

AIR PASSENGER RIGHTS: CONSUMER COMPLAINTS

2006



A summary and analysis of consumer complaints
reported to the European Consumer Centre Network



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1. Introduction

The European Consumer Centre (ECC) Network consists of centres in 27 European countries. The Network is co-financed by the Health and Consumer Protection Directorate General of the European Commission and by each of the national governments. ECC-Net's objective is to create consumer confidence in the Internal Market. This is achieved by providing information to consumers on their rights, and by assisting them with cross-border disputes.

In addition, each ECC carries out information campaigns; publishes information material and a website; gives presentations and engages in joint reports and surveys with other ECCs. ECCs also provide feedback to national consumer agencies and the European Commission on problem areas requiring enforcement.

Since Regulation (EC) N° 261/2004 on air passenger rights came into force on 17th February 2005, ECC-Net has seen an increase in cases relating to this area. In 2006, ECC-Net decided to compile and analyse statistics of the air passenger rights cases handled in 2005. Air Passenger Rights: Consumer Complaints 2005 was published in November 2006. Now it is time to publish the follow up, Air Passenger Rights: Consumer Complaints 2006.

The legal framework for the cases handled by the ECC Network is the Regulation (EC) N° 261/2004 and the Montreal Convention. Regulation (EC) N° 261/2004 applies in cases where a flight is cancelled or delayed, or when a passenger is denied boarding. The Montreal Convention establishes the air carrier's responsibility when the consumer suffers (economical) damage due to a flight delay or when their luggage is lost, damaged or delayed.

In 2005 2,716 cases relating to air passenger rights were received by ECC-Net. In 2006 the Network recorded 4,901. The number of complaints has almost doubled in one year. In the first 6 months of 2007, ECC-Net statistics show that some 1,500 complaints and disputes relating to air travel have been received. This is on par with the number of complaints received in 2006 and it remains to be seen whether an increase will be recorded, once complaints received after the busy summer period have been counted.

The fact that ECC-Net deals solely with cross-border problems means, however, that in terms of complaints received, they just represent the 'tip of the iceberg'. The analysis of complaints received by ECC-Net relating to air travel should, therefore, be read within a wider context. Other actors dealing with consumer problems and air passenger rights include the National Enforcement Bodies (NEBs), Consumer Agencies and Ombudsmen, Alternative Dispute Resolution Bodies (ADRs) and also the courts.

Being the only network that deals specifically with cross-border consumer complaints and disputes, the European Consumer Centre Network is certainly in a unique position to document the problems consumers face when shopping within the Internal Market. While the Internal Market offers so many advantages in terms of choice and value to the 500 million people living in it, problems remain too. As more and more people avail of cheap flights to enable travel within that Market, it is imperative that the legislation protecting them is strong and that adequate enforcement ensures 100% compliance with the legislation by airlines. The complaints analysed in the Report show that this is not always the case and outlines where action is needed.

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2. Scope

The purpose of this Report is to:

- Analyse the air travel complaints received by the ECC Network in 2006
- Use that as a basis to provide comments on the problem areas
- Highlight the relevant work undertaken by each ECC during 2006
- Suggest recommendations for possible improvement.

All the statistics, statements and conclusions made in the Report are based on the information that has been provided by each of the national ECC offices. A copy of the questionnaire sent to all ECCs can be found in Appendix A. The opinions contained are not those of the European Commission or of national funding bodies.

All contacts from consumers received by the ECC-Net are divided into two categories: 'requests for information' and 'complaints and disputes'.

A 'request for information' means any query by a consumer regarding a national or cross-border consumer issue, not related to an existing individual complaint, where expert information on EU consumer legislation is given.

A 'complaint' means any statement of dissatisfaction by a consumer, concerning a cross-border transaction with a trader, where ECC assistance is provided. With some complaints, a consumer is informed about their entitlements and advised how to approach the trader in order to solve the issue directly and in these cases no follow-up by an ECC is needed. In other complaints, intervention is necessary on the part of an ECC.

A 'dispute' means a complaint referred to an out-of-court scheme, after ECC intervention proved unsuccessful.

3. The legal framework

There are two main legal instruments that are applicable to cases regarding air travel: Regulation 261/2004, and the Montreal Convention.

Regulation (EC) N° 261 / 2004

This Regulation¹ came into force in February 2005. It regulates cases where a flight is either cancelled or delayed, and when a passenger is denied boarding. The Regulation is applicable on all flights that depart from an airport in all EU and EEA countries. It also applies to flights departing from: an airport outside the EU/EEA, going to an airport within the EU/EEA, if the flight is operated by an air carrier with a license issued by an authority in an EU/EEA country.

The Regulation stipulates that in the case of a cancellation, delay or denied boarding, passengers have the right to care provided by the air carrier. The care varies according to the length of the delay, but might include meals and refreshments, phone calls, fax messages or email. If the passenger has to spend an extra night waiting for a flight, hotel accommodation and transport to and from it must be provided at the expense of the air carrier. It is important to note that the duty to provide the consumer with the right to care is absolute, and cannot be excluded by claiming that there were exceptional circumstances.

In the case of a flight cancellation with no prior notice, the passenger is additionally entitled to compensation. For cancellation with short prior notice the passenger is entitled to compensation if the air carrier fails to provide a new booking to the final place of desti-

nation. It is only when the air carrier can prove that the cancellation was due to extraordinary circumstances, that the air carrier can be excluded from the obligation to pay this compensation.

The Regulation imposes an obligation on the air carrier to inform passengers about their rights. At the check-in desk, the air carrier should have a clear notice that in the case of denied boarding, cancellation or delay of a flight, the passenger can ask for written information on their rights.

The Montreal Convention

The Montreal Convention² is applicable on international flights, provided that the countries of flight departure and arrival have ratified it. The European Union is a party to the Montreal Convention. With the amendments made (in Regulation 889/2002) to the Regulation 2027/97, the Montreal Convention was made applicable on all flights within the European Union, both domestic and international. The Montreal Convention regulates the air carrier's responsibility in cases where the passenger suffers economic loss due to delay³, as well as economic loss due to lost, delayed or damaged luggage.

The Montreal Convention also places limits on the air carrier's responsibility. For damages due to delay, the liability of the air carrier to compensate the passenger is limited to the value of 4,150 Special Drawing Rights (SDR)⁴ per passenger. When it comes to luggage, the liability of the carrier is limited to 1,000 SDR per passenger.

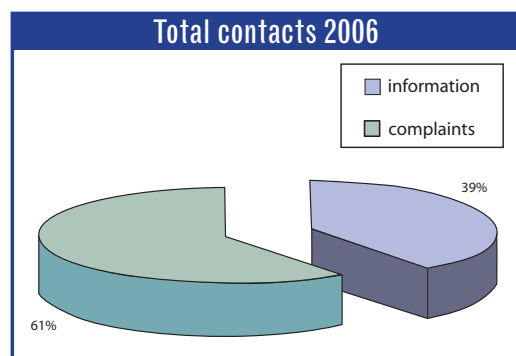
There are set time limits in the Montreal Convention, pointing out when the passenger must make his claim. For a damaged luggage claim, the time limit is seven days from the moment of delivery, for delayed luggage the claim must be made within twenty-one days of the luggage being returned to the passenger.

If the air carrier admits that the luggage is lost, or the luggage does not arrive within twenty-one days, the passengers have the right to make a claim for lost luggage against the air carrier. The Convention does not set a time limit for when this claim should be made but the recommendation would be to make a claim as soon as possible.

4. General results

4.1 Types of contacts

In 2006 ECC-Net recorded 4,907 contacts concerning air passenger rights.



Of these contacts, 1,928 were information requests. The type of information requested can be broken down as follows:

Information requests 2006		
	TOTAL	%
Luggage related	422	22%
Delay	311	16%
Cancellation	297	15%
Denied boarding	75	4%
Other air passenger related	349	18%
Not specified	474	25%
TOTAL	1928	100%

The other 2,979 contacts were recorded as complaints and disputes. The breakdown of these complaints and disputes is as follows:

Complaints 2006		
	TOTAL	%
Luggage related	978	33%
Cancellation	782	26%
Delay	465	16%
Denied boarding	195	7%
Other air passenger related	559	19%
TOTAL	2979	100%

Compared to the requests the ECC-Net received in 2005, the total number of contacts increased by 80%. The complaints received by the ECC-Net almost doubled (96%) in one year.

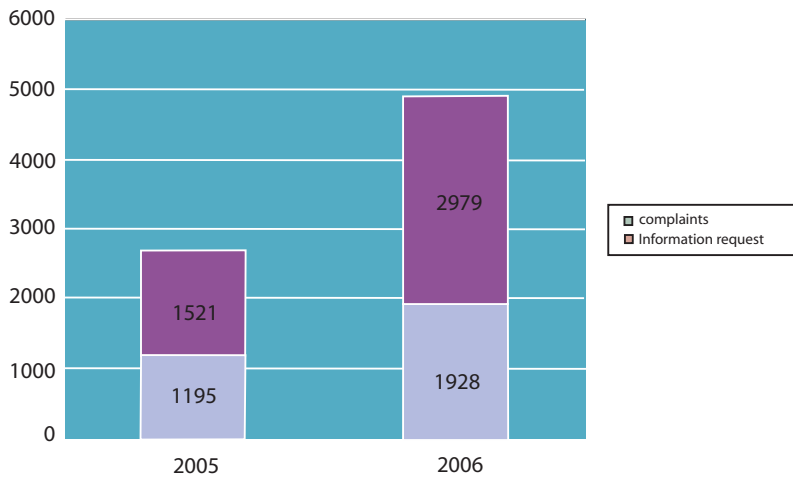
Since the 1 January 2007, ECC-Net has used a web based IT-Tool to register the contacts of consumers from all Centres in the Network. According to this database, ECC-Net received 1,538 complaints and disputes during the first 6 months of 2007. These numbers are comparable with the numbers of 2006.

In April 2007, the European Commissioner for Transport, Mr Jacques Barrot, gave airlines a period of six months to comply with Regulation 261/2004. ECC-Net has not observed any improvement as of yet.

In relation to *information requests*, not all ECCs classified them into distinct categories in 2006. For 474 information requests, the type of request was not specified. From all the specified information requests (1,454), the luggage related requests are the most frequent, followed by questions concerning delay and cancellation of flights. In the category "other air passenger related" questions were registered regarding time deadlines for check-in, cancellation or modifications of bookings, price displays, or retrieving charges for unused tickets.

The information requests on denied boarding are recorded as being the lowest. A reason for this might be that this is the clearest part of the European Regulation 261/2004 which governs air passenger rights, as it is a consolidated and amended version of the previous legislation - Regulation (EC) 295/91⁵.

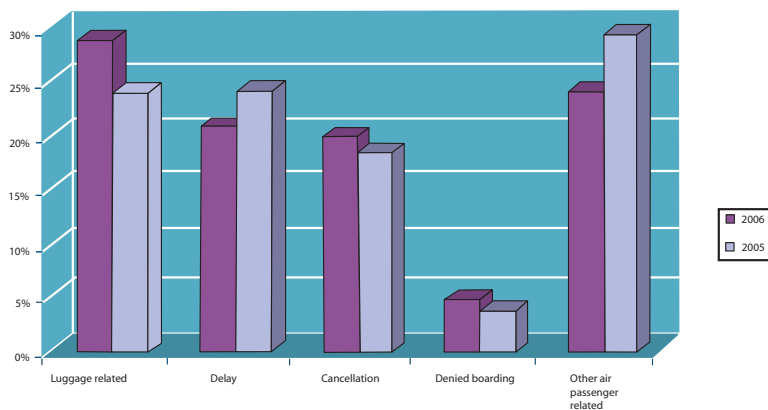
Number of contacts 2005 and 2006



With regard to *complaints*, luggage related complaints are the most frequent, as in 2005. Consumers also frequently seek advice or intervention from the ECCs when they are confronted with a problem of cancellation or delay.

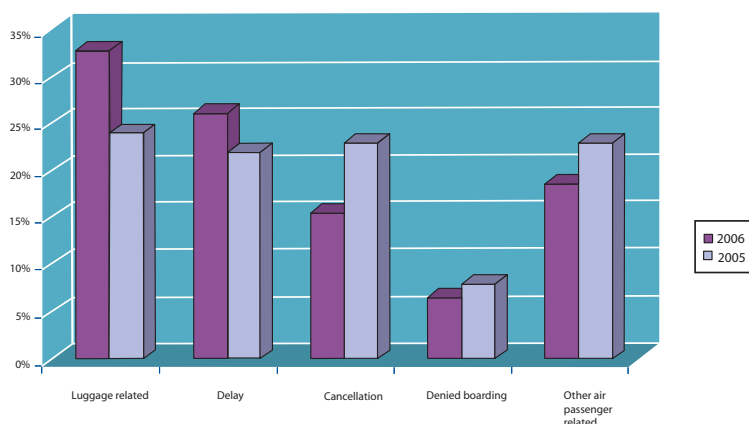
It is interesting that luggage complaints top the list, as the Regulation 261/2004 does not cover luggage problems. Instead, luggage issues fall under the remit of an international convention – the Montreal Convention – the Montreal Convention⁶ is only enforceable through the courts and there is currently no link between it and Regulation 261/2004 or with the remit of the National Enforcement Bodies (NEBs)⁷.

Type of information requests 2005 and 2006



Furthermore, the category of 'other air passenger related' is in fact the third highest in terms of the number of complaints and these complaints concern issues that are neither covered by the Regulation 261/2004 or the Montreal Convention. Some of these issues (terms and conditions, return of charges for unused flights) may be covered under other EU legislation, such as the Unfair Terms Directive or the Unfair Commercial Practices Directive (although the deadline for the latter to be transposed in all Member States is not until December 2007). With regard to the issue of price displays, the new European legislative proposal COM (2006) 0396, due to come into force by summer 2008, will clarify this issue. All of these pieces of legislation are enforceable by the various national consumer agencies and ombudsmen. This snapshot alone shows the need for synergy between the various actors in this area.

Type of complaints 2005 and 2006





4.2 Importance of air travel complaints

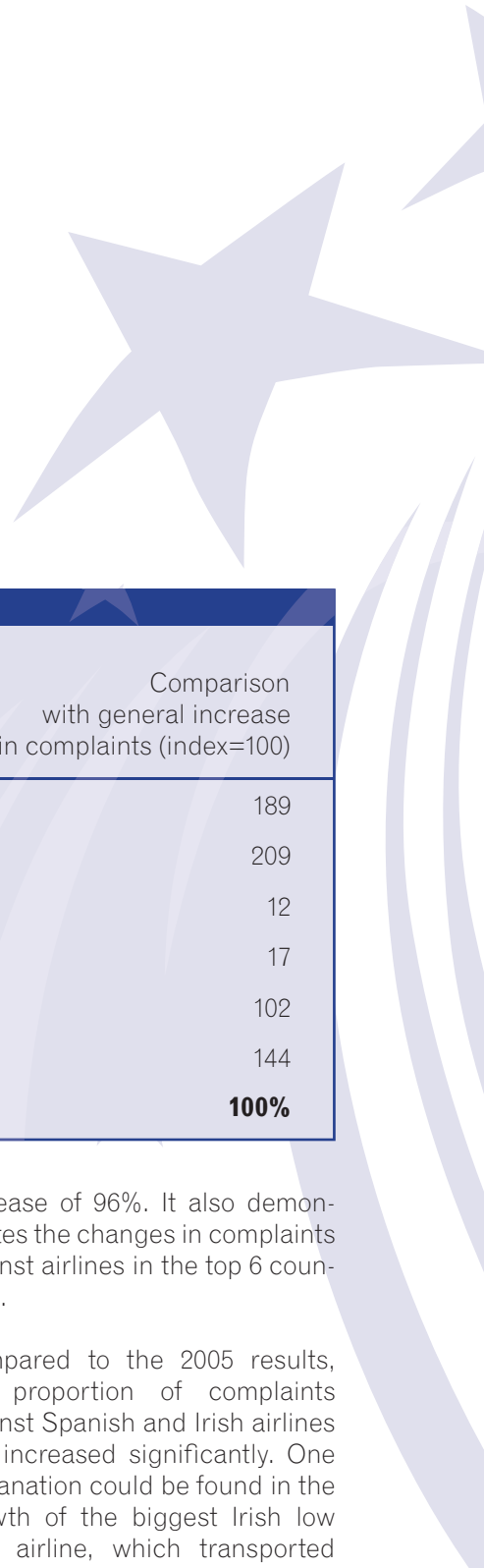
Consumer contacts relating to travel form an important part of the overall contacts that ECC-Net receives. In many Member States, it is the most important topic consumers complain about when it comes to cross border purchases. Air travel complaints amount to an average of 14% of total complaints received for the whole of the ECC-Net.

Proportion of air travel contacts per ECC

	in %
Latvia	38
Lithuania	32
Hungary	30
Spain	25
Slovenia	24
UK	24
Cyprus	23
Ireland	21
Poland	20
Sweden	17
Finland	16
Estonia	15
ECC-Net	14
Czech rep.	13
Iceland	10
Belgium	10
Portugal	10
Denmark	9
Slovakia	9
Greece	9
Germany	9
The Netherlands	9
Italy	5
Norway	5
France	4
Malta	3
Austria	3
Luxemburg	2

4.3 Complaints : country of the air carrier

Country of the air carrier		
		in %
Ireland	612	24%
Spain	435	17%
UK	230	9%
Italy	195	8%
Germany	172	7%
France	162	6%
Netherlands	96	4%
Latvia	91	4%
Denmark	69	3%
Belgium	49	2%
Hungary	48	2%
Sweden	46	2%
Portugal	41	2%
Czech Rep	37	1%
USA	32	1%
Slovakia	29	1%
Poland	25	1%
Austria	25	1%
Greece	21	1%
Norway	20	1%
Cyprus	8	<1%
Estonia	7	<1%
Switzerland	6	<1%
Iceland	4	<1%
Luxemburg	4	<1%
Lithuania	4	<1%
Finland	3	<1%
Malta	2	<1%
Bulgaria	2	<1%
Canada	1	<1%
Romania	1	<1%
Slovenia	1	<1%
Outside EEA	84	3%
Unknown	30	1%
TOTAL	2592	



Country of air carrier - year on year increase

	2005	2006	Increase in %	Comparison with general increase in complaints (index=100)
Ireland	218	612	181%	189
Spain	145	435	200%	209
UK	207	230	11%	12
Italy	168	195	16%	17
Germany	87	172	98%	102
France	68	162	138%	144
TOTAL COMPLAINTS	1521	2979	96%	100%

The total number of complaints received by the ECC-Net has increased by 96%. The top 6 air carrier 'countries of origin' remain unchanged from the 2005 report findings. However, the position of countries within the top 6 has shifted somewhat. While Ireland retains its top position, Spain, for example, has climbed from fourth to second place.

The index shown in the table above compares 'country-specific' increase with the general

increase of 96%. It also demonstrates the changes in complaints against airlines in the top 6 countries.

Compared to the 2005 results, the proportion of complaints against Spanish and Irish airlines has increased significantly. One explanation could be found in the growth of the biggest Irish low cost airline, which transported more passengers than the year before (from 30.9 million in 2005 to 42.5 million passengers in 2006).

Country of consumer		
		in %
Ireland	424	16%
Sweden	396	15%
Germany	274	10%
Spain	223	8%
Italy	207	8%
Belgium	193	7%
Poland	162	6%
Portugal	105	4%
Austria	104	4%
France	76	3%
Norway	70	3%
UK	69	3%
Greece	57	2%
Luxemburg	43	2%
Lithuania	40	2%
Finland	37	<1%
Denmark	24	<1%
Netherlands	18	<1%
Latvia	13	<1%
Slovakia	12	<1%
Czech Rep	11	<1%
Estonia	10	<1%
Hungary	10	<1%
Malta	9	<1%
Cyprus	9	<1%
Bulgaria	3	<1%
Slovenia	2	<1%
Switzerland	2	<1%
Iceland	1	<1%
Outside EEA	20	1%
unknown	6	<1%
TOTAL	2630	100%

4.4 Complaints : country of the consumer

The largest number of complaints received by ECC-Net came from Irish, Swedish, German and Spanish consumers. According to Eurostat⁸, the countries with the highest amount of air passengers are the UK (177,326/year), Germany (124,076/year) and Spain (104,675). However, this does not explain why countries with small populations, namely Ireland and Sweden, top the ECC-Net list of complainants in this area.

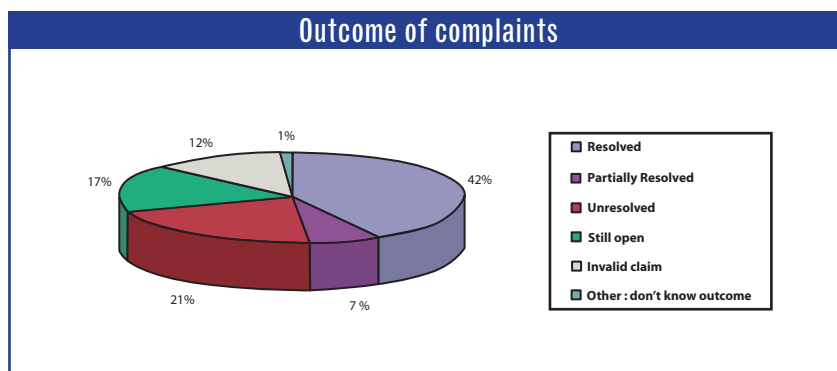
With regard to Irish consumers making complaints, it should be taken into account that, as the largest low cost airline in Europe is based in Ireland, the Irish media pays much attention to the air passenger rights issue, which surely builds up Irish consumers' awareness of their entitlements. This, along with the relatively high number of Irish residents travelling by air, due to geographical location and the current favourable economic situation, impacts on the number of consumer complaints. A high number of complaints were also recorded from Swedish and German consumers. Here again, well developed Alternative Dispute Resolution systems, good domestic law coverage and a general culture of pursuing complaints plays a significant role.



4.5 Outcome of complaints

42% of the complaints received by the ECC-Net were resolved, i.e. an amicable solution was found. 17 % of the cases are still open at the time of writing this report and 12 % of the claims were invalid, which is the same proportion as in 2005. Invalid claims are claims outside the time limits set out under legislation or when passengers believe they are entitled to compensation but in fact are not.

28% of cases stayed unresolved (21%) or were only partially resolved (7%). An example of a partially resolved case is when the airline claims "extraordinary circumstances", but the consumer does not agree that the circumstances were extraordinary. The consumer receives a refund of the part of the ticket not used but does not receive the compensation foreseen by EC Regulation 261/2004. In this case, in relation to compensation, the ECC can do nothing more than to advise the consumer to complain to the NEB or to start a judicial procedure and to close the case as partially resolved. Another example of partially resolved claims is when luggage is lost and the airline only reimburses a very small amount or, in the case of a cancellation, the airline only reimburses the ticket but does not comply with the right to care foreseen by Regulation 261/2004.



Breakdown of unresolved or partially resolved cases

Airline claimed "exceptional circumstances"	33%
Airline did not respond	30%
Airline met responsibilities under 261/2004 but not a claim for damages/expenses under the Montreal Convention	10%
Airline agreed to make payment in relation to expenses but not responsibilities under 261/2004	8%
Other	20%
TOTAL UNRESOLVED OR PARTIALLY RESOLVED CASES (28% of total cases)	100%

The main problem ECCs meet when trying to resolve cases is that airlines claim "extraordinary circumstances" in the case of a cancellation, but do not give any explanation about these circumstances, or that airlines do not respond at all. ECCs also report that in cases where luggage was lost, it was often impossible for the consumer to provide proof of the value of the items that were contained therein. The large amount of cases which are still open is also partially due to the fact that airlines often take a very long time to respond.

When airlines do not respond to correspondence from ECCs, or when they do not appear to want to comply with Regulation

261/2004, it is impossible to find an amicable solution. In these cases, ECCs will look for an Alternative Dispute Resolution body (ADR) which could take up the case. Under EC Regulation 261/2004, ECCs can also turn to the National Enforcement Bodies, designated by the Member States. But, ADRs are scarce and the network of the National Enforcement Bodies was inconsistent in resolving individual consumer complaints. If the consumer cannot find a solution through an ADR or through the NEBs, they have to go to court. Most consumers consider that cross-border judicial proceedings are too expensive and time-consuming and so they stop seeking redress.

5. Other agencies involved in resolving air passenger complaints

5.1 Collaboration with the National Enforcement Bodies⁹ (NEBs)

Article 16 of Regulation 261/2004 stipulates that “the body designated by each Member State shall take the measures necessary to ensure that the rights of passengers are respected”. It further states that passengers may complain to any of these designated bodies about an alleged infringement of the Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory.

According to a communication from the European Commission¹⁰, the NEBs received 18,288 complaints from February 2005 to September 2006. Of these, 35% were complaints about cancellations, 34% concerned delays and 7.1% related to denied boarding. These figures correlate with the findings of the ECC-Net, taking into account that the ECC-Net also handles air passengers complaints that fall outside of the scope of Regulation 261/2004.

Only 14% of the cases received by the NEBs were resolved and settled. Sanctions were proposed for less than 1 % of the cases.

The experiences of the different ECCs in their collaboration with the NEBs are quite different. Some ECCs have a good cooperation with the NEB of their country (see section 6 on ECC-Net activities), but in many instances ECCs encounter difficulties in seeking the support of the different NEBs.

The ECC-Net experiences show that the varying actions of the NEBs result in uneven protection for consumers across Europe.

The main problems the ECCs reported when trying to solve a case with NEBs were:

- A different interpretation is given to article 16
- Some NEBs don't intervene with individual complaints
- Some only intervene with air lines from their own territory
- Some only intervene when the offence has happened on their territory
- Some refuse to intervene with complaints from consumers living in another Member State
- The “extraordinary circumstances” are not thoroughly investigated
- Little or no enforcement of Regulation 261/2004
- No response or very long delays in responding to claims
- Some don't handle the case if it is in another language
- Some NEBs do not act independently of the airline companies
- There is not optimum cooperation between the NEBs

The ECC-Net and the NEBs should combine their efforts to ensure that air passengers can fully enjoy their rights. ECCs primary concern is to find redress for consumers, but ECCs are also interested in the enforcement of consumer legislation. NEBs primary concern is the enforcement of the Regulation 261/2004, but NEBs are also interested in the redress of consumers. The common ground between ECC-Net and the NEBs is clear. Synergies should continue to be developed in order to best protect consumers.

Recommendations:

- **That there is one clear interpretation of the tasks and responsibilities of the NEB**
- **That there is a good mutual cooperation between the NEBs**
- **That there is a good cooperation of the ECC with the NEB of its Member State**
- **That there is a good cooperation between the ECC-Net and NEBs.**



5.2 Collaboration with the Alternative Dispute Resolution Body (ADRs)

The European Commission and the consumer organisations are in general in favour of Alternative Dispute Resolution (ADR) bodies, because they are designed as a cheap, efficient and time saving alternative to court proceedings.

When the ECC cannot find an amicable solution to the problem of the consumer, the ECC may seek a relevant ADR body with competence for resolving air travel complaints. The ECC may also forward the case to their national NEB for resolution, but depending on the country it may be more practical to seek an ADR body that can help.

However, there are very few national ADR bodies dealing with complaints in this sector. In fact in only 9 of the 27 countries where an ECC is established, an ADR body competent to deal with air passengers' complaints¹¹ exists. In 4 of these 9 countries, there is a general ADR body who can deal with these types of complaints¹². In one country, Latvia, the National Enforcement Body (NEB) is also acting as an ADR body.

The success of national ADR bodies (for example, in the Scandinavian countries) in resolving air passengers' complaints, shows their importance in ensuring that consumers can seek redress in an efficient and inexpensive way. (In fact, the Dutch Minister

Eurlings and the French Minister Buisserieu have gone so far as to call for the installation of a Europe wide ADR body).

Consumers increasingly buy airline tickets over the Internet and some airlines sell their tickets only through the Internet. This results in the fact that air passenger complaints are not confined to national borders as they used to be in the pre-Internet era. Handling cross-border disputes requires a cross-border mechanism. This can be easily facilitated by ADR and such a mechanism would ensure that consumers are not penalised for shopping across borders.

Recommendations:

- **That ADR bodies be developed on a national and a European level**
- **That the ADR bodies cover the EC Regulation 261/2004 and other relevant legislation, like the Montreal Convention.**

5.3 Legal Action

In some circumstances, when a consumer cannot reach an amicable solution dealing directly with the airline and where the intervention of ECC-Net proves unsuccessful, and where there is neither a designated ADR body nor can the assistance of an NEB be offered, the consumer is left with no other option but to pursue the matter further through the courts.

Taking legal action is complex by its very nature; however, taking legal action in a cross-border context involves significant expense, time, language problems, and travelling to the country of the air carrier. Given that ECC-NET or any other network acting at a European level cannot assist consumers in taking legal action, in most of these cases consumers are not prepared to go to court, particularly if the cost of doing so would exceed the amount of compensation claimed.

An interesting solution may be found, however, in the form of a small claims procedure that will allow consumers to pursue such claims without incurring the significant expenses that legal action generally entails. The experience of consumers residing in Ireland and the UK is worth highlighting, as their situation fares slightly better due to the existence and quite efficient operation of their small claims court systems. The procedure is simple and relatively cheap, does not require the engagement of a lawyer, and in some cases, disputes can be resolved without the consumer actually appearing in court.

In the context of air travel related complaints, the small claims procedure proved very helpful and efficient in both Ireland and the UK, particularly as consumers can initiate a claim in their own national courts against any airline with a registered office in that country.

The positive experience with the small claims procedure in the British Isles makes the introduction of the European Small Claims Procedure, planned for 1 January 2009¹³, most welcome. Although it is difficult to assess in advance its impact on the efficiency of exercising consumers' entitlements, it will hopefully simplify access to court procedures. The possibility of conducting a hearing via modern means of communication technology, as envisaged by the legislation, is progressive and particularly welcome, as it will make it worthwhile for consumers to enforce their rights at great distances, even for disputes involving small amounts.

6. ECC Network activities in relation to Air Passenger Rights

The ECC Network is in daily contact with individual consumers who turn to ECC-Net with questions on consumer issues, including questions on air passenger rights when there has been a problem with a flight. The Network also needs to reach out to consumers as a whole and make them aware of air passenger rights, and encourage them to claim their entitlements. To achieve this, all ECCs engage in information campaigns directed towards consumers.

ECC-Net also participates in meetings with stakeholders, such as the NEBs or representatives from airlines. Issuing press releases and fostering a good relationship with the media is also part of the information work of ECC-Net.

22 of the 27 ECCs have reported carrying out activities in relation to air passenger rights. These activities may be information campaigns, meetings, workshops etc¹⁴.

6.1 Information activities

In general, ECCs use their websites for communicating information on air passenger rights to consumers. On their websites, ECCs give information on legal rights, and updated information on legal developments, as well as news regarding air travel. An example of this occurred when certain air carriers from Sweden and Spain went out of business, and the ECCs of Sweden and Spain had information on their websites on how to proceed in order to make a claim against the air carrier.

Another means of informing consumers is through the production and distribution of written materials, leaflets, etc., on air passenger rights. ECC Denmark and Ireland have also produced luggage tags containing information on air passenger rights, which have been distributed at airports by ECC staff. ECC Cyprus produced a poster on air passenger rights which was distributed to travel agents, consumer associations and relevant stakeholders.

ECC Lithuania organised several seminars for consumers in which air passenger rights were discussed.

Other ECC initiatives worth mentioning are those of ECC Denmark and ECC Austria.

ECC Denmark developed an SMS service, which air passengers stranded anywhere in Europe can use. The service is available in Danish and in English. The passenger simply sends an SMS with the word "fly" to a certain phone

number, and gets an answer with detailed information on air passenger rights in the case of denied boarding, cancellation or delay, or in relation to lost, delayed or damaged luggage. ECC Austria has put increased effort into reaching out to young air passengers, by regularly giving lectures for pupils on air passenger rights, and by contributing to the European School Diary with a chapter on air passenger rights.

An important part of the informative work carried out by the ECC Network is achieved through good relationships with the media that many of the ECCs have established. The press releases issued from the ECCs spur the media to get in touch with the network, and generate articles in the daily press, as well as reports on the radio and television.

6.2 Meetings with stakeholders

Many ECCs have participated in meetings with the National Enforcement Body (NEB) of their country: ECC Ireland, ECC Lithuania, ECC Poland and ECC Spain all report having participated in meetings with their NEBs, where air passenger rights were discussed. ECC Finland reports having an ongoing dialogue with the NEB of Finland, as they work side by side in the same building.

Other ECCs have participated in meetings with other relevant authorities, such as relevant ministries for consumer protection, transport, economic affairs and tourism.

ECC Austria, ECC Czech Republic, and ECC Netherlands have all participated in such meetings.

ECC Estonia reports attending a meeting with the Ministry of Economic Affairs and the Ministry of Communications where the main discussion topic was how to ascertain the extraordinary circumstances declared by an airline in the case of delayed or cancelled flight.

ECC Norway is a member of the working group for establishing an ADR body for air passenger rights in Norway, a project initiated by the Norwegian Ministry of Transport and Communications.

In addition, meetings have been held between ECC offices and representatives from businesses, air carriers, or associations of travel agents and air carriers.

ECC Cyprus had a meeting with the board of Airline Representatives in Cyprus, and also organised a seminar on air passenger rights and package travel. ECC Belgium organised a seminar on the added value of ADR for enterprises, which included a section on air passenger rights.

Some ECC offices, such as ECC Austria, ECC Latvia and ECC Ireland, have good relationships with the air carriers of their country.

Two examples of the contact between the ECC Network and airlines are given by ECC Latvia and ECC Portugal. ECC Latvia established cooperation with the customer service department of their national air carrier, which facilitates the resolution of air passenger issues. ECC Portugal had a meeting with the national manager of a Spanish air carrier in Portugal, and provided him with a list of Portuguese consumers' claims against the air carrier, so that he could exert pressure on the air carrier's head office in Spain.

6.3 Skill enhancement

Many ECC offices, such as ECC Austria, ECC Germany, ECC Hungary, ECC Spain and ECC Sweden, have participated in seminars and conferences on the subject of air passenger rights.

In this way the ECC Network both strengthens its competence, and shares its knowledge with other stakeholders. Worth mentioning is the field trip made by ECC Austria to the Austrian Airlines Hangar at Vienna International Airport, in order to discuss the Regulation 261/2004 from a practical point of view.

7. Overall problems and recommendations

7.1 Luggage/baggage claims

During 2006, 29% of all information requests and 33% of all complaints and disputes involving air travel related to luggage. This means that in 2006 difficulties with lost, damaged or delayed luggage remained the number one problem area.

Under the Montreal Convention when luggage is damaged, lost or delayed, a passenger is entitled to compensation of up to 1,000 Special Drawing Rights (SDR), which is approximately €1,042¹⁵. This is only a maximum amount that consumers can claim under the Montreal Convention, and since no detailed rules on how to calculate the compensation have been set, it is left entirely at the airline's discretion to fix the amount offered within the limit envisaged under this Convention.

This often causes a lot of confusion, particularly when the luggage is **delayed**. Although most airlines agree to refund the money paid by consumers for necessary replacement items on the production of receipts, it is entirely up to the air carriers to decide which items are indeed absolutely indispensable. Additionally, many airlines refuse to pay any compensation when the luggage is delayed on an inbound flight, if the final destination is the consumer's place of residence. The explanation given for this is that as passengers are returning home, they have access to their personal belongings and so there is no need for them to purchase any replacement items. This, in reality, may

not always prove justified, especially if consumers are returning home from a longer stay abroad or were carrying in their luggage items of particular, everyday use/need. Some airlines pay a one-off allowance or pay a set amount per day, up to a maximum number of days, and consider this as a final and indisputable form of redress, regardless of the actual damage incurred by the consumer due to the delay in delivery.

An Italian consumer reported one such experience:

The consumer's luggage went missing on a flight with a Portuguese airline. He reported this at the airport and was given a voucher of €240. As his luggage was missing for a long time, the consumer incurred much higher expenses than this. However, the airline refused to pay any further compensation, stating that the voucher provided in advance was a total and final form of compensation. Only after the intervention of the ECC, did the airline agree to offer full reimbursement.

It is also worth mentioning that consumers whose luggage was delayed are not always offered the immediate assistance desirable in such situations, and are left with no other choice but to purchase replacement items, not certain at that stage if they will even be able to obtain full reimbursement in the future.

Portuguese consumers took a flight to Gran Canaria with a Spanish airline. At the airport they noticed that their luggage had not arrived. They complained immediately, but were provided with no information or assistance. Three days later, their luggage was found. In the meantime,

however, they had to purchase replacement items at a value of €215. They later requested reimbursement of this amount and presented all the receipts. As the airline did not respond, the consumers requested the assistance of the ECC, who contacted the airline and obtained a refund of €120. Having no other choice, the consumers accepted the offer.

According to the information obtained from the questionnaire submitted by ECCs, in 2006 proving the value of luggage was the second most common reason for not being able to resolve consumer complaints. When luggage is lost or damaged the burden of proof is levied on the more vulnerable and weaker party – the consumer, whilst the level of evidence required by airlines is in many instances extremely difficult to meet.

When luggage is **damaged**, airlines will always look for a proof of purchase of the luggage itself. The amount of compensation offered will vary, depending on whether the luggage was damaged, or completely destroyed. This will always raise the question as to whether or not the suitcase is still in useable condition. This again can be argued, but airlines in many cases will insist that the damage to the luggage was minor and was a result of a normal wear and tear.

Some airlines will offer a replacement bag, rather than monetary compensation. Given that the value of the suitcase will depend on numerous features, such as brand, quality or price, offering a replacement bag of the airline's choice may not necessarily be considered a satisfactory form of compensation.

When luggage is **lost**, most air carriers require receipts, not only for the luggage itself but also for all its contents. In most of the complaints received by ECCs, this requirement was very difficult, or even impossible, to satisfy. Even when consumers are in a position to produce proof of purchase, airlines will usually apply a depreciation rate when calculating reimbursement. There are no set depreciation rates in place and therefore it is left entirely at the discretion of the air carriers. Even in circumstances when consumers are in a position to produce receipts, it is sometimes such a surprise for the airline that they simply stop dealing with the complaint at all. This gives the impression that airlines impose such strict requirements mainly to prevent consumers from seeking redress.

One European consumer had the following experience when dealing with an Irish airline:

The consumer's luggage was lost on a flight from Budapest to Dublin. He filled out a PIR at Dublin airport and complained to the air carrier in writing. He was then informed that he needed to provide receipts for items contained in the luggage. He subsequently went directly to the airline's office at Dublin airport and handed in documents and receipts. He followed up with a letter but heard nothing back at all. ECC Dublin wrote to the airline on numerous occasions but the case had to be closed as unresolved, due to the lack of response from the airline.

Worth noting is also the fact that most airlines would advise against including in checked-in luggage certain items such as money, jew-

ellery, keys, cameras, computers, medicines, spectacles, sunglasses, contact lenses, watches, mobile phones, personal electronic devices, cigarettes, tobacco, passports, etc. This means that should these items be contained in the luggage, the air carrier will take no responsibility for their damage or loss, and therefore will pay no compensation. While some of these exclusions seem to be justified, others such as cigarettes or medicine, which could not be regarded as valuable or fragile, may raise certain doubts. In any case, consumers are usually unaware of these exceptions, until their luggage is lost and they try to claim compensation.

Terms and conditions with regard to checked-in luggage allowances and charges may often be far from comprehensive, and as a result, consumers are not aware as to how many pieces of luggage they are allowed to check in or take on board.

It has been highlighted in the ECC-Net's 2006 Report *Air Passenger Rights: Consumer Complaints 2005* that the relevant time limits outlined in the Montreal Convention are very strict and short, and therefore consumers are very often deprived of the possibility to claim from airlines. In 2006, this problem continued to exist and it is still very often a huge surprise for consumers, when they learn that the time to complain has elapsed while they were still away on holidays.

What is also very worrying is the amount of luggage being lost by airlines every year. As an example, one of the UK-based airlines during only one year failed to de-

liver 1,300,000 pieces of luggage. 200,000 of these seem to have been lost definitively. Assuming that each piece was approximately 15 kg, this represents 3,000 tons of luggage lost by only one airline. The question arises, therefore, as to how this is possible in a strictly controlled environment like an airport and whether airlines indeed do whatever is in their power to find the lost bags.

Recommendations:

- That the legislation concerning flight cancellation, delay and denied boarding and the legislation concerning delayed, lost or damaged luggage are brought together in one piece of EU legislation
- That in the case of luggage delay, consumers should receive guidelines on what sort of replacement items they are entitled to purchase
- That consumers should have the option of requesting a down payment from the air carrier in order to purchase "emergency items"
- That airlines respect the consumers' right to compensation for costs due to delay of luggage, which is not conditional on whether it was an inbound or outbound flight



- That the completion of the PIR should count as the initial claim
- That in the event of the passenger not being able to produce any proof of purchase of the luggage or its contents, standard figures agreed with insurance representatives should apply
- That when the consumer is able to prove the value of the item, the full amount should be paid by the air carrier, or in the case of older items, a uniform system of depreciation rates should apply
- That the only form of redress is monetary compensation, rather than replacement bags
- That all airlines have reasonable and comprehensive lists of checked-in items for which liability is excluded
- That the airlines have an obligation to provide passengers with written information about their entitlements at the airports when problems with luggage are concerned.

7.2 Flight delay & cancellation

In 2006, 16% of all information requests and 21% of all complaints and disputes related to air travel concerned flight delay, while those regarding flight cancellation comprised 20% and 26% respectively.

Both flight cancellation and delay are regulated by Regulation (EC) No. 261/2004¹⁶, introduced in February 2005. Under the provisions of this Regulation, in the case of **delay**, passengers are entitled to free meals/refreshments and telephone calls; if the delay involves an overnight stay, the airline should also provide free hotel accommodation. These entitlements (meals/refreshments, phone calls and accommodation) are collectively called the “right to care”. Additionally, once the delay is over 5 hours, the option of not flying with the airline and obtaining a full refund of the ticket should be given to passengers.

The type of complaints received by ECCs in 2006 shows that one of the main problems consumers encounter is that many airlines tend to offer a refund of expenses incurred, payable at a later stage, rather than to provide relevant assistance up-front. This raises the question as to whether or not airlines are complying with their obligations in the manner envisaged under the Regulation. Many consumers do not keep receipts or perhaps would not consider it worthwhile to complain when only the reimbursement of refreshments is involved, and therefore it would seem that the policy of these airlines proves to be more

profitable for them. Also, given the cross-border context of these complaints, very often the cost of exercising consumers’ rights may exceed the amount due. It is important to remember that the “right to care” is concerned with the provision of these services at the time, not with reimbursing them at a later stage.

Another problem that has been brought to the attention of ECCs is that despite the obligation imposed under Reg. 261/2004, airlines do not provide consumers with information about their entitlements in the case of flight delay, cancellation or denied boarding.

An interesting example is given by ECC Belgium:

A Belgian couple with their three children were flying back to Brussels from their holidays in Rome. At the airport, their flight was first delayed, then cancelled. The only information they received was that the airline was not responsible and that they would probably be able to fly the following evening. Because they feared that they would not be able to find any available accommodation in the middle of the tourist season in Rome and did not want to spend the night at the airport with their three children, they decided to look for an alternative flight on their own. They managed to purchase flight tickets to the Netherlands, and then continued by train. This journey cost them more than the whole holidays in Italy. After the intervention of ECC Belgium, the consumers obtained a refund of the tickets not used, which was trivial when compared with the other expenses they faced. Had the consumers been informed about their rights and of-

ferred relevant assistance within the “right to care”, this problem would not have arisen.

Regulation 261/2004 states that in the event of flight **cancellation**, consumers should be informed about it beforehand and offered reasonable re-routing. Otherwise, consumers are entitled to either the refund of the ticket not used, or rerouting to the final place of destination. They are also entitled to the same “right to care” as passengers, whose flights are delayed, and also, in general, to additional monetary compensation. The level of compensation depends on the distance of the flight and should be payable to the passenger, unless the reason for cancellation was due to extraordinary circumstances.

The experience of ECC-Net shows that, in practice, obtaining compensation in the event of a flight cancellation is very difficult, or even impossible. In many of these cases, there are no legal grounds for the airline’s refusal. The following example from Sweden illustrates this problem well. Although during 2006 and 2007 the Swedish National Board of Consumer Complaint has decided in favour of the consumer in 35 separate cases against one of the Irish airlines, in 22 of these cases the air carrier simply refused to follow the recommendation of the board. In light of this, the Swedish Consumer Ombudsman has decided to assist a Swedish couple, seeking compensation under EC Reg. 261/2004, with their claim in civil court.

When **the difference between delay and cancellation** is considered, the legislation is not

comprehensive. Namely, it is not clear when the delay becomes a cancellation. It would be reasonable to consider that delays longer than 24 hours are, in fact, cancellations. This should also apply in the majority of situations where an overnight stay is involved. This issue has been a subject of much confusion and debate. Art 2 (l) of the Regulation defines cancellation as the “non-operation of a flight which was previously planned and on which at least one place was reserved”. At the same time, the Regulation does not specify the maximum length of the delay. The question is whether, if in the case where a flight is “delayed” more than 24 hours, it can indeed still be called a delay, or should rather be considered a cancellation. The answer to this question is of significant importance, since compensation will be due only in the case of the latter. Airlines, in order to avoid paying compensation, tend to maintain that the flight is only delayed.

The German Bundesgerichtshof has recently suspended national proceedings in a case before it and asked the European Court of Justice for guidance as to how Article 2(l) of the Reg. 261/2004 should be interpreted.

In this case, the claimants booked a return charter flight between Frankfurt and Toronto. The return flight did not take off due to a technical failure. After waiting several hours, passengers were requested to take their luggage back and they spent a night in a hotel. They were not able to take their flight until the following day. They reached their destination with a delay of around 25 hours. They claimed compensation of €600,

but the air carrier refused to pay on the grounds that the flight had been delayed rather than cancelled.

The Amtsgericht and the Berufungsgericht rejected the claim, considering that it was indeed a delay. The claimants have now taken their case to the Bundesgerichtshof which has referred a question to the European Court of Justice to clarify the circumstances in which a long delay becomes a cancellation.

The case has not been registered before the European Court of Justice yet, but hopefully the opinion given will clarify the situation and is therefore much anticipated.

As mentioned before, when a flight is cancelled, passengers are entitled to additional compensation, unless:

- they have been informed of the cancellation two weeks or more in advance or,
- they have been informed of the cancellation less than two weeks before the departure time and were offered reasonable re-routing, or
- the cancellation was due to **“extraordinary circumstances”**.

The phrase “extraordinary circumstances” is not defined in the legislation. All that is provided is the non-exhaustive list of examples, such as political instability, weather conditions, security risks, strikes and unexpected safety shortcomings. In 2006, for most of the unresolved cases, the reason given by airlines for not paying compensation to the consumer was “force majeure”. The frequency of usage of this exception,



together with the lack of uniform interpretation of this term and lack of guidance as to the type of evidence required, raises the suspicion that this defence is vastly overused by airlines, in order to avoid the obligation to pay compensation to consumers. Even in the case of circumstances clearly within the airline's control, such as pilot error, air carriers are trying to take advantage of the force majeure defence, as the following example shows:

An UK consumer was due to fly from Derry to Liverpool with an Irish air carrier. The flight was cancelled due to a pilot error. The consumer complained to the airline, but was refused compensation as the airline claimed "extraordinary circumstances". After the intervention of the ECC, the airline finally agreed to pay compensation of €250, but "as a gesture of good will"!

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 the "exceptional circumstances" can be invoked only when the additional compensation is concerned. Surprisingly enough, some airlines tend to invoke "extraordinary circumstances" even in the case of a flight delay:

A German consumer's flight from Frankfurt to Stansted was delayed 4 hours. He was offered no assistance during this time and was advised to submit receipts at a later date for reimbursement. When he did so, the airline refused to refund him, claiming that the flight was delayed for reasons beyond their control and therefore no reimbursement was due! After the interven-

tion of the ECC, a full refund of all expenses was obtained.

In September 2006, the Danish Ostre Landsret asked the European Court of Justice a preliminary question as to whether or not a technical problem with the aircraft, resulting in a cancellation of the flight, constitutes an "extraordinary circumstance". In his opinion¹⁷, the Advocate General states:

The circumstances, in order to be considered "extraordinary", have to first of all result in both withdrawal of the aircraft from operation and the unavailability of providing a replacement. At the same time, the circumstances have to be both unavoidable and extraordinary in the normal sense of the word. There are therefore certain aspects that have to be taken into account, such as:

- *Whether the airline complied with the schedule of maintenance and checks of the aircraft,*
- *Whether every reasonable step has been taken to resolve the technical problem without withdrawing the aircraft from operation,*
- *Whether this kind of technical problem could be considered typical for the particular aircraft or whether it occurred before*
- *Whether there was adequate provision of replacement aircraft, in light of previous experience*

The above guidelines might be useful in the future, whenever a consumer's claim is considered before court and airlines invoke a technical problem as a reason for cancellation. However, the opin-

ion does not provide any set rules that would be useful in resolving disputes in an out-of-court manner.

Other "extraordinary circumstances", weather conditions in particular, remain very vaguely defined, which gives airlines the opportunity to abuse this provision of the legislation.

Also the problem of reliability of evidence remains. Although the **burden of proof** that the circumstances were extraordinary lies with airlines, there is no guidance about the type and level of evidence. The only guidance this far is the opinion of the Advocate General mentioned above, according to which the admissibility and probative value of the evidence needs to be assessed in respect of the principles of equivalence and effectiveness. This however does not clarify the issue, and certainly does not improve the consumer's position, since it is almost impossible for them to challenge the arguments put forward by airlines. At the same time, airlines are making no effort in providing any evidence to consumers and simply refuse to pay compensation, as the example below shows:

In response to a consumer request for compensation due to a flight cancellation, all one of the airlines wrote was:

"With regards to your compensation claim, I regret to advise that flight X was cancelled for safety reasons, outside our control, no compensation is due".

Recommendations:

- That some sections of Regulation 261/2004, such as those concerning flight delay or cancellation, contain more clearly worded definitions
- That in cases where a consumer was not offered assistance within the “right to care” and is forced to seek reimbursement of expenses afterwards, they can claim additional compensation
- That penalty charges are imposed on airlines by NEBs for not providing passengers with written information at the airport about their entitlements in the case of delay, cancellation or denied boarding
- That penalty charges are levied by NEBs on air carriers, whose general policy is to refund the expenses rather than offer assistance
- That delay is clearly defined in legislation, in the context of both its maximum length and overnight stay
- That NEBs handle complaints concerning damages resulting from a delayed flight
- That, in order to comply with already existing legislation, which levies the burden of proof on the air carrier, whenever “extraordinary circumstances” are invoked, the air carrier has to provide evidence of it
- That NEBs assist consumers with obtaining contra-evidence whenever “extraordinary circumstances” are invoked
- That a uniform, comprehensive and detailed system of assessing the value of evidence supplied by airlines is created

7.3 Denied boarding

Although the number of information requests and complaints received by ECC-Net in relation to denied boarding (5% and 7%, respectively) is much lower than complaints related to flight delay, cancellation or problems with luggage, it causes considerable inconvenience to consumer. In the event of denied boarding due to overbooking, consumers are entitled to reimbursement of the ticket or rerouting, the “right to care” and monetary compensation. It seems reasonable that if the airline is ready to take the risk and allow more passengers to book flights than there are seats, it should be ready to assume responsibility to pay suitable compensation.

In 2006, apart from complaints related to overbooking, ECC-Net received a number of complaints in relation to denied boarding due to passengers not being able to present necessary documentation at the check-in desk (acceptable form of photo I.D., visas, transit visas, etc.). It is clearly stated in the terms and conditions of most air carriers that it is entirely the passenger's responsibility to ensure that they are in possession of the necessary documentation. ECCs were, however, informed about situations where consumers enquired about the required documentation in relevant embassies and consulates beforehand, but were still denied boarding. The reason given for this was that the documentation was not in compliance with airlines' own internal lists of documentary requirements. In such cases, airlines refused to pay compensation, claiming that passengers



were not denied boarding within the meaning of legislation.

Two Estonian consumers were flying from Stockholm to Krabi, Thailand with a Swedish air carrier. When they presented themselves at the check-in desk, they were informed that they could not fly, because they were missing Thai visas. The consumers had to travel back to Estonia at their own expense.

While organising the trip, the consumers made thorough research regarding all the relevant travelling documents needed. According to information available on the website of the Ministry for Foreign Affairs in Thailand, and also the Estonian Ministry for Foreign Affairs, Estonian citizens could purchase visas on arrival to Thailand. Furthermore, this information was confirmed by Thai Consulate in Stockholm.

After arriving back home, the consumers made a formal complaint to the airline and requested compensation. The air carrier, however, refused compensation, claiming that they acted in compliance with TIM (Travel Information Manual). According to the air carrier, TIM was considered as a world standard guidance on air travel documentation requirements.

Because of the conflict between the information provided by different sources, even after the intervention of ECC-Net, no one took responsibility for the damage suffered by the consumers.

ECCs also dealt with complaints where consumers fully complied with provisions of Terms & Conditions relating to passports and visas, but were still prevented from boarding:

ECC Ireland received a complaint from Italian consumers, who were

flying from Bolzano to Stockholm. Their children were denied boarding because they did not have photos in their parents' passports. However, according to the airline's booking confirmation, this was not obligatory for Italian children under the age of 16 in possession of a valid birth certificate, which the consumers had with them. ECC Ireland contacted the airline and obtained compensation for denied boarding. The airline also corrected their Terms & Conditions in order to avoid such situations in the future.

Recommendations:

- **That one universal register of required travel documentation is created and used by all air carriers**
- **That if the passenger has been denied boarding due to what the airline deemed to be insufficient documentation and the passenger afterwards can prove that the documentation was indeed sufficient, then the passenger should be entitled to compensation for the denied boarding**

7.4 Claims for consequential damages

ECC-Net received a number of complaints from consumers in relation to additional expenses they incurred as a result of a flight delay or cancellation. As mentioned before, under Reg. 261/2004 consumers are entitled to free accommodation, refreshments, phone calls, etc., and even if these are not provided beforehand by the airline, consumers are often able to obtain reimbursement, either through direct contact with the airline or where the ECC acts on their behalf. Very often, however, consumers incur other types of damages, such as lost days of holiday, lost days of work (and consequently, loss of earnings), missing pre-booked accommodation, car rentals, buses, trains, cruises, ticketed events or important personal appointments.

An Austrian consumer's flight from Newquay to London was cancelled. The consumer had already booked another flight with a different airline from London to Budapest, and then a train from Budapest to Vienna. She enquired about alternative flights to London; she was advised that there was none. When she requested information about a connection by coach or train, the airline failed to assist her. She also asked about the possibility of using the phone, but again she was refused any assistance. As a result she missed her subsequent flight and train connection, and had to book new flights. The ECC contacted the airline and requested the refund of the ticket not used under Reg. 261/2004, along with compensation for the money

paid for the other flights and train connection under the Montreal Convention. The airline refunded the ticket not used, but decided that no further compensation was due.

According to the terms of the Montreal Convention, air carriers are liable for damages occasioned by delay in the carriage by air of passengers or baggage. When it comes to delay in the carriage of persons, this liability is limited to 4,150 SDR (approx. €4,550)¹⁸. The Convention does not stipulate which types of damages are covered. As a result, it is difficult for consumers to establish in an out-of-court manner which damages airlines would be responsible for. In light of this situation, the introduction of the European small claims court procedure, which is set to come into operation on 1 January 2009, will certainly prove practical.

While airlines are evidently unwilling to recognise the requirements under the Montreal Convention to compensate passengers for damages resulting from delay in the carriage of persons, experience shows that airlines are more willing to honour their obligations and compensate passengers for damages caused in the delay of luggage. However, aside from the typical damages that can be directly attributable to the airline (see section 7.1. "Luggage/Damage Claims"), certain problems have been observed when it comes to claiming for consequential damages.

An Irish consumer, who at the time was living in Australia, took a flight from Rome to London. Her luggage was delayed 6 weeks. In the meantime she returned to Australia.

When her luggage was found, it was delivered by the airline to London. The consumer had to pay over €250 for its delivery to Australia. She complained to the airline, but could not obtain any reimbursement of this cost through her direct contact with the air carrier. After the intervention of the ECC, the money was refunded to her.

In the above case, the explanation given by the airline was that they were contracted to deliver the luggage to the final destination of the flight – London. However, the ECC argued that the expenses incurred by the consumer were clearly resulting from a mistake on the air carrier's side, and that under the Montreal Convention, the air carrier is liable for "damages occasioned by delay in the carriage of luggage", which was the case here.

Recommendations:

- **That the remit of NEBs is extended and the power of investigating claims for consequential damages is given to them**
- **That the European small claims procedure, once introduced, is available for consumers in such cases**

7.5 Other air travel related queries

7.5.1 Price display

In order to make it possible for consumers to effectively compare the tariffs between airlines, it is essential that the prices of the tickets displayed in advertisements and on websites include all applicable taxes, charges and fees. At the moment airlines try to compete on the market by advertising very low prices, even reaching the level of 1 cent. However, when consumers reach the end of the booking process, the price may vastly increase, through the addition of all sorts of supplementary charges, such as airport charges, government taxes, baggage fees, credit card charges, fuel surcharges, etc. Clearly this blurs the picture for consumers and is misleading for them. ECC-Net also received complaints about price differences, depending on the country of residence of a consumer.

The proposal of the European Commission of 18 July 2006 on common rules for the operation of air transport services¹⁹, aiming to promote price transparency, should be a welcome improvement of the situation. In this proposal, all fares advertised have to include all applicable taxes, charges and fees. In other words, the price advertised should equal the total cost the consumer will incur when purchasing the ticket. In addition, the proposal seeks to eliminate discriminatory pricing on the basis of consumers' country of residence.



7.5.2 Modifying or cancelling a booking, booking online & “taxes, fees & charges”

It happens that passengers, for various reasons, decide not to fly, and although it does happen that passengers simply do not show at the check-in desk, most of them contact airlines in advance and cancel their booking. This affords air carriers the very real possibility of reselling the seats. However, regardless of how much in advance consumers cancel their booking, the tickets are non-refundable. All that the consumer can claim in such a situation are supplementary charges payable to the third party (such as airport charges and government taxes), but the refund of these “third party fees” can be the subject of a further administration fee. Even when the reason they cannot fly is outside of their control, it is quite unlikely that they will be able to obtain a refund of the ticket. As ECC Spain duly points out, *“one of the major reasons for not paying compensation by airlines in case of flight cancellation is force majeure. On the other hand it is almost impossible for a consumer to cancel the booking, even in the case of serious illness, which is indeed a real force majeure situation”*.

A consumer booked a flight with an Irish air carrier. A few days before the flight, his brother died and the consumer could not fly. He contacted the airline, provided them with a death certificate and requested a refund of the money paid, explaining that the reason he could not fly was sudden and beyond his control. However, the airline refused to refund the money, quoting their Terms & Conditions and stating that the tickets were non-refundable.

One can not help but to have the impression that this is simply airlines applying a double standard, which reinforces the belief that it is the consumer who is indeed the weaker party.

It is worth mentioning that not only are there issues with cancelling a booking, but even minor modifications made to bookings, such as the correction of name misspellings, are subject to an unreasonably high handling fee. What is more, it is not clear why the administration fee applies per person, rather than per booking, if the same amount of administrative work is involved. This surely makes a significant difference when one booking is made for a larger number of passengers.

As mentioned before, passengers who do not fly can claim back these charges incorporated into the total price of the ticket which are payable to other entities, such as airports or governments. However, the handling fee for processing the refund very often exceeds the amount due, which thus makes the consumer’s claim futile. There is no specific legislation under which airlines are required to refund these charges. Nor is there any law that prevents them from charging an administration fee for processing the refund. So far, there has been no legal challenge to this practice of airlines through the courts. However, it is interesting to note that the Norwegian Consumer Ombudsman issued a fine to an Irish low cost airline for continuing to charge passengers when refunding taxes and fees for unused tickets²⁰. Nevertheless, a complete lack of uniformity and transparency of such charges/fees remains.

A Danish consumer cancelled a flight with an Irish airline from London to Aarhus, Denmark. The consumer asked the airline to refund the taxes and other fees associated with the cancelled flight, but the airline declined due to the tickets being non-refundable. The ECC contacted the airline on the consumer’s behalf and the airline replied as follows: “Our Terms & Conditions state that all our tickets are non-refundable, and that applications for tax refunds are subject to an administration charge of 10GBP per passenger. Please note that all other fees and charges, such as the passenger service charge, aviation insurance and credit & debit card handling fees are non-refundable, as they are paid irrespective of flight being used. Our records show that the amount of the government tax paid in relation to your unused flight was 5GBP.”

As the administration fee exceeded the tax refund amount in this case, no refund was paid.

The application of administration charges is particularly striking when the need for making a change result from a fault that did not necessarily arise on the passenger’s side. Consumers reported to ECC-Net situations where they were incorrectly charged for their booking. When they contacted the air carrier in order to correct the inaccuracy/error, an administration fee was applied. The ECC-Net also received complaints in relation to not receiving any booking confirmation at all, or duplicate or triplicate bookings being accepted, due to technical problems with the air carriers’ websites. Granted, mistakes and problems certainly occur, however it does not seem just to penalise the consumer for them.

A Danish consumer booked a return flight from Malmö to London. Before going, he wished to change the return flight (London- Malmö) but due to a very high handling fee, he simply decided to cancel the return leg of his flight and purchase a new one. However, when he arrived at the airport in Malmö to take the flight to London, it transpired that the airline had cancelled not only the return flight, but also the outbound flight. As a result, the consumer had to pay a much higher amount at the airport than he had paid previously, in order to get a new reservation Malmö-London at the last minute. He wrote to the airline afterwards, but the reply that he received was that the tickets were non-refundable, which was not really an answer to his question. After the ECC intervention, the consumer received a full refund.

Recommendations:

- That consumers who cancel their bookings are refunded all “third party fees” subject to a reasonable administration fee
- That legislation regulating “third party fees” is created
- That the booking confirmation includes a clear and comprehensive breakdown of all the supplementary charges, indicating what they are for and who they are payable to

7. 5.3 Connecting flights, involvement of different airlines, & return/one way flights

A further problem reported to the ECC-Net by consumers during 2006 was the missing of connecting flights due to delays. It may happen that a flight, constituting the first sector of a journey, is delayed, and as a result, the passenger misses their subsequent flights. Even if they manage to make it to the boarding gate on time, they may still be denied boarding, given that there is not enough time to transfer their luggage from one aircraft to another. It is crucial that consumers are aware of the fact that their entitlements in such a situation will differ, depending on whether the two flights were made as one booking or not. Many “point-to-point” airlines will not give consumers the possibility of booking two consecutive flights during one reservation. In such situations, if consumers miss their subsequent flight, they will be treated as passengers who simply did not show at the check-in desk on time.

If, however, both flights are from the one booking, the consumer should remain under the care of the air carrier until they reach the final destination of their journey, and all of the entitlements deriving from Regulation 261/2004 would apply.

While no provision for compensation for delay is provided for under Regulation 261/2004, there is provision for damages caused by delay under the Montreal Convention. Therefore, if a journey is

booked to allow sufficient transfer time and if the consumer incurs extra expenses (such as buying a new flight ticket) due to the delay of the first flight, damages can be claimed. This provision comes with a caveat however, in that airlines are not liable for such damages if they can prove that they took all reasonable measures to avoid the delay.

An Irish consumer reported the following experience:

The consumer booked a flight from Dublin to Cape Town, via Amsterdam with a Dutch air carrier. The flight from Dublin to Amsterdam was delayed, and as a result the consumer missed his subsequent flight from Amsterdam to Cape Town. As the next available flight was on the following day, the consumer had to stay overnight in Amsterdam. No assistance, except for a €10 voucher and 5-minute phone card, was offered to the consumer, nor was any assistance or information provided as to finding accommodation. Additionally, when the consumer arrived in Cape Town, his luggage was missing. After the intervention of the ECC, the consumer received compensation for all the expenses incurred.

In the above example, the consumer was still under the care of the airline, and therefore should have been provided with assistance in the same manner as passengers whose flights are delayed.

It is worth mentioning that frequently, where different airlines are involved, consumers have problems in identifying the responsible airline and the relevant NEB to complain to. This is particularly difficult where luggage is



lost or damaged during a journey comprising numerous flights with different airlines, and none of the air carriers involved want to take responsibility.

One further observation that merits comment was raised by ECC Germany:

“According to the general conditions of airlines, consumers often cannot make use of their return ticket if they do not use the outward flight.”

We should note that air carriers adopt such a policy in situations where the price of return tickets are lower than the price of a one-way ticket and they do not wish consumers to take advantage of this by booking return tickets where they intend to take one leg of the journey only.

Whether or not such a clause in an airline's general conditions is valid has not been decided, but such a condition has to be considered unfair and should be discussed further in the future.

7.6 Dealing with airlines

In 2006, consumers also brought to the attention of ECC-Net various problems they faced when trying to address their complaint to the airline.

First of all, it may be very difficult to establish contact details for the air carrier. If the consumer places no trust in the email complaint form available on the air carrier's website, often the only alternative for the consumer is contacting customer service information via phone. Given that these are usually charged at premium rates, additional expenses are levied on consumers, even though they are trying to make a valid claim.

Once the airline's contact details are obtained and a letter of complaint is sent, consumers very often have to wait quite a long time for the airlines to respond. Also of particular importance in a cross-border context is the fact that airlines would usually only accept complaints written in certain languages (in English, or in the language of the country where the airline is based). Surely no one could expect air carriers to deal with complaints written in all existing languages; however, the question arises as to whether it would be reasonable to expect them to deal at least with complaints written in all those languages in which online booking completion is possible.

According to the information obtained from the questionnaire submitted by ECCs, in 2006 non-response from the airline was the main reason why the complaint

could not be resolved. If airlines fail to at least reply to the correspondence sent to them by their local ECC, it is hard to even imagine the number of complaints sent to air carriers directly by consumers that are simply ignored. One cannot help having the impression that this attitude results from the belief that a consumer based in another country will not decide to pursue legal action against the airline.

Finally, it is worth mentioning that even though some ECCs have developed working relationship with their local airlines, which in most cases significantly facilitates communication, it is often still impossible for them to enforce consumers' rights.

Recommendations:

- That all airlines make available their contact details to complain, via telephone, email and post
- That a reasonable time limit for dealing with complaints is outlined in the legislation
- That NEBs levy penalty fines on airlines which blatantly fail to respond to consumers' complaints
- That it is possible to complain in the same language in which the passenger booked the ticket

8. Conclusions and final recommendations

The purpose of this report is to present a statistical overview of the complaints relating to air travel received by ECC-Net in 2006, compare them to the figures from 2005, stress the main problems encountered and suggest recommendations. The findings of this year's report confirm the findings of the previous report, in that consumers are still facing difficulties when travelling by air.

The number of complaints received by ECC-Net in 2006 almost doubled in comparison to 2005. The number of European passengers taking flights has been constantly increasing during the last couple of years, and considering the growth of some of the airlines operating in Europe it will be interesting to see whether this increase continues.

Throughout the whole report, we have attempted to point out existing gaps in legislation, some dubious practices and policies of airlines, difficulties resulting from the lack of development of an ADR system or a fully functional NEB network, and a need for introducing a simplified way of taking cross-border legal action against airlines. We have also made suggestions as to how to rectify existing problems and all these recommendations are now presented in this last section.

Finally, we wish to point out that the ECC-Net will continue in its role of providing information and assistance in resolving consumers' disputes amicably. However, it is essential that a more developed system of ADRs is created, that the functioning of NEBs is improved, that the European Small Claims Procedure is intro-

duced, and that some of the airlines' practices and policies are modified.

Legislation related recommendations

- That the legislation concerning flight cancellation, delay and denied boarding and the legislation concerning delayed, lost or damaged luggage are brought together in one piece of EU legislation
- That in the case of luggage delay, consumers should receive guidelines on what sort of replacement items they are entitled to purchase
- That consumers should have the option of requesting a down payment from the air carrier in order to purchase "emergency items"
- That the completion of the PIR should count as the initial claim
- That in the event of the passenger not being able to produce any proof of purchase of the luggage or its contents, standard figures agreed with insurance representatives should apply
- That when the consumer is able to prove the value of the item, the full amount should be paid by the air carrier, or in the case of older items, a uniform system of depreciation rates should apply
- That the only form of redress is monetary compensation, rather than replacement bags
- That the airlines have an obligation to provide passengers with written information about their entitlements at the airports when problems with luggage are concerned
- That some sections of Regulation 261 such as those concerning flight delay or cancellation, contain more clearly worded definitions
- That in cases where a consumer was not offered assistance within the "right to care" and is forced to seek reimbursement of expenses afterwards, they can claim additional compensation
- That delay is clearly defined in legislation, in the context of both its maximum length and overnight stay
- That a uniform, comprehensive and detailed system of assessing the value of evidence supplied by airlines is created
- That when a passenger who was denied boarding produces confirmation from the relevant authority in a country of transit or the final destination that the documentation was sufficient to enter that country's territory, compensation should be paid by the airline



- That passengers who cancel their booking are refunded all “third party fees” subject to a reasonable administration fee
- That legislation regulating “third party fees” is created

Legal action/ADR/ NEB related recommendations

- That an effective and developed system of ADRs is created
- That the ADR bodies cover the Regulation 261/2004 and other relevant legislation, like the Montreal Convention
- That penalty charges are imposed on airlines for not providing passengers with written information at the airport about their entitlements in the case of delay, cancellation or denied boarding
- That there is a good mutual co-operation between the NEBs
- That there is a good cooperation of the ECC with the NEB of its Member State
- That there is a good cooperation between the ECC-Net and NEBs
- That NEBs assist consumers with obtaining contra-evidence whenever “extraordinary circumstances” are invoked

- That penalty charges are levied by NEBs on air carriers, whose general policy is to refund the expenses rather than offer assistance
- That the remit of NEBs is extended and the power of investigating claims under the Montreal Convention is given to them
- That the European small claims procedure, once introduced, is available for consumers in cases where consequential damages are claimed

Airline customer service related recommendations

- That all airlines make available their contact details to complain, via telephone, email and post
- That a reasonable time limit for dealing with complaint is outlined in the legislation
- That NEBs levy penalty fines on airlines which blatantly fail to respond to consumers' complaints
- That it is possible to complain in the same language in which the passenger booked the ticket
- That one universal register of required travel documentation is created and used by all air carriers

- That the booking confirmation includes a clear and comprehensive breakdown of all the supplementary charges, indicating what they are for and who they are payable to
- That airlines respect the consumers right to compensation for costs due to delay of luggage, which is not conditional on whether it was an inbound or outbound flight
- That all airlines have reasonable and comprehensive lists of checked-in items for which liability is excluded
- That, in order to comply with already existing legislation which levies the burden of proof on the air carrier, whenever “extraordinary circumstances” are invoked, the air carrier has to provide evidence of it

Footnotes

- 1 *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 (OJ L46, 17.2.2004, p. 1)*
- 2 *Convention for the Unification of Certain Rules for International Carriage by Air, Montreal, 28 May 1999 (OJ L194, 18.7.2001, p.39)*
- 3 *The convention does not explicitly mention cancellation, but this would also cover damages due to cancellation*
- 4 *As of 16/10/2007 1SDR equals €1.04. www.imf.org.*
- 5 *Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied-boarding compensation system in scheduled air transport. OJ L 36, 8.2.1991, p. 5–7.*
- 6 *Convention for the Unification of Certain Rules for International Carriage by Air Montreal, 28 May 1999*
- 7 *The NEBs are nationally designated bodies who enforce the EC Reg 261/04 and also handle consumer complaints related to issues that fall under that legislation only.*
- 8 *Panorama of Transport, Edition 2007, Eurostat, table 5.38 p. 120*
- 9 *The list of National Enforcement Bodies under Regulation 261/2004 can be found on the website of the European Commission : http://ec.europa.eu/transport/air_portal/passenger_rights/doc/2005_01_31_national_enforcement_bodies_en.pdf*
- 10 *Commission staff working document accompanying the communication from the Commission to the European Parliament and the Council pursuant to Article 17 of Regulation EC 261/2004*
- 11 *Denmark, Finland, Germany, Hungary, Latvia, Norway, Portugal, Sweden and UK*
- 12 *Finland, Portugal, Sweden and UK*
- 13 *Regulation (EC) No. 861/2007 published in the Official Journal on 31.07.07*
- 14 *Most ECC offices have general information on air passengers rights on their website, but might not report this as an activity.*
- 15 *As of 16 October 2007 (www.imf.org)*
- 16 *See reference 1*
- 17 *Opinion of Advocate General, Sharpston, delivered on 27 September 2007 (1), Case C-396/06 Eivind F. Kramme v SAS Scandinavian Airlines Danmark A/S*
- 18 *As of 16 October 2007 (www.imf.org)*
- 19 *Proposal for a Regulation of the European Parliament and of the Council on common rules for the operation of air transport services in the Community, Brussels, 18.7.2006, com(2006) 396 final, 2006/0130 (cod)*
- 20 *Refund fees applied by the airline are in violation of the Norwegian Market Council's ruling from 02/2006, stating that the company cannot charge passengers for refunding taxes and fees. The Market Council also stated that the airline must improve passenger information regarding rights and responsibilities in the case of delays or cancellations and also assume more responsibility for lost or damaged luggage.*

APPENDIX A

ECC Net questionnaire

AIR PASSENGERS REPORT 2007

answers from ecc

1. How many information requests did your ECC receive in relation to the following categories in 2006

Delay	<input type="text"/>
Cancellation	<input type="text"/>
Denied boarding	<input type="text"/>
Luggage related e.g. lost, delayed, excess baggage etc.,	<input type="text"/>
Other air passenger related	<input type="text"/>
TOTAL:	<input type="text"/>

2. How many complaints / disputes did your ECC receive in relation to the following categories in 2006

Delay	<input type="text"/>
Cancellation	<input type="text"/>
Denied boarding	<input type="text"/>
Luggage related e.g. lost, delayed, excess baggage etc.,	<input type="text"/>
Other air passenger related	<input type="text"/>
TOTAL:	<input type="text"/>

3. What proportion of your total contacts in 2006 related to air travel (information requests and complaints / disputes)?

4. Country of the air carrier (Please add to the list of countries where required)

Please note the country of the air carrier involved in each air travel related complaint / dispute handled by your ECC during 2006. Please do not include information relating to simple complaints.

UK	<input type="text"/>
France	<input type="text"/>
Germany	<input type="text"/>
Denmark	<input type="text"/>
Spain	<input type="text"/>
Netherlands	<input type="text"/>
Belgium	<input type="text"/>
Norway	<input type="text"/>
Ireland	<input type="text"/>
Portugal	<input type="text"/>
Canada	<input type="text"/>
Malta	<input type="text"/>
Italy	<input type="text"/>
Switzerland	<input type="text"/>
Poland	<input type="text"/>
Austria	<input type="text"/>
Greece	<input type="text"/>
USA	<input type="text"/>
Sweden	<input type="text"/>
Other:	<input type="text"/>
Other:	<input type="text"/>
Other:	<input type="text"/>

5. Country of consumer (Please add to the list of countries where required)

Please note the country of the consumer involved in each air travel related complaint / dispute handled by your ECC during 2006. Please do not include information relating to simple complaints.

Sweden	<input type="text"/>
Portugal	<input type="text"/>
Germany	<input type="text"/>
France	<input type="text"/>
UK	<input type="text"/>
Austria	<input type="text"/>
Norway	<input type="text"/>
Finland	<input type="text"/>
Belgium	<input type="text"/>
Greece	<input type="text"/>
Spain	<input type="text"/>
Italy	<input type="text"/>
Czech Rep	<input type="text"/>
Denmark	<input type="text"/>
Netherlands	<input type="text"/>
Ireland	<input type="text"/>
Lithuania	<input type="text"/>
Malta	<input type="text"/>
Other:	<input type="text"/>
Other:	<input type="text"/>
Other:	<input type="text"/>

6. How many complaints / disputes were by the end of 2006

Resolved	<input type="text"/>
Partially resolved	<input type="text"/>
Unresolved	<input type="text"/>
Still open	<input type="text"/>
Invalid claim	<input type="text"/>
TOTAL:	<input type="text"/>

7. For those complaints / disputes that were partially resolved or unresolved what were the reasons?

Partially resolved :	<input type="text"/>
Airline claimed "exceptional circumstances"	<input type="text"/>
Airline did not respond	<input type="text"/>
Air line met responsibilities under 261/2004 but not a claim for damages/ expenses under the Montreal Convention	<input type="text"/>
Air line agreed to make payment in relation to expenses but not responsibilities under 261/2004	<input type="text"/>
Other:	<input type="text"/>
TOTAL:	<input type="text"/>

Unresolved :	
Airline claimed "exceptional circumstances"	<input type="text"/>
Airline did not respond	<input type="text"/>
Air line met responsibilities under 261/2004 but not a claim for damages/ expenses under the Montreal Convention	<input type="text"/>
Air line agreed to make payment in relation to expenses but not responsibilities under 261/2004	<input type="text"/>
Other:	<input type="text"/>
TOTAL:	<input type="text"/>

8. Do you have an ADR in your country that can deal with air passenger complaints? If so, please name the ADR body:

9. a) If an ADR body was used in resolving the complaint / dispute (NOT the NEB), please name the ADR body:

b) How many complaints / disputes have you referred to that body?

10. What in your opinion when trying to resolve consumer complaints / disputes, are the main areas that prevent them being resolved? (give a number from 1 to 5 depending on its importance (5: very important - 1 not important))

Enforcement body coverage

Non-response from airlines

Proving the value of luggage

Airline claims "force majeure"

Proving the damage when delay (in Montreal Convention)

No legal base to recover from damage after annulment in case of force majeure

Other:

Other:

Other:

11. Please list any initiatives/work/meetings that your ECC has been involved with in relation to air passenger rights in 2006:

12. Do you have any case studies that highlight particular problems consumers in your country have encountered in relation to air travel? If so please note them here:

APPENDIX B

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