

ECTAA Position on mobility package proposal of 29 November 2023 – unimodal 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. The value of indirect distribution players for competition to the benefit of consumers cannot be underestimated.

ECTAA supports a strong passenger rights framework. A fair passenger rights framework has to consider who is responsible for the performance of a transport contract when it comes to burden sharing.

We appreciate the opportunity to provide detailed feedback to the Commission proposal of 29 November 2023.

The most important aspects to be highlighted:

- We welcome that reimbursements when intermediaries are involved is included in the proposal. The process proposed is however not realistic and needs some amendments.
- Sharing of “passenger” contact information has been a conflictual issue between airlines and intermediaries for many years. Certain clarifications around passengers vs. customers need to be made. Additional amendments are needed to prevent misuse.
- ECTAA has called for a mandatory airline failure protection for decades and the lack thereof in the proposal is disappointing. In the interest of consumers and the whole travel ecosystem this should be revised.

Regulation of the European Parliament and of the Council amending Regulations (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards enforcement of passenger rights in the Union,

Consumers want transparency and choice beyond what individual transport operators offer in their own direct distribution channels. It is therefore very important that consumers have the right to use the services of an intermediary and should not be limited to do so. Packages offer the highest level of consumer protection. Intermediaries must therefore have the right to include stand-alone services in packages.

We thus suggest to include in the recitals:

Customers / passengers have the right to use the services of intermediaries. They should not be limited to do so.

Intermediaries have the right to include transport services in packages. They should not be limited to do so.

ECTAA welcomes that attention is given to the reimbursement process when an intermediary is involved. Travel intermediaries are between customers and suppliers and customers place a lot of trust when choosing to use an intermediary. Intermediaries are only in a position to reimburse a customer when the supplier has reimbursed to the intermediary. This is especially relevant for package organisers that have refund obligations under the Package Travel Directive.

261/2004 Air Passenger Rights

Right to reimbursement or re-routing

In article 8 on the “Right to reimbursement or re-routing”, it says under 2. that “Paragraph 1(a) shall also apply to passengers whose flights form part of a package, except for the right to reimbursement where such right arises under Directive 90/314/EEC.”.

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 8a on “reimbursement when the ticket was booked through an intermediary”. This article states under 5. (a) that “the air 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 air carriers to reimburse package tickets as well under the air passenger rights regulation while preventing fraud, illegitimate refunds etc.

We thus propose to delete 2. of article 8

2. ~~Paragraph 1(a) shall also apply to passengers whose flights form part of a package, except for the right to reimbursement where such right arises under Directive 90/314/EEC~~

When it comes to the reimbursement of tickets, it has to be sure that the reimbursement is made to the correct recipient avoiding fraud and illegitimate refunds, e.g. refunds to passengers directly while customer (who paid) was a company.

In the new dedicated article 8a on “reimbursement when the ticket was booked through an intermediary” it says that “the air carrier shall reimburse ...through the same payment method which was used at the time of the booking”. This will prevent fraud and illegitimate refunds etc.

In order to prevent fraud, illegitimate refunds etc. for all refund cases, we suggest a new paragraph in article 8 “Right to reimbursement or re-routing”

5. **Refunds shall be made through the same payment method which was used at the time of the booking**

Reimbursement when the ticket was booked through an intermediary

When customers choose to pay their ticket to an intermediary they expect to receive reimbursement from the same intermediary and customers should not be limited in this regard.

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

1. *Where the passenger has bought a ticket through an intermediary, the operating air carrier **may shall** make the reimbursement referred to in Article 8(1) point (a) through that intermediary in accordance with this Article.*

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 8a, 2

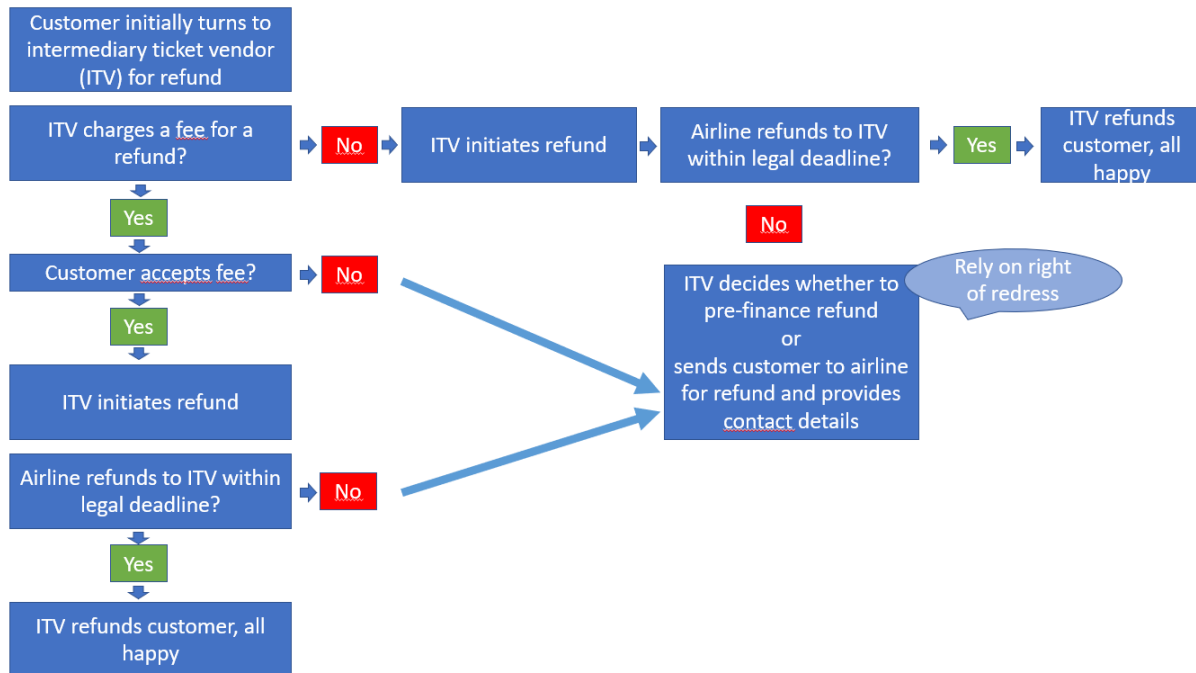
2. *The intermediary and the air carrier shall inform the **passenger customer** of the reimbursement process as provided for in this Article in a clear, comprehensible and easily accessible manner at the time of booking and on the booking confirmation.*

Intermediaries are very often not compensated for selling air tickets and servicing customers by airlines. 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 an air 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 to delete the proposed Article 8a, 3

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

Our suggestion would be such an approach



In Article 8a, 4 it says “*The air carrier shall state publicly, in a clear, comprehensible and easily accessible manner, whether it agrees to process reimbursements through intermediaries, and with which intermediaries it accepts to do so.*”

We do not understand how this would be possible. In Europe there are some 20.000 IATA accredited agents alone not to even speak of numerous non-IATA agents. There are consolidators working with thousands of individual agents. A customer will know with which intermediary a booking was made, but not necessarily which consolidator issued a ticket. This will create uncertainty for the customer as well as all parties involved why we suggest to delete the proposed article 8a, 4.

~~4. — The air carrier shall state publicly, in a clear, comprehensible and easily accessible manner, whether it agrees to process reimbursements through intermediaries, and with which intermediaries it accepts to do so~~

Article 8a, 5 refers to “*the case of reimbursement through intermediaries which have paid the air carrier for tickets from their own accounts:*”

This is a very common case in many different constellations – basically all those cases where the customer credit card is not simply “passed-through” to the airline. Background for this is e.g. running fraud prevention technology, accepting different forms of payment from the customer (e.g. invoices) while paying the airline separately e.g. via the IATA Billing and Settlement Plan (BSP). This is often referred to as merchant model as the intermediary acts as a merchant of record for the payment.

The process described in Article 8a, 5 is not realistic and seems nearly impossible.

There are well-established payment cycles between intermediaries and airlines that enable intermediaries to grant certain timelines for payment to their customers (e.g. business

customers paying by invoice). The timelines foreseen under 5. are not in line with most of the payment flows between intermediaries and airlines and vice versa.

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

(a) *the air 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 ~~seven~~ **twenty**-day period shall start on the date of the passenger's choice of a reimbursement in accordance with Article 8 (1) (a), first indent. 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 air carrier thereof.*

It needs to be further elaborated how the airline can be informed by the intermediary in an efficient and automated way.

The process described in Article 8a, 5b seems problematic and not feasible. As described above, there would be many cases where an airline would not yet have reimbursed within seven or even fourteen days. According to the current proposal the intermediary would have to inform the “passenger” and the airline when the reimbursement is made within a further seven days after the airline has reimbursed to the intermediary within the first seven days. Airlines that have not been informed by the intermediary within fourteen days that a reimbursement was made to the “passenger” would then have to contact the “passenger” to receive the payment details for reimbursement. This is problematic for different reasons.

Firstly, it is important to understand that the “passenger” is often not the paying “customer” (e.g. business travel where a company pays a flight for an employee). The passenger often does not even know what original form of payment was used for the payment of an air ticket. It must however be made sure that the reimbursement is made to the original form of payment to prevent fraud.

It would be further problematic if several airlines would reach out to the paying customer in order to request the payment details for reimbursement. There are good reasons and rules why payment details are kept protected within the systems of the intermediary (e.g. credit card details x-ed out / tokenization).

We would like to reiterate that nearly no intermediary is in a position to pre-finance a reimbursement to the customer before the airline has reimbursed to the intermediary. If an intermediary would do so, there would be the need for an enforceable and insolvency protected right of redress against the airline. The question would remain how that could be enforced against a third country airline.

For these reasons, we suggest the following amendments to the proposed Article 8a, 5b

(b) *~~if the passenger does not receive the reimbursement within 14 days as of the date of choosing a reimbursement in accordance with Article 8 (1) (a), first indent, the operating air 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 operating air carrier shall reimburse the passenger within seven days and inform the passenger and the intermediary thereof.~~*

If the intermediary does not receive the reimbursement from the air carrier within 30 days as of the date of the customer choosing a reimbursement in accordance with

Article 8 (1) (a), the intermediary shall contact the customer with copy of the airline at the latest on the day following the expiry of the 30-day period informing that a reimbursement by the air carrier has not yet taken place. The intermediary will inform the customer about the possibility to contact the air carrier for direct reimbursement as well as about the option to contact the NEB concerning the unprocessed reimbursement

It is currently up to each airline to decide how an intermediary has to apply for a reimbursement of a ticket (e.g. automated GDS-refund, application via BSPlink or sending an email). This has implications how fast the reimbursement will be “approved” or “processed” by the airline while also having an impact on the level of complexity for the intermediary. Automated GDS-refunds should be obligatory wherever possible.

Concerning the reference made in Article 8a, 6 to the Directive (EU) 2015/2302 we would like to highlight the importance of issues around packages.

It is important that reimbursements for customers whose ticket form part of a package are reimbursed through the package organiser and not the airline directly. First of all, the cancellation of a flight does not mean that the whole package is cancelled. The package organiser would first try to arrange an alternative flight so that the package can still be performed. Also, as the flight is part of a package sold at one inclusive price, the airline does not even know what a customer paid for the flight part of a package.

Transfer of information

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.

As explained above, there are additional practical issues concerning the sharing of contact details. In many constellations 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 strongly oppose the obligatory sharing of “passenger” contact details and suggest the following change to the proposed Article 14a, 2

- 2. Where the passenger does not acquire a ticket directly from the air carrier, but through an intermediary, this intermediary shall provide the contact details, **where available**, of the passenger and the booking details to the air carrier. The air carrier*

may only use these contact details to the extent necessary to comply with its information, provision of care, reimbursement, re-routing and compensation obligations under this Regulation and to fulfil the air carrier's obligations under applicable Union law on aviation safety and security and to provide information to passengers on the operating carrier in accordance with its obligations under Chapter III of Regulation (EC) No 2111/2005.

3. *An intermediary/organiser/ticket seller shall be exempted from the above provision 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 airline. In such a case, the airline shall fulfil its information obligations under this Article towards the intermediary / organiser / ticket seller who shall ensure the correct and timely transmission of the information to the passenger and, therefore, in such cases contact details transmitted to the airline can be those of the intermediary / organiser or ticket seller.*
4. *In case the intermediary / organiser / ticket seller fails to timely transmit the information to the passenger, the resulting consequences would have to be borne by the intermediary / organiser or ticket seller*

As explained before, we have documented several cases of misuse of contact information provided to airlines for operational disruptions. We therefore strongly welcome the clarification that “the air carrier may only use these contact details to the extent necessary...” and that “the carrier shall delete the contact details within 72 hours...”. It will be very important to effectively control this and apply deterrent sanctions for non-compliance.

We welcome the mentioning of intermediaries acting “on behalf of a passenger”. While we explained before the necessary differentiation between passenger and customer, it makes clear that intermediaries work for their passengers / customers. For bookings made in B2B booking tools (e.g. GDS, aggregators, B2B websites etc.) it is clear that a booking is made by an intermediary with a customer demand in the background. No additional information to the air carrier is needed, that a booking was made as an intermediary.

We welcome the clarification that the intermediary has the right to receive the information from the air carrier simultaneously. We request however that intermediaries shall always simultaneously get all the information that air carriers share with passengers.

Service quality standards

ECTAA welcomes that attention is given to service quality standards. We would however suggest to consider more detailed information like this <https://www.transtats.bts.gov/homedrillchart.asp>. With such detailed information consumers could make better informed choices. It is important that the information must be validated and come from an independent entity.

We especially welcome the “adherence to industry standards on weight and dimensions of hand luggage”. ECTAA has already advocated for such standards during the consultation on Regulation 1008/2008 (Air Services Regulation).

Common form for reimbursement and compensation requests

We do not have a strong opinion the “common forms for reimbursement and compensation requests”. We do however want to highlight that intermediaries are not responsible for compensation and this should be made clear in this regard as well.

Lack of airline failure protection

ECTAA has explained for decades the negative impact on the travel ecosystem and consumers of a lack of an airline failure protection. We have called for such a mandatory airline failure protection borne by the airlines and we think it is long overdue to set this up.

On average there is one airline failing per month in Europe leaving customers (B2C and B2B) with massive losses. There are several possible solutions as presented in the past. In Denmark for example there is a guarantee fund that covers not only package travel contracts (legal requirement under PTD) but also air tickets. Airlines have to pay a small contribution for each passenger travelling from a Danish airport to a foreign destination. The fund covers the repatriation and also prepaid tickets apart from a small lumpsum amount. There should be no restrictions on B2B reimbursements - reimbursements must also be made to travel agencies and tour operators when tickets are part of a package.

Other possible solutions include insurances, guarantees, escrow accounts or “sliced” payments (down payment + final payment – like for packages). As it is the case in the Package Travel Directive, the form of an airline insolvency protection should be left to the Member States, provided that certain conditions are met:

1. All passengers have to be repatriated and refunded
2. There is a mutual recognition of insolvency schemes by Member States
3. No double imposition/obligation based on place of residence of the passenger or registration of airline
4. B2B refunds are covered (for tickets that are part of a package).

National Enforcement Bodies should be involved in helping Member States to set up national systems.

The suspension of operation due to the airline insolvency should be treated in the same way as a cancellation, as the inconvenience triggered by these events is the same. Passengers should thus be entitled to assistance (return flight) and refund (if ticket or part of the tickets have not been used).

We are disappointed that this is not part of the presented proposal.

1107/2006 rights of disabled persons and persons with reduced mobility when travelling by air

Concerning the newly added sentence in Article 4 (2), we would like to highlight that it would be the decision of an air carrier whether they require that a disabled person or person with reduced mobility would need to be accompanied by another person who is capable of providing the assistance required by that person. As it is not the decision of “their agents or a tour operator”, we suggest the following amendment:

'Air carriers, ~~their agents or a tour operator~~ shall ensure, and their agents and tour operators must inform, that such an accompanying person travels free of charge and, where practicable, sits next to the person with disabilities or to the person with reduced mobility.'