than 1 hour earlier than and arrive no later than 2 hours after scheduled times.

In March 2013, the European Commission published a proposal for an amendment to Regulation (EC) 261/2004 and Regulation (EC) 2027/97.²⁷ The proposal 'Air transport: enforcement of passenger rights; air carrier liability limits 2013/0072(COD)' was adopted by the European Parliament in February 2014 and a decision from the Council is currently pending.²⁸

One of the aims of the passenger rights revision is to clarify areas in which the current rules are unclear and problematic for both passengers and airlines. The proposal includes a clear definition of the term 'extraordinary circumstances' as 'circumstances 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 new definition, which is in line with EU case law (C-549/07 Wallentin-Hermann), confirms that while natural disasters or air traffic control strikes would continue to be considered as 'extraordinary', some technical problems – such as those identified during routine aircraft maintenance – would not.²⁹

The new rules also take into account the financial implications of passenger rights for the air transport sector. The objective of the revision is to ensure that European air carriers operate under harmonised conditions in a liberalised market.³⁰

The proposed Regulation would clarify the rules for access to compensation, including:³¹

- an increase in the time threshold after which compensation is payable in the event of a delay from 3 to 5 hours for all journeys within the EU (for journeys outside the EU, the threshold would depend on the length of the flight);
- the introduction of a single time threshold of 2 hours after which care and assistance, such as refreshments, must be provided for all delayed flights;
- clear rules for connecting flights and when passengers have the right to care and/or compensation;
- a requirement for airlines to reroute passengers on other carriers or means of transport if they cannot do so on their own service within 12 hours;
- clarification of rights for passengers whose flights are rescheduled less than 2 weeks before departure;
- a clear explanation of passenger rights during tarmac delays and the requirement for passengers to be told about flight disruption as soon as information is available.

The changes would also create more effective complaint handling procedures and strengthen enforcement, monitoring and sanctioning policies. In particular, airlines would have to provide clear complaint procedures (web form, email address) and reply to passengers within specific deadlines.

The draft proposal strengthens passenger rights in the event of baggage handling problems, and includes:

- specific new rules for mobility equipment and musical instruments;
- transparency for passengers on baggage allowances and any additional charges for baggage;
- the requirement for airlines to provide forms for baggage handling complaints at the airport.

Under the pending revision of Regulation 261/2004, the right to compensation in the event of delays will be incorporated into the legislation, whereas it is currently based on the Court of Justice of the European Union (CJEU) rulings on the Sturgeon and Nelson cases. Another proposed change is a limitation of assistance to 3 days and EUR 100 per person per night for hotel accommodation.

.....
27 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 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 and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013PC0130&from=EN>.

28 Remaining legislative demands of the European Parliament's 7th legislative term, August 2014, page 38-39. http://www.europarl.europa.eu/the-secretary-general/resource/static/files/Documents/2014september-Remaining_Legislative_Demands.pdf.

29 <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52013PC0130&from=EN>.

30 Outcome of the Council meeting, 3394th Council meeting, Luxembourg, 11 and 12 June 2015: <http://www.consilium.europa.eu/en/policies/air-passenger-rights/>.

31 <http://www.consilium.europa.eu/en/policies/air-passenger-rights/>.

3.2 Clarification by the Court of Justice of the European Union

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

In 2008, the CJEU was presented with a case where the airline refused to pay compensation on the grounds of extraordinary circumstances³². 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 arguments that the frequency of the technical problems experienced by an air carrier is a deciding factor, and also rejected the argument that an air carrier's compliance with minimum maintenance rules could in itself suffice to establish that that carrier had taken 'all reasonable measures'. Moreover, the Court noted that when defining an extraordinary circumstance the similar, but not identical, term in the Montreal Convention is not conclusive. Finally, the Court also made it clear that the burden of proof rests upon the air carrier who claims extraordinary circumstances and that terms which have not previously been defined in EU law must only be interpreted when they appear as an exception to a main rule. This is especially the case when it concerns consumer protection.

In 2014, the CJEU interpreted the term 'extraordinary circumstances' in relation to technical issues.³³ In that case, the CJEU came to the conclusion that a technical problem which occurred unexpectedly and was neither attributable to poor maintenance, nor detected during routine maintenance checks, did not constitute 'extraordinary circumstances'.

In 2010,³⁴ the Court ruled that the definition of 'a flight' is to be understood as only concerning either the outward or homeward journey, not the two combined, even if both are booked at the same time. In practice, this meant that an incident in a country outside the EU was not covered by the Regulation³⁵ because the air carrier was not licensed in the EU.

In 2012, the CJEU provided a further definition of 'denied boarding'.³⁶ The court decided that the concept must be interpreted as relating not only to cases where boarding is denied because of overbooking but also to those where boarding is denied on other grounds, such as operational reasons. In the same ruling, the Court stated that 'denied boarding' must be interpreted as meaning that 'extraordinary circumstances' resulting in an air carrier rescheduling flights after those circumstances arose cannot give grounds for denying boarding on later flights or for exempting a carrier from its obligation to compensate a passenger to whom it denies boarding on such a flight.

The CJEU stated in 2012³⁷ that there are no common time limits for bringing actions for compensation under Articles 5-7 of the Regulation. Time limits are therefore to be determined in accordance with the rules of each Member State on the limitation of actions.

In May 2011³⁸, the Court ruled that in cases of delay, the airline should make sure that necessary resources are available, so that when the reason for the delay passes, operations may be resumed as soon as 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 came in 2009 in the so-called Sturgeon case.³⁹ Here, the Court stated that, under Articles 5-7 of Regulation 261/2004, if a delay causes passengers to arrive at their final destination more than 3 hours behind schedule, the passengers may be entitled to compensation. This ruling has been widely discussed because the Articles in the Regulation only mention compensation with regard to cancellations and denial of boarding. The High Court of the United Kingdom challenged it, asking the CJEU to reconsider⁴⁰ and the UK NEB suspended application of the Sturgeon decision to complaints regarding delays of this nature pending final determination of the matter by the CJEU.

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

33 C-257/14 (Corina van der Lans vs. KLM).

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

35 An accident such as a delay at arrival or a missed connecting flight on the territory of a third country when the operating air carrier is a non-EU carrier still falls under the Regulation if the journey started on EU territory.

36 C-22/11 (Finnair Oyj vs. Timy Lassooy).

37 C-139/11 (Joan Cuadrench Moré vs. KLM).

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

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

40 Case-629/10 Tui Travel, British Airways, EasyJet, IATA vs. Civil Aviation Authority.

The Grand Chamber of the CJEU again decided on compensation for delayed flights in the joined cases Nelson and TUI Travel.⁴¹ The judgment confirms the 2009 ruling in *Sturgeon*, in which the Court held that under Articles 5-7 of Regulation 261/2004 passengers not only have the right to standardised monetary compensation in case of denied boarding or cancellation, but also in case of long delay (long being three hours or more). This interpretation of Articles 5-7 had raised some questions because neither Article 7 nor any other provision of the Regulation expressly provides the right to compensation in case of delay. The ruling in *Sturgeon* has been questioned by airlines since 2009. The arguments the airlines have made is for example that *Sturgeon* is invalid because it is inconsistent with both the 2006 IATA ruling and the Montreal Convention for the Unification of Certain Rules for International Carriage by Air (ratified by the EC).

The questions put to the Court essentially sought to ascertain whether any of the objections raised by the airlines had merit. The Court ruled that they did not.

On the compatibility with the Montreal Convention:

49 (...) it should be made clear that, like the inconveniences referred to in IATA and the European Low Fares Airline Association (ELFAA), a loss of time cannot be categorised as ‘damage occasioned by delay’ within the meaning of Article 19 of the Montreal Convention, and, for that reason, it falls outside the scope of Article 29 of that convention.

50 Article 19 of the Montreal Convention implies, in particular, that the damage arises as a result of a delay, that there is a causal link between the delay and the damage and that the damage is individual to passengers depending on the various losses sustained by them.

54 The specific obligation to pay compensation, imposed by Regulation (EC) 261/2004, does not arise from each actual delay, but only from a delay which entails a loss of time equal to or in excess of three hours in relation to the time of arrival originally scheduled. In addition, whereas the extent of the delay is normally a factor increasing the likelihood of greater damage, the fixed compensation awarded under that regulation remains unchanged in that regard, since the duration of the actual delay in excess of three hours is not taken into account in calculating the amount of compensation payable under Article 7 of Regulation (EC) 261/2004.⁴²

As to the principle of legal certainty:

67 (...) having regard to the requirements arising from the principle of equal treatment, air carriers cannot rely on the principle of legal certainty and claim that the obligation imposed on them by Regulation (EC) 261/2004 to compensate passengers, in the event of delay to a flight, up to the amounts laid down therein infringes the latter principle.

*68 In addition, as the Advocate General observed in point 46 of his Opinion, once the judgement in *Sturgeon and Others* was delivered, both air passengers whose flights were delayed and air carriers were able to know unequivocally the point from which those passengers may claim payment of compensation and the carriers will be required to pay that compensation, respectively, since the introduction of a clear timelimit also serves to prevent national courts from making different assessments of what constitutes a long delay which would, in some cases, give rise to legal uncertainty.*

.....
41 Joined Cases C-581/10 *Nelson and Others v Deutsche Lufthansa AG* and C-629/10 *Tui Travel, British Airways, EasyJet, IATA vs. Civil Aviation Authority*.

42 The U.K.'s High Court of Justice referred the case to the CJEU for reconsideration of whether Reg. 261/2004 should be interpreted as requiring airlines to pay compensation to passengers whose flights are subject to delays in excess of 3 hours and, if so, whether such interpretation is in accordance with the Montreal Convention and principles of proportionality, legal certainty and equal treatment. 55 In those circumstances, the loss of time inherent in a flight delay, which constitutes an inconvenience within the meaning of Regulation No 261/2004 and cannot be categorised as ‘damage occasioned by delay’ within the meaning of Article 19 of the Montreal Convention, cannot come within the scope of Article 29 of that convention. 56 Consequently, the obligation under Regulation No 261/2004 intended to compensate passengers whose flights are subject to a long delay is compatible with Article 29 of the Montreal Convention.

As to the principle of proportionality:

77 First of all, the obligation to pay compensation which stems from Article 7 of Regulation (EC) 261/2004 does not concern every delay, but only long delays.

78 Next, the amount of compensation, fixed at EUR 250, EUR 400 and EUR 600 depending on the distance of the flights concerned may still be reduced by 50 % in accordance with Article 7(2)(c) of Regulation (EC) 261/2004, where the delay is – in the case of a flight not falling under subparagraphs (a) or (b) of Article 7(2) – less than four hours (*Sturgeon and Others*, paragraph 63).

79 In addition, air carriers are not obliged to pay compensation if they can prove that the cancellation or long delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, that is, circumstances which are beyond the air carrier's actual control (see *Sturgeon and Others*, paragraph 67).

80 Moreover, the discharge of obligations pursuant to Regulation (EC) 261/2004 is without prejudice to air carriers' rights to seek compensation from any person who caused the delay, including third parties, as Article 13 of that regulation provides. Such compensation may accordingly reduce or even remove the financial burden borne by carriers in consequence of those obligations. Nor does it appear unreasonable for those obligations initially to be borne, subject to the abovementioned right to compensation, by the air carriers with which the passengers concerned have a contract of carriage that entitles them to a flight that should be neither cancelled nor delayed (IATA and ELFAA, paragraph 90, and *Sturgeon and others*, paragraph 68).

The Court concluded:

1. Articles 5 to 7 of Regulation (EC) 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, and repealing Regulation (EEC) 295/91, must be interpreted as meaning that passengers whose flights are delayed are entitled to compensation under that regulation where they suffer, on account of such flights, a loss of time equal to or in excess of three hours, that is, where they reach their final destination three hours or more after the arrival time originally scheduled by the air carrier. Such a delay does not, however, entitle passengers to compensation if the air carrier can prove that the long delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, namely circumstances beyond the actual control of the air carrier.

2. Consideration of the questions referred for a preliminary ruling has disclosed no factor of such a kind as to affect the validity of Articles 5 to 7 of Regulation (EC) 261/2004.

The decision confirmed that passengers have the right to fixed monetary compensation under Article 7 of the Regulation in cases of a delay of 3 hours or more. Compensation is only not due in case of 'extraordinary circumstances'.⁴³ Several judgements have already been made on the question of what exactly constitutes 'extraordinary circumstances'.⁴⁴

In 2013, the CJEU provided another ruling on the right to compensation when it comes to delayed flights.⁴⁵ The court ruled that Article 7 of the Regulation must be interpreted as meaning that compensation is payable, on the basis of that Article, to passengers on directly connecting flights who have been delayed at departure for a period below the limits specified in Article 6 of that Regulation, but have arrived at the final destination at least 3 hours later than the scheduled arrival time, given that the compensation in question is not conditional upon there having been a delay at departure and, thus, upon the conditions set out in Article 6 having been met

43 In the CJEU decision of C 549/07 *Wallentin-Hermann v Alitalia* it was held that for an event to be characterised 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.' In considering this definition of extraordinary, the CJEU ruled that as aircraft regularly experience technical problems, 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 on to state that not only must 'extraordinary circumstances' be present, but that the airline must also be able to show that the circumstances 'could not have been avoided even if all reasonable measures had been taken'.

44 Cases C-294/10 and C-549/07.

45 C-11/11 (*Air France SA vs. Heinz-Gerke Folkerts and Luz-Tereza Folkerts*).

3.3 Clarification from the European Commission⁴⁶

The European Commission has various means to ensure consistent and seamless application of the Regulation and the relevant case law. For example, it holds regular meetings with NEBs, maintains regular contact by e-mail/phone, opens infringement procedures, etc.

Since the Regulation's introduction, the Commission has issued two interpretative documents⁴⁷ in order to facilitate its homogeneous application.

One important issue was the right to rerouting. The question arose as to whether other means of transport were included under this right, as many airlines were not prepared to offer such options. The Commission emphasised that rerouting could also be by train, bus and presumably car. In a Communication to the Parliament and Council from April 2011, the Commission definitively stated, that rerouting could be via another mode of transport. Furthermore, rerouting can also be via another airline, and not, as many airlines believe, only through their own flights.

To limit liability for air carriers in special situations like the ash cloud incident in 2010, it must be noted that many delays and cancellations experienced during heavy snow fall were caused by airports not being sufficiently prepared or equipped to handle such situations. In these instances, it would be appropriate to advise air carriers to avail themselves of the option offered under Article 13 of the Regulation, which states that the air carrier can seek redress from contractual parties.⁴⁸

3.4 The Montreal Convention

Since 1999, the Montreal Convention, ratified by around 130 countries including all EU Member States, has regulated both delays to passengers and delay or damage to, or loss of their luggage. The Convention is applicable to international flights in instances where both the country of departure and the country of arrival have ratified it. It is therefore applicable to all flights within the EU, both domestic and international.⁴⁹

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 actual loss suffered, not the incident causing the loss. The Convention limits the potential liability of an air carrier to 1 131 Special Drawing Rights (SDR) in respect of passengers whose luggage is delayed, damaged or lost, and to SDR 4 694 in respect of passengers suffering loss due to a delay.⁵⁰

As a general rule when dealing with claims for damages, the claimant must try to mitigate their loss and should limit their expenses to reasonable necessities.

.....
46 It is important to note that only the CJEU can interpret EU legislation and that statements from the Commission are not legally binding, but indications of the Commission's view.

47 Q&A, February 17th 2008, Memo/10/143 of April 20th 2010 and COM/2011/0174 final Communication from the Commission to the European Parliament and the 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: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52011DC0174&from=EN>.

48 The main third parties who could be responsible for disruption are principally airports, air navigation service providers (ANSPs) and ground handlers. In practice it is very difficult to claim against these bodies in view of legal obstacles in contract or national law (e.g. airport conditions of use generally only allow claims in very exceptional cases which are difficult to prove; airports and ANSPs are usually government bodies and may have state immunity from claims; ground handlers are protected by the IATA Standard Ground Handling Agreement, which means that in most circumstances airlines cannot claim costs from them).

49 EU Acquis, The acquis is the body of common rights and obligations that is binding on all EU Member States: http://ec.europa.eu/enlargement/policy/conditions-membership/chapters-of-the-acquis/index_en.htm.

50 An SDR is a currency unit used by the IMF and its exchange rate to the euro is around 1.2 as of August 2015: https://www.imf.org/external/np/fin/data/rms_five.aspx.

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 7 days from the moment of delivery. For delayed baggage the claim must be made within 21 days of the passenger getting the baggage back. Even if the carrier does not admit responsibility for the loss of the baggage, the passenger is entitled to make a claim for his/her loss if the baggage does not arrive by 21 days after its scheduled arrival.

Under Article 35 of the Convention, an action has to be brought to the Court within 2 years of the arrival or scheduled arrival of the baggage. Passengers need to be aware of these timeframes and respect them when contacting the airlines.

In 2012, in a case regarding the right to compensation when a passenger had belongings in another passenger's checked in luggage,⁵¹ the CJEU ruled that Article 22(2) read in conjunction with Article 3(3) in the Montreal Convention must be interpreted as meaning that the right to compensation and the limits to a carrier's liability in the event of loss of baggage also apply to a passenger who claims that compensation by virtue of the loss of luggage checked in in another passenger's name, provided that the lost baggage did in fact contain the first passenger's items.

In 2009, the CJEU 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 – SDR 1 131 – must comprise both types of damage.⁵²



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51 C-410/11 Sánchez, González, Oviedo vs. Iberia Líneas Aéreas de España SA).

52 C-69/09 Walz va. Clickair SA.

4. ECC-Net

case handling data

This chapter provides an overview of air passenger complaints reported to the ECC-Net, based on data from two sources. The quantitative data comes from the IT system provided by the European Commission to be used by the ECCs for recording 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, data was also gathered from a questionnaire sent to each ECC, of which a copy can be found in appendix 1.

The cases handled by the ECCs concern only reported cross-border cases, where the trader and the consumer are based in different Member States, Iceland or Norway. As such, the statistics in this chapter account for only a small proportion of the overall number of complaints from air passengers in Europe.

According to the Association of European Airlines, 869 795 000 passengers were transported in 2014 compared with 769 079 000 in 2010.⁵³ The number of cases handled by the Network regarding problems for air passengers in Europe must be viewed against the overall number of passengers transported.

A Eurobarometer survey carried out in September 2014 shows that 22 % of air transport users had faced disruption in the previous 12 months. The most common forms of disruption were long delays (69 %), baggage-related disruptions, i.e. delayed, damaged or lost baggage (21 %) and cancellation (15 %). Of those respondents who had experienced disruptions, 57 % were dissatisfied with how this was handled, whether in terms of general information received about the disruption, assistance (48 %) or financial compensation (55%).⁵⁴

.....
53 The Association of European Airlines: <http://www.aea.be/statistics.html>.

54 Special Eurobarometer 420, PASSENGER RIGHTS REPORT, December 2014. Page 48-49. This survey was carried out by TNS Opinion & Social network in the 28 Member States of the European Union between 13 and 22 September 2014. Some 28,050 respondents from different social and demographic groups were interviewed face-to-face at home in their mother tongue on behalf of the Directorate-General for Mobility and Transport. http://ec.europa.eu/public_opinion/archives/ebs/ebs_420_en.pdfA.

Even though complaints relating to air travel received by the ECC-Net represent only a small segment of problems experienced by air passengers, the number of cases handled by the Network is large enough to enable it to gain an insight into the type of problems air passengers in Europe face.⁵⁵

The main problem is that some airlines do not apply the law as they do not agree with it. It is surprising to encounter an industry where several traders openly decide to not apply the law or case law from the CJEU.⁵⁶

Examples⁵⁷ include airlines not complying with ADR decisions, as mentioned on the blacklist⁵⁸ in the Swedish consumer magazine Råd & Rön and the website of the Air Passenger Complaint Handling Body in Norway⁵⁹ which deals with cases where air passengers' rights have not been respected by airlines.

A report from the UK Civil Aviation Authority (CAA) shows 'that it appears a small number of airlines are letting their passengers down by failing to consistently pay compensation and also applying a two year limit to claims.'⁶⁰ The CAA is now starting the legal phase of its enforcement process, stating: 'With the law clear, passengers rightly expect airlines to abide by it and expect the CAA to enforce it.'⁶¹

These difficulties may be related to the average level of ticket prices compared to the compensation rates, even though, when taken on overall business turnover, this should be part of the costing strategy of an airline.

Also, as some airlines still do not inform consumers about their rights, and many consumers do not request the compensation to which they are entitled, communication from airlines should be improved, as stated in the section on dealing directly with airlines.⁶²

55 From 1 January to 30 October 2015, ECCs registered 7 381 complaints regarding air passenger rights, 835 about luggage, 6 546 on passenger transport and 1 604 about delays.

56 CAA launches legal action: regulator acts against three major airlines to protect UK passengers. The UK Civil Aviation Authority (CAA) has announced enforcement action against three major airlines, as the regulator steps in to safeguard the rights of millions of passengers. The action follows the CAA's comprehensive six-month review of airline policies in relation to supporting passengers during disruption, including their approaches to paying flight delay compensation and the provision of information about their rights. This review has already resulted in a number of airlines changing their policies, resulting in millions of passengers benefiting from improved support during disruption. <http://www.caa.co.uk/application.aspx?appid=7&mode=detail&nid=2437>.

57 In Denmark, the NEB, according to information received from them, reports the matter to the prosecutor every time an airline does not pay a consumer in accordance with an NEB decision. The airline can be fined for not abiding by an NEB decision.

Ryanair clearly informed in their case ref: 802022/DEBKHF "I acknowledge receipt of your online claim dated 04/12/2015. Ryanair are now in receipt of the AESA's recommendation for the above claim. I regret that on this occasion, Ryanair cannot comply with the board's recommendation, as we believe that their decision is outside the scope of the EU Regulation 261/2004." (Spanish NEB AESA ref.number 007063-15: http://www.seguridadaerea.gob.es/LANG_EN/home.aspx).

58 Blacklist 2015 Råd & Rön: <http://www.radron.se/svarta-listan/?ind=10>. The current blacklist is based on cases from the second half of 2014 handled by the Swedish National Board for Consumer Disputes (ARN) in which the consumer has still not received redress. Råd & Rön goes through ARN's decisions and contacts both the consumer and the company to hear what has happened. Sometimes the companies then pay, rather than going on the blacklist. Some airlines carry a warning triangle which means that they have also been on the blacklist before during the previous 2 years. Air Baltic (delayed flight), Air China (delayed flight), Air Méditerranée (delayed flight), British Airways (cancelled flight, rebooked on a flight departing 23 hours later), Norwegian (20 cases with a total of 56 travellers regarding delayed flights. Some travellers were partially compensated before or after ARN's decision, some hired solicitors. One case was taken to the district court where Norwegian agreed to pay.), Primera Air (delayed flights), Pullmantur Air S.A (delayed flights), Qatar Airways (cancelled flight, four passengers rescheduled for the following day. The airline owed EUR 2 400 in compensation for the delay and SEK 3 306 for hotels and phone calls but only paid the SEK 3 306.), Tailwind Airlines (delayed flight), Wizz Air (7 cases with a total of 13 travellers regarding delayed flights), Vueling Airlines S.A. (delayed flights).

59 In Norway, the NEB regularly publishes the names of the companies that do not comply with their decisions on their website: <https://fly.transportklagenemnda.no/Forside/Foelger-ikke-vedtak> (Only in Norwegian).

60 Financial compensation, technical faults and time limitations, Compliance report, Civil Aviation Authority UK 2015, page 2: <https://www.caa.co.uk/docs/33/CAP%201275%20Compliance%20Report%20230315.pdf>. Andrew Haines, chief executive of the CAA, said: 'Airlines are well aware of the support they must provide when there is disruption and passengers have every right to be disappointed that a small number of airlines are not complying with the Court of Appeal rulings and continue to let people down in this way.'... 'We have been active to ensure airlines are applying consumer law appropriately and I warmly welcome the response of those airlines that have changed their policies as a result of this work. Our job is not done until all airlines can demonstrate they are providing care, assistance and compensation as required by law.' 'While we have no power to secure redress for individual consumers, we are determined to stand up for passengers and are taking this action to safeguard their rights, making sure all airlines consistently provide their passengers with the support and compensation they are legally entitled to.'

61 Ibid. page 3. See also article 'UK airline regulator to force Ryanair to pay flight delay compensation': <http://www.theguardian.com/business/2015/sep/17/european-court-ruling-boosts-flight-delay-compensation-claims>. Ryanair denies breaching consumer law. 'The CAA claims Ryanair is still failing to comply with rules over flight delay compensation, despite pressure from the airline body and binding court decisions. While it has managed to force three other airlines - Jet2, Aer Lingus and Wizz Air - to change their policies, the CAA says Ryanair is still not falling into line.' http://www.travelmole.com/news_feature.php?news_id=2018540.

62 This has also been seen in a survey. See page 4 in this report.

4.1 Total volume of cases handled by the ECC-Net

During the period 2012-2014, the volume of contacts⁶³ handled by the ECC-Net has increased by 30 %, from 72 067 in 2012 to 93 741 in 2014 (see table 1). One explanation for this could be that the ECCs are better known than they were in 2012, when a survey showed that 22 % of respondents had heard of them.⁶⁴ In addition, there is a consistent increase in the number of consumers engaging in cross-border shopping. In 2012, 11 % of consumers made at least one cross-border purchase, whilst by 2014, this had increased to 19 %.⁶⁵

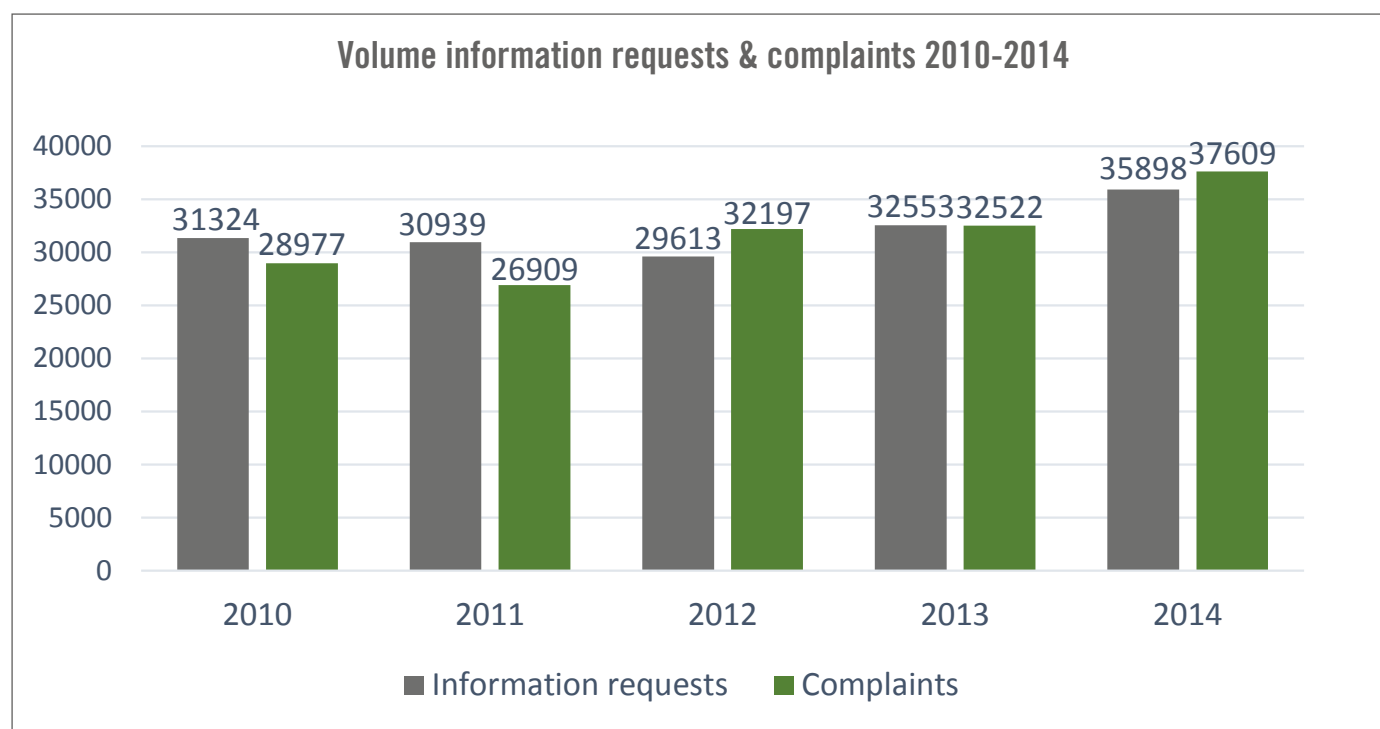


Table 4.1 Information requests and complaints, statistics from DG Justice and Consumers E.5. Data: ECC Database.

63 A contact can be an information request or a complaint. A complaint is defined as a statement of dissatisfaction by a consumer concerning a cross-border transaction with a seller or a supplier. Where information is given to consumers but no further follow up is required, the matter is classed as an information request. The ECC-Net registers every contact in the ECC-Net Case Handling IT tool which is used to collect and handle the necessary data. The tool is operated by the European Commission. The cases are classified using the COICOP-classification system, which is implemented in the IT-tool registration function. This system is a reference classification published by the United Nations Statistics Division.

64 Flash Eurobarometer 358, June 2013: http://ec.europa.eu/public_opinion/flash/fl_358_en.pdf.

65 Flash Eurobarometer 397, Consumer attitudes towards cross-border trade and consumer protection, September 2015, page 4: <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2031>. Consumer Conditions Scoreboard, page 4, 9th edition, July 2013 http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/9_edition/index_en.htm Growth forecast of cross-border online sales in Western Europe, <http://e-commercefacts.com/research/2015/06/growth-forecast-of-cross-border-online-sales-in-western-europ/index.xml>.

4.2 Volume of air transport cases

Looking at the volume of information requests and complaints from air passengers, we see an increase in the number of complaints in 2014. The ECC-Net handled 37 609 complaints and of these, 18% concerned air transport services.

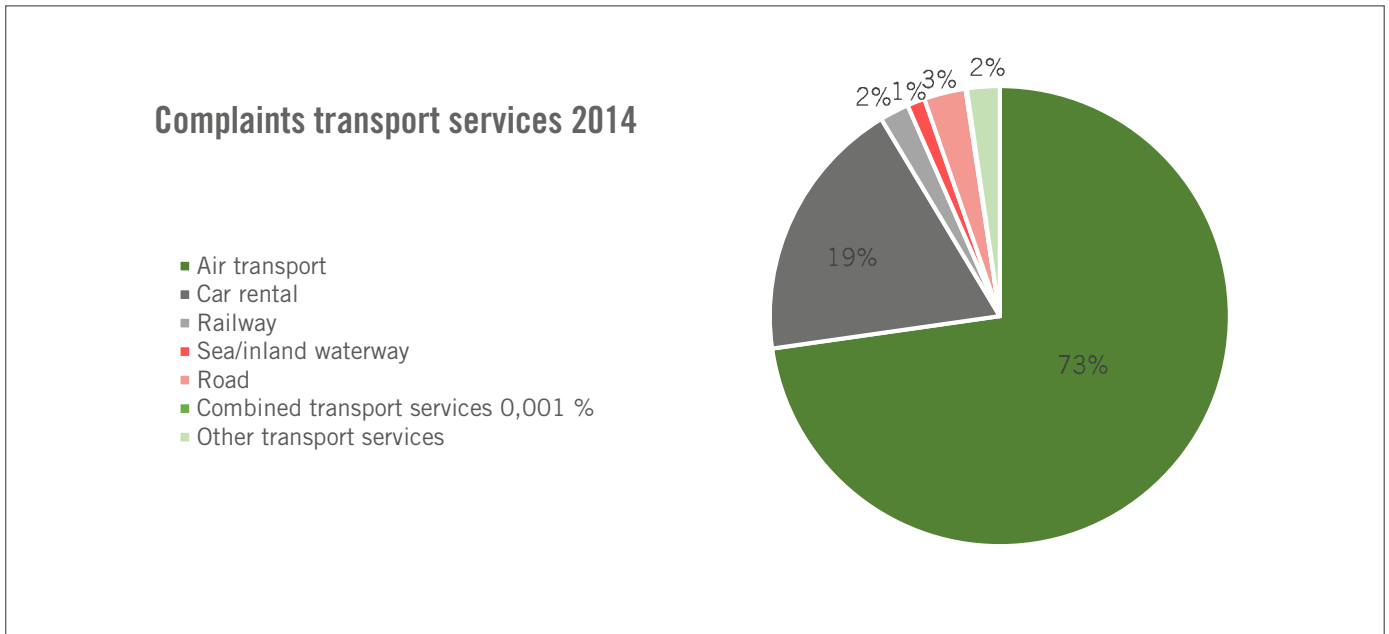


Table 4.2 Complaints transport services 2014, statistics from DG Justice and Consumers E.5. Data: ECC Database.

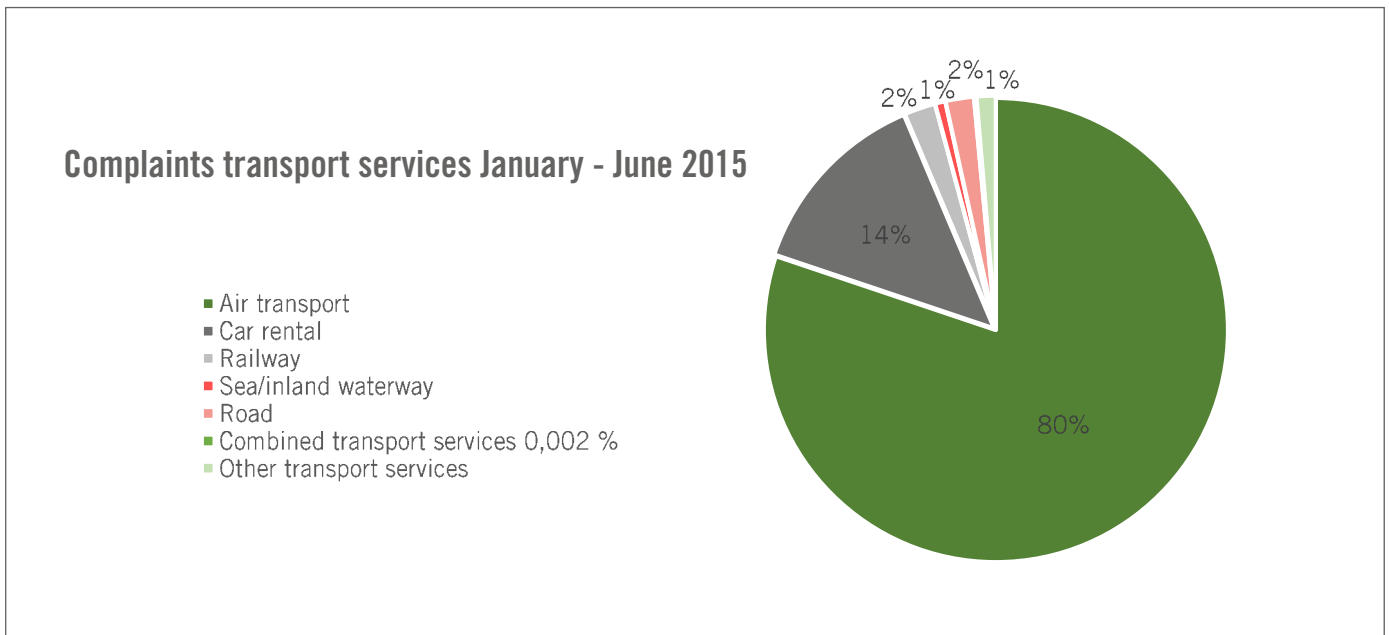


Table 4.3 Complaints transport services January–June 2015, statistics from DG Justice and Consumers E.5. Data: ECC Database.

Volume information requests & complaints air passengers rights 2010 - 2014

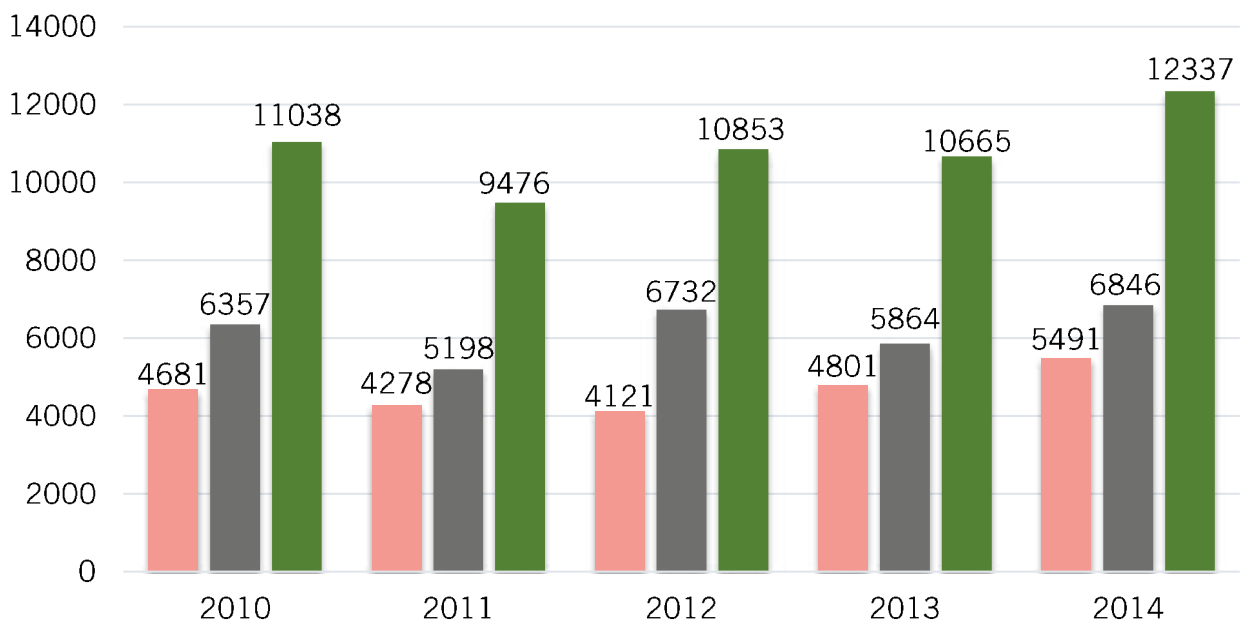


Table 4.4 Information requests and complaints regarding air passenger rights 2010-2014. Total number of contacts is the sum of these two items.

The ECC-Net saw a substantial increase in air transport complaints in 2010 due to the eruption of the Eyjafjallajökull volcano on 14 April which affected a large number of travellers.⁶⁶

In 2011, the numbers returned to the levels of 2007-2009, but in 2012 there was an increase of 29.5 %. A decrease of 14.8 % was seen in 2013 and this turned into a 16.7 % increase in 2014.

Air transport - Complaints per topic evolution over time

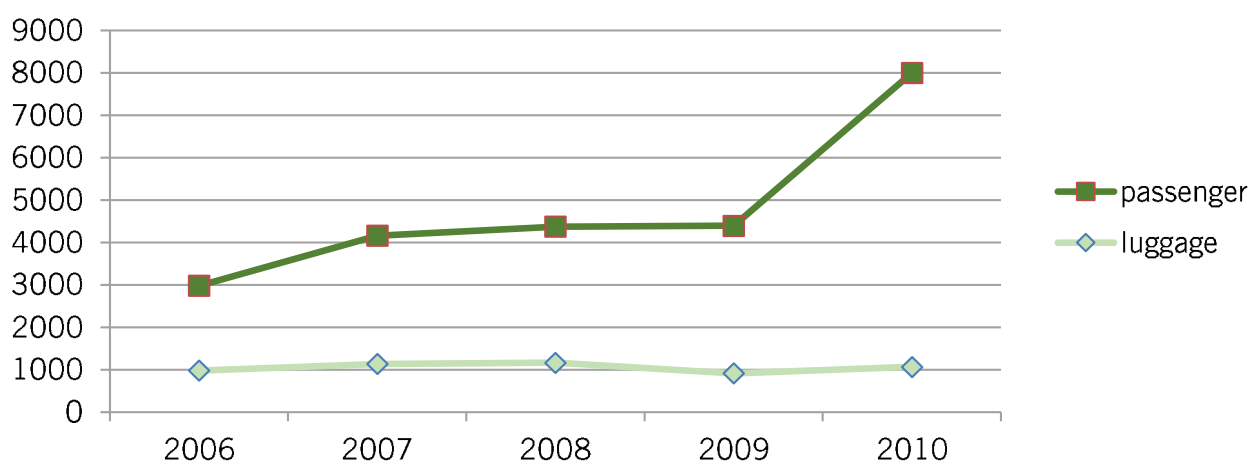


Table 4.5 Increases in complaints concerning air passenger transport and transport of luggage by air received by the ECC-Net (2006-2010).⁶⁷

66 ECC-Net Air Passenger Rights Report 2011 – in the aftermath of the ‘Volcanic Ash Crisis’, October 2011: http://ec.europa.eu/consumers/ecc/docs/ecc_net_air_passenger_report_2011.pdf.

67 Ibid. page 22.

Volume information requests & complaints luggage issues 2010 - 2014

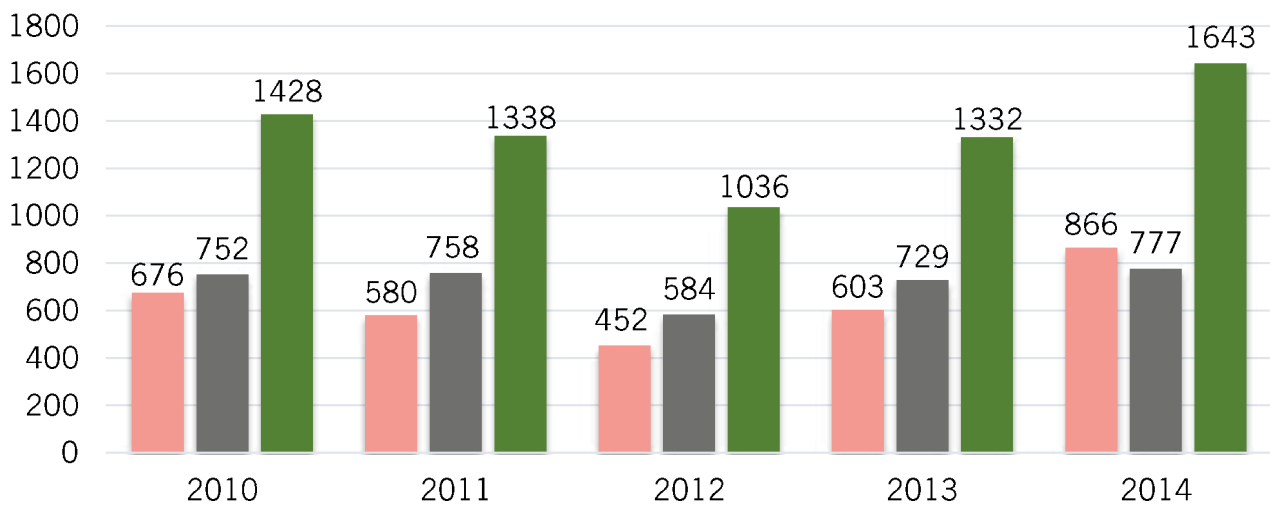


Table 4.6 Information requests and complaints regarding luggage issues 2010–2014, statistics from DG Justice and Consumers E.5. Data: ECC Database.

While consumers frequently seek information or have complaints about their rights as air passengers, fewer have questions or complaints about the transport of their luggage. In 2013 and 2012, the percentages of information requests and complaints received pertaining to luggage were 12 % and 10 % respectively. These difficulties can mainly be categorised as damaged, delayed or lost luggage.

Under the Montreal Convention, consumers are entitled to compensation of up to SDR 1 131 when luggage is damaged, delayed or lost. This is the maximum amount that a consumer can claim and it is important to note that compensation is not awarded automatically. Rather, consumers have to prove the extent of their loss. The attempted resolution of baggage complaints involves two components:

- **Property Irregularity Report**

If luggage is damaged, delayed or lost, the first step is to report the matter to a representative of the airline or a handling agent whose desks are normally located at the baggage pick up point and complete a Property Irregularity Report (PIR). Upon completion of the report, the consumer should be given a copy of it. Airlines may request a copy upon receiving the complaint, however this is not a legal requirement and failure to produce a PIR alone should not prove fatal to a consumer's claim though it may cause evidential difficulties particularly in cases of damaged luggage.

- **Written Complaint**

Few consumers realise that a follow up letter is required and that it is vital that this letter be sent to the airline within the time limits set out under the Montreal Convention. Time limits are as follows:

1. for damaged luggage and items which are missing from bags, 7 days;
2. for delayed luggage, 21 days from the date of delivery of the bag;
3. for lost luggage, no set time limit but the advice is to write as soon as possible after 21 days.

Failure to observe these time limits often results in consumers losing their right to claim from the air carrier. This can be particularly harsh for consumers who complain at the airport but fail to follow up their complaint in writing because they believe that their initial complaint is sufficient or for those whose luggage is delayed, damaged or lost on the outward journey of an extended trip and who intend complaining in writing upon their return home.

Quantifying the value of the claim can be a problem since there are no detailed rules on how to calculate appropriate compensation. When luggage is damaged, airlines generally request proof of purchase for the luggage itself. This may present obstacles to getting compensation as the older the luggage is, the less likely it is that consumers will have the requisite proof, such as a receipt or credit card statement.

When baggage is delayed, consumers incur expense as a result of the absence of their belongings. In these situations, some airlines offer immediate one-off cash payments of a set amount to cover emergency purchases to see the passenger through until the delayed bag is delivered. 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 passengers' expenditure on essential purchases, and will often insist on seeing receipts.

Where luggage is lost, most air carriers will request receipts for all items contained therein. Even where receipts are provided, airlines usually apply a depreciation rate when calculating compensation, the rationale being that as the consumer had use of the item for a certain period of time, they are not entitled to its full value⁶⁸ In the event of any items going missing from luggage, it can be very difficult to get any compensation, primarily because it is almost impossible to prove that the items were in the baggage in the first place. It is important that consumers receive information about the possibility of making a special declaration of interest at check-in.

Most airlines advise consumers in their terms and conditions not to put items such as money, jewellery, keys, cameras, spectacles, etc. in their checked in luggage. Should these items be in the checked in luggage, the airlines will accept no responsibility for their damage or loss. Airlines also have different luggage weight restrictions and different ticket categories, even for connecting flights.

Particularly problematic are those instances where luggage 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.

The Montreal Convention provides for joint and several liability of successive carriers, therefore the consumer can claim against either party.



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68 Airlines should inform consumers about the relevant depreciation rules and on what grounds they are applied but complaints reported to ECC-Net suggest that this is rarely the case.

2014	Air transport complaints as a % of the total number of complaints from consumers by country.
AT	20 %
BE	13 %
BG	31 %
CY	36 %
CZ	27 %
DE	10 %
DK	29 %
EE	21 %
ES	23 %
FI	14 %
FR	14 %
GR	19 %
HR	19 %
HU	28 %
IE	9 %
IS	50 %
IT	46 %
LT	33 %
LU	9 %
LV	25 %
MT	11 %
NL	10 %
NO	5 %
PL	38 %
PT	18 %
RO	35 %
SE	20 %
SI	29 %
SK	11 %
UK	15 %
ECC-Net	18%

Table 4.7 APR complaints as a % of the total number of complaints to ECCs, statistics from DG Justice and Consumers E.5. Data: ECC Database.

4.2.1 Importance of air travel complaints

In 2014, approximately 25 % of all recorded complaints were in the area of transport, of which 46 % concerned APR.⁶⁹ In some countries, such as Cyprus, Iceland, Italy, Poland and Romania, they account for more than a third of all cases.

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69 Complaints and disputes, statistics from DG Justice and Consumers E.5. Data: ECC Database.

4.2.2 Complaints by air passenger country

Complaints by consumer country 2014			
	Complaints about luggage transport by air	Complaints about air passenger transport	Total air transport complaints
Italy	97	595	692
Belgium	57	580	637
Poland	145	469	614
Spain	17	594	611
France	79	529	608
United Kingdom	19	530	549
Austria	46	454	500
Sweden	3	449	452
Germany	33	250	283
Finland	12	259	271
Denmark	33	230	263
Ireland	27	140	167
Netherlands	20	118	138
Hungary	21	104	125
Bulgaria	37	75	112
Czech Republic	19	81	100
Romania	22	86	108
Lithuania	14	81	95
Luxembourg	14	76	90
Latvia	7	67	74
Portugal	11	53	64
Estonia	10	52	62
Norway	4	55	59
Slovenia	8	39	47
Cyprus	9	31	40
Greece	2	23	25
Malta	5	18	23
Iceland	0	15	15
Croatia	3	11	14
Slovakia	3	11	14
TOTAL	777	6 075	6 852

Table 4.8 Total complaints and APR complaints by consumer ECC, statistics from DG Justice and Consumers E.5. Data: ECC Database.

The largest numbers of air travel complaints received by the ECC-Net in 2014 came from consumers living in Italy, Belgium, Poland, Spain, France and United Kingdom. Together they represented 54 % of all complaints. In 2015, (January-June) most complaints came from consumers in Austria, Italy, Poland, France, United Kingdom and Belgium. They represented 59 % of all complaints.

Complaints by consumer country January – June 2015			
	Complaints about luggage transport by air	Complaints about air passenger transport	Total air transport complaints
Austria	49	418	467
Italy	42	392	434
Poland	101	229	330
France	36	283	319
United Kingdom	6	253	259
Belgium	14	210	224
Finland	20	152	172
Sweden	2	167	169
Germany	13	145	158
Denmark	12	112	124
Spain	4	92	96
Ireland	9	86	95
Romania	16	53	69
Netherlands	6	60	66
Luxembourg	13	52	65
Czech Republic	6	48	54
Bulgaria	6	42	48
Hungary	8	37	45
Latvia	3	40	43
Lithuania	8	29	37
Norway	0	36	36
Portugal	2	31	33
Estonia	5	19	24
Slovenia	7	16	23
Greece	1	20	21
Cyprus	2	15	17
Malta	1	7	8
Slovakia	2	4	6
Croatia	2	3	5
Iceland	0	3	3
TOTAL	396	3 054	3 450

Table 4.9 Total complaints and APR complaints by consumer ECC, statistics from DG Justice and Consumers E.5. Data: ECC Database.

4.2.3 Complaints by air carrier country 2014 and 2015

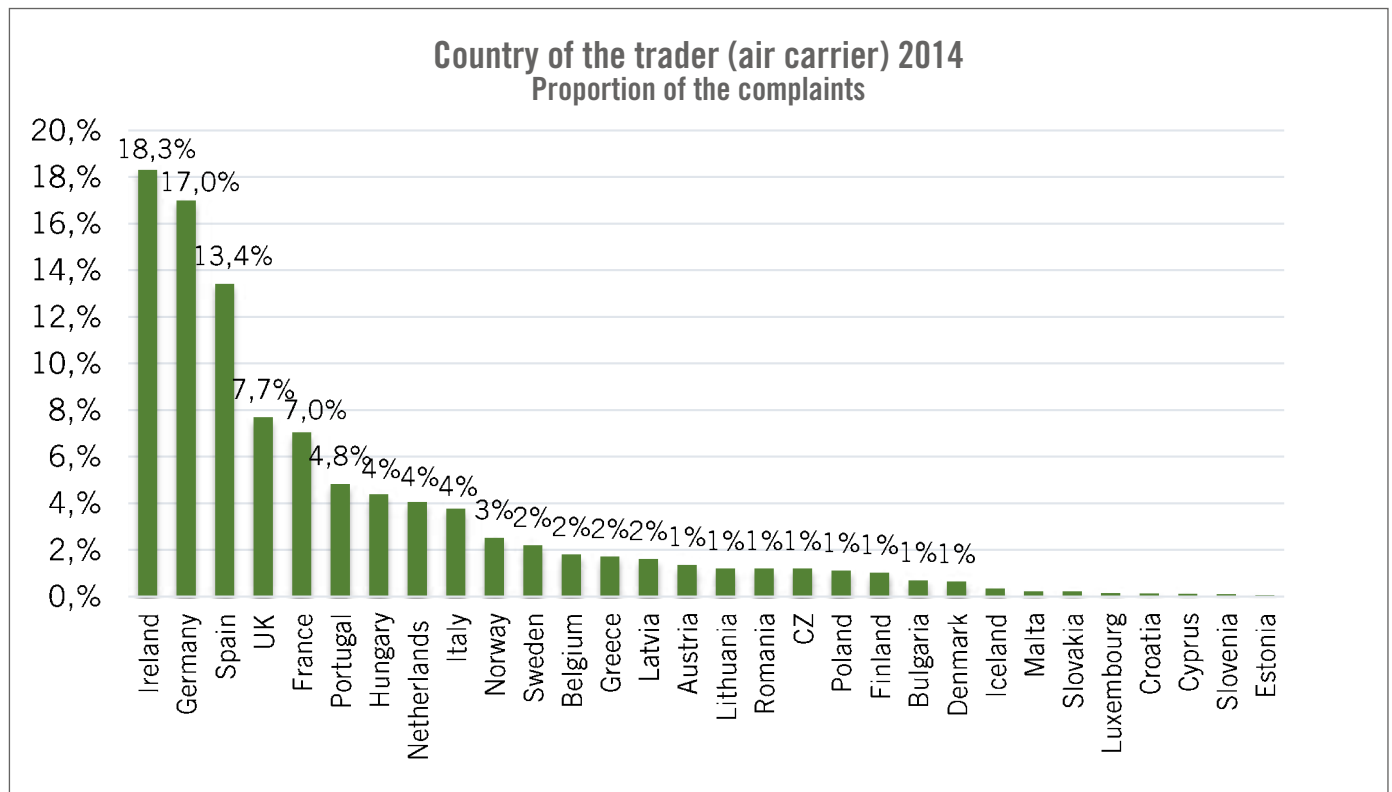


Table 4.10 Country of the air carrier 2014, statistics regarding trader ECC from DG Justice and Consumers E.5. Data: ECC Database.

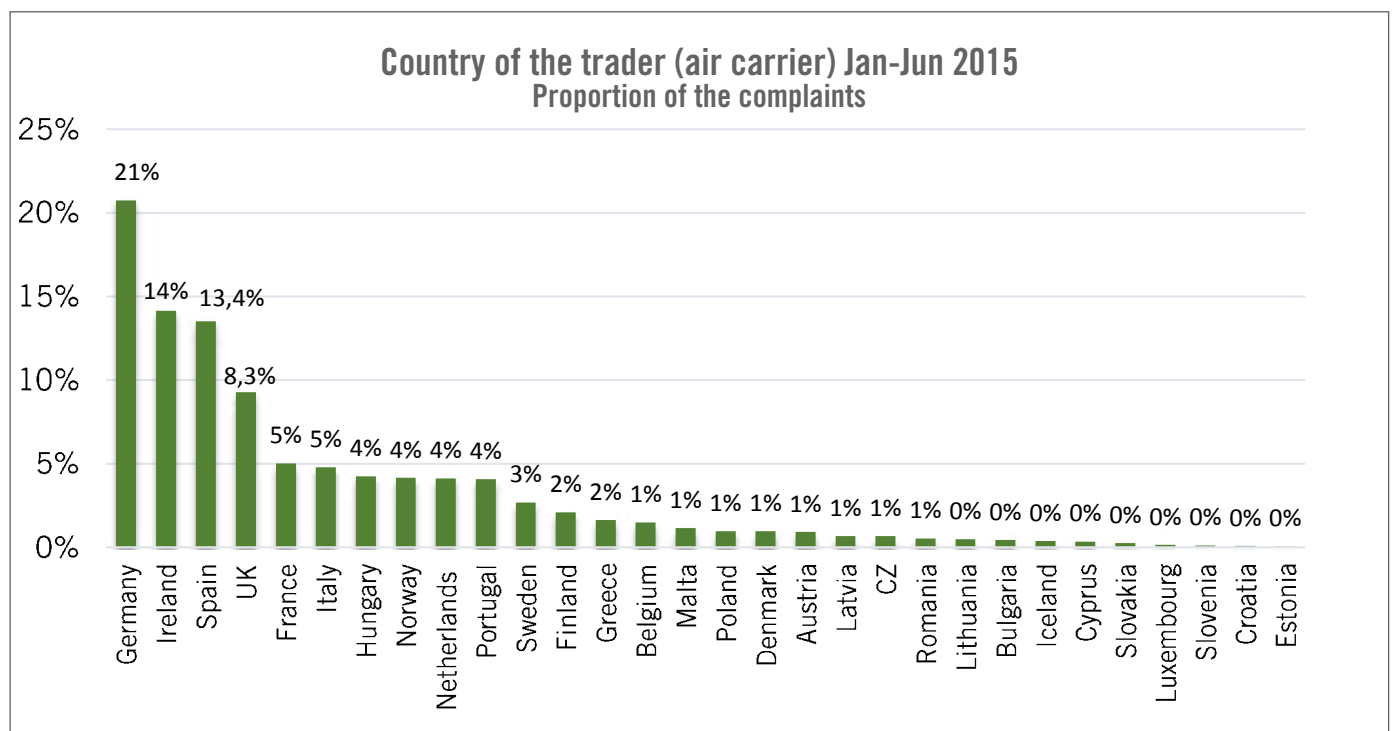


Table 4.11 Country of the air carrier January–June 2015, statistics regarding trader ECC from DG Justice and Consumers. E.5. Data: ECC Database.

Top 5 – country of the trader

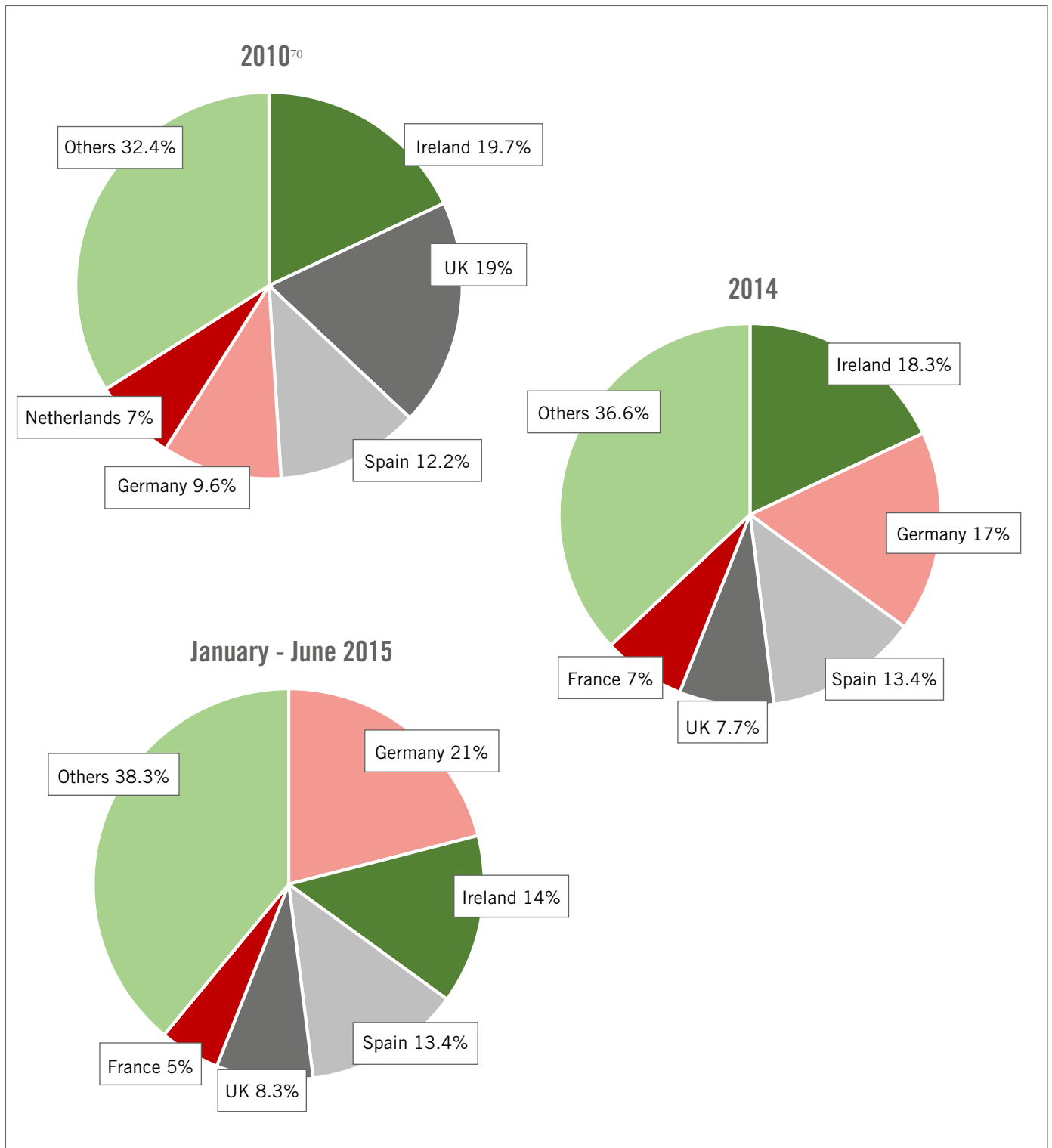


Table 4.12 Country of the air carrier, % of all air transport complaints. Statistics regarding trader ECC from DG Justice and Consumers E.5. Data: ECC Database.

A total of 63.4 % of all complaints in 2014 and 61.7 % of all complaints in 2015 (January-June) are against air carriers from five countries: Ireland, Germany, Spain, United Kingdom and France.

These numbers should be treated with caution, as they may depend on many different factors such as the number of passengers carried, severe weather conditions, strikes, incidents at airports, etc.

⁷⁰ ECC-Net Air Passenger Rights Report 2011 – in the aftermath of the ‘Volcanic Ash Crisis’, October 2011, page 25: http://ec.europa.eu/consumers/ecc/docs/ecc_net_air_passenger_report_2011.pdf.

4.2.4 Rate of cases resolved amicably

When a complaint reaches the ECC-Net, the ECC in the country of the consumer makes an initial assessment as to whether the complaint is valid and if necessary, shares the case with the ECC in the country of the airline in order to assist the consumer in resolving the issue in an amicable way. If the airline does not react positively, the ECC advises the consumer to use an ADR body or to contact the NEB if the case relates to Regulation (EC) 261/2004.

NEBs are designated by the Member States, Iceland and Norway to supervise and ensure compliance by air carriers with Regulation (EC) 261/2004. However, NEBs' approach to individual complaints is not the same in all Member States, which means that even if an NEB does intervene and, for example, sanctions the airline, the consumer will still not be reimbursed.⁷¹

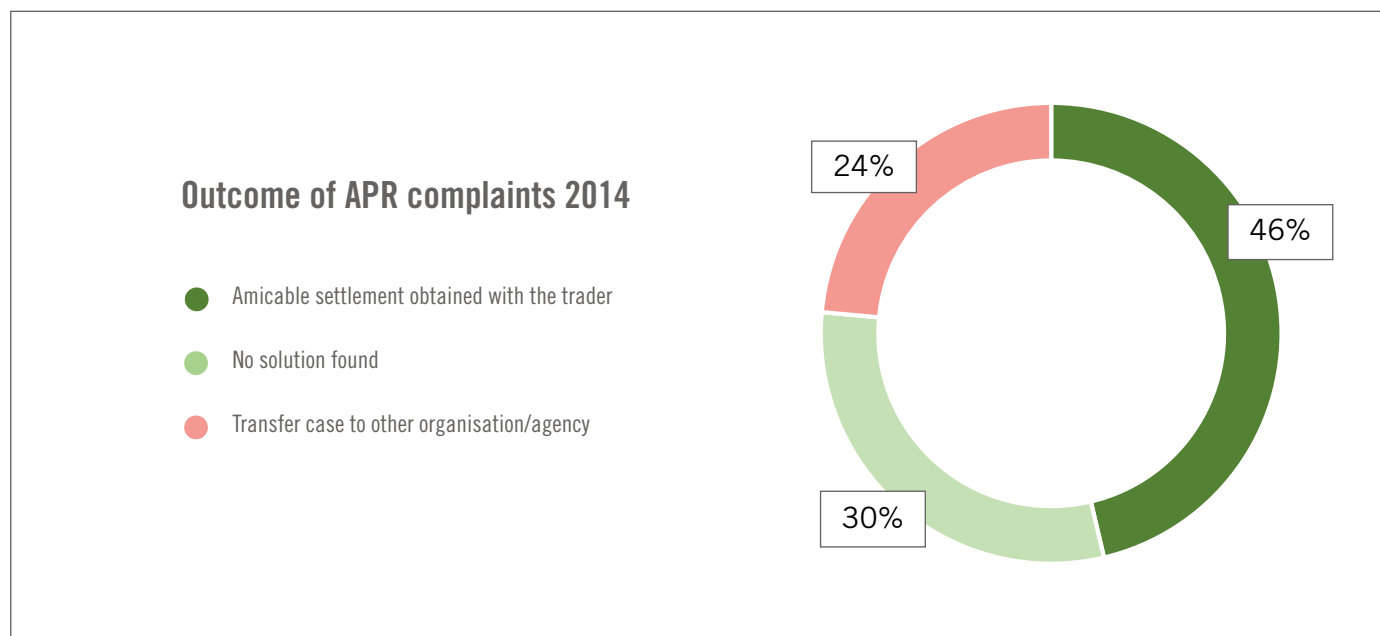


Table 4.13 Outcome of APR complaints 2014, statistics from DG Justice and Consumers E.5. Data: ECC Database.

In 2014, 46 % of cases received by ECC-Net were resolved amicably, compared to 40.6 % in 2010, an increase of 13.3 %.

Of the cases handled in 2014, 24 % were transferred to another organisation or agency, including ADR-bodies or NEBs. In the majority of these cases, the outcome is unknown to ECC-Net as no feedback is reported to the ECC.⁷²

One other possibility is to use the European Small Claims Procedure (ESCP) which was introduced in 2009. It is meant to be effective, efficient and cheap but despite this, awareness of it is low among judicial authorities and consumers.⁷³

71 According to Regulation 261/2004, NEBs' functions include complaint handling and sanctioning. NEBs must evaluate complaints from passengers or their representatives on a case-by-case basis in order to ensure that the Regulation is properly applied by the air carriers. In assessing an individual complaint, NEBs give an opinion on whether they consider that an air carrier has fulfilled its obligations under the Regulation. This opinion is not binding for the air carrier, but it allows the complainant to make an informed decision as to whether or not to pursue the matter further, either by trying to find an amicable solution with the airline, or by bringing the case to civil court or, if applicable, to a national ADR body. The complaint handling procedure is an essential element in enabling the NEB to fulfil the general compliance supervision task. There is therefore no obligation under Article 16 for the NEB to mediate between the passenger and the airline or a fortiori to adopt binding acts (administrative decisions) addressed to carriers in individual cases. This is not prohibited by the Regulation and some NEBs do mediate between passengers and airlines, but nor is it required.

72 ECC-Net Joint Project Report Alternative Dispute Resolution in the Air Passenger Rights sector. September 2012, updated September 2015: http://ec.europa.eu/consumers/ecc/docs/adr_report_06022013_en.pdf.

73 ECC-Net European Small Claims Procedure Report, September 2012: http://ec.europa.eu/consumers/ecc/docs/small_claims_210992012_en.pdf.

5. Redress mechanisms

for consumers



Apart from the ECC-Net there are several other types of organisation offering assistance to consumers seeking redress from airlines. These include NEBs, consumer agencies and ombudsmen, ADRs and courts. Also, the private claims industry seems to be a growing sector. The report will try to provide a picture of how these organisations and companies operate and if passengers can actually ensure that their rights are respected.

In any case, consumers should receive the compensation to which they are entitled in accordance with Regulation (EC) 261/2004 free of charge. However, more and more consumers seek redress through private claims companies for a fee which is typically deducted from compensation they receive. This report looks at the different redress mechanisms that exist for cases where ECC-Net services cannot obtain a positive outcome for consumers.

5.1 Dealing directly with airlines

ECC-Net regularly hears from consumers seeking advice as to the manner in which to contact airlines or the difficulties they are experiencing trying to notify an airline of problems they experienced. Methods of communication vary from airline to airline and one must often go to the airline's website to see which forms of communication are accepted by customer service. If a consumer uses the 'wrong' method, they are unlikely to receive a response.

Particularly problematic is the fact that some airlines do not provide an e-mail address and still only offer customer service over the phone or by a web-based portal, making it difficult for consumers to keep a written record of their complaint. Often consumers have to wait a long time for a reply to their complaint. This problem is exacerbated by the fact that frequently airlines will reply with a standardised response which does not address the consumer's concerns. Consumers often contact airlines several times before receiving any response at all. In some instances, no response will be received. ECCs cite lack of response from carriers as an important reason why some cases cannot be resolved.

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

5.2 Alternative Dispute Resolution schemes regarding Air Passenger Rights

As a general remark, the ADR landscape varies considerably from one country to another and has not yet reached its full potential, especially in the APR sector.⁷⁴

A Directive on consumer ADR⁷⁵ was to be transposed by the Member States by 9 July 2015. Several Member States have announced delays in the transposition, but, as stated by the Directive: 'In order for consumers to exploit fully the potential of the internal market, ADR should be available for all types of domestic and cross-border disputes covered by this Directive'. This will hopefully lead to more consumers asserting their rights before qualified and efficient ADR bodies and strengthen consumers' confidence that complaining to sellers will lead to satisfactory outcomes.

If a consumer's initial claim is not handled satisfactorily, they can go to an ADR to resolve the matter without launching legal proceedings. Hopefully, sellers will give consumers' complaints proper consideration and demonstrate the airline industry's willingness to find amicable solutions out of court.

At present, the organisation and structure of ADR schemes differs between Member States.⁷⁶

Country	ADR body	Restrictions
Austria	Agentur für Passagier- und Fahrgastrechte (The Agency for Passenger Rights).	This ADR is competent for passenger rights concerning air, bus, train and sea travel – but only rights laid down in the four relevant EU Regulations.
Belgium	Commission Litiges Voyages/Geschillencommissie reizen, Service de Mediation pour le Consommateur.	Only for package travel. Residual ADR.
Bulgaria	Conciliation Commission for Disputes in the Air Transport Sector.	
Croatia	No ADR.	
Cyprus	Competition and Consumer Protection Service of the Ministry of Energy, Commerce, Industry and Tourism, Arbitration procedures for settlement of consumer disputes.	
Czech Republic	No ADR.	
Denmark	The Consumer Complaints Board, Rejse Ankenavnet (Danish Travel Industry Complaints Board).	Does not handle Regulation 261/2004 cases.
Estonia	The Consumer Complaints Committee.	Only handles cases regarding national traders.
Finland	Kuluttajariitalautakunta/The Consumer Disputes Board.	Also functions as the NEB.
France	Mediation for Tourism and Travel.	Only for the members of the mediation scheme: most French airlines and the main tour operators and travel agencies.
Germany	SOP - Schlichtungsstelle für den öffentlichen Personenverkehr e.V.(Conciliation Body for Public Transport), Bundesamt für Justiz Schlichtungsstelle Luftverkehr. Online-Schlichter (For complaints concerning the booking process or online booking intermediaries).	
Greece	Hellenic Consumer Ombudsman (HCO).	
Hungary	Arbitration boards operate in each county and in Budapest: http://magyarefk.hu/en/dispute-settlement/alternative-dispute-resolution/arbitration-boards.html .	

74 Alternative Dispute Resolution in the Air Passenger Rights sector, ECC-Net Joint Project 2012, updated September 2015: http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/publications/etudes_et_rapports/ADR-APR-2015-FINAL.pdf.

75 Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>.

76 Alternative Dispute Resolution in the Air Passenger Rights sector, ECC-Net Joint Project 2012, updated September 2015..

Iceland	Urskurðarnefnd Neytendasamtakanna og Samtaka ferdatjónustunnar/The Ruling Committee in Travel Industry Matters.	The ADR handles all travel matters where members of the trade association are involved. The NEB also functions as an ADR.
Ireland	No ADR.	
Italy	The Mediation Chamber of the Chamber of Commerce in Milan / Online Dispute Resolution Service Risolvi Online, Conciliazione paritetica Alitalia (Alitalia's joint conciliation service).	
Latvia	Consumer Rights Protection Centre of Latvia (CRPC/PTAC).	
Lithuania	State Consumer Rights Protection Authority.	
Luxembourg	Commission Luxembourgeoise des Litiges de Voyage (CLLV).	The ADR in the travel sector in Luxembourg (CLLV) can deal with 'disputes involving transport services which are part of the package', but not 261/2004 APR cases.
Malta	The Malta Mediation Centre and The Malta Arbitration Centre.	
Netherlands	No ADR.	
Norway	Transportklagenemda Norsk Reiselivsforum/The Complaints Board for Scheduled Flights.	
Poland	Trade Inspection/ Wojewodzkie Inspektoraty Inspekcji Handlowej. Trade Inspections are located by every Branch Offices of the Office of Competition and Consumer Protection, Wojewodzki Inspektorat Inspekcji Handlowej we Wroclawiu.	
Portugal	Centro de Arbitragem de Conflitos de Consumo de Lisboa (CACCL), Centro Nacional de Informacao e Arbitragem de Conflitos de Consumo – CNIACC.	
Romania	National Authority of Consumer Protection in Romania (will start work in 2016).	
Slovakia	No ADR.	
Slovenia	European Centre for Dispute Resolution (ECDR).	A private ADR scheme, which covers also APR cases.
Spain	74 official ADR boards : http://consumo-inc.gob.es/arbitraje/juntas.htm#01 .	
Sweden	The Swedish National Board for Consumer Disputes/Allmänna reklamationsnämnden (ARN).	Also functions as the NEB. For a claim to be heard it must exceed set value limits. For travel issues, this is SEK 1 000. This amount will be reduced in 2016 to SEK 500. If a dispute is of particular importance or if there are other special circumstances, the Swedish ADR can hear it even if the claim is below the value limitations.
United Kingdom	No ADR.	

Table 5.1. The organisation and the structure of the ADRs in the various Member States. Data: ECC Database Wiki, ECCs' answers to a questionnaire and the ECC-Net report, Alternative Dispute Resolution in the Air Passenger Rights sector, updated September 2015.

5.3 Collaboration with National Enforcement Bodies (NEBs)

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

The territorial scope of NEBs is limited to intra-EU flights to and from airports in its territory or flights from third countries to airports in its territory operated by EU licensed airlines.

The NEBs⁷⁷ are tasked with enforcing the Regulation both by addressing any potential infringements, and responding to individual complaints filed by passengers. Some Member States have divided the tasks so that enforcement and complaint handling are managed by different agencies⁷⁸.

There are two 'informal' agreements on how the NEBs handle complaints – one between the appointed NEBs and one between the NEBs and the airlines.⁷⁹

In 2010, the Commission issued a report on the Regulation,⁸⁰ and though major improvements had been made, the functioning of the NEBs could still be improved.

The current proposal under discussion to amend existing rules on compensation and assistance for passengers and on air carrier liability is meant to 'create more effective complaint handling procedures and strengthen enforcement, monitoring and sanctioning policies.'⁸¹

The European Parliament Committee on Transport and Tourism (EP TRAN) has proposed amendments to Regulation (EC) 261/2004 which include greater detailing of the roles of NEBs. Exchange of information and coordination between the NEBs is also a key part of the revision proposal.⁸²

The Council of the European Union proposes to go further in amending Article 16, by wording paragraph 3 thus: *'The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive. In particular, such sanctions shall be sufficient to provide air carriers with a financial incentive to comply consistently with the Regulation.'*

Paragraph 5 of the proposed Article 16a foresees that *'Where the body or bodies designated under paragraph 3 are different from those entrusted with the enforcement of this Regulation under Article 16(1), they shall cooperate and exchange information.'*⁸³

Scope for the Commission to act against Member States is limited by the vague definition of the NEBs' role in the Regulation. Given the absence of any information obligations regarding their monitoring and sanctioning activities, the provision of information from the NEBs to the Commission remains irregular and lacks detail. The provisions of the Montreal Convention with regard to mishandled luggage are not adequately enforced because no specific enforcement body is foreseen, neither by the Montreal Convention nor by Regulation 2027/97.⁸⁴ Affected passengers are entirely dependent on the policy and goodwill of air carriers, legal and out-of-court means of settlement or private travel insurance. It follows that, in the absence of a credible and dissuasive enforcement policy, air carriers are not encouraged to respect APR especially if their competitors are not doing so.⁸⁵

All Member States have authorities to handle complaints from passengers who believe they have not been treated correctly by airlines. There seem to be differences in the way each NEB handles passenger complaints, as regards whether they take an individual or collective approach, the time it takes, the level of investigation, communication with the passenger and of results, or even whether they assist the passenger in obtaining redress. The variations in interpretations of CJEU rulings in different Member States and the different documentation requirements for air carriers depending on which NEB is competent do not help matters. All NEBs must provide an assessment of the complaint filed by the passenger, and as a last resort, passengers might go to court in order to obtain individual redress. The differentiation between the individual and collective interest is often confusing for the consumer.

77 In 18 or 21 (the Staff Working Paper for the Communication dated 11 April 2011 says 18, but the report from Steer Davis Gleave from 2010 says 21) of the 28 EU Member States, the NEB has been placed within the aviation authority as they have the necessary knowledge of and expertise in the sector. Some countries have instead placed it within a government ministry or a consumer organisation.

78 Commission Staff Working Paper accompanying Communication on the application of Reg. 261/2004.

79 The agreements are not legally binding.

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

81 <http://www.consilium.europa.eu/en/policies/air-passenger-rights/>.

82 http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2013/0130/COM_COM%282013%290130_EN.pdf.

83 <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209820%202014%20ADD%201%20REV%201>.

84 Regulation 2027/97 of 9 October 1997 on air carrier liability in the event of accidents.

85 Commission Staff Working Document SWD(2013) 62 final, page 15: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0062:FIN:EN:PDF>.

Based on the ECC-Net Vademecum⁸⁶ and the experience of the ECCs, the network assists consumers with claims under Regulation (EC) 261/2004, instead of referring them to the competent NEB. The main reason for this is to offer consumers the support they need against a stronger party and it is often the quickest way, as many ECCs have good working relationships with their national airline. Providing such assistance also facilitates data collection on the functioning of the NEB network, the air carriers involved in complaints and the countries where incidents occur, as cases handled by ECC-Net are registered in the ECC-Net database. When a case is referred to the NEB, this is also registered in the system along with any eventual feedback regarding the outcome. A public consultation on possible revision of Regulation 261/2004⁸⁷ confirmed that passengers are often confused by the role of NEBs with regard to enforcement of individual claims as compared with their general enforcement remit⁸⁸

Differences in NEB practices may leave passengers with the same problem in different legal positions depending on where their flight is cancelled or delayed, and unless 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 on the consumer who will have to contest the airline’s statement.⁸⁹

In addition, inconsistent interpretation of the Regulation weakens the authority of the NEB network and lessens the incentive to comply with decisions, let alone the Regulation as a whole.

With regard to enforcement of the Regulation, NEBs’ position is undermined by differences in the manner in which Member State and NEBs implement the rules. When the proposed Regulation speaks of effective, proportionate and dissuasive sanctions, the financial consequences must be such that air carriers have a real economic incentive to comply. Some airlines currently disregard NEB decisions, forcing passengers to go to court, perhaps in a different jurisdiction.

In some cases, the authorities have reacted. The UK CAA took action against three major airlines to safeguard the rights of millions of passengers. The action follows the CAA’s comprehensive 6-month review of airline policies on support for passengers during disruption, including their approaches to paying compensation for delays and provision of information about passenger rights. This review has already led a number of airlines to change their policies, resulting in millions of passengers benefiting from improved support during disruption. Some airlines are yet to make the changes required by the CAA.⁹⁰ Recently these three airlines avoided legal action after agreeing to change their rules on how passengers are helped during disruption.⁹¹

The Swedish Consumer Ombudsman (KO) filed a lawsuit⁹² in July 2015 against a Norwegian air carrier, on the grounds that the carrier provides insufficient information to air passengers on several issues. Airline passengers have a right to clear information about their rights when their flight is delayed or cancelled. There are also guiding CJEU judgements which state that if a flight is more than 3 hours late, the airline must apply the same rights to compensation as in cases of cancellation.

The Swedish Consumer Agency had already pointed out the information obligation in 2013, following which the carrier undertook to inform passengers about their rights, but problems persist.⁹³ The company displays certain information on its website, but excludes other, equally important details. The Ombudsman considers that this makes the information misleading and has requested that the Stockholm District Court fine the company SEK 500 000.

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86 ECC-Net Vademecum, Article 6, Objective 2: http://ec.europa.eu/chafea/documents/consumers/ECC-NET/2013/ECC-Net_Vademecum.pdf.

87 Public consultation on the possible revision of Regulation 261/2004 – results: <http://ec.europa.eu/transport/themes/passengers/consultations/doc/2012-03-11-apr-public-consultation-results.pdf>.

88 SWD(2013) 62 op. cit., page 16: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0062:FIN:EN:PDF>.

89 This consideration may also apply to claims other than for compensation, i.e. whether a passenger was actually offered the choice between rerouting and reimbursement, whether care and assistance was provided, whether passengers were correctly informed of their rights, etc. Staff Working Document (2014) 156 of 7 May 2014 on complaints handling and enforcement by Member States of the Air Passenger Rights Regulation: [http://ec.europa.eu/transport/themes/passengers/air/doc/swd\(2014\)156.pdf](http://ec.europa.eu/transport/themes/passengers/air/doc/swd(2014)156.pdf).

90 Aer Lingus, Jet2 and Wizz Air all face legal action for breaching consumer law., March 2015: <http://www.caa.co.uk/application.aspx?catid=14&pagetype=65&appid=7&mode=detail&nid=2437>.

91 ‘Airlines avoid watchdog action after changing how passengers are treated during disruption’: <http://www.itv.com/news/2015-08-19/airlines-avoid-watchdog-action-after-changing-how-passengers-are-treated-during-disruption/>.

92 Lawsuit: <http://www.konsumentverket.se/Global/Konsumentverket.se/Best%3c3%a4lla%20och%20ladda%20ner/Bransch%3c3%b6verenskommelser/2015/St%3c3%a4mningsans%3c3%b6kan%20Norwegian%20Air%20Shuttle.pdf>.

93 ‘Norwegian Air Passengers Seek USD 28 M For Delayed Flights’: <http://www.law360.com/articles/569154/norwegian-air-passengers-seek-28m-for-delayed-flights>.

The Consumer Agency has received numerous complaints about this carrier and has discussed deficiencies and inaccuracies in information to passengers regarding rights with the company. The airline also accounts for a large proportion of flight-related cases brought before the National Board for Consumer Disputes (ARN). Of 549 decisions from 1 January 2014 to 31 March 2015 involving airlines, more than 38 % concerned this carrier. In about 90 % of these decisions, the consumer completely or partially won.⁹⁴

The Swedish KO also acted in a case where an Irish air carrier refused to provide financial compensation to a Swedish couple stranded in Brussels in 2006.⁹⁵ In 2012, when the case reached the Supreme Court, the airline finally paid, as they wanted to have the case dismissed, probably fearing a precedent-setting ruling. The background is as follows: shortly before the return trip from Brussels in May 2006, the carrier cancelled the flight. Passengers were offered a flight a few days later but received no compensation for hotel costs or food. The Swedish couple could not wait that long, so they made their own way home and took it for granted that the carrier would compensate them for the additional costs. The carrier refused.

This was the start of a protracted dispute that the KO pursued all the way to the Supreme Court on the couple's behalf. The Supreme Court sent the matter to the CJEU for guidance. Before the main Supreme Court hearing, the carrier paid SEK 15 000 and demanded that the case be withdrawn from the CJEU. Prior to this, KO had been contacted by the carrier who wanted a settlement, but the couple turned this down and KO wanted to set a legal precedent.

The ECCs state that they refer cases against Maltese and Estonian airlines to the NEB. NEBs with the power to issue individually binding⁹⁶ decisions are in some cases better equipped than ECCs to handle compensation claims.

5.4 Legal action

There is no obligation for consumers to use an ADR body or to lodge a complaint with an NEB. However, due to the complexity of the Regulation and the perception of the court system, many passengers chose to use the free complaint handling service offered by the NEBs, which in many countries have expertise on air traffic and technical matters, something which courts are likely to lack.⁹⁷

The Regulation does not contain rules on jurisdiction, but the CJEU⁹⁸ has ruled that in APR cases, jurisdiction can be both that of the place of departure and the place of arrival, depending on the passenger's choice.

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94 <http://www.konsumentverket.se/Om-oss/Nyheter-och-aktuella-fragor/Nyheter/Nyhetsarkiv-2015/KO-tar-Norwegian-till-domstol/>.

95 <http://www.dn.se/ekonomi/ryanair-ger-upp-i-ersattningstvist/>.

96 Generally, Member States designate the national civil aviation authority as NEB. In accordance with the structure of the national administration or the mission of the NEB, some of these bodies are able to handle and enforce cases individually (for example in Denmark or Estonia).

97 See chapter 7, private claims companies.

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

5.4.1 European Small Claims Procedure (ESCP) in Air Passenger Rights cases

The ESCP entered into force 2009 for the purpose of providing EU citizens with easier access to dispute resolution mechanisms in cross-border cases.⁹⁹ It 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, minimising both time and cost. However in some cases in civil courts, ESCP can be slow and expensive and judges often lack relevant experience in aviation law.

It is the experience of many ECCs that the ESCP has not yet had the desired effect and that many consumers refrain from using courts to settle disputes because it seems too complicated¹⁰⁰

Previous reports from the ECC-Net confirm that the ESCP has not yet reached its full potential. Language barriers, uncertainty concerning court fees in other Member States and complicated and costly enforcement procedures discourage consumers from using it. During the writing of this report, the working group submitted a case to the ECC-Net to enquire about the average cost for filing a claim in court, the average duration of a court of first instance procedure and the enforcement procedure.

The case reads as follows: *'The consumer flew with an EU carrier for a distance of less than 1 500 km. The flight was cancelled. The consumer was rerouted and arrived at the final destination 2 hours and 30 minutes late. The compensation should be EUR 250. The airline refused to pay but did not argue any extraordinary circumstances. The consumer decided to go to court to ensure that his rights were upheld.'*

What would be the approximate cost of filing this claim in court under the ESCP?

- Nothing: Greece, France, Lithuania, Luxembourg, Romania
- EUR 10-30: Hungary (EUR 17¹⁰¹), Poland (EUR 23¹⁰²), Bulgaria, Ireland and Malta (EUR 25)
- EUR 30-50: Belgium (EUR 40), Austria (EUR 43), UK (EUR 48¹⁰³)
- EUR 50-80: Italy (EUR 43-69), Slovenia (EUR 54), Latvia (EUR 71.14¹⁰⁴), Estonia (EUR 75), Netherlands (EUR 78), Finland (EUR 86)
- EUR 80-100: Sweden (EUR 96¹⁰⁵)
- More than EUR 100: Portugal (EUR 102¹⁰⁶), Germany (EUR 110)
- In Croatia the fee will depend on which court the claim is brought before (commercial or municipal court).
- **The ESCP does not apply to Denmark.** Under the Danish small claims procedure the cost would be approximately EUR 67.

The amounts mentioned above concern only court fees and exclude legal representation or assistance with completing the form and filing the claim. Normal solicitor rates would apply. Such fees are unlikely to be reimbursed.

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

100 ECC-Net European Small Claims Procedure Report, September 2012: http://ec.europa.eu/consumers/ecc/docs/small_claims_210992012_en.pdf.

101 According to the relevant act, the fee is 3 % of the claim, but not lower than HUF 5 000 (~EUR 17) and not higher than HUF 250 000 (~EUR 800).

102 PLN 100.

103 Depending on the value of the complaint: <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex050-eng.pdf>.

104 The amount in respect of the ESCP is determined in accordance with the Civil Law, which for claims of up to EUR 2 134 is 15 % of the amount claimed but not less than EUR 71.14.

105 For cases regarding claims worth less than SEK 22 250 and for ESCP, the cost of filing the case is SEK 900.

106 An initial fee of EUR 102 has to be paid to commence the procedure and final expenses depend on translations, witnesses, etc. The losing party pays the expenses incurred by the winner.

Average duration of a trial in courts of first instance:

- 1-3 months: Belgium (2-3 months), Lithuania (about 3 months)
- 3-6 months: Ireland, France, Luxembourg, Slovenia
- Up to 6 months: Romania
- 6 months-1 year: Denmark, Greece, Netherlands, Poland (8 months, in Warsaw 15 months), Sweden¹⁰⁷, UK (30 weeks)
- Less than 1 year: Bulgaria
- 1 year: Italy
- 1-3 years: Cyprus, Malta
- Unknown: Czech Republic, Estonia, Spain, Croatia, Latvia, Hungary, Austria, Portugal, Slovenia, Slovakia, Finland

Once the consumer has obtained a judgement in his/her favour, most ECCs would make an attempt to contact the airline to ask them to comply, as enforcement procedures especially in a cross-border context remain complex and may also lead to further costs.

Which authority is in charge of enforcing this kind of decision in the Member States? ¹⁰⁸

- Trader's regional or district court: Croatia, Italy, Cyprus, Hungary, Austria
- Court executor: Romania
- Bailiffs(public and/or private): Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Greece, France, Latvia, Lithuania, Luxembourg, Netherlands, Slovenia, UK¹⁰⁹
- Sheriff: Ireland (in County Cork and County Dublin), County Registrars in all other countiesExecution solicitor: Portugal
- Enforcement officer: Norway
- Enforcement authority: Finland, Sweden

Such a procedure lasts 6-12 months on average in most Member States.

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107 7 months for civil cases and 5 months for criminal cases.

108 http://ec.europa.eu/civiljustice/enforce_judgement/enforce_judgement_gen_en.htm.

109 For claims worth over GBP 600, high court enforcement officers at the district court of the trader's registered office.

How much approximately does this enforcement cost the consumer?

- **EUR 0-20:** Finland (In a regular enforcement case, the fee is EUR 10 and in a limited enforcement case it is EUR 5. If the creditor requests that the debt be entered into the passive register, a supplementary processing fee of EUR 10 is payable. The creditor is liable for a disbursement fee for each amount that the enforcement authority disburses to him or her. The fee amounts to 1.45 % of the disbursed amount, but cannot exceed EUR 500¹¹⁰.)
- **EUR 20-50:** Portugal (EUR 25.50), Greece (EUR 30), Austria (EUR 38)
- **EUR 50-80:** Sweden (EUR 64), Lithuania (It depends on the value of the claim but in the above scenario the administration fee would probably be EUR 18 and the execution fee EUR 58.)
- **EUR 80-100:** Germany (EUR 80), Denmark (EUR 93), Czech Republic (EUR 100)
- **EUR 80-200:** France (The fees for most tasks are regulated and depend on the value of the complaint and other criteria. However, some activities are freely negotiable such as remuneration for assistance. Disbursements are always negotiable, irrespective of whether the fee is regulated or not.)
- **Over EUR 200:** Belgium (EUR 220)
- In the Netherlands, the petition costs EUR 62. In addition, the consumer must pay the bailiff's costs. These are subject to market forces. Most bailiffs mention their rates in their terms and conditions which are published on their websites.
- In Hungary, 1 % of the claim, but no less than HUF 5 000 (EUR 17) and no more than HUF 350 000 (EUR 1 130).
- In Ireland, the fees are set out in statutory instruments (currently the Sheriff's Fees and Expenses Order (SI 644/2005) under the Enforcement of Court Orders Act 1926. This provides for various fixed fees and a scale of fees related to the amount involved; 5 % of the first EUR 5 500 and 2.5 % of the balance.)
- In Poland, it depends on the value of the claim (min. PLN 30, max. PLN 300).
- In Romania, a judicial tax of almost EUR 5 plus an executor's fee, which depends on the value of the claim and can be as high as 10 % of the value, must be paid.
- In Slovenia, the court costs depend on the value of the claim and fixed and variable costs of the bailiff (expenses for examination of the dossier, costs for the calculation of default interest, travel expenses, etc.) must also be paid. The costs would certainly exceed EUR 100.
- In the UK, the fee depends on the complexity of the process¹¹¹. The claimant may be expected to pay GBP 90 to the enforcement body if the case is unsuccessful.

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110 <http://oikeus.fi/ulosotto/en/index/ulosotto/ulosottomaksut.html>.

111 <https://www.gov.uk/make-court-claim-for-money/enforce-a-judgment>.

5.4.2 Judicial collective redress in the Air passenger rights sector

For many years, the European Commission has tried to promote collective judicial procedures for EU consumers.

According to the Commission: *'Collective redress is a procedural mechanism which allows for reasons of procedural economy and/or efficiency of enforcement, many single claims (relating to the same case) to be bundled into a single court action. Bundling claims reduces the burden on claimants and therefore facilitates access to justice. It thus constitutes a key mechanism to ensure that rights do not only exist on paper but are enforced. Collective redress is a broad concept that includes injunctive relief (lawsuits seeking to stop illegal behaviour) and compensatory relief (lawsuits seeking damages for the harm caused).'*¹¹²

In APR cases, consumer detriment is often similar as one incident causes harm to many consumers, for example all passengers on the same flight. As compensation schemes are harmonised, collective redress seems an appropriate tool if no out-of-court settlement can be reached with the airline. Several countries already have collective redress mechanisms in place.

Collective APR redress mechanisms exist in Belgium, Bulgaria, Croatia, Denmark, Finland, France, Greece, Hungary,¹¹³ Italy, Lithuania, Malta, Netherlands, Norway, Poland, Portugal, Sweden and UK.

In Cyprus, consumer associations representing consumers collectively may apply to courts for injunctions.

In Austria, the ECC host-structure, the Austrian Consumers' Association (VKI) can gather claims from several consumers and start proceedings on their behalf. To finance these actions, VKI cooperates with litigation funding bodies (Prozessfinanzierer), who take a percentage of the payout if the proceedings are successful. The VKI recently used this method to bring a case against a German airline on behalf of 14 passengers for payment of compensation. After submission of the claim, the airline settled.

The Portuguese Association for Consumer Protection (DECO) initiated a collective case regarding unfair contract terms in the airline sector. The case is still pending.

In the UK, the NEB took airlines to court over certain issues regarding interpretation of Regulation (EC) 261/2004 (e.g. the proceedings which ended in the CJEU case of TUI and others v CAA). This has effectively resulted in passengers being able to claim compensation for flight delays and can be considered as acting in the wider interest of passengers as a whole.

Collective redress does not yet exist in all countries and private claims companies have therefore found a profitable market.

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¹¹² http://europa.eu/rapid/press-release_MEMO-13-530_en.htm.

¹¹³ In one case, the court specified the value of food and refreshment the airlines must provide to passengers in cases of delays of flights departing from Hungary.

6. Private claims companies

and organisations helping consumers to seek redress



Aside from the ECC-Net, several other types of organisation and company offer assistance to consumers seeking redress from airlines. Since this seems to be a growing industry, the working group sent out questionnaires to all ECCs in order to get an idea of how these organisations and companies operate. The questionnaires can be found in appendix 1. The different initiatives have been divided into three groups: private claims companies, consumer body initiatives and industry initiatives.

6.1 Private claims companies

There has been an increase in the number of private companies helping consumers to get redress, mostly for a percentage of the sum that the consumer receives. Some of these are registered in the EU, whereas others are based elsewhere and operate in the EU. This chapter provides a compilation of the answers received from the ECCs with regard to questionnaire 3 on private company initiatives.

Not all of the companies had enough information available on their websites in order for the ECCs to fill out the questionnaire. The questionnaire was filled in for a total of 36 companies. For nine companies, no information was provided.

Some of these companies have representatives at airports, where they actively seek out passengers who have suffered delays. Other have special offers such as 'Get EUR 15 for every fellow passenger you can get to make a claim.'

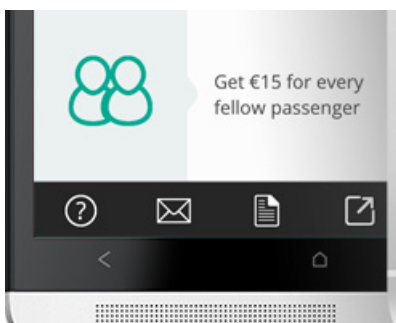


Figure 6.1. Clip from AirHelps website.¹¹⁴

114 <https://www.getairhelp.com/en#>.

What is also interesting in this context, is that such companies are starting to cooperate with actors such as booking intermediaries, using lines such as: 'Flight disruptions happen, but it is what you do next that matters most. Turn delays and cancellations to your advantage. Earn money from customers who file a claim.'¹¹⁵

As an example, the following text has been found in the terms and conditions of a booking intermediary¹¹⁶

Flygförsening och samarbete med konsumentföretaget [REDACTED]

Flygförsening, inställda flyg samt denied boarding enl EU förordning 261/2004

Enligt 261/2004 kan du beroende på resans längd och destination ha rätt till ersättning på mellan 250-600 euro. Flygpoolen samarbetar med konsumentföretaget TRS [REDACTED]. Detta innebär att [REDACTED] via [REDACTED] automatiskt bevakar ditt flyg och om en flygförsening skulle uppstå som [REDACTED] bedömer ger dig rätt till ersättning så kommer du att kontaktas av [REDACTED] som sedan driver ditt ersättningskrav mot flygbolaget. [REDACTED] arbetar på en no win no fee basis vilket innebär att om de inte lyckas få ut någon ersättning åt dig så kostar deras tjänster ingenting. Om de lyckas få ut ersättning från flygbolaget kommer de att debitera 30 procent inkl moms på utfallande belopp. (Exempel om du har rätt till 600 euro får du utbetalt 420 euro). Observera att om du även tecknat reseförsäkring hos oss så kan du ha rätt till både försäkringsersättning och ersättning enligt 261/2004. Du hittar [REDACTED] Allmänna villkor här.

The text is in Swedish but in translation it says:

'Flight delays and cooperation with company X

Delayed flights, cancelled flights and denial of boarding according to Regulation (EC) 261/2004

According to 261/2004 you may, depending on the length and destination of your journey, be entitled to compensation of EUR 250-600. Y (the booking intermediary) in partnership with company X looks out for your flight and if a delay occurs which X thinks entitles you to compensation, you will be contacted by X who will take up your claim against the airline. X works on a no win no fee basis which means that if they do not get you any compensation, their services are free of charge. If they manage to get you compensation from the airline, they will charge 30 % of the compensation received inclusive of VAT (for example, if you have the right to EUR 600 you will receive EUR 420). NB, even if you have taken out travel insurance with us you can have the right to both compensation from the insurance and compensation under 261/2004. You will find X's general terms and conditions here.'

Targeted countries

The countries targeted by such companies vary. Some companies only seem to operate in their own country, whereas some operate in several countries including their own.

Question 1: Do the companies take up claims regarding Regulation (EC) 261/2004 only, or regarding other legislation as well (please give details)?

Of these companies, 72 % only help consumers with issues related to Regulation (EC) 261/2004. However, some also assist consumers with claims concerning luggage issues and other problems related to the Montreal Convention. Some companies not only specialise in APR, but also help consumers with issues related to other means of transport, energy, real-estate and art and craft products.

Question 2: Are their rules and procedures published?

In all, 69 % of the companies publish their rules and procedures on their website, either in their terms and conditions or elsewhere on the site.

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115 <https://beta.getairhelp.com/en/partners>.

116 <http://www.flightfinder.se/terms>.

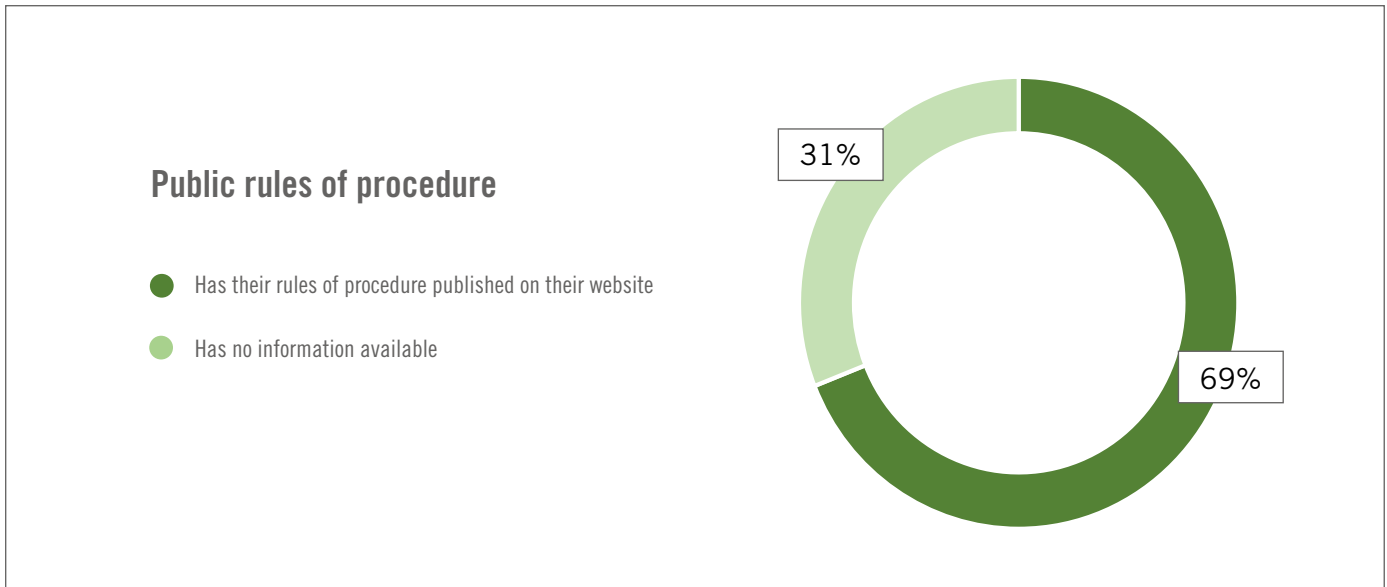


Table 6.2 Information provided about the duration of private companies' interventions. Data: Questionnaire part 3.

Question 3: What are the time limits for/duration of their interventions?

The duration of their interventions varies. A total of 56 % of the companies had no information on their websites concerning time limits. Some say that this can range from days to years as the intervention only ends when compensation is paid to the consumer or when the company decides that there is no chance of success. Interventions can take years if the case goes to a higher court. A few companies mention that if there is no reply from the airline within 30 days, they take the case to court. When it comes to time limits, two companies do not take cases older than 3 years.

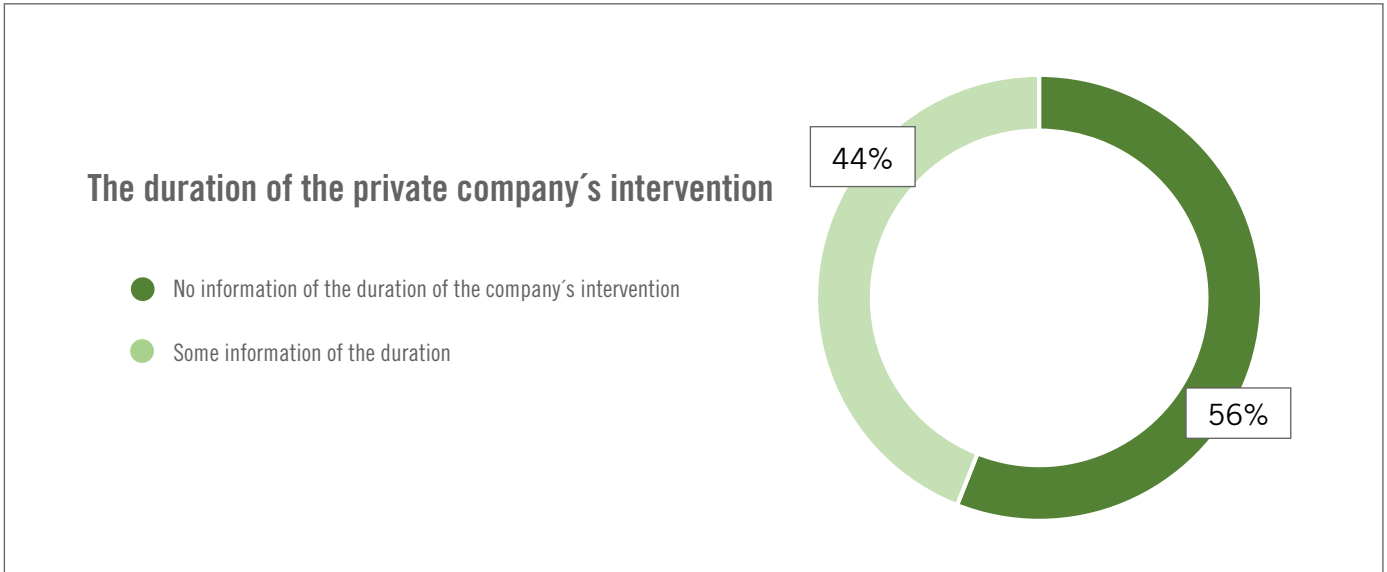


Table 6.3 Information provided about the duration of private companies' interventions. Data: Questionnaire part 3.

Question 4: Do they only take cases that go to court or do they also take those that can be settled out of court?

A total of 69 % of the companies try to solve problems both out of court and in court if necessary. Normally, they seem to try out-of-court settlements and procedures at first and then turn to NEBs or ADRs, and eventually, court proceedings.

Question 5: If they offer both possibilities, is the consumer consulted before legal proceedings are launched on his/her behalf?

On some websites, there was no information regarding whether the companies ask consumers before starting legal proceedings on their behalf. Of the companies who had this information available, 84 % seem to ask consumers before going to court.

Question 6: Is there an exclusivity agreement, preventing consumers from acting on their own behalf while the case is with the company?

In the case of 60 % of the companies, consumers undertake not to initiate other proceedings for the duration of the contract, whether on their own, with the airline or with other institutions (private or public).

The question of exclusivity is particularly relevant. In most cases in which the company provides for this obligation in the terms and conditions, it also adds that regardless of who obtains compensation for the consumer, the fee will always be due if there is a positive outcome.

This rule can prevent other interventions during the procedure and avoid useless interventions by claims companies or confusion for airlines in handling claims. However, in some cases, this exclusivity might be considered as limiting the consumer's chance of obtaining redress.

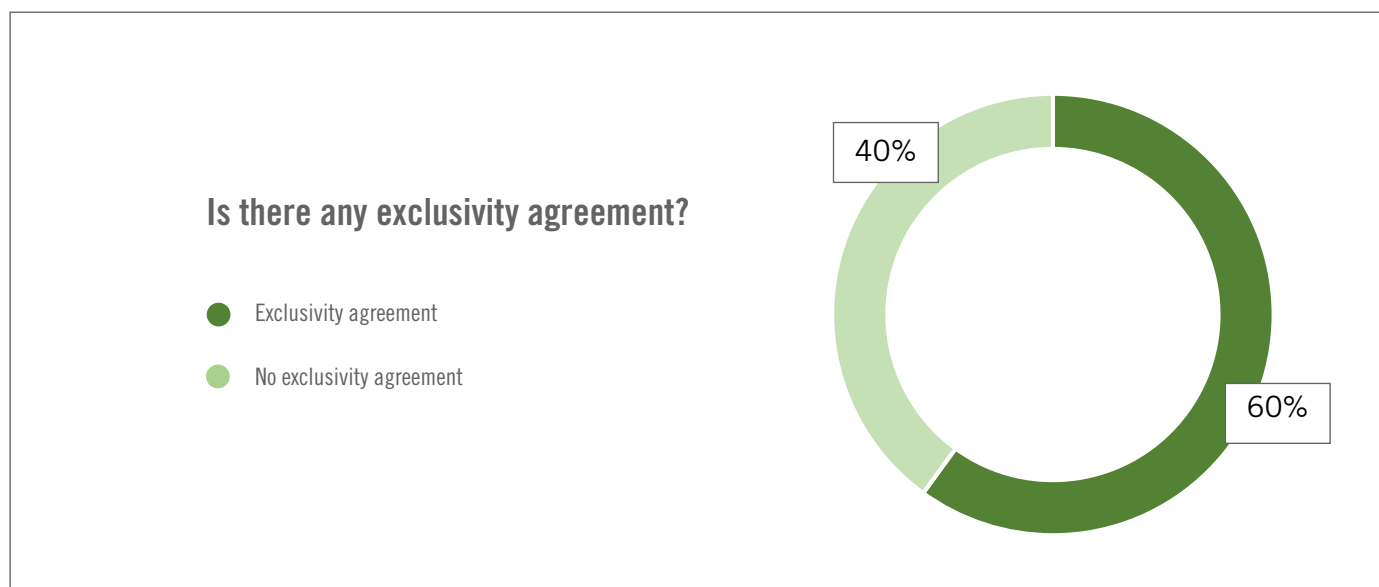


Table 6.4 Information about exclusivity agreements. Data: Questionnaire part 3.

Experience of a French consumer: The consumer first asked ECC France to help him with a request for compensation from a Greek airline. In the meantime, thinking that it could be useful and maybe quicker, he also got in touch with a consumer association working with a private claims company and concluded a contract. Two days after receiving an acknowledgement from the claims company informing him that they would handle the case, the consumer received compensation via the ECC-Net, who had reached an amicable solution by contacting the airline directly. The ECC-Net was unaware that the consumer had hired the claims company. When the consumer informed the consumer association and claims company about the positive outcome, he was asked to pay the fee foreseen in the contract in the event of success; 25 % of the compensation received.

The consumer contacted ECC-Net to complain. The association and claims company argued that it was clearly stated in the terms and conditions that the consumer was not supposed to use another private claims company for the duration of the contract and in any case the fee was due in the event of success. With the help of the ECC-Net, which operates free of charge for consumers as it is financed by public funds, the consumer argued that he did not use another private claims company. The association then proposed a EUR 50 penalty. The consumer refused as this was not provided for in the terms and conditions. In the end, the claims company agreed to forgo the fee.

Question 7: If the consumer signs a contract, especially one with a renewal clause is there a cooling off period and if so, how long is it?

Even if in most cases the contract can be concluded at a distance, only 38 % of the private claims companies studied provide information about about cooling off rights. Its duration is 14 days in the majority of cases, which is in line with the Consumer Rights Directive. Only two companies have a different duration, 30 days in one case and 7 days in the other. Whereas the first grants supplementary protection to consumers, the second, if the contract is concluded at a distance, does not respect binding law. Only in one case¹¹⁷ was a form seen enabling consumers to exercise cooling off rights more easily, a mechanism foreseen by the Consumer Rights Directive. In addition to the cooling off right, an Austrian claims company allows consumers to cancel without paying a fee if the company takes no action within 6 weeks, or if no solution can be found within 24 months.

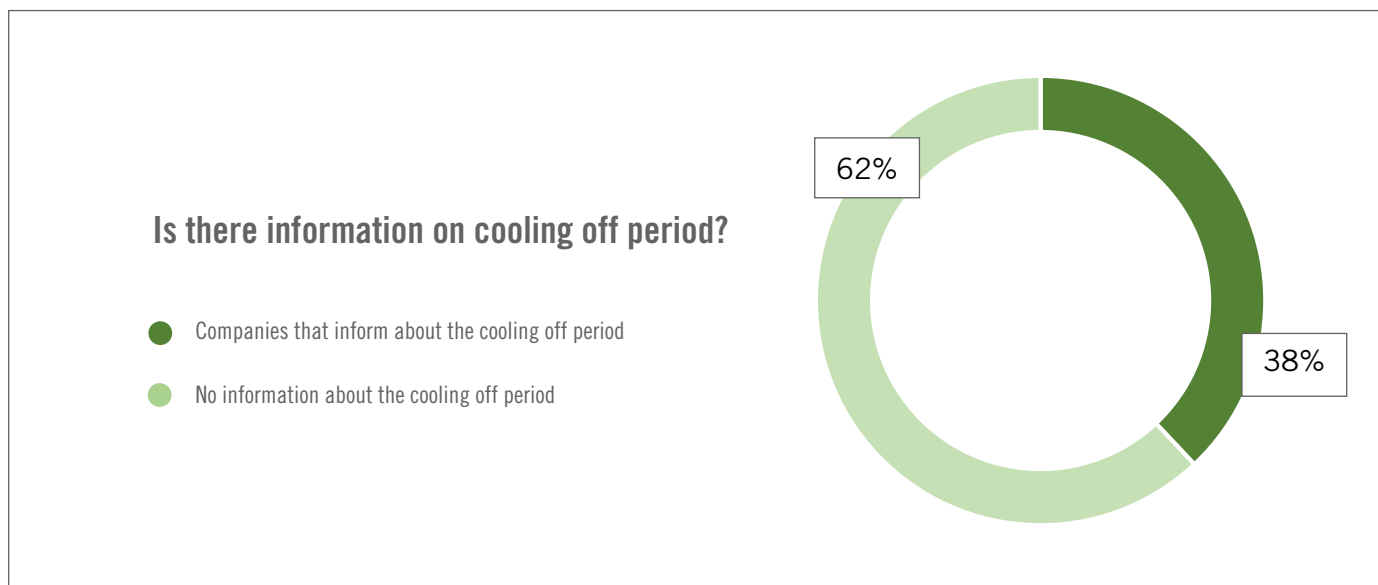


Table 6.5 Information about cooling off periods. Data: Questionnaire part 3.

Question 8: If the contract contains a renewal clause, is there a period in which the consumer can cancel it and by when does this have to be done?

None of the claims companies studied propose automatic contract renewals and contract durations are rarely mentioned. Contracts generally end when a solution is found but there are no provisions for ending a contract before this. In three cases, the consumer can stop the procedure when he/she wants but will have to pay the fee regardless of whether there is a solution or not.¹¹⁸

Some companies offer consumers the chance to cancel under certain conditions. For example, for one of the companies based in France, terms and conditions allow cancellation if the company does not respect its obligation, in the event of force majeure or at any moment after a period of over 6 months. In the case of one of the Hungarian companies, it is possible to cancel a contract before it ends by paying a EUR 50 penalty.

Question 9: Is only a conciliation process used or can an ADR be involved and if so, which ADR?

In a majority of cases (62 %), the procedure or methods to be implemented by the company are not clearly stated.

Only 11 companies mention that there will first be a conciliation phase. The possibility of a court procedure is mentioned by six companies. Two of them refer to the NEB. In one case, the claims company is clearly a solicitor's office and can consider taking legal action itself on behalf of consumers.

Almost none of the companies studied mention an ADR procedure. Only in two cases is explicit reference made to an external entity. One is a Danish claims company,¹¹⁹ which mentions that if conciliation does not work, the case can be sent to a 'relevant authority'. This could be an ADR or the NEB.

The other is a Swedish company, which explicitly refers to an ADR.

¹¹⁷ A company in Belgium.

¹¹⁸ Companies in Denmark, France and Sweden.

¹¹⁹ Company in Denmark.

Question 10: Are there any costs to the consumer for out-of-court procedures (agency, ADR fees, etc.)?

Of the companies studied, 62 % give clear indications regarding costs of procedures. In 15 out of 18 cases, costs are clearly indicated as a percentage of the refunded amount (20-33 %). In the event of failure, the consumer owes the company nothing.

In two cases, the claims company asks for a fixed amount (one company in Denmark and one company in France). This fee is to be paid just for handling the case, regardless of the outcome.

The solicitor's office, which is based in the United Kingdom, foresees a fixed fee of EUR 25 for case handling and 27 % of the payment obtained from the airline (no win no fee).

For the other cases, information was not available, which constitutes a lack of transparency for consumers. In any case, this does not mean that no fee is payable.

In general, it is unclear if the costs mentioned cover the conciliation phase and eventual court procedure, or only the conciliation phase.

In the event of a court procedure, consumers may incur additional costs (even if it is free to open the procedure). For example, in France, if a court decides in favour of an airline, the consumer can be ordered to pay the legal fees of the airline and other extra costs.¹²⁰



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120 Article 700 of the Civil procedure code.

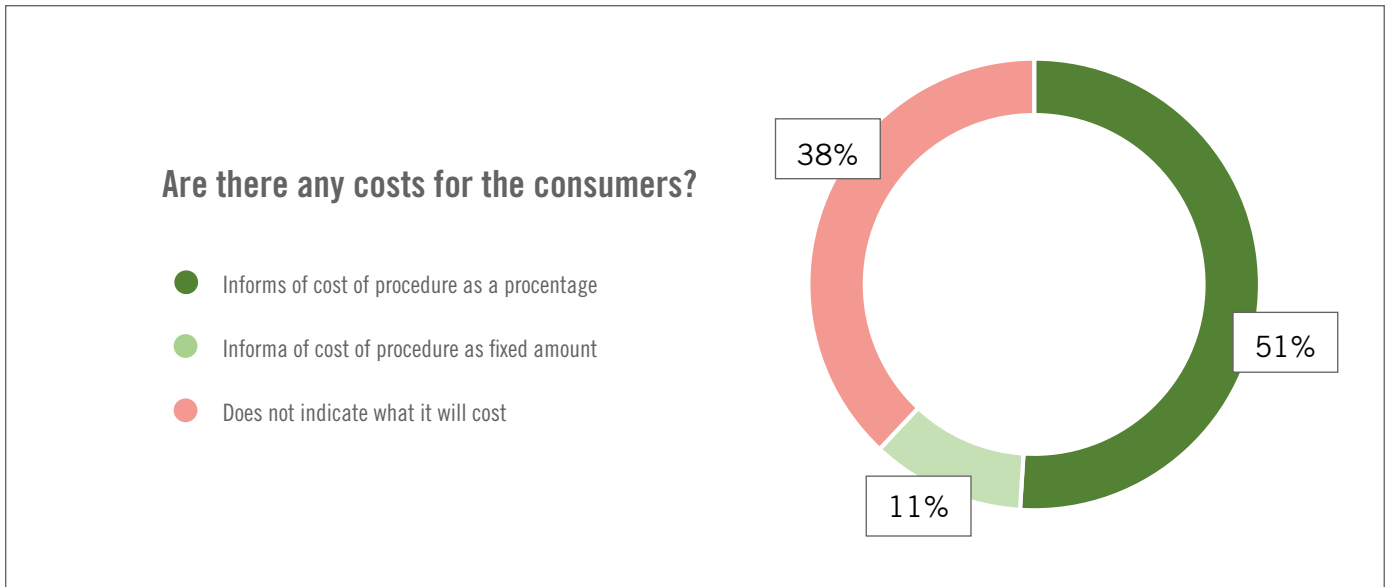


Table 6.6 Information about cost for the consumer. Data: Questionnaire part 3.

Question 11: What is the duration of the out-of-court procedure?

Out-of-court procedures take 52 days on average. However, only 14 % of the companies mention a specific timeframe beyond which they refer cases to the courts or close them. Of the respondents, 3 % state that this is assessed on a case-by-case basis and 83 % have no information available.

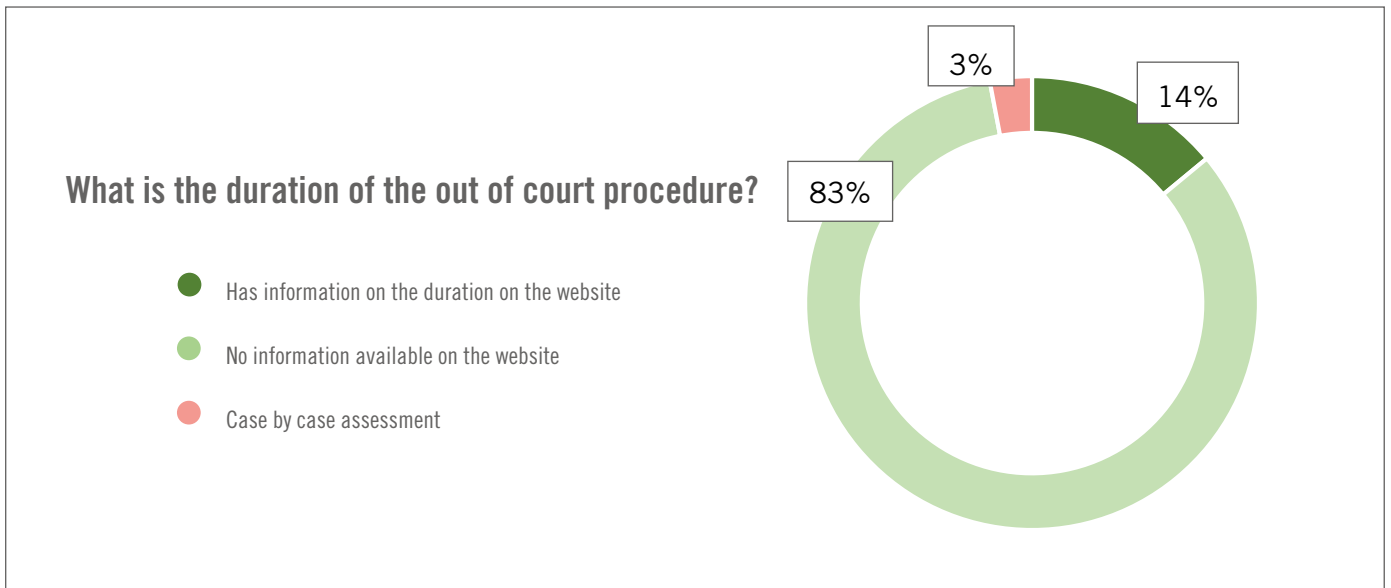


Table 6.7 Information about duration of out of court procedures. Data: Questionnaire part 3.

Question 12: What is the nature of the decision (binding, non-binding)?

While 14 ECCs replied that they have experience with this type of company, none have said that out-of-court decisions are binding. Outcomes of conciliation processes are not binding, but none of the company websites have information on this.

Question 13: Is the service run by legal professionals (lawyers, etc.)?

For 39 % of the companies, it is stated that the service is run by legal professionals and 6 % state that it is not. In 47 % of cases, no information is available at the website and 8 % state that the service is not run by legal professionals but that they work with lawyers if the case is taken to court.



Table 6.8 Service run by legal professionals. Data: Questionnaire part 3.

Question 14: Is it necessary to have a nationally recognised authorisation/qualification/diploma to represent consumers in court? If so, which of these private entities do not seem to be in line with national law?

Out of the 14 ECCs that have replied to the questionnaire, four say it depends on the value of the claim, six say that it is necessary to have an authorisation to represent a consumer, two say that it is not necessary and two mention that close relations can represent a consumer in court.

No ECC has said that there are companies that are not in line with national law. ECC Denmark notes that the concept of payment of a percentage of the compensation may not be in line with regulations regarding good practice for legal professionals. In Sweden, this is forbidden for bar association lawyers under section 4.a of the terms of conduct for lawyers.¹²¹ ECC Poland states that they have noticed a few entities using unfair practice in this field. Two of them have been reported to the enforcement authority.

Question 15: Which are the competent courts in your country for APR cases? Is this information mentioned on the websites of these companies? Is the information correct?

On 86 % of websites, there was no information regarding which court is competent to hear disputes. Only Belgium and Spain provided information on courts other than local courts of first instance.

Question 16: Does the company website indicate court fees?

None of the companies provided specific information on court fees. One company, based in Hong Kong, charges a standard legal action fee in the event that court action is required of either EUR 63, EUR 100 or EUR 150 depending on the distance of the flight and compensation due. This is in addition to the service fee payable in order to make a claim through the company.

A Spain-based claims company indicates that consumers may incur additional costs of EUR 60 if court action is required but does not provide further details on whether and how such fees will be charged or whether they are recoverable in the event of a successful outcome.

Question 17: Does the consumer pay the company anything?

Over 81 % of the companies charged consumers for using their service. In 5 % of cases, it was not possible to ascertain whether a fee was payable. All of the Italian companies provided their services free of charge. The vast majority of companies who levied a fee, calculated this as a percentage of the compensation payable in the event of a successful outcome. Rates varied from 20 % to 30 % and the most common amount charged was 25 % (by 44 % of the companies). Almost 8 % charged a flat rate fee.

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 121 https://www.advokatsamfundet.se/Documents/Advokatsamfundet_sv/Advokatetik/V%c3%a4gledande%20regler%20med%20kommentarer%20december%202012.pdf

Question 18: Who pays the court procedure? The company or the consumer?

This was frequently not clear from the information provided on the website of the companies reviewed. In one third of the companies looked at, no information at all was provided regarding who was to be responsible for court fees. The company is most frequently responsible for paying the court procedure (55 %) with many indicating that such charges form part of their commission. However, other companies will pass these costs to consumers so it is important that the information provided is transparent and complete. In practice, if a claim is successful in court the relevant court fees should be payable by the losing party ie the airline in which case whichever party pays the court fees should be reimbursed.

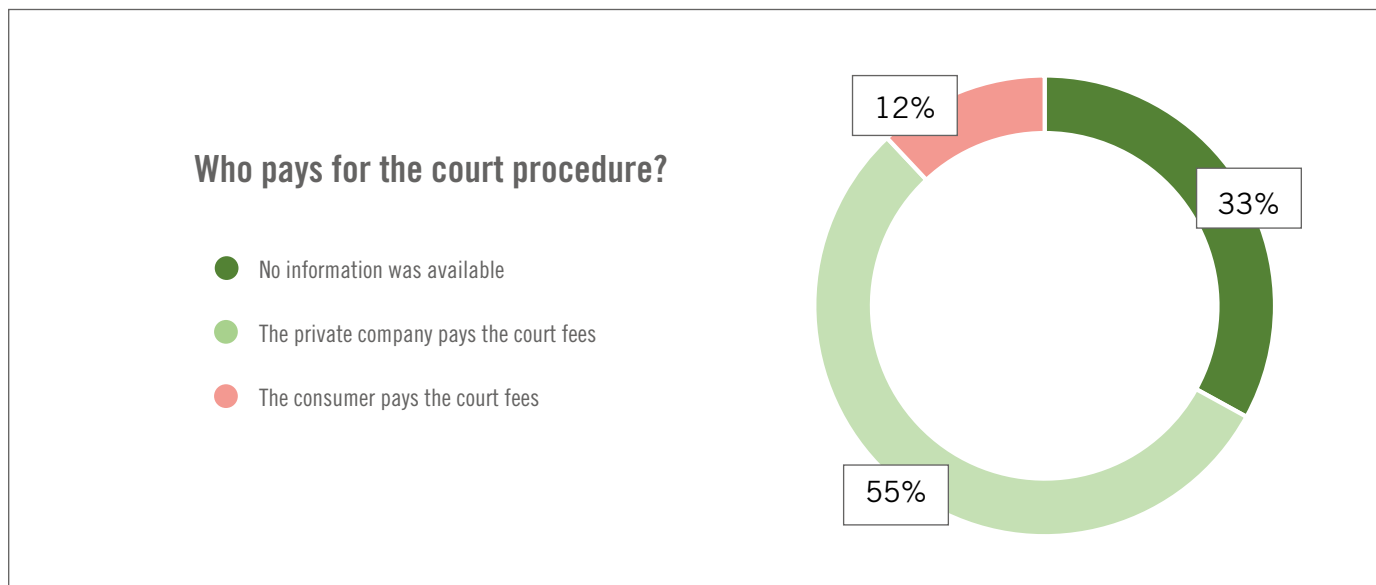


Table 6.9 Information about who pays for court proceedings. Data: Questionnaire part 3.

Question 19: What other costs does the consumer have to bear (translation, execution...)? Does the website mention such costs and where?

Again, there was scant information on additional fees. Although not explicitly stated on any of the websites, it is likely that the consumer would incur additional costs should the award need to be enforced given that the services provided by these companies tend to be limited to securing the award of compensation. Three of the companies specifically stated that fees are levied on consumers who withdraw from agreements prematurely to cover costs incurred. One company charges consumers EUR 30 just to process payment of compensation and EUR 30 for an invoice.

Question 20: How and when is the consumer paid the compensation if they win the case, either in court or amicably?

Of the companies examined, 57 % did not provide any information on how compensation would be paid should the consumer be successful. Those that did simply stated that the money would be paid as soon as it was received from the airline by electronic transfer. Seven companies indicated specific timeframes which ranged from 5 to 90 days of receipt of the funds by the company. A further two companies stated that they did not process the payment and this would be done directly by the court.

Question 21: Is there already any case law in this area? What is the position of the courts regarding interventions by such companies?

There is very little case law or general information available on the position of European courts regarding the involvement of these companies in APR disputes. ECC France reports that a body of case law exists but the attitudes of the courts vary depending on the company involved. One issue that has arisen in French jurisprudence is the lack of competence of some of these companies to represent consumers given that they are not legal professionals and have not been granted power of attorney by the consumer.

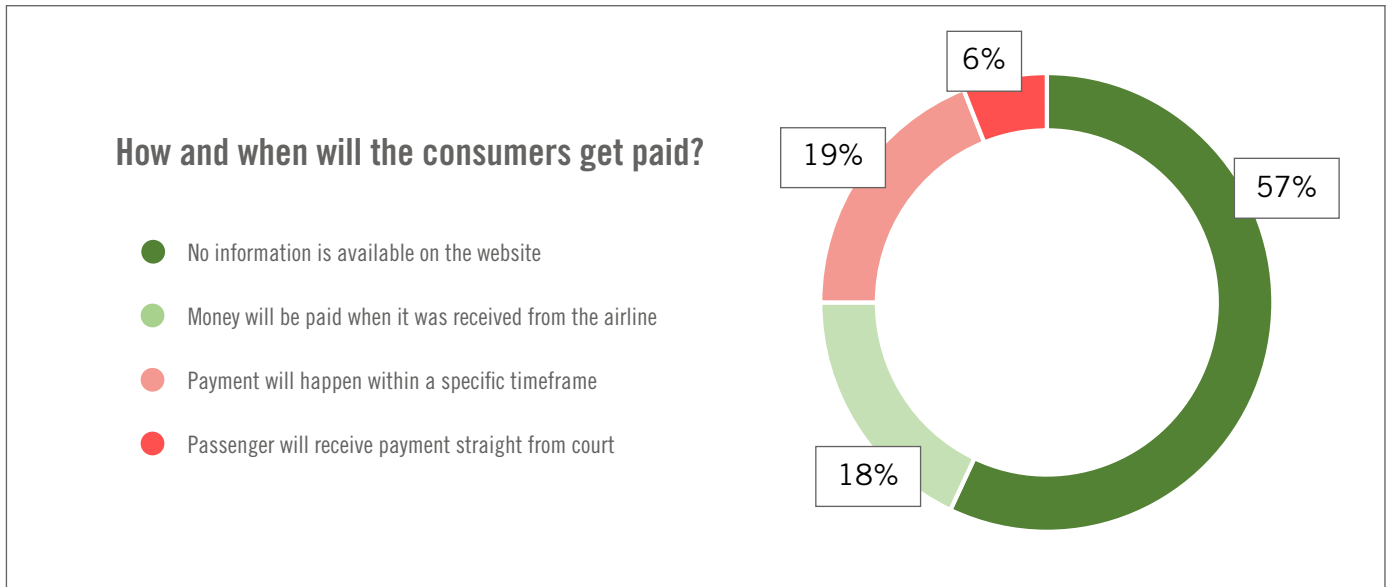


Table 6.10 Information about how and when consumers are paid. Data: Questionnaire part 3.

Question 22: By what means do these companies advertise their services in your country?

The companies advertise their services mainly via the media, Internet and social media. One company has Google adverts and even a smartphone app for their services.

Question 23: What marketing arguments are used?

The marketing arguments used are mainly that they are fast, safe and efficient for consumers. Furthermore, they emphasise that using their services carries no risk, and that the procedure is simple. They also highlight their high success rates. Finally, some companies market their services as free of charge or no win, no fee.

Question 24: Do the marketing arguments accurately describe the services provided? Please detail any discrepancies (for example, is it really for free if you consider court costs or other costs?)

It is difficult to find sufficient information to assess whether the marketing arguments accurately describe the services provided. Furthermore, in some countries the consumer has to pay court costs. Also, some of the companies have hidden costs.

Question 25: Are such companies really allowed to advertise in your country (given the status of professionals such as lawyers)?

These companies are allowed to advertise in the EU, Iceland and Norway and use advertising to attract the attention of air passengers who have had flights disrupted. In many countries, there is a ban on no win, no fee advertising by lawyers and legal professionals in France are not allowed to advertise.

Question 26: Does their marketing create the impression that NEB/ADR procedures are complicated?

Of the registered companies, 29 do not claim that it is complicated to use NEB/ADR procedures. On the other hand, 2 companies do say that this is complicated. They are registered in Germany and Belgium. For the rest of the companies, it was not possible to find any information regarding this.

Question 27: Do they mention 'European Union support' or any other official support? Please provide examples.

Of the 36 companies, five incorrectly mention the European Union as supporting their activities.

Our company is supported by the European Union.

Question 28: Do you have any case studies that highlight particular problems consumers in your country have encountered in relation to these companies? If so please give details.

In France, the number of examples of case law related to private claims companies is increasing. Currently, in most such cases, the court does not even get to consider the facts of a claim. Rather, the case is dismissed on procedural grounds.

Generally, consumers will hire a private claims company to get compensation to which they think they are entitled. The company will start proceedings and often file a claim with the court. However, in line with French legislation, the first thing the defendant will check is whether the company is legally entitled to represent the consumer in court.

In France, only an attorney can represent a consumer in court on an individual case. The lawyers taking the case should not be considered as representing the consumer as they usually act on behalf of the claims company with which they have a contract.

A consumer association can represent a consumer under certain very restrictive conditions, and only in a collective interest case. Another exception is representation by a member of the family but this must be a very close relative.

When it comes to private claims companies who do not work with a lawyer, the air carrier can argue that the company does not have the authority, even with power of attorney, to handle the case in court on behalf of the consumer. The case may then be dismissed to the detriment of the consumer who is usually required to pay the court costs.

Other cases brought before courts of first instance (*juges de proximité*) confirm the incompatibility of the commercial practices of private claims companies with French civil procedure rules. Requests for compensation under application of Regulation (EC) 261/2004 in which the consumer was represented by a lawyer who also represented a claims company (Skymediator) were dismissed on the grounds that the company was acting as a relay for the lawyers. In this case, the consumer did not have a choice of lawyer, as the claims company only worked with one firm. The claimants had to pay costs in accordance with article 700 of the civil procedure code and the airline was able to claim back their legal and procedural fees. If the contract between the consumer and the claims company is not clear, dismissal of the case may cause the consumer to incur further financial loss.

6.1.1 Specific problems regarding private claims companies

Some private claims companies do not handle cases sent to ADR bodies in an appropriate and professional way. One example can be seen in a recent decision¹²² from the Norwegian ADR. In this case, the claims company did not send information requested by the ADR. Due to this, the consumer lost the case. The Swedish ARN has also experienced problems with claims companies who did not submit requested supplementary information by a set deadline. The ARN could not consider the case without this information.¹²³

Below are some examples of consumer complaints regarding claims companies received by ECC-Net.

‘On 26 June 2012 our flight from San Francisco to Paris was delayed by around 16 hours. At the time, the French airline gave us neither assistance, nor the offer of an overnight stay in a hotel, nor any information on the duration of the delay.

At home, I learned that in such cases passengers are entitled to EUR 600 compensation per person. I therefore raised this with the French airline but they said we were not entitled to compensation and offered us a voucher for a flight within 12 months, which we rejected. We then contacted www.claimit.be.

We granted them power of attorney and they say they went to court in Belgium. A few months ago, they told me that they lost the case, as the French airline claimed that the court was not competent to rule, on the grounds that the flight did not depart from or arrive in Belgium.

After examination by one of their French lawyers, they concluded that there was no possibility to bring a case in France, given the prescription period. The fact that a Belgian court had ruled, had no effect on the prescription period and they closed the matter without success.’

An Austrian consumer flew with a Belgian airline from Tenerife to Charleroi. The flight was delayed by 3 hours 40 minutes. The consumer claimed compensation but the airline refused, arguing extraordinary circumstances. Subsequently, the consumer turned to ECC-Net for help. ECC Austria shared the case with ECC Belgium and they contacted the airline. The airline replied very quickly but said that the 1-year prescription period had elapsed.

The consumer passed the case on to Fairplane.at. After a year and a half, the company told the consumer that the airline did not reply and they did not want to go to court since the airline is based in Belgium. Hence, they closed the case. It turned out that the attorney-at-law assigned to the case by [Fairplane](http://Fairplane.at) sent just one e-mail to the airline in a year and a half. There were no registered letters, no reminders and no court proceedings.

When the consumer confronted the attorney-at-law with the answer ECC-Net received from the airline, the lawyer said that the prescription period had not elapsed. However, this is not correct since Belgian law is applicable and, as ECC Belgium told ECC Austria, the period is indeed 1 year in Belgium.

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122 Transportklagenemnda, the Air Passenger Complaint Handling Body is Norway’s official complaints body and channel for dealing with cases where APR are not been respected by airlines. It is attached to the European NEB network, which handles disputes between passengers and airlines according to Regulation 261/2004 and Decision 1266/14F, nr: 9/15 of 21 September 2015: <https://fly.transportklagenemnda.no/Forside/Nemndsavgjoerelser/1266-14F-behandlet-i-moete-nr-9-15-den-21-september-2015>.

123 The Swedish National Board for Consumer Disputes (ARN) is a public authority that functions roughly like a court. It impartially tries disputes between consumers and business operators. It is attached to the European NEB network in accordance with Decision 2015-00217 and 20015-02604.

A French consumer called on ECC France regarding a claim for compensation from a Greek airline based on Regulation (EC) 261/2004. After several months of amicable correspondence, ECC France were close to receiving the payment, but the consumer started to get impatient and decided (without informing ECC France) to ask a claims company (run by a consumer association) for more help. The consumer had just signed the contract with them when payment of the compensation was made thanks to ECC France.

The consumer informed the company, that its help was no longer needed. Until that point, the agency had only opened the consumer's file (2 or 3 days before the consumer received the money), but they then sent the consumer an invoice for 25 % of the compensation, claiming that this was set down in their terms and conditions. The consumer was upset by this request: as the successful outcome was down to the ECC-Net, and not the company. The company argued that the consumer was not supposed to call on two 'agencies' at the same time and then said that they would settle for payment of a penalty of EUR 50 (but this was not mentioned in the terms and conditions).

When the company noticed that the other body whose services the consumer had enlisted was not a company but the ECC-Net (which intervenes for free), it finally gave up on any compensation claim from the consumer.

It is understandable that such companies will incur losses (opening of files, administrative costs, etc.) if a consumer engages both their services and those of another company or a free service such as the ECC-Net. A penalty fee can be justified if it is clearly mentioned in the terms and conditions, and the consumer is forewarned that he/she is not entitled to use two services at the same time.

A French consumer had a complaint against a Belgian airline. ECC France shared the complaint with ECC Belgium. When they contacted the airline, they were informed that this case was already ongoing with Claimit. In order to handle the case with ECC Belgium, the airline requested a written document signed by the consumer and Claimit, indicating that Claimit doesn't handle the case anymore. ECC Belgium informed ECC France and the consumer about this demand and the fact that the ECC-Net procedure can't be handled in parallel. After receiving this information the consumer informed ECC France that Claimit had already started a procedure with a lawyer costing him EUR 326 and that he can't resign from the contract.

The Swedish Consumer Agency (SCA) has opened four cases against private claims companies based in Sweden. The SCA found that the companies used unfounded claims regarding the process of complaining on a delayed flight and that the companies' terms and conditions were written in an unclear way making it difficult for a consumer to understand the scope of the agreement. In some cases the terms and conditions were contrary to consumer protection laws.¹²⁴

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124 The Swedish Consumer Agency, case numbers 2015/1554, 2015/1555, 2015/1556 and 2015/1553.

6.2 Consumer body initiatives helping consumers to make sure their rights are respected

Along with the ECC-Net, which specialises in cross-border consumer issues, national consumer bodies provide information and assistance in APR cases. Some deal with general consumer issues, others may specialise in passenger rights. Some can only inform passengers about their rights, others can assist in and out of court.¹²⁵ Consumer bodies may also be able to represent consumers in collective cases or bring test cases on behalf of consumers when clarification of legislation by a judge is needed.¹²⁶

However, in most Member States consumer bodies are financed by public funding and in some cases also by membership fees. With public resources becoming scarce in several Member States, consumer associations may be inclined to seek other sources of financing. Similarly to claims companies, consumer associations may specialise in representing groups of consumers in court, as well as acting in individual cases.

For example, the Belgian consumer organisation, Test Achats has developed a specific service for APR under Regulation (EC) 261/2004. They work with around 20 lawyers specialising in the travel sector. The service includes direct mediation with airlines and cooperation with the NEB if necessary, as the Belgian NEB can handle individual claims. If no solution can be found, recourse to courts is possible. During the mediation phase, consumers do not have to pay anything. If Test Achats starts judicial proceedings, they will ask the consumer to become a member of their organisation but no other fees are involved. The court fees of EUR 40 for the justice of the peace and EUR 100 for the court of first instance are paid by Test Achats.

In France, UFC-Que choisir, a main player in the consumer movement, has set up a specialist APR service, [Indemnit'Air](#). They can intervene in claims based on Regulation (EC) 261/2004, and the Montreal and Warsaw conventions (the latter of which regulates liability for international carriage of people, luggage or goods by aircraft) for flights departing from airports in the EU, Iceland, Norway or Switzerland. They handle cases of delay from the previous 2 years, and cases of cancellation or denied boarding from the previous 5 years.

According to the terms and conditions¹²⁷, the consumer hires them for a renewable period of 12 months¹²⁸ to represent him/her in and out of court. To represent consumers in court, they work with external lawyers. The organisation seems to look for amicable solutions at first, with no transfer to an ADR body foreseen. If they find a solution, they transfer the money within 30 days of receiving it from the airline, keeping 25 % of the amount obtained.

Concerning court fees, the procedure before the court of first instance (for claims of a value of under EUR 4 000) is free of charge. The consumer may need to pay enforcement fees if the airline does not adhere to the court's decision right away. The [Indemnit'Air](#) name is very similar to that of a private company called [Air indemnit ](#) which may cause confusion.

Another initiative in France links the consumer movement with a private claims company. The Consommation Logement Cadre de vie [CLCV](#) has launched a new online service in cooperation with [Demanderjustice.com](#) to enable consumers to file a claim at the court of first instance. This initiative does not specifically concern APR but covers all consumer law issues. For EUR 79.90 the consumer receives administrative help in reaching an amicable solution, and if this is unsuccessful, with filing a claim with the competent court and a year's membership of CLCV.¹²⁹ The CLCV presents this service as an alternative to in-house mediation which is quite widespread in the French ADR landscape where many businesses have set up their own ADR bodies which are listed by the European Commission.

In the Netherlands, the Consumer association, Consumentenbond has created the [Vlucht Claim Service](#) which specialises in APR under Regulation (EC) 261/2004. However, this service does not cover individual assistance for consumers, but only enables them to check whether they are entitled to compensation based on their flight number.

The #rightsonboard alliance has been created essentially by private claims companies and consumer associations from Denmark, Germany, Spain, France and Austria to defend passengers' rights.¹³⁰

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125 See also the report on ADR in the APR sector, ECC-Net Joint project 2012, revised 2015: http://ec.europa.eu/consumers/ecc/docs/adr_report_06022013_en.pdf.

126 For example, Consumers Association of Austria – Verein f r Konsumenteninformation.

127 <http://www.quechoisir.org/que-choisir-site-internet/ufc-que-choisir-indemnit-air-conditions-generales-de-vente-du-service-indemnit-air>.

128 If the contract is signed online, the consumer has a 14 days cooling off period.

129 If the consumer is already a member of the association, he/she can order the other two services for EUR 49.90.

130 http://rightsonboard.org/?page_id=2. Members: AirHelp, AirRefund, flightright, reclamador.es and Verbraucherschutz.de. (registered non-profit consumer organization).

6.3 Industry initiatives facilitating complaint handling in the APR sector

So far the ECC-Net is only aware of one concerted industry initiative to facilitate the complaints process for consumers, see also the section on dealing with airlines.

In light of the growth of private claims companies and the fact that some of them are quite quick to consider legal action without trying to find an amicable solution with the airline, as well as the negative consumer feedback many airlines have received, the syndicate of independent airlines in France created an online platform, SAV.flights.¹³¹ This aims to provide a consumer complaint handling mechanism which enables passengers to contact airlines prior to taking any further steps and allows passengers and airlines to avoid unnecessary court proceedings and fees.

This platform does not operate as a consumer body or an ADR, and it does not claim to be an NEB. Rather, it is simply a way of enabling consumers to find out about their basic rights, to clearly explain the claim and to send it to the appropriate service of the airline. No legal analysis of cases is performed but the moderators make sure that the cases are well documented before transferring them to the airlines. The procedure is only available online and is totally free of charge for consumers.

Consumers can see how their cases progress on a time line and can communicate with the airline or the SAV.flights team directly online.

If the company does not answer the consumer within 2 months or if the solution proposed does not meet the consumer's expectations, he/she has the possibility to have the file directly forwarded through the platform to the French ADR for Tourism and Travel.¹³² The consumer thus simultaneously becomes aware of the existence of this ADR scheme (if they did not already know about it) and can access it directly by forwarding the case to it (with no further action needed).

As the ADR for Tourism and Travel is only competent for cases involving traders who are members of the scheme (mainly the French airlines and Easyjet regarding APR), claims from French consumers against an airline based in another EU Member State, Iceland or Norway can be redirected to ECC France.

If direct contact with the trader, ADR or intervention by ECC-Net does not lead to a successful outcome, the consumer can still consider legal proceedings. If the case involves technical issues such as extraordinary circumstances, the consumer might forward the case to the NEB first.

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131 <https://fr.sav.flights/>.

132 <http://www.mtv.travel/>.

7. Main areas of complaint

Results from the general ECC-Net questionnaire



7.1 Flight Delays and Cancellations

Under Article 14 of the Regulation, airlines are obliged to provide consumers with information about their entitlements in the event of delay, cancellation or denied boarding.¹³³

One of the main problems consumers experience in these instances is that many airlines fail to provide this 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 it is only a matter of reimbursement of the cost of refreshments or telephone calls, for which the airline may request receipts. It is important therefore to remember that the 'right to care' concerns provision of assistance at the time of the incident, as opposed to reimbursement at a later date.

If this is borne in mind, many of these difficulties can be overcome.

As regards **cancellations**, Regulation (EC) 261/2004 states that consumers should be notified and offered the option of a refund of the price of the ticket or rerouting to their final destination. Where consumers choose to be rerouted this must be done at the earliest opportunity and the airline should cover costs such as meals and accommodation. It is crucial to ensure that information is provided about this option, because in many cases, the consumer will refuse rerouting for good reasons (the proposed rerouting is too late or to a different destination) and would prefer a refund. Accepting a refund will end the company's responsibility towards the consumer but the consumer may not be aware of this and expect assistance to which he/she is not entitled under the regulation.

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.

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¹³³ 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.'

As regards whether the circumstances could have been avoided if reasonable measures had been taken by the airline, the recent CJEU decision, C-294/10 (*Eglītis and Ratnieks v Ekonomikas Ministrija*) is very instructive.

Following on from its reasoning in *Wallentin-Hermann*, the CJEU held that Article 5(3) of Regulation (EC) 261/2004 must be interpreted as meaning that an air carrier must take account of the risk of delay connected to 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 have passed.¹³⁴

Another very recent decision in C-257/14 further clarifies that *'Article 5(3) of Regulation (EC) No 261/2004 /.../ must be interpreted as meaning that a technical problem, such as that at issue in the main proceedings, which occurred unexpectedly, which is not attributable to poor maintenance and which was also not detected during routine maintenance checks, does not fall within the definition of "extraordinary circumstances" within the meaning of that provision.'*¹³⁵

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 regard to compensation.

The questionnaire sought to examine the types of issue that arise most frequently in the APR cases dealt with by ECC-Net. Both in consumer and trader ECC cases, delays and cancellations are the most common overall, while denied boarding is rarely a subject of consumer complaint. Lines can be blurred between delays and cancellations as there is no fixed timeline at which a delay becomes a cancellation. If the flight number is changed, it is a cancellation. ECC UK notes that airlines based in the United Kingdom rarely cancel flights but instead have long delays.

The ruling of the EUCJ is very clear on long delays; as with cancellation they entitle passengers to compensation.

Luggage issues and problems with intermediaries are very common in some countries, while in other countries there are fewer instances of this.



134 Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62010J0294:EN:HTML>.

135 Full Judgment at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=167942&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=420867>.

The issues reported to the ECCs are shown in the graph below, 1 being the most common and 5 the least.

Consumer ECC	Delay	Cancellation	Luggage	Intermediaries	Denied Boarding
Austria	2	3	4	1	5
Belgium	1	2	4	3	5
Bulgaria	4	4	3	2	2
Croatia	1	2	3	4	5
Cyprus	2	3	1	4	5
Czech Republic	1	3	2	5	4
Denmark	1	2	4	3	5
Estonia	1	2	4	3	5
Finland	1	2	4	3	5
France	1	3	4	2	5
Germany	1	4	2	3	5
Greece	3	2	1	4	5
Hungary	1	3	2	4	5
Iceland	1	2	3	4	5
Ireland	3	4	2	1	5
Italy	1	2	3	4	5
Latvia	2	1	4	3	5
Lithuania	1	3	2	4	5
Luxembourg	1	2	3	4	5
Malta	4	3	1	2	5
Netherlands	1	4	2	3	5
Norway	1	4	2	3	5
Poland	2	3	1	3	5
Portugal	1	2	4	3	5
Romania	1	2	3	4	5
Slovakia	1	3	2	5	4
Slovenia	1	4	3	2	5
Spain	1	3	2	5	4
Sweden	1	2	3	4	5
United Kingdom	1	5	3	2	4

Table 7.1. The most common issues the ECCs experience in consumer cases.

7.1.1 Strikes as an extraordinary circumstance

Regulation (EC) 261/2004 dispenses air carriers from some of their duties in cases of extraordinary circumstances. However, the regulation does not provide any definition of 'extraordinary circumstance'. The CJEU has clarified this issue to a certain extent but questions remain, such as regarding strikes.

Air transport strikes are common and can affect air traffic to a greater or lesser extent and cause disruption for consumers such as delays or cancellations.

Regulation (EC) 261/2004 does not lay down any specific rules concerning strikes and whether they should be considered as extraordinary circumstances. Court rulings in the Member States depend on the national jurisdiction, national law or NEB positions. The ECC-Net therefore organised a small questionnaire on this topic, to which 24 ECCs responded.

The results show that views vary from one country to another. In most countries, a strike is clearly considered as an extraordinary circumstance. In eight countries, the law differentiates based on the origin of or reasons for the strike. For example, a strike by airline staff would not be considered an extraordinary circumstance. A strike by external personnel such as air traffic control or as a consequence of a government decision would be considered as an extraordinary circumstance (as it would be outside of the airline's control).

In Denmark, it depends on the information given prior to the strike and its predictability. A strike announced in advance is not considered as an extraordinary circumstance, as the airline has time to find solutions.

The current situation is unsatisfactory as consumers will be treated differently depending on the country where they launch judicial proceedings, which may lead to so-called 'forum shopping'.

For example, if a French consumer's flight from Paris to Berlin with a German company is cancelled because of a pilot strike, he/she will be able to choose between making a claim in Germany or France. The consumer will probably choose France, as a French court may not consider the strike as an extraordinary event, while in Germany, due to a Supreme Court decision, it will be impossible to get compensation as strikes, even by pilots, are considered as extraordinary circumstances.

7.2 Denial of boarding

Denial of boarding is governed by Regulation (EC) 261/2004 and occurs when there are not sufficient seats for all passengers booked on the flight. Article 4 sets out the procedure to be followed in such circumstances. The air carrier must ask passengers to give up their seats to other passengers. If volunteers come forward, they are entitled to a sum of money or other benefits to be agreed with the air carrier. They must also receive assistance in accordance with Article 8, which means a choice between reimbursement and rerouting.

However, if enough people do not volunteer to give up their seats, the airline may prevent passengers from boarding. These passengers are entitled to reimbursement of the ticket price or rerouting. If they choose the latter, the airline should provide them with adequate care such as meals, refreshments, telephone calls and overnight accommodation if required. In both cases, the consumer is entitled to monetary compensation, the amount of which is determined by the distance of the flight.

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

A distinction must then 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 themselves sufficient time to check in.

It is clearly stated in the terms and conditions of most air carriers that it is entirely the passengers' responsibility to ensure that they are in possession of the necessary documentation. This includes items such as acceptable forms of photographic identification, passports, visas and transit visas.

Consumers should be aware that whilst certain identification documents may be acceptable for public authorities in charge of border control, it is possible that they will not be accepted by airlines. This is because border controls and airline checks differ as regards their objectives and the technical means available. While refusal of certain types of identification is not always justified, it is advisable that consumers read the terms and conditions carefully to see what forms of identification are accepted by the airline.

7.3 Claims for Consequential Damages

In the CJEU's preliminary ruling C-344/04 IATA v Department of Transport,¹³⁶ it distinguished between individualised and standard damage as a result of delays, stating 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 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 (EC) 261/2004 entitles consumers to free accommodation, refreshments, phone calls etc., consumers frequently experience other types of damage such as missed days at work or of holidays, or inability to use pre-booked accommodation or attend events.

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 luggage up to a maximum threshold of SDR 4 694. 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, from the ECC-Net's experience, it is difficult for consumers to recoup such damages out of court as the Convention does not stipulate what types of damages are recoverable.

7.4 Other air-related queries

7.4.1 Airport taxes and fees

The question of airport taxes becomes relevant in cases where consumers have a flight ticket but do not use it. In such cases, consumers have the right to reimbursement of recoverable taxes. In most countries, there are only statutory airport taxes. Cyprus and Poland only have private taxes, while Bulgaria, Denmark, Hungary and Portugal have both private and statutory airport taxes.

In Germany and Sweden, the airline can charge fees but it is unclear how these differ from taxes. In Ireland and the United Kingdom, the airport can impose taxes directly on the passenger.

The taxes and fees airlines impose on consumers through tickets vary in name and size. The average consumer will not even notice what kind of tax they pay, why or to whom. Nothing conclusive can be said regarding which taxes and fees are recoverable and which are not based on their name. In general, taxes and fees that are only triggered when a consumer actually takes a flight are usually recoverable.

Some airlines use the term taxes and fees to describe a supplementary charge to the ticket price in order to allow them to compete on price. These charges are not recoverable. What can be said conclusively is that there is no uniform meaning of the terms taxes and fees in the EU, Iceland and Norway. It is unclear which taxes are recoverable and which are not for the consumer, who must rely on the information given by the airline. Furthermore, in practice some airlines charge fees of approximately EUR 50 per ticket to enable them to pay recoverable taxes back to passengers.¹³⁷

The issues mentioned in the 2009 Consumer Protection Cooperation network (CPC) report on airline taxes¹³⁸ still appear to hold true.

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136 See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62004J0344:EN:HTML>.

137 In France, article L 121-118 of the Consumer code foresees that if a consumer does not take a flight, airport taxes have to be reimbursed within 30 days of receiving the consumer's demand. Administrative fees cannot be higher than 20 % of the amount to be reimbursed. If the consumer submits the claim online, no fee can be applied: http://www.legifrance.gouv.fr/affichCode.do;jsessionid=1B5139BA6AA3AF6CC42D17D0D1E2A68A.tpdila11v_2?idSectionTA=LEGISCTA000031052533&cidTexte=LEGITEXT000006069565&dateTexte=20151019.

138 http://ec.europa.eu/consumers/enforcement/docs/airline_charges_report.pdf. See also 2012 ECC-Net report 'The Cost of Paying' available at http://www.eccireland.ie/wp-content/uploads/2013/07/Study_On_Currency_Payment_Card_Fees.pdf.

7.4.2 Extra charges on payments by credit or debit card

According to several legislative acts, it is not allowed to charge a fee for payment by card. The ECCs were asked how Directive 2007/64/EC on payment services in the internal market (Article 52(3)) was implemented in their countries and if there were bans or restrictions on charging consumers for payments made by credit or debit card.

Country	Can consumers be charged for paying with credit or debit cards?	Can consumers be charged for using other means of payment?
Austria	NO	NO
Belgium	YES	YES
Bulgaria	NO	NO
Croatia	NO	YES
Cyprus	NO	NO
Czech Republic	YES	NO
Denmark	YES	YES
Estonia	YES	YES
Finland	YES	YES
France	NO	NO
Germany	YES	YES
Greece	NO	NO
Hungary	NO	NO
Iceland	NO	NO
Ireland	YES	YES
Italy	NO	NO
Latvia	NO	NO
Lithuania	YES	
Luxembourg	YES	YES
Malta	YES	NO
Netherlands	YES	YES
Norway	NO	YES
Poland	YES	YES
Portugal	YES	
Romania	NO	NO
Slovakia	NO	NO
Slovenia	YES	NO
Spain	YES	NO
Sweden	NO	NO
United Kingdom	YES	YES

Table 7.2 Country overview regarding fees and bank charges. Yellow indicates that fees can be imposed but only to cover additional costs incurred by the trader.

A total of 16 ECCs replied that traders can impose additional costs if consumers pay by credit or debit card. The ECC countries marked in yellow specify that the charge may not exceed the cost the trader incurs from the transaction.

ECC Germany specifies that there are no restrictions but on the basis of the German law transposing Article 19 of Directive 2011/83/EU (the Consumer Rights Directive), an agreement obliging a consumer to pay a fee for use of certain means of payment is void if:

- no customary and reasonable payment method is available to the consumer that is free of charge;
- the fee agreed exceeds the cost borne by the trader for processing such payments.

In France, the law does not allow traders to charge a fee for a specific payment method. If a trader wants to encourage consumers to use a specific means of payment, they can propose a rebate but cannot apply a fee.

A total of 14 ECCs answered that the trader may not impose additional fees for payment by credit or debit card. In Lithuania, such fees are not forbidden, but their application is limited. The fee must not be higher than the amount the trader must pay to the bank which provides them with the means to accept cards. In Denmark, extra fees are allowed for e-commerce purchases. If a product is purchased on a trader's premises, the trader is allowed to charge for payment by credit card but not by debit card. Ireland has not implemented the option in Article 52(3) to forbid such fees or limit the right to impose them.

Can consumers be charged for using other payment methods?

In all, 16 ECCs replied that consumers cannot be charged for using other means of payment, whereas 12 replied that they can.

In Austria, surcharges for any payment method are generally forbidden according to Article 27(6) of the Payment Services Act (Zahlungsdienstegesetz). However, it is allowed to give a discount for use of a specific method, even though the outcome is the same.

In Sweden, it is forbidden to charge a fee for using a card, but it is legal to charge a general administrative fee as long as it is not only levied for card payments.¹³⁹

In Denmark, consumers are not charged for paying with cash. As most APR cases involve distance selling (e-commerce), payment methods other than credit and debit cards are rarely used.

Companies in Finland can levy a surcharge for using a method of payment, if at least one commonly used method of payment is offered without a surcharge. The surcharge must be reasonable, and it must correspond to the real costs incurred by the company for the use of the method of payment. The imposition of a surcharge must be stated clearly in advance, at the same time as the acceptability of the method of payment is stated. Instances where a surcharge can be imposed include when, instead of paying in cash, a consumer asks that a bill be sent to their home, or when a consumer opts for a credit card payment instead of payment by debit card.

ECC Malta have never seen a case where a consumer was charged when paying by cash or cheque.

Polish law allows traders to charge consumers for using certain methods of payment, such as money transfers.

Companies in the UK are only allowed to charge extra for use of different payment methods if this leads to them incurring additional costs. The legislation states that '*a trader must not charge consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of that means.*' In practice, airlines tend to apply small additional charges for payments made by credit card (but not by debit card).

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139 Payment Services Act/Lag (2010:751) om betaltjänster.

7.5 Return/one way flights

It is important that consumers are aware that their entitlements will differ depending on whether two flights are made as one booking or not. Many low cost airlines operate as 'point to point' airlines, meaning that consumers may not book two consecutive flights in one booking. As such, two separate contracts exist and if consumers miss their subsequent flight, the airline is not obliged to ensure that they reach their final destination.

In contrast, if both flights are from the same booking, the consumer should remain under the care of the air carrier until they reach their final destination. In these instances, all entitlements derived from Regulation (EC) 261/2004 apply.

Another problematic issue for consumers is the practice whereby airlines insist that tickets must be used in the sequence in which they are booked. For example, it is common that if an outbound flight is not taken, the return ticket becomes invalid. Airlines claim that such a policy is implemented in cases where the price of a return ticket is lower than the price of a one-way ticket, so as to prevent consumers from booking flights which they will not actually use. This practice will often form part of the airline's terms and conditions of transport or rules attached to the fare paid. Unless the consumer can prove that they were not informed of this prior to purchase, this term will be considered as part of the contract.

Nevertheless, according to Directive 93/13/EEC on unfair terms in consumer contracts, 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 (Bundesverband der Verbraucherzentralen) sued British Airways, Lufthansa and the BGH in case Xa ZR 5/09. Whilst acknowledging that airlines have a legitimate interest in protecting their tariff structures, the German Supreme Court found that this could have been achieved by more proportionate means (e.g. a surcharge for not having used a ticket for a flight segment). To ban a passenger from further use of contractual services was disproportionate and against the principle of good faith as the provisions in question made no distinction between passengers who deliberately booked more segments than they required or left tickets unused for justified reasons.

Whilst this decision has no legal value in other countries, it is to be welcomed. As a result, Austrian Airlines and Lufthansa changed their terms and conditions, so 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.

7.6 Booking intermediaries

More and more consumers book their flight tickets over the Internet from online travel agencies, intermediary booking platforms or price comparison websites.

Using an intermediary may create additional difficulties for passengers faced with a problem related to the purchase of their flight or a refund.

Indeed, according to Directive 90/134 on package tours, intermediaries or agencies which only sell transport do not have any liability in the event of problems with the flight service (cancellation, delay, etc.)

While an agency has no control over delays and flight cancellations, the ECC-Net noted that many agencies and other sales intermediaries wrongly think that they are exempt from liability even for problems concerning bookings or ticket management (modifications, booking errors that are the fault of the agency, etc.)

At a time when this method of booking is used more and more, it seems crucial that the role of each party be clarified, especially for consumers, who often end up as the victims of this lack of clarity.

The European Commission launched a public consultation in September 2015 on platforms, online intermediaries, data, cloud computing and the collaborative economy.¹⁴⁰ This consultation is aimed at gathering evidence and obtaining input for a comprehensive analysis of the role of online spaces where providers and users of content, goods and services meet. It will specifically explore how far and in what way online intermediaries should be responsible, and what duty of care intermediaries may have towards their users.

ECC	Important administrative fees to be paid in addition to the ticket price	Banking fees to be paid including debit and credit card fees	Reimbursement of airport taxes	Modification of the ticket due to the consumer having made a mistake as regards destination or dates	Modification of the ticket due to the intermediary having changed the destination or the dates	Modification of the ticket due to the consumer having inverted first name and surname	Modification of the ticket due to the intermediary having inverted first name and surname	Refund processed by the booking intermediary	Airline should inform the consumer about a change in schedule/date, cancellation, etc., but the consumer never receives the information
AT	3	1	4	5	7	8	9	2	6
BE	3	7	6	4	5	8	8	1	2
BG	5	2	5	3	2	4	1	3	4
CY	5	4	1	7	9	6	8	3	2
CZ	5	4	3	6	7	9	8	2	1
DE	1	2	4	6	7	9	8	3	5
DK	9	8	1	4	5	6	7	3	2
EE	-	-	-	2	-	-	-	1	-
ES	9	7	8	2	4	1	3	5	6
FI	-	-	4	3	2	-	-	1	5
FR	1	6	5	7	9	8	3	2	4
GR	8	8	4	1	2	7	8	3	5
HR	7	6	4	3	5	2	1	8	9
HU	*	*	2	5	6	3	*	1	4
IE	2	7	8	1	3	6	9	5	4
IS	1	-	2	4	5	-	-	6	3
IT	3	4	9	6	8	2	7	1	2
LT	4	9	5	2	8	6	7	1	3
LU	7	1	6	3	2	8	9	4	5
LV	1	-	3	-	5	-	-	2	4
MT	8	9	5	1	6	2	7	4	3
NL	8	9	4	5	6	1	7	3	2
NO	5	8	9	1	4	2	3	6	7
PL	8	7	9	6	5	1	4	2	3
PT	5	6	7	1	2	8	9	4	3
RO	7	1	8	2	6	3	9	5	4
SI	6	9	1	8	5	7	4	2	3
SK	9	3	1	2	8	7	6	4	5
SE	6	5	3	2	9	8	7	1	4
UK	2	1	7	3	5	8	9	6	4

Table 7.3 Importance of issues related to travel intermediaries in complaints received by ECCs (1 is most important and 9 least important)
*means that no complaints were related to this issue during the relevant period (2014-2015)

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140 The consultation on geo-blocking and other forms of geographically-based restriction will gather opinions on unjustified commercial barriers which prevent the purchase and sale of products and services within the EU. It covers, for example, customers who are charged different prices or offered a different range of goods based on where they live, but it does not cover copyright-protected content and content licensing practices. The second consultation will look at the economic role of online platforms, which include search engines, social media, video sharing websites, app stores, etc. It will also explore the liability of intermediaries as regards illegal content hosted online and how to improve the free flow of data in the EU and build a European Cloud. In addition, it will look into the possibilities and potential issues raised by the rise of the collaborative economy: http://europa.eu/rapid/press-release_IP-15-5704_en.htm.

When it comes to booking intermediaries, the main problem area for European consumers seems to be getting refunds for tickets and the least common is inversion of names on tickets. When looking at all of the results, the list of problems is as follows:

1. refunds processed by booking intermediaries (airlines usually refund the intermediary who should reimburse the consumer);
2. modification of the ticket due to the consumer having made a mistake as regards destination or dates;
3. the airline should inform the consumer about a change in schedule/date, cancellation, etc., but the consumer never receives the information;
4. reimbursement of airport taxes;
5. modification of the ticket due to the intermediary having changed the destination or the dates (this can happen if the consumer changes something in the research function);
6. banking fees to be paid including debit and credit card fees;
7. important administrative fees to be paid in addition to the ticket price;
8. modification of the ticket due to the consumer having inverted first name and surname;
9. modification of the ticket due to the intermediary having inverted first name and surname.

An ongoing case at the Danish court of second instance will hopefully clarify intermediaries' responsibilities under Danish law.

In Denmark on 3 May 2012, the airline, Cimber Sterling went bankrupt. Many consumers had tickets for flights purchased through an intermediary, Den Danske Rejsegruppe, a branch office of Svenska Resegruppen AB.

It is estimated that the Danish ADR has more than 800 cases pending in relation to this intermediary and similar cases awaiting the judgement of the courts of second instance.

Example of a consumer complaint: *A consumer had a case tried at a court of first instance¹⁴¹ to determine whether the intermediary was responsible for the losses he had incurred. The consumer claimed that he had a contract with the intermediary and not the airline. The intermediary claimed that they were not responsible and said that in the small print on their website, they expressly state that they only act as an intermediary and that 'they do not contract on their own behalf'. The consumer did not look any further into the legal status of the booking site as the price involved was relatively low.*

Under Danish law, an intermediary is a contracting party if the customer, based on an overall assessment, is under the impression that the intermediary acts on their own behalf and gives the impression that they are a contracting party.

During the trial mentioned above, the intermediary claimed that the consumer had been made aware on several occasions that the intermediary only acted on behalf of airlines. The court of first instance concluded that the intermediary had made this sufficiently clear to the consumer.

After the consumer lost the case, the Danish consumer ombudsman was granted permission to represent him in the court of appeal.

The ombudsman states that the consumer had reason to believe that he had a contract with the intermediary, furthermore stating that it is all too often unclear who the direct contracting party is.¹⁴²

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141 Case BS 2A-1449/2012 of 2 January 2014.

142 <http://www.forbrugerombudsmanden.dk/Nyheder-fra-FO/Pressemeddelelser/Forbrugerombudsmanden-gaar-ind-i-sag-om-ansvar-ved-flykonkurs?tc=4F11B2F9F5F74EC586F562EE592E995C> Tried in court on 20-21 October 2015 with a decision due 4 weeks later unless circumstances dictate otherwise.

Problems during booking often relate to lack of information about terms and conditions or the sale of the ticket.

The agency or intermediary generally refers to the conditions of the carrier in respect of cancellation policy, modifications or claims. Unfortunately, consumers do not always understand that these conditions may differ from those of the website where they bought the tickets. They may find themselves with two sets of incompatible terms and conditions.

For example, site conditions do not always indicate whether a ticket is flexible or not. Moreover, the ECC-Net observes that information on whether luggage is included in the ticket price is sorely lacking. Some companies offer tickets at low prices but this does not include transport of luggage. Consumers unaccustomed to such conditions do not imagine that luggage would not be included in the price.

Example of a consumer complaint: A disabled French consumer booked airline tickets on the site of a French online agency to visit Israel with an Italian company for himself and a person to assist him during his trip. This person withdrew and the consumer wanted to change the name on the ticket to that of another person. Unfortunately, the tickets could not be modified or cancelled and the only option was to buy tickets at full price (EUR 1 400) for the other person. The consumer had not been informed about this when buying. If he had known, he could have chosen his ticket accordingly.

Some agencies and online intermediaries charge additional fees, such as insurance, application fees or fees for paying with certain credit cards, without necessarily informing consumers when they buy. Intermediaries and travel agencies must now be transparent about the prices of their tickets, as required by Regulation (EC) 1008/2008¹⁴³ and the CJEU case law of 15 January 2015 (C-573/13).¹⁴⁴

Advertising must be fair and include all ‘predictable’ fees (such as travel agency fees). The consumer must be in a position to compare prices in order to make an informed choice of provider.

Example of a consumer complaint: A French consumer booked airline tickets on the site of an online agency based in Germany. The price shown was 400.64 €. The consumer finds that this price is lower than the same ticket on the website of the company that is 100 € more expensive. However, after confirmation of booking and communication of the credit card number, the agency has increased the bill for different sums which the consumer had not consented to: fee for credit card payment taken by the company: 15 €, fee for credit card payment taken by the agency: 53.48 € and travel Insurance: 39 €.

The price of these flights was the final plus 137.94 €, from 400.64 € to 538.48 €. It had therefore become more expensive than that offered directly on the company’s website. ECC Germany intervened in order to seek reimbursement of these amounts that were not included in the contract initially and some of which are contrary to French law (fee for using a card bank). Unfortunately, the professional has maintained that these expenses were planned (even if not included in the price) before the validation and was in accordance with its conditions of sale. Unless the consumer can prove materially the amount initially displayed, the French consumer was therefore unable to obtain reimbursement of those costs.

This is not an isolated case. ECC France has seen a rise in this kind of hidden price increase and provision of opaque information at the time of booking seems to be the rule in many cases.

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¹⁴³ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community.

¹⁴⁴ Judgment of the Court (Fifth Chamber) of 15 January 2015. Air Berlin plc & Co. Luftverkehrs KG v Bundesverband der Verbraucherzentralen und Verbraucherverbände - Verbraucherzentrale Bundesverband e. V. Reference for a preliminary ruling: Bundesgerichtshof - Germany, Regulation (EC) No 1008/2008 –on common rules for the operation of air services–, second sentence of Article 23(1) - Price transparency – Computerised booking system – Air fares – Indication at all times of the final price.

Another recurrent case is that of a consumer choosing a trip on a website, continuing the booking process until confirmation and providing bank details without noticing a small statement to the effect that confirmation of the booking and the fare will arrive later. They subsequently receive an e-mail from the agency explaining that the carrier's tariff has increased and the price has gone up by EUR 100. With some agencies or intermediaries, the consumer may be able to cancel the journey with no fee, but others do not ask consumers whether the new price is acceptable or provide the option to withdraw.

This generally happens when booking and payment is not made via the IATA Booking and Settlement Plan system, but rather the agency books tickets for the consumer directly on the airline's website. On the subsequent bank statement, there is not one debit, but several, including one to the company in direct contact with the consumer and one for the agency's booking fee. Sometimes airlines change price in the time between the consumer's booking at the agency's website and the reservation on the airline's website, which explains the price increase.

This type of manipulation is also a problem when consumers give an e-banking card number that can only be used once. With this booking system, payment is made in two stages: payment for tickets on the airline's website and payment of agency fees. Consumers think that there will be one payment and usually, the system blocks when the agency tries to book tickets on the airline's website. The consumer is then forced to provide new card details or miss out on the deal, having not been informed that use of a disposable credit card was not recommended.

Airlines sometimes anticipate flight cancellations and, in accordance with Regulation (EC) 261/2004, inform passengers. If this is done more than 15 days before departure, the airline is not required to pay compensation. When tickets are purchased via a travel agency or other intermediary, who has to inform passengers of any changes and alternative options, the agency or the airline? If no information is forthcoming, consumers are frequently passed back and forth between the agency and the airline, the former claiming that the airline is obliged to provide information under the terms of the Regulation, the latter claiming that it did not have the consumer's full details and could not make this information available to them, and that this is the agency's role. Finally, it is not possible to clearly identify who is responsible for providing compensation.

In cases of booking errors or tickets not being sent, it can also happen that agencies or intermediaries are not aware of their responsibilities.

Example of a consumer complaints: A consumer bought a ticket for a flight from Paris to Miami via Madrid on an intermediary website. On arriving at the airport, he was informed that he was not on the passenger list. It might be that the agency did not send details of the reservation to the airline or pay for the tickets. The error may also have come from the airline if it did not take account of the booking by the agency.

In any case, the consumer ends up going between the two parties without having any way of knowing who is really responsible for this error and should provide compensation. Agencies and intermediaries generally believe that for flight only purchases, they have no responsibility, and the airline, not having been directly involved in the booking process, cannot check at what level the error has occurred.

Example of a consumer complaint: A French consumer made a booking on the website of a German travel agency for a trip scheduled on 8 May 2012. The booking process ran smoothly and the right amount was debited from the consumer's account. In accordance with the terms and conditions, the booking confirmation was expected within 48 hours, but 5 days later, the consumer had neither confirmation, nor a ticket.

ECC France advised him to contact the airline to check if it had a reservation in his name. The consumer's name was on the passenger list but he had to pay an extra fee to collect the tickets at the airport.

Who has to provide a refund if an airline cancels? For flight only bookings, the airline does, but the airline sometimes refers consumers to the travel agency, who in turn tends to pass them back to the airline. As with communication of information, consumers can be left without a clear idea of who should pay compensation and so do not get the money to which they are entitled.

Example of a consumer complaint: A French consumer purchased tickets with an Italian airline on the website of a Spanish travel agency. The outbound flight was cancelled by the company and the agency informed the consumer. He called the agency to claim reimbursement of the price of the tickets. The agency referred him to the airline who, according to the Regulation, should pay. The airline said that the refund application must go through the travel agency as reimbursement must follow the same process as payment. ECC France attempted to intervene with both companies with the help of ECC Italy and Spain. Finally, the airline paid compensation after 6 months of discussion.

If a consumer wishes to cancel a flight ticket or does not show up for boarding, he/she is still entitled to a refund of airport tax. If a reservation is cancelled, the airline is no longer liable to pay airport tax for the passenger and the amount of the tax must be returned to the passenger in full. As for flight cancellations by airlines, consumers can find themselves passed between the travel agency or intermediary and the airline when trying to obtain reimbursement, each claiming that the other is liable. In addition, some agencies charge high administration costs, thus effectively depriving consumers of reimbursement of the tax.

Example of a consumer complaint: A Belgian consumer had to cancel a flight booked through a French agency. The agency referred his request for refund of airport tax to the airline. The airline said that the refund should be claimed from the travel agency. The consumer contacted the agency, but received no response. He then got in touch with the ECC-Net and ECC France contacted the agency, who finally agreed to reimburse the tax, but deducted EUR 50 for administrative costs (as provided for in the agency's terms and conditions). Finally, the consumer obtained a refund of EUR 2.33.

In all of these examples, consumers are caught between the air companies and agencies that sell the tickets. Each has different arrangements regarding information or refund policy, which causes confusion and makes it difficult for consumers to get their rights upheld out of court or assign responsibility in the event of legal action.

7.6.1 Booking directly with the airline

The following table shows the most common areas of complaint when consumers book directly with airlines, 1 being the most common and 6 the least.

	Administrative fees to be paid in addition to the ticket price	Banking fees	Reimbursement of airport taxes	Modification of ticket due to customer having inverted first name and surname	Refund of ticket	Compensation under Reg. 261/2004
Austria	6	4	2	5	3	1
Belgium	5	4	3	6	2	1
Bulgaria	3	3	2	2	4	4
Croatia	2	3	1	1	5	4
Cyprus	5	4	3	6	1	2
Czech Republic	4	3	5	6	1	2
Denmark	6	5	3	4	2	1
Estonia	-	-	-	-	2	1
Finland	-	-	3	-	2	1
France	5	4	2	6	3	1
Germany	4	5	3	5	2	1
Greece	5	4	3	4	1	2
Hungary	-	-	4	3	2	1
Iceland	2	-	4	-	1	3
Ireland	5	4	6	3	2	1
Italy	3	5	6	2	1	4
Latvia	4	-	2	5	3	1
Lithuania	3	6	5	4	2	1
Luxembourg	5	2	3	6	4	1
Malta	5	6	4	3	2	1
Netherlands	5	6	4	2	3	1
Norway	4	4	5	1	3	2
Poland	5	5	5	3	1	2
Portugal	5	6	3	4	2	1
Romania	6	1	4	5	3	2
Slovakia	4	2	5	6	3	1
Slovenia	3	5	4	-	2	1
Spain	6	4	5	1	3	2
Sweden	5	4	3	6	2	1
United Kingdom	5	6	3	4	2	1

Table 7.4 Most common areas of complaint when consumers book directly with airlines, 1 being the most and 6 the least common.

Claims for compensation in relation to Regulation (EC) 261/2004 are by far the most common type of complaint brought to ECCs. The second most common relates to consumers seeking refunds for tickets. The questionnaire does not specify on what grounds refunds are sought. Consumers are entitled to a refund under Regulation (EC) 261/2004 in cases of delay or cancellation, and can also seek a refund on the basis of contract law. In some cases, they request a refund as they incorrectly believe that a cooling off period applies, as in the case of other services covered by the Consumer Rights Directive. The third most common area of complaint is reimbursement of airport taxes, which the consumer can claim if the ticket is unused.

For cases by country in which the trader is based, outcomes are generally positive, with claims either totally or partially resolved. France, Latvia, Hungary, Portugal, Finland and the United Kingdom all note that cases often go unresolved when the airline claims extraordinary circumstances.

	Totally resolved	Partially resolved	Partially unfounded	Unresolved	Case still open	Claim unfounded	Other
Austria	1	3	2	5	7	4	6
Belgium	2	4	5	1	3	6	-
Bulgaria	2	3	3	6	5	6	-
Croatia	4	6	7	2	3	5	1
Cyprus	2	1	4	3	7	5	6
Czech Republic	3	1	2	4	5	6	-
Denmark	2	1	4	6	3	5	7
Estonia	-	-	-	-	-	-	-
Finland	5	2	3	1	-	4	-
France	1	2	3	4	5	6	7
Germany	3	2	1	5	6	4	7
Greece	2	1	4	5	6	5	-
Hungary	3	2	-	1	4	6	-
Iceland	1	2	3	-	-	-	-
Ireland	3	2	1	5	6	4	-
Italy	3	2	4	1	6	5	-
Latvia	2	3	1	4	7	5	6
Lithuania	6	3	2	1	7	4	5
Luxembourg	2	5	4	3	1	6	7
Malta	3	2	6	1	4	5	7
Netherlands	4	1	5	2	6	3	-
Norway	1	2	3	6	4	5	7
Poland	2	2	4	4	2	5	-
Portugal	3	4	5	3	2	1	6
Romania	4	1	2	3	5	6	7
Slovakia	-	-	-	-	-	-	-
Slovenia	2	1	6	3	4	5	-
Spain	4	1	3	2	5	7	6
Sweden	1	2	3	6	4	5	-
United Kingdom	2	4	3	1	6	5	7

Table 7.5 Outcomes in cases by country where the trader is based, 1 being the most and 7 the least common.

In cases where the consumer is resident in the countries of the ECCs listed below, the most common outcomes are also positive, with most cases fully or partially resolved.¹⁴⁵

	Totally resolved	Partially resolved	Partially unfounded	Unresolved	Case still open	Claim unfounded	Other
Austria	2	1	6	3	4	7	5
Belgium	2	3	4	1	5	6	-
Bulgaria	4	4	3	4	4	3	-
Croatia	4	6	7	2	3	5	1
Cyprus	3	1	6	2	4	5	7
Czech Republic	4	1	2	3	5	6	-
Denmark	1	3	4	2	6	5	7
Estonia	6	5	4	2	3	1	-
Finland	-	-	-	-	-	-	-
France	4	3	5	2	1	6	7
Germany	3	1	2	5	4	6	7
Greece	2	1	3	6	6	6	-
Hungary	3	2	4	1	5	6	-
Iceland	1	2	-	3	-	-	-
Ireland	2	1	4	3	5	6	-
Italy	4	1	3	2	5	6	-
Latvia	1	2	5	3	7	6	4
Lithuania	7	3	2	1	7	4	6
Luxembourg	-	-	-	-	-	-	-
Malta	3	4	6	5	1	2	7
Netherlands	5	1	3	2	4	6	-
Norway	2	1	3	5	4	6	7
Poland	3	2	4	4	2	5	-
Portugal	2	3	5	1	4	6	-
Romania	5	4	2	1	6	3	7
Slovakia	4	1	2	3	5	6	7
Slovenia	2	1	3	4	5	6	-
Spain	5	1	3	2	4	7	6
Sweden	2	1	3	6	4	5	-
United Kingdom	3	4	2	1	6	5	7

Table 7.6 Outcome in cases by country where the consumer is based, 1 being the most and 7 the least common.

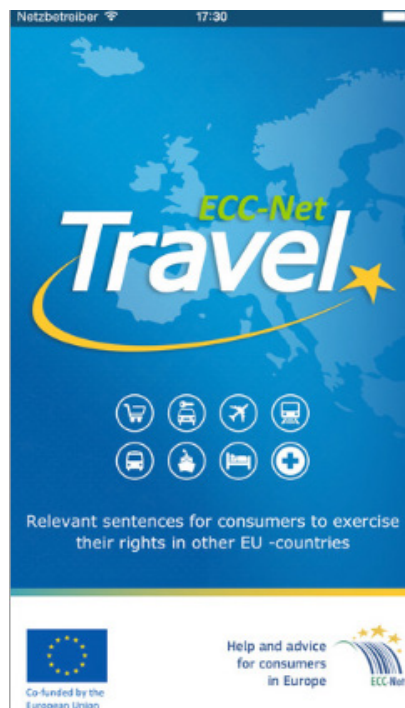
.....
 145 Denmark and Portugal note that in cases where the NEB can rule, the consumer can be advised to contact the NEB instead of using the ECC-Net. ECC Portugal sends cases directly to the Portuguese NEB, when it is competent to rule.

8. Conclusion

and Recommendations



Consumers can get good information about APR through information campaigns and travel apps.¹⁴⁶



But can they be as well informed as they need to be? If they need to go to court to make sure that their rights are respected, they will lose trust in EU legislation and enforcement mechanisms in Europe as a whole.

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¹⁴⁶ The European Commission has launched an application for smartphones which covers air and rail transport and works on four mobile platforms. http://europa.eu/rapid/press-release_IP-12-738_en.htm The ECC-Net has also launched an ECC travel app.

The purpose of this report is to present a statistical overview of the complaints relating to air travel received by ECC-Net and to investigate whether air carriers respect relevant EU legislation, focusing on whether or not consumers get the compensation to which they are entitled and at what cost.

According to ECC-Net statistics and answers to the questionnaire, the areas where consumers face most problems are issues regarding delayed and cancelled flights. There are also issues regarding luggage, but not to the same extent.

Lack of awareness of rights and rules among consumers and lack of APR compliance by some airlines could be reasons for the growth of organisations and companies helping consumers to seek redress.¹⁴⁷ Lack of compliance with the compensation rules in Regulation (EC) 261/2004 and failure to abide by decisions of transport and consumer dispute boards have more or less created a new business model in which companies take on claims for a percentage of the eventual compensation award.¹⁴⁸

This is a new type of business that has not been seen before in other sectors. The fact that consumers seek redress by using these companies shows that:

- consumers do not receive the full amount of compensation to which they are entitled, as the claims company takes a fee of 20–33 %;
- the majority of such companies only help consumers with issues regarding Regulation (EC) 261/2004, so some consumers can still miss out on their entitlements;
- airlines have to pay compensation to air passengers if court verdicts go against them and the legal costs of the claims company, so they often settle automatically to avoid costly legal proceedings.

Having such cases handled by private claims companies often leads to losses for both consumers and airlines. The increased costs imposed on airlines may lead to higher prices for flight tickets.

On the other hand, it can be argued that these companies provide added value for consumers. In cases where an ADR concludes that a consumer is entitled to money and the airline refuses to pay, it can be beneficial to use private claims companies if consumers do not want to take the case to court themselves.

If consumers were better informed about their rights and knew how to exercise them, and enforcement on these issues worked better, there would be no need for private claims companies and court procedures could focus on further developing the law governing these matters.¹⁴⁹

The ECC-Net cannot emphasise strongly enough the importance of enforcement and the need for all Member States to take action against airlines that do not comply with Regulation (EC) 261/2004 or with ADR decisions in favour of consumers.¹⁵⁰

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147 <http://www.dinside.no/934197/skal-du-velge-airhelp-eller-transportklagenemnda> (In Norwegian). 'These companies have emerged because some saw the opportunity to create an income-generating product, so they submit claims based on guesses of air passengers' entitlements and pocket a share of the payout', says the head of Transportklagenemnda (Dispute Resolution Board/Norwegian NEB) Rolf Forsdahl who is critical of the trend.'

148 Floodgates open for flight delay claims, The Guardian, 19 September 2015: <http://www.theguardian.com/money/2015/sep/19/flight-delay-claims-compensation-airlines-passengers>. See also page 28-29 in this report.

149 The threat of legal action is key to facilitating flight delay payouts: 'More than half of legitimate compensation claims made by passengers for flight delays were paid only after the airlines were threatened with legal action, analysis reveals.': <http://www.thesundaytimes.co.uk/sto/business/money/Consumer/article1605603.ece>; Airlines take fright: <http://www.thesundaytimes.co.uk/sto/business/money/Consumer/article1593412.ece>.

150 See Råd & Rön blacklist: <http://www.radron.se/svarta-listan/?ind=10>.

It is extremely important that authorities responsible for overseeing and enforcing EU APR rules at national level join forces to improve compliance with APR legislation. Laws are to be respected and competition must be on equal terms. Airlines should not gain a competitive advantage by not paying compensation to passengers who are entitled to it by law.¹⁵¹ It is important that airlines handle passengers' complaints seriously and respect APR covered by Regulation (EC) 261/2004 and CJEU case law. Otherwise, they will continue to have to deal with private claims companies and court procedures. This is to the detriment of both consumers and airlines.

At the same time, more and more consumers use booking intermediaries. To overcome problems, at time of booking travel agencies and other intermediaries selling flight tickets should clearly inform consumers of all applicable conditions or provide a direct link to the airline website at which complete information on the terms and conditions (flexibility, luggage, stops, etc.) can be found.

The proposal to revise Regulation (EC) 261/2004 to allow communication of consumers' personal data to companies, subject to the consumer's agreement is a step in the right direction. Further improvements could include clear definition in the legislation of the entity responsible for providing information and the means of communication. This would help to ensure that consumers get important information in good time.

Due to the severe impact that things such as schedule changes can have on passengers, particularly to the extent that they cause them to miss flights, it would be advisable to increase protection for passengers faced with schedule changes, regardless of whether the departure time is brought forward or put back. Passengers should be immediately informed of the rescheduled departure time and have the right to cancel their ticket if necessary. Reports by the European Parliament Committee on Transport and Tourism (EP TRAN)¹⁵² and the Committee on the Internal Market and Consumer Protection (IMCO)¹⁵³ propose amendments extending protection to passengers whose departure times have been brought forward.

Booking intermediaries, such as online travel agents, should also have an explicit obligation to inform passengers immediately when they are made aware of a schedule change/cancellation/long delay. Consumers have reported instances in which they were only informed of the changes at very short notice, in circumstances where the carrier had passed the relevant information to the intermediary months previously. This greatly limits a passenger's ability to cancel and search for affordable alternatives, and make the necessary arrangements for other contracts connected with their trip.

In order to achieve the best possible results for consumers in the air passenger rights area, there is a clear need for improvement concerning the cooperation between consumers and airlines, airlines and the ECC-Net, national consumer protection authorities, ADRs and between the NEBs. ECC-Net continuously strives to encourage and enhance communication and co-operation with all stakeholders involved. Only a coherent system based on all involved parties will guarantee strong air passenger rights and strengthen the trust in EU legislation.

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151 Floodgates open for flight delay claims, Article in the Guardian 19 September 2015. <http://www.theguardian.com/money/2015/sep/19/flight-delay-claims-compensation-airlines-passengers>.

152 EP TRAN proposal: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2014-0020&language=EN&mode=XML>.

153 Opinion of the Committee on the Internal Market and Consumer Protection (IMCO), <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2014-0020&language=EN&mode=XML#title3>.

Appendix 1.

Draft questionnaire for ECCs

Part 1

Main areas of complaint

1. We will ask the Commission for IT-Tool statistics **but from your feeling as consumer and trader ECC which are the most common areas of complaint in the APR sector?** *Please rank from 1 to 5, 1 being the most common.*

• **As consumer ECC**

- Delay
- Cancellation
- Denied boarding (also due to identification papers, if this is a major problem for your ECC, please specify in the comment box)
- Luggage issues (damage, loss, delay etc.)
- Intermediaries/booking portals (price and service fees, technical problems during booking process, consumer being played ping pong with between portal and airline if something goes wrong)

Comment

• **As trader ECC**

- Delay
- Cancellation
- Denied boarding (also due to identification papers, if this is a major problem for your ECC, please specify in the comment box)
- Luggage issues (damage, loss, delay etc.)
- Intermediaries/booking portals (price and service fees, technical problems during booking process, consumer being played ping pong with between portal and airline if something goes wrong)

Comment

Airport taxes

2. In your country, are there only statutory taxes (or can airports also impose private airport taxes?). This might be an issue if the consumer didn't take a flight and the airline has to reimburse the airport taxes.

- YES: there are only statutory airport taxes
- NO: there are both statutory and private taxes
- There are only private taxes.

Fees/bank charges

3.a According to several legislations it is not allowed to charge a fee for using a card. The question is how the directive 2007/64/EC (Art. 52 pt3) was implemented in your country. Is it forbidden or restricted to charge the consumer for payments with credit- or debit cards?

- YES
- NO

3.b Can the consumer be charged for using another payment method?

- YES
- NO
- If yes for which one? Please specify:

Booking intermediaries

4. Which are the areas of complaint you see most often with regard to booking portals? Please rank from 1 to 9, 1 being the most common. For some of the issues, we have additional questions.

- **As consumer ECC**
 - Important administrative fees to be paid besides the ticket price
 - Banking fees to be paid including debit and credit card fees (see above)
 - Reimbursement of airport taxes
 - Modification of the ticket due to the **consumer** having made a mistake in the destination or the dates
 - Modification of the ticket due to the **intermediary** having changed the destination or the dates (sometimes when the consumer changes something in the research function, this may happen)
 - Modification of the ticket due to the **consumer** having inverted name and first name
 - Modification of the ticket due to the **intermediary** having inverted name and first name
 - Refund of the ticket to be processed via the booking intermediary (airlines usually refund the intermediary who then should reimburse the consumer)
 - Airline needs to inform the consumer about a change in schedule/date, cancellation etc. but the consumer never receives the information

Booking directly at airline

5. Which are the areas of complaint you see most often with regard to booking at the airline directly? *Please rank from 1 to 5, 1 being the most important.* For some of the issues, we have additional questions.

- **As consumer ECC**
 - Important administrative fees to be paid besides the ticket price
 - Banking fees to be paid
 - Reimbursement of airport taxes
 - Modification of the ticket due to the consumer having inverted name and first name
 - Refund of the ticket
 - Compensation payment

Direct contact Trader ECC-airline company

6.a We will ask the Commission for IT-Tool statistics but from your feeling as trader ECC which is the main outcome of complaint in the APR sector which you have handled directly (no redirection to ADR/NEB)? Please rank from 1 to 7, 1 being the most frequent.

- Claim of the consumer was totally resolved
- Claim of the consumer was partially resolved – compromise
- Claim of the consumer was partially unfounded (for example the compensation claimed by the consumer was too high) but the claim was settled in accordance with the consumer's legal rights
- Unresolved (if you identified “extraordinary circumstances as a main reason for the claim to be rejected, please specify under Comment)
- Still open
- Claim was unfounded
- Other – please specify

Comment

6.b And as a consumer ECC, which is the main outcome of complaint in the APR sector which you have handled directly (no redirection to ADR/NEB)? Please rank from 1 to 7, 1 being the most frequent.

- Claim of the consumer was totally resolved
- Claim of the consumer was partially resolved – compromise
- Claim of the consumer was partially unfounded (for example the compensation claimed by the consumer was too high) but the claim was settled in accordance with the consumer's legal rights
- Unresolved (if you identified “extraordinary circumstances as a main reason for the claim to be rejected, please specify under Comment)
- Still open
- Claim was unfounded
- Other – please specify

Comment

Part 2

ADR

1. We will ask the Commission for IT-Tool statistics but from your feeling as consumer and trader ECC which is the main outcome of complaint in the APR sector which you have transferred to ADR? Please rank from 1 to 7, 1 being the most frequent. We will ask you further questions on your ADR a bit later.

• **As consumer ECC**

- Claim of the consumer was totally resolved
- Claim of the consumer was partially resolved – compromise
- Claim of the consumer was partially unfounded (for example the compensation claimed by the consumer was too high) but the claim was settled in accordance with the consumer’s legal rights
- Unresolved (if you identified “extraordinary circumstances as a main reason for the claim to be rejected, please specify under Comment)
- Still open
- Claim was unfounded
- Other – please specify

Comment

• **As trader ECC**

- Claim of the consumer was totally resolved
- Claim of the consumer was partially resolved – compromise
- Claim of the consumer was partially unfounded (for example the compensation claimed by the consumer was too high) but the claim was settled in accordance with the consumer’s legal rights
- Unresolved (if you identified “extraordinary circumstances as a main reason for the claim to be rejected, please specify under Comment)
- Still open
- Claim was unfounded
- Other – please specify

Comment

2. From your feeling as consumer and trader ECC which is the main outcome of complaint in the APR sector which you have transferred to NEB (meaning that your NEB does individual redress)? Please rank from 1 to 7, 1 being the most frequent. We will ask you further questions on your NEB a bit later.

• **As consumer ECC**

- Claim of the consumer was totally resolved
- Claim of the consumer was partially resolved – compromise
- Claim of the consumer was partially unfounded (for example the compensation claimed by the consumer was too high) but the claim was settled in accordance with the consumer’s legal rights
- Unresolved (if you identified “extraordinary circumstances as a main reason for the claim to be rejected, please specify under Comment)
- Still open
- Claim was unfounded
- Other – please specify

Comment

• **As trader ECC**

- Claim of the consumer was totally resolved
- Claim of the consumer was partially resolved – compromise
- Claim of the consumer was partially unfounded (for example the compensation claimed by the consumer was too high) but the claim was settled in accordance with the consumer’s legal rights
- Unresolved (if you identified “extraordinary circumstances as a main reason for the claim to be rejected, please specify under Comment)
- Still open
- Claim was unfounded
- Other – please specify

Comment

Your ADR

- 3.a Are there any changes in your ADR landscape and functioning? If so, please specify which changes need to be implemented for your country to this report.
- 3.b Do you actively participate/represent the consumer in the ADR procedure, so that the communication is between you and the ADR not the ADR and the consumer directly?
- YES
 - NO
- 3.c Does your ADR allow “collective cases”, either by regrouping of several consumers against a same company in one ADR procedure?
- YES
 - NO
- 3.d Or by trying one test case of which the solution will be applicable to all other identical cases?
- YES
 - NO
- 3.e Have there already been collective cases in the APR sector?
- YES
 - NO

Your NEB

- 4.a Please name your NEB
- 4.b Does your NEB handle individual complaints, meaning that it tries to obtain individual satisfaction to an individual consumer complaint?
- YES
 - NO, it only intervenes as an enforcement authority in the collective interest of consumers.
- 4.c Which sanctions can your NEB impose on the airline?
- Comment
- 4.d Are they published?
- YES
 - NO
 - If yes please indicate where?
5. In your country are your ADR and NEB hosted in the same organisation?
- YES
 - NO
6. Has the ADR also NEB functions or vice versa?
- YES
 - NO

Small claims

7. Taking an identical case as reference all over Europe, please inform us about the approximate time and cost the consumer will need to support:

“The consumer flew with an EU carrier a distance of less than 1500 km. The flight was cancelled. He was rerouted and arrived at final destination with a delay of 2.5 h. The compensation would be 250 €. The airline refused to pay but didn’t argue any extraordinary circumstances. The consumer decides to go to court to enforce his rights.”

- **As consumer ECC**

Do you assist the consumer in filing the case in court? For example filling in the forms?

- YES
- NO
- How much would be the costs of filing this claim in court under the EU small claims procedure?
- Which is the average duration of a trial in your first instance courts?

- **As trader ECC**

Once the consumer has obtained a judgement in his favour and the consumer ECC informs you about this, will you approach the airline with this judgement to try to obtain settlement so that the consumer does not need to enforce the judgment?

- YES
- NO
- If no, what would be the reasons? Please specify?

If the airline doesn’t settle, the consumer would need to enforce the judgment.

- Who is in charge in your country of enforcing the decision?
- How much would this cost to the consumer?
- By chance do you know the average time the enforcement will take?

Collective redress

8.a In your country, are mechanisms for collective court actions (“group actions”) foreseen?

- YES
- NO
- If yes, please specify the type of action

8.b Have collective court actions already been used in the APR sector?

- YES
- NO
- If yes, please specify the type of action
- If yes, if possible, indicate where to find the decisions

Part 3

Private complaint management:

1. Are there private companies registered in your country helping consumers to claim their air passenger rights
(Please fill in one set of question per company)
 1. Name and address

Scope

 2. Targeted consumer countries
 3. Regulation 261/2004 only? More (please detail)?

Procedure

 4. Are the rules of their procedures published? Where? Please provide a link to their terms and conditions.
 5. What are the time limits/duration of their intervention?
 6. Only in court or out of court also.
 7. If they offer both possibilities, will the consumer be asked before a court procedure is introduced on his behalf?
 8. Is there any exclusivity agreement, preventing the consumer to act on his own while the case is with the company?
 9. If the consumer signs a contract, especially one with a renewal clause is there a cooling off period? How long?
 10. If the contract contains a renewal clause, is there a period in which the consumer can resign from the contract? When is this possible? (ex. 14 days prior to the anniversary of the contract?)

Out of court procedure (if so)

 11. Is it a conciliation process only or can an ADR be involved? Which ADR?
 12. Are there any costs for the consumer for this out of court procedure (to the agency, the costs for the ADR)?
 13. What is the duration of the out of court procedure?
 14. What is the nature of the decision (binding, non-binding)?

Court procedure

 15. Is the service run by law professionals (lawyers etc.)?
 16. Is it necessary to have an authorization/qualification/diploma in your country to represent the consumer in court? And then, which services from these private entities seem not in conformity with your national law?
 17. Which are the competent courts in your country for APR cases? Is this information mentioned on the website of these companies? Is this information correct?
 18. Does the website of the company indicate the amount of court fees?
 19. Does the consumer pay something to the company?
 20. Who pays the court procedure? The company or the consumer?
 21. What other costs does the consumer has to bare (translation, execution...)? Does the website mention such costs and where?
 22. How and when will the consumer be paid the compensation if they win the case, either in court or amicably?
 23. Is there already any case law? What is the position of your courts toward the intervention of these types of companies?

Advertisement/Marketing

24. By which means do these companies advertise for their services in your country?
25. What are the marketing arguments?
26. Are the marketing arguments in conformity with the service really provided? Please detail discrepancies. (for example, is it really for free if you consider court costs or other costs)
27. Are they really allowed to advertise in your country (thinking of the professional status such as lawyer or other)?
28. Do their marketing portrays say that it is complicated to use the procedure via the NEB/ADR?
29. Do they mention a “European Union Support”? Or any other official support? Please provide examples.
30. Do you have any case studies that highlight particular problems consumers in your country have encountered in relation to these companies? If so please note them.

2. Consumer body initiatives (please fill in one set of question per initiative)

1. Name and address
2. Targeted consumer countries
3. Scope: regulation 261/2004 only? More?
4. How do they advertise for their services? Are they allowed to advertise? Please provide some examples.
5. Are the rules of their procedures published? Where? Please provide a link to their terms and conditions.
6. What are the time limits/duration of their intervention?
7. Only in court or out of court also.
8. If out of court also, is it a conciliation process only or can an ADR be involved? Which ADR? Are there any costs? What is the duration of the procedure? What is the nature of the decision (binding, non-binding)?
9. If in court: Are they law professionals and do they need an authorization in the consumers country or in your country to represent the consumer in court
10. Which are the competent courts in your country for APR cases?
11. What is the court fee and who pays it? The company or the consumer?
12. What other costs the consumer has to bare?
13. Is there already any case law? What is the position of your courts toward these type of companies?

3. Are there any industry initiatives (from trade organizations for example) to facilitate consumer complaints in the APR sector? (*please fill in one set of question per initiative*)

1. Name and address
2. Targeted consumer countries
3. Scope: regulation 261/2004 only? More?
4. How do they advertise for their services? Are they allowed to advertise? Please provide some examples.
5. Are the rules of their procedures published? Where? Please provide a link to their terms and conditions.
6. What are the time limits/duration of their intervention?
7. Only in court or out of court also.
8. If out of court also, is it a conciliation process only or can an ADR be involved? Which ADR? Are there any costs? What is the duration of the procedure? What is the nature of the decision (binding, non-binding)?
9. If in court: Are they law professionals and do they need an authorization in the consumers country or in your country to represent the consumer in court
10. Which are the competent courts in your country for APR cases?
11. What is the court fee and who pays it? The company or the consumer?
12. What other costs the consumer has to bare?
13. Is there already any case law? What is the position of your courts toward these type of companies?

Search engines

4. What is the outcome of a google search in your own language for “Delayed flight”?

- Who is represented with ads?
- What is the top five search results?
- Where do the local ECC turn up, on the first page?

YES

- Top five
- Six - ten

NO

- If no, where. Please specify?

Part 4

Cases / Testimonials

Do you have any case studies that highlight particular problems consumers in your country have encountered in relation to air travel and also with these kind of companies mentioned in part 3? If so please note them here:

European Consumer Centres' contact details are also available at: http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/ecc-net/index_en.htm

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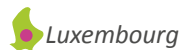
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Co-funded by
the European Union



This report is part of the action ECC-Net FPA which has received funding under a grant for an ECC action from the European Union's Consumer Programme (2014-2020).

ECC Ireland ECC France ECC Norway ECC Denmark ECC Sweden