

Help and advice
for consumers
in Europe



European Consumer Centres Network



Januar 2020

The ECC-Net offers its expertise
on cross-border consumer topics



Co-funded by
the European Union



ECCs are experts on consumer issues in the EU

30 centres across all EU Member States, Norway and Iceland, work closely together to **resolve consumer disputes in an amicable manner**. Each centre is co-funded by the European Union and national governments. By **providing a full and centralised service**, ECC-Net is committed to empowering consumers and enabling them to take full advantage of the Single Market.

The ECC-Net : 30 centres across Europe with 15 years of experience and unique expertise

The primary role of ECC-Net is **to enhance consumer** confidence when engaging in cross-border transactions by providing **free information and advice** to the public on their rights as consumers, as well as assistance in the resolution of cross-border consumer disputes.

Recently, it was also decided that the ECC- Net will contribute even more to the cooperation between national authorities responsible for the enforcement of consumer protection laws (CPC-Network), as an **external alert mechanism**.



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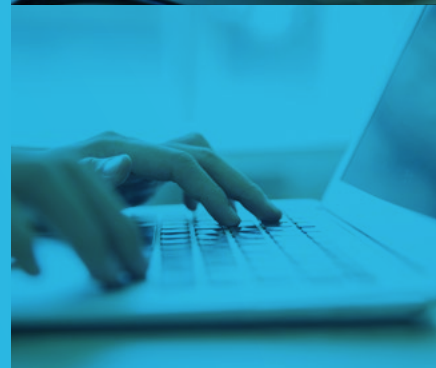
European Consumer Centres Network

The ECC-Net is vital for consumers who are experiencing difficulties with traders from another EU-country, and the Consumer Conditions Scoreboard 2017 shows that the ECC-Net receives more cross-border complaints than alternative dispute resolution bodies or The European Small Claims Procedure. Thus, the ECCs are in a unique position to **document the cross-border problems consumers face when shopping within the EU.**

Providing help and information for air passengers are among the ECC-Nets most frequent tasks, and our expertise on Air Passenger Rights (APR) issues is often required by various consultants and stakeholders.

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Urgent need for revision of Air Passenger Rights regulation (EU) 261/2004



In ECC-Net's experience, it is becoming increasingly difficult to obtain the application of the rights foreseen by the EU legislation and case law of the CJEU through amicable agreements. **Recourse to justice is no longer the last resort, it is often the only recourse for consumers.**

The development of private claims companies specialised in airline complaints is therefore not surprising.

For an effective application of air passenger rights the following suggestions should be considered: Most of these measures have already been mentioned in the draft revision of Regulation 261/2004, which was submitted to the vote of the European Parliament in 2013. However, they are still not finalised.

These proposals to address the deficiencies in Regulation 261/2004 should be considered as a matter of priority.

The first wish of a consumer when a cancellation, delay or denied boarding is occurring, is to get good information and assistance. Consumers want to know what is going on and want to get as soon as possible to their final destination. They are not taking a plane hoping to get a compensation.

We would also recommend strongly to strive for a simplification in the revision of the regulation. The current regulation, interpreted by a lot of case law, is difficult to apply, by ECCs and enforcement officers. If consumers need to know their rights and discussions between the different parties need to decrease, then a simplification of the regulation is definitely a way to go.

The cases ECC-Net handles regarding Air Passenger rights is not restricted to the regulation 261/2004, but also covers luggage issues, issues regarding intermediaries and price comparison websites. New contracts enter the market e.g. multimodal transport which are meant to increase in these sustainable times and they are not covered by the regulation. No show clauses and airline insolvencies are also a source of issues our passengers face. For these „new“ problems in the APR-sector the ECC-Net is often the only body offering cross-border assistance free of charge.

Therefore the ECC-Net would like to share its experience by broadening the scope of the regulation to englobe all aspects concerning air passenger rights.



- > Require airlines to offer **rerouting not only on their own fleet** but on other airlines or other transport modes as well, if it allows the consumer to reach the destination earlier and in comparable transport conditions.
- > Ensure that in case of **intermodal transport** passengers are well protected and it is clear which rules apply for example between air passenger and train passenger rights when one of the legs is realized by train.
- > **Require airlines to immediately and correctly inform** passengers about their rights at the airport. Effective enforcement of this information duty should be ensured.
- > **Ensure that airlines apply the CJEU case law ([Nelson case](#))** and guarantee identical rights in the event of cancellation or long delay of flights, particularly in the amounts and scales of compensation.

Under the current rules, passengers who declare the withdrawal of the contract after the departure of their flight was delayed by minimum 5 hours are not entitled to a payment of compensation whereas passengers who in the event of a cancellation choose the refund of the ticket instead of the re- routing are entitled to a compensation.



- > With regard to **no-show policies** harmonised approach across the EU to avoid differences in the application and understanding of common consumer rights, based on their country of residence or competent court should be considered.
- > Clarify **uncertainties under Art. 7:**
 - double compensation if the alternative flight is delayed/cancelled again
 - calculation of route if incident happens during a multi segment flight. What is the place of departure to use for the calculation of the payment? (C-559/16, side number 29 CJEU does not answer this question clearly as it mainly dealt with another question.)
- > Require airline companies to provide their **full contact information and claim** form on their website so that they can be easily contacted in the event of a claim. A consumer should always immediately receive a **copy of the message** put forward to the trader.
- > Require airlines to be accessible in the **language of the booking process:** whereas airlines usually sell tickets via websites in various languages, customer services are often reachable in a few languages only. If an airline can't offer an after sales service in the language of the website the consumer bought from, this should be clearly indicated to the consumer before the booking starts.
- > Impose time limits for consumers, but also **response times for airlines**, to encourage airline companies to develop their efficiency in handling and tracking consumer complaints and to streamline compensation procedures.
- > Define the notion of **extraordinary circumstances** and list the events that may justify non-payment of compensation by airlines.
- > Clearly define the **role of NEBs towards passengers** and involve them in the settlement of disputes, particularly for their expertise in extraordinary circumstances.
- > **Oblige NEBs to forward complaints** to the competent NEB (passengers are often not aware of the incident based principle).
- > Make NEB action more effective by providing a **common and dissuasive mechanism for sanctioning** companies that do not respect passenger rights and communication about taken sanctions.
- > **Improve communication and cooperation between different actors** (airlines, consumer organisations, ADR bodies and NEBs) to clarify for consumers the role of each of them and facilitate the resolution of the complaint as well as data exchange on recurrent issues.
- > Evaluation and further **follow up at EU-level of the effectiveness of the current ADR/ODR legislation** given the fact that ADR coverage and trader involvement seem not meet set targets.

It therefore seems necessary to ensure that each Member State provides an ADR in the APR sector to ensure that individual consumer disputes are dealt with. The recent directive on consumer ADR and regulation on consumer ODR create incentives to ADRs.

ADR must remain a swift option, easily accessible for consumers and as far as possible free of charge so that it remains a viable option for passengers/consumers.

In order to use ADR in the APR sector to its full potential, the ECC-Net draws the following conclusions for recommendations.

- > **ECC-Net report Alternative Dispute Resolution in the APR sector.**

Legal framework for price comparison websites and booking intermediaries

To get the best deal, consumers more and more rely on online price comparison websites and booking platforms. The ECC-Net has seen an increase in complaints relating to both types of intermediaries.

Price comparison websites

Comparing ticket prices pre-booking is becoming more and more difficult, sometimes even impossible, as every intermediary decides what to include in its reference price.



To allow transparent consumer information and fair competition between air carriers, price comparison tools and booking intermediaries, the following suggestions should be considered:

- > **All unavoidable and foreseeable price elements should be included in the headline price** to allow comparison between operators. The optional price supplements should be clearly visible next to the headline price (at every step of the booking process).
The headline price should include:
 - the ticket price
 - all unavoidable and/or foreseeable service fees including administrative fees, luggage (on luggage prices, see also below), seat selection, credit card fees in the countries where it is allowed to charge so etc. should be indicated even though the consumer might get a discount later due to the chosen means of payment for example
 - the final price should include a breakdown of the tariff in the different categories, including into taxes clearly indicating the refundable ones
- > **Price comparison websites should easily indicate whether tickets are flexible, refundable** or other and should employ the terminology of the airline so that consumers can indeed check the transport condition of the airline as these websites advise them to.

Booking intermediaries

Booking intermediaries usually present themselves as acting for the consumer, they even charge a service fee for their intermediary skills, therefore it may be suggested that they should be bound by a **minimum service to be provided to their customers**.



- > **Require booking intermediaries to immediately and correctly inform** passengers about the type of tickets and services they purchase (price as above, flexible or not flexible tickets etc.) It is essential that when doing so, intermediaries convey special conditions or restrictions from airlines to their customers as currently general terms and conditions and transport conditions may differ. for example some airlines impose very strict rules with regard to ID controls or minors not being allowed to travel alone etc.
- > «Membership/premium systems » should be clearly explained and conditions detailed
- > **Require booking intermediaries to clearly inform passengers in case of sale of disconnected flights** about the consequences a change in schedule, delay or cancellation may have on the rest of the journey and the rights of passengers for assistance or compensation from the airline. They also should inform about the consequences during travel (luggage not checked in until final destination, etc.)
- > Require booking intermediaries to provide their **full contact information** and claim form on their website so that they can be easily contacted in the event of a claim. **A consumer should always immediately receive a copy of the message put forward to the trader.**
- > **Require booking intermediaries to be accessible in the language of the booking process:** whereas airlines usually sell tickets via websites in various languages, customer services are often reachable in a few languages only. If an airline can't offer an after sales service in the language of the website the consumer bought from, this should be clearly indicated to the consumer before the booking starts.
- > **Require booking intermediaries to be the intermediary of the passenger in case of:**
 - change of schedule or disruption of flight: the intermediary should pass all information it is aware of to the consumer immediately
 - change of tickets (name etc) during a specific deadline: a right to correct spelling errors in passengers' names should be introduced covering mistakes from consumers and changes during the booking process by intermediaries.
 - difficulty to reach the airline directly by the consumer
 - refund of a ticket
- > Impose time limits for consumers, but also **response times for the booking intermediary**, to encourage booking intermediaries to develop their efficiency in handling and tracking consumer complaints and to streamline refund procedures.
- > Oblige booking intermediaries to **immediately reply to consumers and/or** forward a consumer's request to the airline if the flight is about to take place soon.
- > As long as airlines insist that changes/refunds have to be made via the intermediary if the ticket was booked via a(n) (online) travel agent: **Forbid booking intermediaries to charge a fee for forwarding a consumer's cancellation request as well as refunds paid by an airline.** It is not the passenger's choice to not handle these issues directly with the airline!
- > **Improve communication and cooperation** between different actors (airlines, booking intermediary, consumers, consumer organisations, ADR bodies and NEBs) to clarify for consumers the role of each of them and facilitate the resolution of the complaint as well as data exchange on recurrent issues.
- > Compel air carriers, online travel agencies and other **intermediaries to provide consumers with the booking process history upon request.**

Protection against airlines insolvencies

In its communication COM(2013) 129 final, the European Commission committed to encourage cooperation between the competent authorities of the various Member States, monitor their licensing oversight under Regulation 1008/2008, and assess whether a legislative initiative would be needed **to guarantee the protection of passengers in the case of airline insolvency.**

For several years, the ECC-Net has alerted on the issues of airline insolvencies, and **recent experience shows that the protection of consumers in these cases is insufficient.** As more insolvencies are predicted for 2020, this topic becomes an urgent issue.

Learning from the neighbours

In Denmark, a Travel Guarantee Fund covers the legal duty of package tour operators to have an insurance. Passengers can also contact this fund if they bought only a flight ticket directly from an airline and this airline goes bankrupt (for travels with departure and return in Denmark with this airline).

Airline insolvencies	Member State	Year
Flybmi	United Kingdom	2019
Germania	Germany	2019
NIKI	Austria	2018
Small Planet Airlines	Lithuania	2018
Primera Air	Denmark	2018
Cobalt Aero	Cyprus	2018
Nextjet	Sweden	2018
Air Berlin	Germany	2017
Monarch Airlines	United Kingdom	2017
Air Mediterranee	France	2016
Estonian Air	Estonia	2015
Cyprus Airways	Cyprus	2015
Intersky	Austria	2015
Eurolot	Poland	2015
Belle Air Europe	Italy	2014
OLT Express	Germany	2013
Helitt Lineas Aereas	Spain	2013
Spanair	Spain	2012
MALEV Hungarian Airlines	Hungary	2012
Wind jet	Italy	2012
Blue1	Finland	2012
Cimber Sterling	Denmark	2012
Skyways	Sweden	2012
Islas Airways	Spain	2012
ItAli Airlines	Italy	2012

Source : Consultation of stakeholders in relation with the study on the current level of protection of air passenger rights in the EU, European Commission 2019 and ECC-Net

Definition and harmonization of dimensions and weight of cabin luggage

The price of an airline ticket is becoming more and more intransparent. As every carrier is free to define what is included in its air tariff and not, comparison of prices often becomes impossible unless consumers go through every step of the booking procedure to see what additional charges are imposed along the way. One of the issues is the price of **hand luggage**, which is **now excluded from some basic tariff tickets**.

The issue is not unknown, and Italy's Competition Authority (AGCM), has already issued penalties to Ryanair (3 million euros) and Wizzair (1 million euros) for their cabin luggage policy.

„The changes made to the rules for the transport of large hand luggage constitute an unfair commercial practice as they deceive the consumer regarding the actual price of the ticket, no longer including an essential element of the air transport contract in the basic tariff which is the big hand baggage,“ AGCM said in a [statement](#).



However, this is only the **interpretation of one country's enforcement authority**, there is **no harmonization or common understanding across the EU**.



- > In order to allow consumers to proceed to a real comparison of prices with regard to air fares including cabin luggage and to ensure fair competition between operators, it should be **defined and harmonised which services are included in the minimum fee**.
- > Also it should always be **clearly stated in the beginning of the booking process** which services are included in the minimum fee. Ideally, all passenger rights should be codified in one single place as to allow consumers to easily understand and research their rights.

For more information on APR please refer to the **reports and position papers of the ECC-Net**, and do not hesitate to get in touch with us.

> [Alternative Dispute Resolution in the Air Passenger Right Sector 2017](#)

> [Revision of EU air passengers rights legislation :](#)

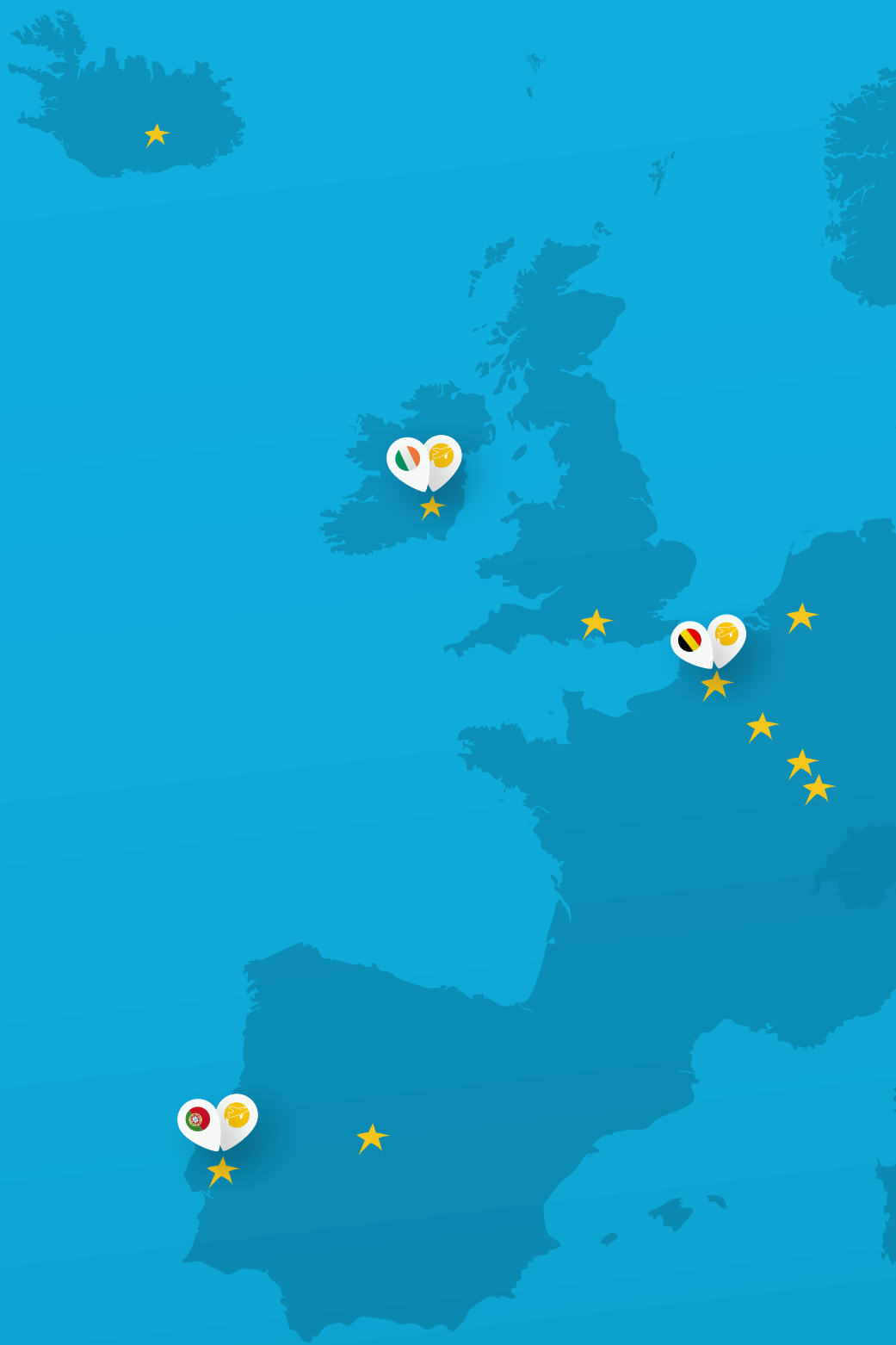
[European Consumer Centers Network position paper \(Update by ECC France and Germany 2017\)](#)

> [Air Passenger Rights Report 2015 :](#)

[Do the consumers get the compensation they are entitled to and at what costs ?](#)

> [ECC France and Germany's position paper :](#)

[Air passenger rights : why the revision of Regulation 261/2004 is urgent ?](#)



« A recast of the current legislation is required to provide for greater legal certainty and further rationalise a number of aspects that have proved problematic and have even been overhauled by the rulings of the CJEU..

The role of the National Enforcement Bodies (NEB) in ensuring compliance and enforcing Regulation 261/2004 remains limited, whilst their support to consumers is, in most cases, very limited. Alternative Dispute Resolution (ADR) is only available in a limited number of countries. Sector-specific ADR with the required expertise would be desirable to facilitate greater fairness and access to redress. ECC-Net continues to bridge the many gaps between public and private enforcement, and the limited availability of ADR in the sector. The surge in claim management companies may place additional pressure on court and out of court procedures, whilst challenging airlines and potentially reducing the amount of redress passengers could otherwise obtain. Better integration of NEBs and ADR schemes would thus be desirable, in cooperation with ECC-Net/CPC, as required, to secure better out-of-court outcomes and enforcement.

A step-by-step claim handling procedure would be desirable, as provided by other sector-specific legislation (e.g. financial services, utilities, telecoms), i.e. internal complaint procedure, that can subsequently be escalated to an NEB, which can in turn investigate the matter and/or refer it to an appropriate ADR body, and court as a last resort, where the members of the ECC-Net can be consulted at all times for practical information and assistance to consumers with cross-border complaints. In the case of passengers whose luggage is lost, damaged or delayed, we are also of the view that clearer step-by-step information should be provided to facilitate the handling of claims.

We would also welcome specific provisions for the protection of passengers in the event of the airline's insolvency, so that affected passengers are reimbursed or repatriated. Since it could be prohibitively expensive to new airline entrants (or even to well-established ones running into difficulty) to take out insurance to provide sufficient security to reimburse passengers and to cover repatriation costs in the event of the bankruptcy of the airline, other solutions could be considered. For instance, a pan-European bond backed by a small levy (e.g. 5 cents per departing passenger could accrue between 25 and 50 million euro annually). Provision could also be made in relation to outstanding claims pursuant to Regulation 261/2004 against a bankrupt airline. »



« The overarching purpose of greater access to effective



« A solution to insure passengers'



« The APR-regulation needs to be complicated and it is not easy
We agree with ECC Austria, intermediary, although the
There is an obligation to too complicated and does
Clear delimitation between of these bodies within the



amending the regulation should be facilitating redress in individual cases..»

reimbursement in the event of an airline bankruptcy is needed!»

be simplified. With the rulings of the CJEU it became more and more to make the passenger understand its rights and also obligations.

that there is often a ping-pong situation between the airline and the airlines responsibility is clear.

inform passengers about their rights, but the information is sometimes not show the consequences of the passengers' choice.

the NEBs decision and the ADRs competence and a uniform position EU is necessary to avoid different decisions in NEB and ADR..»



« You have to know your rights in order to fight for them. »



« The current EU Passenger rights need a thorough simplification exercise, so we don't need to make a 'road trip' of the legislation just to be able to advice our consumers. »



« A passenger must not be the ping-pong ball between an airline and a booking intermediary! It has to be assured that booking a flight via an online travel agency does not lead to a lack of important information, a lack of legal protection, high extra costs and an unbelievable amount of stress due to the often very poor customer service. »



« The very idea of standard compensation system should be to provide consumers compensation cheaply and effectively in a standardised, speedy and summary fashion without having to resort to public authorities, courts or claim agencies.

The current regime must change. The current combination of high level of standard compensation for delays and non-commercial cancellations with exoneration when extraordinary circumstances are shown breeds disputes and claims agencies instead of providing passengers with standard compensation. »

Don't hesitate to get in touch

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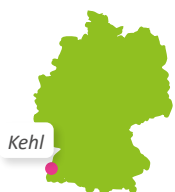
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Registre des associations du Tribunal d'Instance de Fribourg-en-Brisgau, numéro VR 370391; Directrice Générale : Martine Mérieau