

ECTAA Position on mobility package proposal of 29 November 2023 – multimodal passenger rights

ECTAA represents indirect distribution players - intermediaries, ticket vendors, travel agencies, travel advisors, tour operators - to mention some frequently used terms. These are some 80.000 companies in Europe, more than 95% of them SMEs. These indirect distribution players act on behalf of their customers and provide them with transparency and choice.

ECTAA supports a strong passenger rights framework. We have actively engaged over the last 3 years in the discussions around “better protection of passengers and their rights” as well as within the Multimodal Passenger Mobility Forum discussing multimodality and a new set of multimodal passenger rights.

Travel intermediaries have always engaged in making multimodal travel options visible and available for their customers. It is part of their value proposition to provide the widest possible overview and thus creating transparency and choice.

In this context, we would like to highlight the importance of intermediaries’ access to the broadest possible content of carriers (fares, schedules, travel disruption information, etc.) on fair, reasonable and non-discriminatory (FRAND) terms. This is the most important factor whether customers will be able to have a complete overview of options and make informed choices. This should be seen as an extremely important “passenger right”.

Please find hereafter our comments on the Regulation proposal and some suggestions for improvement.

Scope

Concerning the scope, the proposal suggests under 4. that “This Regulation shall not apply to combined multimodal tickets where they are combined by an organiser as part of a package under Directive (EU) 2015/2302”.

Transport operators however are in a position to provide information, assistance, re-routing as they operate the transport and have staff at transport stations. They should not withhold information, assistance, re-routing to package travelers. This way a high protection of all passengers can be provided

We thus propose to change 4. of article 2 like this:

4. This Regulation shall ~~not~~ apply to ~~combined- single~~ multimodal tickets where they are ~~combined by an organiser as~~ part of a package under Directive (EU) 2015/2302

In article 2 on the scope, it further says under 5. that “Paragraph 1, point (a) of Article 7 shall apply to passengers whose single multimodal contracts form part of a package, unless where the right to reimbursement arises under Directive (EU) 2015/2302”.

In the past there were issues when it came to reimbursement of tickets part of a package. It has to be sure that the reimbursement is made to the correct recipient avoiding fraud and illegitimate refunds.

There is a dedicated article 8 on “reimbursement when the single multimodal ticket was booked through an intermediary”. This article states under 5. (a) that “the contracting carrier shall reimburse...the intermediary...through the same payment method which was used at the time of the booking”. This way there is no obstacle for transport operators to reimburse package tickets as well under the passenger rights regulation while preventing fraud, illegitimate refunds etc.

We thus propose to delete 5. of article 2

5. ~~Paragraph 1, point (a) of Article 7 shall apply to passengers whose single multimodal contracts form part of a package, unless where a right to reimbursement arises under Directive (EU) 2015/2302~~

Definitions

In relation to article 3 around the different tickets, we are of the opinion that the most important aspect should be the clear and unambiguous information about which form of ticket(s) a customer is buying. When a customer is informed whether a “combined” or “separate” multimodal ticket is offered, the payment should not be relevant.

We thus propose to delete reference to single / separate payments in the definition of the multimodal journey forms in Article 3:

- (8) ‘combined multimodal ticket’ means a ticket or tickets for a multimodal journey representing separate transport contracts which are combined by a carrier or intermediary on its own initiative, ~~and which are purchased by means of a single payment by the passenger;~~
- (9) ‘separate multimodal tickets’ mean tickets for a multimodal journey representing separate transport contracts which are offered together by a carrier or intermediary, ~~and which are purchased by means of separate payments by the passenger;~~

Travel information for passengers

Article 5 of the proposal sets out the travel information that should be provided to passengers. It seems very difficult for us how a “general guidance on **minimum connecting times** between the different types of transport services...” mentioned in article 5, 2 would look like. We ask ourselves how an intermediary is supposed to inform about a minimum connecting time between e.g. a flight arriving in Charleroi and a coach departing from the bus station in Brussels Nord. If such an information is supposed to be provided, it has to be neutrally established and be made publicly available in an accessible format.

Moreover, in article 5, 4 (c) there is an **enormous amount of information that is requested to be provided “before the multimodal journey”**.

First of all “before the multimodal travel” is not clearly defined. Depending on the time “before” the information e.g. on conditions and available fares will vary.

Also, the amount of information would be nearly impossible to be provided and neither in the interest of (potential) customers as it would be extremely difficult to digest. When it comes to multimodal travel options, there is a huge offer of options for a given city pair and providing “time schedules and conditions for *all* available fares for the multimodal journey” is nearly unlimited and we doubt this can be realistically achieved. We therefore deem it more useful to concentrate on “relevant” information.

Finally, concerning the **provision of contact details of passengers to the carriers** mentioned in article 5, 8, we would like to raise a number of concerns. Travel intermediaries are a much-trusted service provider for many customers that choose to book their travel products with intermediaries instead of suppliers directly. The trust that customers place in intermediaries is a very valuable good. This is especially relevant when it comes to personal information – including contact information.

Intermediaries handle customer information with utmost care and limit contact sharing to only absolutely necessary cases. Intermediaries have often made experiences in the past where contact details were shared for the purpose of informing about short notice operational disruptions, only to find out that they were misused by airlines for marketing information to the customer. ECTAA has documented numerous cases of such misuse and shared this with IATA and the Commission.

Moreover, in many cases the booking person is not the passenger. This is e.g. a common situation in business travel. For certain passenger groups (e.g. VIPs, C-level Executives etc.) the direct passenger information is often not even shared with the intermediary and absolute discretion is expected.

It is important to differentiate between certain information that is relevant for the passenger(s), e.g. information on flight disruptions, and other information that is important for the paying customer, e.g. on reimbursement.

We therefore oppose the obligatory sharing of “passenger” contact details and suggest the following change to the proposed Article 5, 8:

8. *Where the passenger does not acquire a single multimodal contract directly from the carrier, but via an intermediary, this intermediary shall provide the contact details of the passenger, **where available**, and the booking details to the carriers concerned. The carrier may only use these contact details to the extent necessary to comply with its obligations under this Regulation to provide information, provision of care, reimbursement, re-routing and compensation, and to fulfil the carrier’s obligations under applicable Union law on*

safety and security. The carrier shall delete the contact details within 72 hours after the completion of the contract of carriage unless further retention of the contact details is justified to fulfil obligations in respect of the passenger's right to re-routing, reimbursement or compensation.

- 9. An intermediary shall be exempted from paragraph 8 if it can prove the existence of an alternative system that ensures that the passenger is informed without the transmission of the relevant customer contact details to the carriers concerned. In such a case, the carrier shall fulfil its information obligations under this Article towards the intermediary, who shall ensure the correct and timely transmission of the information to the passenger and, therefore, in such cases contact details transmitted to the carrier shall be those of the intermediary.*
- 10. In case the intermediary fails to timely transmit the information to the passenger, the resulting consequences would have to be borne by the intermediary.*

We welcome the exemption from the provision on real-time information for SMEs in article 5, 9.

Access to travel information for carriers and intermediaries

Article 6, 1 of the Regulation proposal requires carriers to give other carriers and intermediaries that sell their single multimodal contracts access to travel information. It further stipulates under paragraph 2 that carriers “may require from other carriers and intermediaries a fair, reasonable and proportionate financial compensation for the costs incurred in providing the access”. ECTAA strongly disagrees that intermediaries have to pay for access to information from carriers, which they are required to provide to customers under Article 5. Access to information (schedules, fares, on-journey information on travel disruptions, etc.) should be made available free of charge to intermediaries, who facilitate the conclusion of a transport contract between the carrier(s) and the traveller.

We thus propose the following changes to Article 6:

- 1. Without prejudice to Article 10 (1) of Regulation (EU) 2021/782, carriers offering single multimodal contracts shall provide other carriers and intermediaries which sell their contracts with access to the travel information set out in Article 5(2) to (5).*
- 2. Carriers offering single multimodal contracts shall distribute this information and grant access in a non-discriminatory manner and without undue delay. A one-off request shall be sufficient to have continuous access to information. The carrier obliged to make available information in accordance with paragraph 1 may request the conclusion of a contract or other arrangement on whose basis information is distributed or access is granted. The terms and conditions of any contract or arrangement for the use of the information shall not unnecessarily restrict possibilities for its reuse. The terms and conditions shall not be used to restrict competition. ~~Carriers offering single multimodal contracts may require from other carriers and intermediaries a fair, reasonable and proportionate financial compensation for the costs incurred in providing the access.~~*

Reimbursement through the intermediary.

Concerning the reimbursement through the intermediary mentioned in article 8, we would like to raise a number of concerns.

Customers that choose an intermediary for making their booking expect to receive after-sales services from the same intermediary including when it comes to reimbursements. Intermediaries and their customers should not be limited in this regard.

We thus suggest the following change to the proposed Article 8, 1:

1. *Where the passenger has bought the single multimodal contract through an intermediary, the contracting carrier ~~may~~ shall make the reimbursement referred to in Article 7(1) point (a) through that intermediary in accordance with this Article.*

Moreover, it is important to note that there is a difference between a customer and a passenger in many cases. Especially in business travel the paying customer is usually not the travelling passenger.

We thus suggest the following change to the proposed Article 8, 2:

2. *The intermediary and the contracting carrier shall inform the ~~passenger~~ customer about the reimbursement process as provided for in this Article in a clear, comprehensible and easily accessible manner at the time of booking and on the booking confirmation.*

Intermediaries are very often not compensated for selling tickets and servicing customers by carriers (notably air carriers). Therefore, a service charge to be paid by the customer is frequently applied. The level of a service charge is calculated in a way that allows the intermediary to stay competitive. Should intermediaries have to make reimbursements “free of charge” they would need to consider this in their initial service charge for the sale of a ticket. This would have an impact on their competitiveness. It would also mean that reimbursements would be paid by all customers through an increased service charge for the sale of a ticket no matter if there is a reimbursement involved later or not. We consider this unfair.

We thus suggest deleting the proposed Article 8, 3:

3. ~~*Reimbursement through the intermediary shall be free of charge for passengers and all other parties concerned.*~~

Finally, the process described in Article 8, 5 is not realistic and seems nearly impossible. There are well-established payment cycles between intermediaries and carriers that enable intermediaries to grant certain timelines for payment to their customers (e.g. business customers paying by invoice). The timelines foreseen under paragraph 5 are not in line with most of the payment flows between intermediaries and carriers and vice versa.

We therefore suggest the following change to the proposed Article 8, 5:

5. *The following shall apply in the case of reimbursement through intermediaries which have paid the contracting carrier for the single multimodal contract from their own accounts:*
 - (a) *the contracting carrier shall reimburse the intermediary within ~~seven~~ twenty days, in one transaction through the same payment method which was used at the time of booking, and linking the payment to the original booking reference. The ~~seventy~~ twenty-day period shall start on the date of the passenger’s choice of a reimbursement in accordance with Article 7(1), point (a), of this Regulation. The intermediary shall reimburse the passenger via the original payment method, at the latest within a further ~~seven~~ ten days, and inform the passenger and the carrier thereof;*
 - ~~*(b) if the passenger does not receive the reimbursement within 14 days as of the date of choosing a reimbursement in accordance with Article 7(1), point (a) of this Regulation, the contracting carrier shall contact the passenger at the latest on the day following the expiry of the 14-day period in order to receive the payment details for the reimbursement. Upon*~~

~~receipt of these payment details, the contracting carrier shall reimburse the passenger within 14 days and inform the passenger and the intermediary thereof.~~

If the intermediary does not receive the reimbursement from the carrier within 30 days as of the date of the customer choosing a reimbursement in accordance with Article 7 (1) (a), the intermediary shall contact the customer with copy of the carrier at the latest on the day following the expiry of the 30 day period informing that a reimbursement by the carrier has not yet taken place. The intermediary will inform the customer about the possibility to contact the carrier for direct reimbursement as well as about the option to contact the NEB concerning the unprocessed reimbursement.