EUROPEAN
COMMISSION

Brussels, 13.3.2013
SWD(2013) 62 final

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

Proposal for a regulation of the European Parliament and of the Council

amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delays of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air

{COM(2013) 130 final}
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1. INTRODUCTION

The liberalisation of the European air transport market has generated significant benefits for consumers, including a wider choice of air services and intense price competition between air carriers leading to lower air fares.

In order to limit any potential negative impacts on service quality, a number of accompanying measures have been taken at EU level to protect air passengers. In particular, Regulation 261/2004[1] (hereinafter "the Regulation") introduced new rules on compensation and assistance in the event of denied boarding, short-notice cancellation, long delay and involuntary downgrading. Moreover, Regulation 2027/97[2], which translates the Montreal Convention[3] into EU law, contains provisions with regard to compensation where baggage has been mishandled.

2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

2.1. Organisation and timing

The work on the impact assessment (IA) was started in April 2011. It was prepared by DG Mobility and Transport (MOVE) with the contribution of an Impact Assessment Steering Group in which the following Directorates General have participated: the Secretariat General, DG Health and Consumers, DG Justice, DG Competition, DG Enterprise[4].

The group has met three times, on 27 April 2011, on 26 June 2012 and on 23 July 2012 and was consulted by writing, on 22 November 2011, 26 July 2012 and 1 August 2012. DGs were invited to send their comments on the final draft IA report until 1 August 2012.

This proposal is part of the Commission's work programme for 2012 (ref. 2012/MOVE/010). It involves the revision of the above mentioned Regulations 261/2004 and 2027/97.

2.2. Consultation and expertise

The constant monitoring by the Commission of the functioning of EU legislation on air passenger rights has been accompanied by several external studies/consultations since 2009, the results of which are available on the Commission website.[5]

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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, JO L46/1 of 17-2-2004.

2 Regulation (EC) No 2027/97 of the Council of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air (OJ L 285, 17.10.1997, p.1) as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 (OJ L 140, 30.5.2002, p.2)

3 Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention), OJ L194 of 18.07.2001, http://europa.eu/legislation_summaries/transport/air_transport/l24255_en.htm

4 The Legal Service, DG Enlargement and the EEAS were also invited, but did not participate.

5 http://ec.europa.eu/transport/passengers/consultations/2010_03_01_apr_legislation_en.htm
http://ec.europa.eu/transport/passengers/studies/passengers_en.htm

2.2.1. External expertise

An evaluation of the past application of the Regulation was carried out by the consultant Steer Davies Gleave and was finalised in February 2010[6]. The purpose of the study was to assess whether the measures taken since the Commission's Communication in 2007[7] have been successful in ensuring that passengers' rights are adequately protected, or whether other measures needed to be taken (see section 3.2, page 10).

In 2012, a further study was finalised by Steer Davies Gleave in support of the present IA[8], studying the current market situation and problems and assessing quantitatively the impacts of numerous policy measures in view to address these problems.

The Impact Assessment Steering group prepared the terms of reference for the study. Furthermore, the study was carried out in parallel with the Commission's work on its IA report, thereby directly contributing with data and estimates in function of the Commission's needs for its own report.

2.2.2. Consultation process

Participation

In the context of the present IA, a public consultation was carried out between 19 December 2011 and 11 March 2012 which focussed on questions with regard to a possible revision of Regulation 261/2004. 410 submissions to the consultation were received (see annex 1 and the Commission's website[9] for more detailed information on the consultation).

Given the large number of issues covered, the Commission instructed its consultant to undertake – complementary to the public consultation - individual interviews and consultations with 98 stakeholders selected in order to cover all stakeholder groups. These individual consultations allowed to deepen the issues with regard to the specific interests and know-how of the stakeholders concerned.

Finally, on 30 May 2012, the Commission and the European Economic and Social Committee co-organised a conference presenting the main results of the public consultation, and giving stakeholders the opportunity to respond to these results. The representative organisations that responded to the public consultation were invited to this conference. The presentations and the minutes of the conference can be found on the Commission's website[10].

It follows from the above that the Commission minimum standards for the consultation have been respected.

Main points of view

The **consumer and passenger representatives** mainly focused on poor compliance and inadequate enforcement, especially in the case of the rights to financial compensation in

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6 Evaluation of Regulation 261/2004, Steer Davies Gleave, February 2010; see http://ec.europa.eu/transport/passengers/studies/doc/2010_02_evaluation_of_regulation_2612004.pdf

7 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0168:FIN:EN:PDF

8 Exploratory study on the application and possible revision of Regulation 261/2004, Steer Davies Gleave, July 2012 – to be published.

9 http://ec.europa.eu/transport/passengers/consultations/2012-03-11-apr_en.htm

10 http://ec.europa.eu/transport/passengers/events/2012-05-30-stakeholder-conference_en.htm

case of delay; they stressed that complaint handling and enforcement are not effective and that, despite the provisions within the Montreal Convention, passengers are insufficiently protected when baggage is mishandled. The European Disability Forum (EDF) highlighted some specific issues with regard to often limited compensation for loss/damage to mobility equipment and the prioritisation of assistance for disabled passengers and passengers with reduced mobility in situations of mass disruption.

Airlines and their associations mainly considered that the financial cost of the Regulation is excessive, particularly that airlines face unlimited liability for incidents which are not their fault (e.g. volcanic ash cloud crisis in April 2010). The airlines heavily criticised the consequences of the Sturgeon judgement – i.e. the right to financial compensation in case of long delay – on the grounds of alleged incompatibility with international law and excessive economic "burden".

Although in the majority of cases airlines and passenger representatives expressed opposing views, there were **some areas of agreement** – for example, the need for clarification of extraordinary circumstances (although not about how it should be clarified), or requiring airlines to provide more information to passengers regarding flight disruptions.

The views of the **travel agent and tour operator associations** were on many issues similar to those of the airlines, but with some notable exceptions such as in regard to the right to rerouting or to the use of individual segments of a flight ticket ("no show" policy).

The views of airports frequently lay somewhere between the airline/travel agent and consumer/government viewpoints. **Airports and travel retailers** expressed strong opinions with regard to specific issues of relevance to their own operations, but in the remainder of other issues usually did not state any opinion. Airports expressed particularly strong opposition towards the options that they be given any responsibilities under the revised Regulation, or that airlines be explicitly given the right to claim compliance costs from responsible third parties.

The **national and sub-national authorities** that responded to the public consultation expressed views on most issues which were similar to those of the consumer/passenger associations, but they were more sensitive to economic, budgetary or legal constraints and led to mixed opinions on some issues such as the scope of the Regulation, compensation for delay, enforcement and complaint handling. Most of the government respondents also agreed that action was required, and in the interviews some said that the Regulation needed to be significantly revised to improve its operation.

2.2.3. Consultation of the Impact Assessment Board

Following the submission of a draft IA report to the Impact Assessment Board (IAB) on 2 August 2012, the IAB sent its favourable opinion on 21 September 2012. The Board's comments were fully taken into account in the final IA report:

- The **problem definition** was strengthened by providing more detailed data and analysis on the reasons behind the insufficient application and enforcement of passenger rights; the report better explains the relations with the Montreal Convention and provides more precise references to the supporting evidence and to the annexes.

- The **range of options was broadened**, mainly by adding an additional policy option that is directly inspired from the EP's report mentioned in section 3.2 (page 11). Furthermore, the various policy measures were formulated more precisely and stakeholders' views with regard to various policy options and measures were clearly presented.
- The **calculation of costs and benefits** was strengthened by a better explanation of the underlying assumptions and methodology and by clear references to the relevant parts of the annexes. The analysis of consumer benefits was further developed.
- The section on **future monitoring and evaluation** was clarified by setting out the future evaluation arrangements and identifying relevant indicators.

3. CONTEXT

3.1. Description of the legal framework in place

Regulation 261/2004 became applicable on 17 February 2005 and, depending on the circumstances of the travel disruption, it requires air carriers to:

- provide passengers with assistance, such as meals, refreshments, telephone calls and hotel accommodation;
- offer re-routing and refunds;
- pay a flat-rate compensation of up to €600 per passenger, depending on the flight distance; and
- proactively inform passengers about their rights under the Regulation.

Note that the airline is not obliged to pay the financial compensation if it can prove that the cancellation or delay was caused by extraordinary circumstances. However, the obligations for care and assistance are upheld even in situations of extraordinary circumstances. The Regulation does not precisely define the concept of "extraordinary circumstances".

The Regulation is applicable to flights operated by EU and non-EU carriers departing from EU airports towards any airport and to flights operated by EU carriers and departing from a non-EU airport towards an EU airport. By application of air transport agreements between the EU and some third countries (e.g. Iceland, Norway and Switzerland), these countries are considered like EU countries for the purpose of the application of the Regulation. As modifications of the geographical scope of the Regulation would create problems of extra-territoriality and hence compatibility with international law, there were not further developed in this report (such measures are mentioned in annex 10, page 109).

The Regulation also requires Member States to establish national enforcement bodies (NEBs) to ensure the correct application of the Regulation (via the introduction of dissuasive sanctions into national law).

The rights of passengers under the Regulation are not to be confused with their rights under the **Montreal Convention**. As confirmed by the European Court of Justice, the rights in Regulation 261/2004 are of a different nature to those in the Montreal Convention: whereas the Montreal Convention is concerned with individualised damage to travellers, to be assessed on a case-by-case basis depending on the individual

circumstances of the passenger (and where the burden of proof lays on the passenger), Regulation 261/2004 set up standardised entitlements (with regard to assistance and care) applicable to all passengers, regardless of their individual circumstances. Also note that the Montreal Convention has no provisions with regard to denied boarding or cancellation.

As regards **mishandled baggage**, under the Montreal Convention (and Regulation 2027/97), a passenger may be entitled to compensation in case of lost, damaged or delayed baggage (but with a limit of about €1200). However, airlines are not liable if they have taken all reasonable measures to avoid the damages or it was impossible to take such measures. Unlike Regulation 261/2004, Regulation 2027/97 and the Montreal Convention do not impose the establishment of enforcement bodies to ensure their correct application.

Air passengers' rights are further reinforced by more general EU law that is described in the relevant sections of this report, such as the Package Travel Directive 90/314 (see section 5.3, p.26) and Directive 93/13 on unfair contract terms (see section 6.1, p.27 and annex 7, p.78). The Commission proposal on alternative dispute resolution (ADR) and its relevance in the present context is explained in section 4.4 (p.21).

This IA report focusses on the protection of air passenger rights in case of disruption of their travel plans (implying a possible revision of Regulations 261/2004 and 2027/97).

3.2. Developments since the entry into force of the Regulation

In April 2007, the Commission issued a **Communication** on the operation of the Regulation, which concluded that substantial improvement to enforcement and compliance was required[11]. It identified that further work was also required in a number of areas, including the clarification of key terms.

The study by Steer Davies Gleave of February 2010 and mentioned in section 2.1.1 above has shown that the Commission and the Member States have made significant progress to improve the application of the Regulation since 2007: the activity of the NEBs has significantly increased both in terms of complaint handling and sanctioning. However, there still remain problems with regard to the insufficient compliance of air carriers with the Regulation and the ineffective and inconsistent enforcement in many Member States.

The 2010 study served as input to the **Commission Communication of 11 April 2011**[12] which reported on the varying interpretation being taken on the Regulation's provisions, due to grey zones and gaps in the current text, and the non-uniform enforcement across Member States. It further pointed towards the difficulties that passengers encounter in seeking to enforce their individual rights.

The Commission **White Paper on Transport** adopted on 28 March 2011 mentions among its initiatives for service quality and reliability the need to "develop a uniform interpretation of EU Law on passenger rights and a harmonised and effective

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11 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0168:FIN:EN:PDF

12 Communication from the Commission to the European Parliament and the Council on the application of Regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0174:FIN:EN:PDF). COM (2011) 174 final

enforcement, to ensure both a level playing field for the industry and a European standard of protection for the citizens".[13]

On 29 March 2012, the **European Parliament** (EP) adopted a resolution[14] on the functioning and application of established rights of people travelling by air, in response to the above mentioned Commission Communication. The EP believes that proper application of the existing rules by Member States and air carriers, enforcement of sufficient and simple means of redress and providing passengers with accurate information concerning their rights should be the cornerstones of regaining passengers' trust. The EP regrets that the enforcement bodies set up by the Member States do not always ensure effective protection of passenger rights, to the detriment of air passengers. With regard to the upcoming revision of the Regulation, the EP asks the Commission to clarify the passengers' rights, in particular the notion of 'extraordinary circumstances' and the rules governing the provision of assistance and the right to redress and compensation.

Case law has also had a decisive impact on the interpretation of the Regulation and, hence its application. In the IATA ruling (C-344/04), the ECJ confirmed its full compatibility with the Montreal Convention and the complementarities between the two legal instruments. In case C-549/07 Wallentin-Herrman, the Court clarified when a technical problem in an aircraft cannot be regarded as an 'extraordinary circumstance'. In the Sturgeon case (Joined Cases C-402/07 and C-432/07, further confirmed in the Joined Cases C-581/10 and C-629/10), the ECJ held that a long delay of at least three hours at arrival entitles passengers to the same compensation as in the case of a flight cancellation (with the same exceptions for extraordinary circumstances), since the inconvenience suffered by passengers is similar. Since the ECJ rulings are directly applicable and legally binding from the date that the relevant Regulation came into force, all the carriers are legally obliged to respect them.

Note that in its resolution of 23 October 2012 on passenger rights in all transport modes[15], the EP specifically asks the Commission to examine the effects of the Sturgeon judgement in the context of a revision of Regulation 261/2004.

Besides the issues linked to interpretation and enforcement of the Regulation, the volcanic ash cloud crisis of April 2010, when airspace in large parts of Europe was closed for several days, showed that the Regulation exposes the airlines to significant (and unlimited) costs and practical problems for assistance and rerouting in the case of such large scale events. This aspect was raised again during the snow crisis of December 2010.

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13 Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system COM(2011) 144 final, see page 23: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0144:FIN:EN:PDF

14 European Parliament resolution on the functioning and application of established rights of people travelling by air, 2011/2150(INI), http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-99

15 European Parliament resolution on passenger rights in all transport modes (2012/2067 INI), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0371+0+DOC+XML+V0//EN&language=EN

In this context, this IA report analyses the extent and underlying reasons of the observed shortcomings of the current legal framework and assesses how these shortcomings could be overcome.

4. PROBLEM DEFINITION

4.1. Nature of the problem

The wide consultation process, the external expertise mentioned above, the ex-post assessments (see section 3.2, page 10) conducted and the internal analysis used over the last years about the application of Regulation 261/2004 (and complementarily the Montreal Convention and Regulation 2027/97 in so far as they concern mishandled baggage) have shown that **very often air passengers do not enjoy the rights to which they are entitled** in case their travel plans are disrupted, i.e. in instances of denied boarding, long delays, cancellations or mishandled baggage.

As shown in annex 2 (p.66), the frequency of such disruptions is relatively low in "regular years" (i.e. without major disruptions like the ash cloud crisis in 2010): on average less than 1.5% of passengers are affected by delays of more than two hours and less than 1% by cancellations, but such events have a significant impact for the affected passengers and their frequency may suddenly increase during exceptional events.

Testimony by consumer organisations and NEBs in the course of the public consultation indicates that airlines are far from fully complying with the obligations under the regulatory framework and under Regulation 261/2004 in particular.

Surveys (see annex 3, p.68) carried out in Germany, Denmark and the UK[16] [17] suggest that in a large proportion of cases airlines are failing to offer disrupted passengers the assistance required under the Regulation:

- three quarters of the surveyed passengers were offered the rerouting to which they are entitled, but other care such as meals, refreshments and accommodation was offered in less than half of the cases;
- only a fraction of the surveyed passengers that were entitled to financial compensation did receive it.

Besides, the surveys show that the provision of information on disruption and the rights of passengers under the Regulation is poor: less than half of the affected passengers seem to be correctly informed about their rights as required by the Regulation.

Furthermore, testimony from consumer organisations indicates that passengers generally do not receive adequate compensation for mishandled baggage as foreseen by the Montreal Convention and Regulation 2027/97 (e.g. a quarter of the air transport complaints received by the European Consumer Centres relate to this problem). In particular, associations representing disabled passengers and passengers with reduced

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16 Surveys by Verbraucherzentrale Brandenburg, Danish Consumer Council, Which (a UK consumer association) and the UK Civil Aviation Authority

17 These surveys are limited and do not allow to draw more detailed conclusions with certainty, but they give clear indications that there are problems with regard to compliance of airlines with passenger rights, although we should be careful not to generalise to all airlines as testimony from enforcement bodies indicates that the degree of compliance varies between airlines. Note also that the information provided form these different sources does not allow to draw conclusions with regard to the compliance by particular airline business models.

mobility (PRM) indicate that compensation for damage to or loss of their mobility equipment, which is subject to the limits stipulated by the Montreal Convention, is often insufficient to meet the cost of its repair or replacement given the high value of this type of equipment. It would appear that such passengers are not adequately informed about the option, which the Montreal Convention provides, to make at check-in a *special declaration of interest in delivery at destination* (which raises the limit of compensation payable up to the actual declared value of such equipment) or that air carriers request a high fee in accepting such a declaration.

4.2. Underlying drivers of the problem

When it comes to compliance with regulatory obligations, there are in theory two counteracting forces at work. On the one hand, enforcement (both sanctioning policy and individual enforcement) should give a direct incentive to airlines for compliance. On the other hand, costs induced by the Regulation that cannot be recovered in an appropriate manner could lead airlines to try to find ways to avoid granting passengers their rights.

The 2010 and 2012 external studies, the 2011 Commission Communication and the contributions to the public consultation confirm that the observed lack of compliance is encouraged by a combination of two factors:

(1) An insufficiently effective and uniform enforcement regime across Europe, and

(2) Certain costs of the obligations imposed by the Regulation constitute strong disincentives to compliance

4.2.1. Insufficiently effective and uniform enforcement across Europe

In the current situation, most stakeholder groups reported that the enforcement system put in place by the regulatory framework is not sufficiently effective and is not applied in a uniform manner across the EU. This situation not only reduces the protection of passengers' rights, but it also endangers the level-playing field between EU air carriers.

The stakeholder consultation, together with the studies and Commission internal analysis, allowed to identify three main problematic aspects with the current enforcement system:

(1) Difficulty in interpreting key aspects of the Regulation;

(2) Inconsistent and insufficiently effective sanctioning policies;

(3) Inadequate complaint-handling processes and insufficient means of individual redress.

4.2.1.1. Difficulty in interpreting key aspects of the Regulation

EU law – i.e. Regulation 261/2004 or general consumer law, mainly Directive 93/13 on unfair contract terms - contains a certain number of grey zones, creating legal uncertainty that hinders the proper enforcement of EU law leading to many disputes between air carriers and passengers. Air carriers are enticed to interpret measures in their favour while passengers may take an opposing view. The difficulties in interpretation have consequently led to the high number of referrals to the European Court of Justice (ECJ), where especially the rulings in the Wallentin-Hermann and the Sturgeon & Bock cases have had a significant impact on the interpretation, application and cost of the Regulation.

The lack of a definition of "extraordinary circumstances"

Airlines are required to pay financial compensation to passengers where a flight is cancelled - depending on when the passenger is informed of the cancellation - or where a flight is delayed by more than three hours at arrival. However, the airline can avoid paying compensation if it can show that the cancellation or delay was caused by *"**extraordinary circumstances** which could not have been avoided even if all reasonable measures had been taken"* (Article 5(3)).

The ruling of the European Court of Justice of 22 December 2008 in the case Wallentin-Herrmann v Alitalia (C549/07) has narrowed the meaning of the term "extraordinary circumstance" by ruling that a technical problem in an aircraft which leads to the cancellation of a flight is not covered by the concept of 'extraordinary circumstances' within the meaning of that provision, unless that problem stems from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control.

As confirmed by most stakeholder groups during the **public consultation**, despite the Wallentin-Herrman ruling many stakeholders believe that the term is still unclear, both in relation to what circumstances can be considered extraordinary, and what type of 'reasonable measures' a carrier would have to take in order to meet the criteria for exemption from payment of compensation. As a result, it appears that different NEBs – and different national judges - adopt different interpretations, in part depending on their reading of the ECJ's judgement.

Regulatory complexity

As confirmed by the contributions of consumer groups to the public consultation, the application of passengers' rights is further hindered by the complexity of the Regulation. This is also refelected by the thousands of passenger inquiries received by the Commission's Europe Direct Contact Centre (EDCC) and which contain – apart from questions on non-compliance – many questions which reveal passengers' difficulties to understand their rights or how to enforce them. This relates mainly to the following issues:

- unclear rights: EU law - be it Regulation 261/2004 or general consumer law - remains vague with regard to the rights of passengers for a number of issues closely related to disruptions of a passenger's travel plans. These issues are further developped in annex 4 (p.70): rights of the passenger in case of a missed connecting flight, advance rescheduling, right of rerouting, "no show" policy, booking errors, tarmac delays, flight diversions.
- confusion about the NEB's role with regard to general enforcement (monitoring and sanctionning) and individual enforcement (complaint handling, possibly mediation);
- in view of the number of different time thresholds existing in the Regulation, problems in understanding how it applies to a particular case: different time thresholds for compensation (3 hrs), for care/assistance (2, 3 or 4 hrs depending on flight distance) and for the right to reimbursement (5 hrs).

4.2.1.2. Inconsistent and insufficiently effective sanctioning policies

The enforcement policy varies in terms of effectiveness across Member States (see also annex 5, p. 73): the various NEBs do not have access to the same level of resources,

their sanction policies differ and they do not interpret various parts of the Regulation in the same way. Currently no formal **coordination** procedure exists between the national enforcement bodies (NEBs) and informal coordination (via the NEB network) seems to have reached its limits as informal meetings of NEBs lack the authority to take binding decisions.

During the public consultation, consumer groups mainly complained about the ineffectiveness of the enforcement policy, while airlines referred to a lack of consistency between national policies.

Moreover, Article 16(3) of the Regulation requires Member States to impose sanctions for infringements which are effective, proportionate and dissuasive, the intention being to create an economic incentive for air carriers to comply with the Regulation. However, the enforcement by the Member States often falls short of these requirements and the sanctions regime often does not provide an economic incentive for carriers to comply with the Regulation.

The identified problems generally do not arise from failings by the NEB, but from wider legal or administrative issues in the State concerned:

- legal or procedural impediments to imposition of sanctions, which means that the sanctions regime cannot provide an incentive;
- difficulties in either imposing or collecting sanctions in relation to carriers not based in the State, meaning that sanctions cannot provide an incentive for these carriers to comply with the Regulation; and
- sanctions which are too low to provide an economic incentive for carriers to comply with the Regulation, taking into account that only a very small proportion of passengers impacted by an infringement are likely to complain to the NEB.

Note that enforcement as improved over time, but not enough to overcome all shortcomings (see section 3.2 with regard to previous evaluations). The option for the Commission to act against Member States is limited by the vague definition of the NEBs role in the Regulation. Moreover, in the absence of any information obligations on their monitoring and sanctioning activities, the provision of information from the NEBs to the Commission remains irregular and lacks detail (despite improvements thanks to regular informal contacts in recent years).

Finally, the provisions of the Montreal Convention with regard to mishandled baggage are not enforced because no specific enforcement body is foreseen neither by the Montreal Convention nor by Regulation 2027/97. Affected passengers are entirely dependent on the policy and goodwill of air carriers and the in-court and out-of-court means of settlement or have to rely on private travel insurance (where available).

It follows that, in the absence of a credible and dissuasive enforcement policy, air carriers are not encouraged from granting air passengers their rights especially if their competitors are not doing so.

4.2.1.3. Complex complaint-handling processes and insufficient means of individual redress

As confirmed by contributions from consumer associations to the public consultation, individual means of redress for passengers are limited and the complaint-handling process can be complex:

- **Inadequate complaint handling procedures**: many passengers face difficulties in submitting a complaint to an air carrier, either because the contact details of the air carrier are difficult to obtain, the process of filing a complaint is unclear or the air carrier does not respond within a reasonable time period to the submitted complaint or its answer is insufficiently detailed. Similar shortcomings are reported with regard to the NEBs; in addition, in particular passengers are often confused by the role of NEBs with regard to individual enforcement (compared to general enforcement).
- **Inadequate means of court and out-of-court dispute settlement**: small claims procedures in civil courts can be slow and expensive and judges often lack relevant experience in aviation law. Many passengers are therefore discouraged from pursuing their claims in court. But out-of-court procedures – either via NEBs or via alternative dispute resolution mechanisms (ADR) – only exist and apply to air transport in some Member States. Note that the latter issue is already being addressed by another EU initiative (see page 22).

As the current system does not provide adequate tools to passengers to enforce the Regulation independently, **passengers are being discouraged from claiming their rights** in situations where they are entitled to them. This can be seen in the low claim rate for financial compensation in case of cancellation or long delays (where financial compensation is not automatic but needs to be claimed). Indeed, data from airlines indicate that only between 5 and 10% of passengers entitled to compensation do actually claim it. This low "**claim rate**" can be explained by two factors: first, the low awareness of passengers about their rights, also because reportedly airlines do not always correctly inform their passengers about their rights; and second, the above mentioned difficulties linked to complaint handling seem to discourage many passengers from even claiming their rights.

4.2.2. Certain costs of the obligations imposed by the Regulation constitute strong disincentives for compliance

The public and targeted consultations have shown that:

(3) Airlines are not able to bear or to price in costs and risks (of assistance/care and compensation) in certain situations:

(a) in extraordinary events of long duration, which are beyond the airlines control, the obligations are potentially of an **unlimited duration**;

(b) in certain **small-scale operations** (with small aircraft on short distances), the costs of the Regulation increase disproportionately to the air fare;

(4) **Certain aspects of the financial compensation** (which comes on top of care and assistance) have a strong disincentivizing effect;

(5) Airlines are liable for care and compensation where disruptions are due to **third parties**, but the latter do not get economic incentives to take measures to reduce the frequency and/or the severety of such disruptions.

As shown below, all these elements imply that, in current circumstances, airlines cannot recover or insure in an appropriate manner certain costs induced by the Regulation. This acts as a strong disincentive for compliance.

Note that annex 6 (p.76) shows that the competition of air carriers with non-EU airlines could constitue an additional but limited disincentive to comply for the directly

concerned carriers. But for reasons of extra-territoriality, Regulation 261/2004 is not applicable to flights operated from third country airports by carriers from third countries.

(1) Airlines are not able to bear or to price in costs and risks (of assistance/care and compensation) in certain situations

Unlimited liability with regard to some obligations in extraordinary events of long duration

While financial compensation is not due in situations of extraordinary circumstances, Regulation 261/2004 does not fix a limit in time to the cost of assistance and care to be provided by the air carrier, even in situations which are beyond its control. This unlimited and unpredictable liability complicates the airlines' financial planning as it is currently impossible to insure and therefore may constitute a risk to their financial stability.

The experience of the ash cloud crisis in April 2010 has shown that, although the cost of the Regulation remains limited in "regular" circumstances, it can quickly take disproportionate dimensions for example when an event takes place that causes mass disruption.The cost of the right to care, especially the accommodation costs for several nights, and the cost (and the difficulty of organisation) of rerouting via alternative transport modes (if available) have been significant. If the Regulation had been fully complied with during the crisis, it would have increased airlines' combined costs by an estimated €960 million (which is roughly 1.5 times the expenses for care and assistance in a "regular" year, and this within a period of less than a week). See annex 9 (p.100) for an overview of the costs linked to the ash cloud crisis.

The frequency of such events is very low and consequently, air carriers are not able to estimate its probability and to adequately price this risk into their fares, although a single such event will require considerable resources. Therefore, where such an event occurs, air carriers may not have available sufficient resources to cope with the care and assistance to so many passengers. Moreover, it is unlikely that airlines could find **insurance** to cover against business disruptions during such events which could impact flights throughout Europe for a prolonged period and which would lead to exceptionally large claims. The association of insurers CEA stated that it would not be possible to offer insurance to cover the risk of these events, because their frequency and severity are difficult to properly assess and because the limited scope of the aviation insurance market means that it would be difficult to maintain an adequate insurance capacity without charging very high premiums.

The **public consultation** has confirmed widespread dissatisfaction from both, consumer groups and airlines, with the application of passenger rights during the ash cloud crisis. Airlines complained about the practical and financial difficulties of implementing the Regulation in such an event, while consumer organisations complained about insufficient compliance by air carriers. The cost of the expected care and assistance could sometimes become a multiple of the value of the transport service the passenger originally acquired and the organisational and/or financial capacities of airlines (and airports) were overtaken by the huge number of stranded passengers in such a short time period; the situation led to frustration on both sides, airlines and passengers, with regard to a situation which could not have been foreseen at the time the Regulation was adopted.

Certain costs of care/assistance are out of proportion with regard to the carrier's revenues for certain small-scale operations

As shown in annex 9[18] (p.100), the impact of the Regulation's obligations varies by air carrier type. Despite some data limitations[19], data provided by some of the interviewed air carriers indicate the main reasons behind these differences. For example, charter carriers, which mainly carry package travellers, typically do not cancel flights, but may then experience long delays for such flights – therefore, the compliance cost for charter carriers is primarily on delays (e.g. hence a stronger impact of the Sturgeon judgement than for other carrier types). The absolute compliance cost is similar for low-cost and traditional scheduled carriers but, because low-cost carriers' tickets are typically of a lower value, the compliance cost as a percentage of carrier revenue is much higher for the low-cost carriers. This low-value-ticket effect also applies to regional carriers but, in addition, the absolute compliance cost is also higher for regional carriers. This small-scale effect observed for the large category of regional carriers is even more pronounced when looking at the smallest types of operations, i.e. short-distance flights with small aircraft.

When the Regulation was introduced in 2004, the specific impact that its provisions could have on small regional operations was not taken into account. However, as shown in annex 9 (p.100), the incremental cost[20] of the obligations of the Regulation appears to be heaviest for the **regional carriers**[21]. There are clear indications in the data analysed by the consultant that the absolute and relative cost of the obligations under Regulation 261/2004 increases the smaller the scale of the operations. Data analysis and stakeholder contacts point towards a higher cancellation rate that increases mainly accommodation costs and financial compensation and which is due to numerous underlying reasons, for example the use of smaller aircraft which are more vulnerable to adverse weather, the high frequency of take-offs and landings which makes small regional aircraft more vulnerable to technical defaults or the fact that regional carriers typically have small aircraft fleets and therefore less replacement options than bigger carriers.

The higher costs translate into higher prices which can be significant enough to discourage passengers from travelling by air to make that journey or from travelling at all. Passengers do not necessarily value these rights as high as the price increase that they involve. This may have a negative impact on regional accessibility as these carriers often serve islands or other remote areas which are very dependent upon air transport.

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18 Annexes 7, 8a and 8b explain the assumptions and data underlying the calculations

19 Delay data are broken down by cause or by carrier type (see annex 2, p. 66), but cannot be broken down at the same time by carrier type and by delay cause. For cancellations, no official data are available; therefore estimates were made on the basis of the data provided by some of the interviewed air carriers.

20 The incremental cost of the Regulation is its cost relative to a situation in which it would not exist (but where the Montreal Convention and other EU consumer law such as the Unfair Contract Terms Directive 93/13 would remain applicable)

21 **Micro-enterprises** (defined as companies with fewer than 10 employees and a turnover or balance sheet total equal to or less than €2 million) are not concerned by this report; indeed, even the smallest airlines offering services that fall within the scope of the Regulation have more employees. But also the number of **small and medium-sized enterprises (SMEs)** that fall within the scope of this Regulation is very limited (around 30).

The main cost driver for the regional carriers is the cost of accomodation to be provided to stranded passengers (which is part of the category "care" in the table on page 102 of annex 9). Given the low value ot tickets on very short routes (e.g. less than 250 km), the provision of accomodation can easily imply a cost higher than the ticket value.

(2) Disincentivizing effect of certain aspects of the financial compensation

Resistence from air carriers against financial compensation has increased since the Sturgeon judgement, which extended compensation payments from cancellations to long delays, and the Wallentin judgement, which extended compensation to many cases where the flight disruption is not due to an airline's commercial decision (e.g. technical defaults). In the public consultation, the airlines confirmed their view with regard to compensation, often referring to the cases where compensation went beyond the value of the ticket. Note, however, that consumer groups are opposed to a reduction in compensation levels.

The financial compensation can have a disincentivising effect in two ways:

1. The Sturgeon judgement has fixed a one-trigger **time threshold of 3 hours** for compensation in cases of delay. However, many delays cannot be resolved within the three hours fixed in the judgement and this – in combination with the next point – strongly discourages airlines from complying, as suggested by airlines and their associations during the consultation. In addition, as shown in section 7.2.1 (on p.55), a short time threshold may increase the number of flight cancellations.

2. The standardised compensation in the Regulation serves to compensate a **loss of time which is common to all passengers** (individual damage suffered beyond this common element is governed by the conditions for compensation specifed in the Montreal Convention)[22] . However, the amounts fixed in the Regulation[23] can in many cases go beyond the value of the damage (i.e loss of time) incurred by passengers as established by economic studies[24]. This aspect plays a significant role in discouraging airlines from granting passengers their rights, especially with respect to the short time thresholds for compensation for delay (Sturgeon) and in combination with the restrictive definition of extraordinary circumstances (Wallentin).

(3) Lack of economic incentives for third parties to take measures to reduce the frequency and/or the severity of flight disruptions.

The application of Regulation 261/2004 has shown a lack of transparency with regard to the **liability of the different actors in the industry chain**. The party responsible for flight disruptions is not always clearly identified and the cost of passenger rights is

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22 This is confirmed by paragraph 52 of the Sturgeon judgement (joined cases C-402/07 and C-432/07), Paragraphs 46 to 60 of the judgement in the joined cases C581/10 and C629/10 repeats this point of view.

23 Levels of compensation are: €250 below 1500 km, €400 for 1500-3500 km, €600 for more than 3500km

24 In the *Handbook on estimation of external costs in the transport sector*, used for reference by the Commission services and which provides an overview of such studies, the estimated values of waiting time are, based on willingness-to-pay surveys and after adjustment for inflation, between €16 per hour (for leisure travel) and €39 per hour (for business travel). The handbook recommends the multiplication by 2.5 in case of unexpected delays, giving respectively €40 and €98. As we are referring to standardised amounts covering a damage common to all passengers, it is the lowest value that should be taken as reference. Study done for the Commission, see pages 29 and 30 (http://ec.europa.eu/transport/sustainable/doc/2008_costs_handbook.pdf)

mostly borne by the air carriers, with limited possibilities of recourse against a possible responsible third party. Although most of this cost will ultimately be borne by the passenger, in ticket prices, such system may fail to give sufficient incentives to third parties to address the origins and the severety of the flight disruptions and further reduces the incentive on airlines to comply with these rights.

Article 13 of the Regulation does not preclude air carriers from claiming costs from third parties where they are responsible for the disruption. However, in itself, it does not provide any such right and to date airlines state they have not been able to claim successfully against third parties. The main third parties, who could be responsible for disruption, are principally airports, air navigation service providers (ANSPs) and ground handlers. But in practice it is very difficult to claim against these bodies in view of legal obstacles in contracts or national law (e.g. airport conditions of use generally only allow claims in very exceptional cases which are difficult to prove; airports and ANSPs are usually government bodies and may have State immunity from claims; ground handlers are protected by the IATA Standard Ground Handling Agreement, which means that in most circumstances airlines cannot claim costs from them[25]).

Note that, during the public consultation, most stakeholders argued in favour of such a form of "burden sharing", but the airports were clearly opposed to any measure that would shift part of the compliance cost to them.

Table 1 : Synoptic table of problem and drivers

Problem: Lack of compliance with EU regulatory framework	
Driver 1: Insufficiently effective and uniform enforcement across Europe	*Driver 2: Certain costs of obligations imposed by the Regulation act as disincentives for compliance with passenger rights*
Difficulty to interpret key aspects of Regulation Inconsistent and insufficiently effective sanctioning policies Inadequate complaint-handling processes and insufficient means of individual redress	Strong disincentives in specific situations (extraordinary events of long duration, small-scale operations) Certain aspects of financial compensation discourage compliance Lack of incentives for responsible third parties

4.3. Who is affected, in what ways and to what extent?

Various categories of actors are affected by the identified problems:

1. The **citizens/passengers** who are the beneficiaries of the transport services and of the passenger rights granted by the Regulation: as mentioned above, in many cases they are not granted the rights to which they are entitled.

[25] Although it could be argued that airlines contract with ground handlers competitively and could therefore require a change to this agreement, at most airports airlines have only a limited choice of ground handling providers, and therefore they are not necessarily able to negotiate any change.

2. The **air carriers** which provide the transport services and which are due to respect air passengers' rights: the obligations flowing from air passenger rights incur costs for the airlines and which become disproportionate in certain circumstances.

3. The (at least 27) **national enforcement bodies** which are responsible for ensuring the correct application of the Regulation: inconsistent policies between them affect the level of protection of the passengers and the level-playing field between airlines. The enforcement of passenger rights requires human and financial resources that weigh on national budgets.

4. **Airports** – first, because the flight disruptions usually take place in airports; second, because airports sometimes provide care and assistance to passengers, where airlines fail to provide it – for whatever reason.

4.4. Likely evolution of the problem (baseline scenario)

In the baseline scenario – which assumes unchanged policy – the scale of the problems is not expected to evolve significantly (except for out-of-court means for individual redress). Overall, it is not expected that over time airlines will get more incentives to comply with the air passenger rights regulation. The underlying root causes are not expected to significantly change over time.

Grey zones in the Regulation

Some of the **regulatory grey zones** in the Regulation may be addressed through judgements issued by the Court of Justice. Indeed, the ECJ has been seized on more than 20 prejudicial questions with regard to Regulation 261/2004, many of them still outstanding. But in most cases, these judgements concern one particular issue, leave open others and take considerable time to be decided. In addition, although in legal terms these judgements address the lack of clarity in the text of the Regulation, it would be clearer for passengers, airlines, and enforcement bodies if the obligations of the Regulation were clear in the text.

General enforcement (monitoring and sanctioning)

Studies of the **enforcement** of the Regulation (see section 3.2) have shown gradual improvements over time, but this improvement has been slow. In the initial years after the Regulation took effect, the Commission had to intervene in particular because some Member States had not yet set up the processes to do so (for example, penalties had not been introduced into national law). However, almost 7 years after it took effect, many Member States still do not enforce the Regulation effectively and therefore it is likely that some Member States will continue not to do so. In addition, constraints to public finances in many Member States may result in reductions in staff at enforcement bodies, which may reduce the effectiveness of enforcement.

Individual enforcement (complaint handling)

The possibilities of **individual redress** are expected to improve under the impulse of general consumer legislation.

On 29 November 2011, the Commission proposed a Directive on alternative dispute resolution for consumer disputes (Directive on consumer ADR)[26] and a Regulation on

[26] COM(2011) 793.

online dispute resolution for consumer disputes (Regulation on consumer ODR)[27]. These proposals are now being discussed in the European Parliament and in the Council.

Under the **proposed Directive on consumer ADR**, Member States shall ensure that all contractual disputes between a consumer and a trader arising from the sale of goods or the provision of services can be submitted to an ADR entity. This also includes disputes between passengers and air carriers. The proposal ensures that passengers will be able to find information on the competent ADR entity in the main commercial documents provided by the air carrier.

The **proposal for a Regulation on consumer ODR** aims at establishing a European online dispute resolution platform ("ODR platform"). The proposed ODR Regulation establishes a network of ODR facilitators for the single EU-wide ODR platform, in the form of an interactive website which offers a single point of entry to consumers and traders who seek to resolve a dispute. Consumers and traders will be able to submit their complaints through an electronic complaint form which will be available on the platform's website in all official languages of the EU. The platform will check if a complaint can be processed and seek the agreement of the parties to transmit the complaint to the ADR scheme which is competent to deal with the dispute.

Disincentives from the cost of the legislation

The **incremental compliance cost** of the legislation on airlines is expected to increase more or less in line with airlines' revenues. At unchanged legislation (baseline scenario), the incremental cost of the legislation on airlines will increase from €0.9 billion on average over 2007-2009 to €1.7 billion in 2025, mostly due to traffic growth.

The baseline scenario was calculated on the assumption that the disruption rates would remain on their average levels of 2007-2009. It follows that the number of disruptions remains in line with traffic growth. With respect to specific traffic categories, it was assumed that on the basis of recent trends, for intra-EU flights of less than 1,500km, only low cost carriers (LCCs) would experience growth. In addition, given the long-term trends towards passengers arranging their own travel itineraries, charter traffic was assumed not to grow on any category of route. For other market segments, future demand was estimated using Airbus' Global Market Forecast (see annex 8b for a more detailed description of the underlying assumptions). The proportion of passengers claiming compensation for cancellations and delays ("claim rate") is assumed to slowly increase over time under the influence of information campaigns, the work of commercial claim services and, potentially in some Member States, introduction of provisions allowing collective action to claim compensation on the part of a group of consumers. Total cost therefore increases slowly as a share of airline revenue, from 0.6% over 2007-2009 to 0.7% in 2025.

Almost the entire compliance cost is carried by airlines, although the biggest part will ultimately be borne by the passengers through higher fares. Indeed, as the estimated cost variations would apply to all airlines operating in the EU, we need to refer to price elasticity of demand on a supra-national level; demand is estimated to be quite inelastic

[27] COM(2011) 794.

(estimates of -0.6 to -0.8 are reported[28]), therefore airlines should be able to transfer most of the cost variations via fare variations to their passengers.

Costs are also incurred by Member States, due to the requirement to establish and fund national enforcement bodies (NEBs). The cost for Member States is estimated to increase from approximately €27 million now to €46 million by 2025, which is in line with traffic growth (the underlying assumption is that the number of complaints increases in the same proportion as air traffic).

Extraordinary events of long duration

In 2010, delays and cancellations increased as a result of the volcanic ash crisis which led to a complete closure of airspace across northern Europe. A number of other events including particularly bad winter weather and strikes by air traffic controllers (the latter leading to the complete closure of Spanish airspace in December) added to this event in 2010. Whilst 2010 was a particularly bad year there may be exceptional events in the future.

As there has been no event comparable to volcanic ash before, we do not know the likelihood of such type of events. Note that even if such an ash cloud event were to be repeated, better understanding of the problem being reflected in changes to safety regulations mean that this would now be less likely to cause the complete closure of airspace. Therefore, the probability that the Regulation would generate an exceptional economic cost to a comparable extent to that it generated in 2010 is low but cannot be further quantified.

Third party responsibility

Although Article 13 of the Regulation states that carriers are not prevented from claiming the costs of compliance from responsible third parties, there are limited legal means for airlines to claim against the third parties most likely to be responsible for disruption (e.g. airports, ANSPs). Some airlines are nonetheless trying to do so through national courts; at the time of writing this report these cases had not been decided or were unsuccessful.

4.5. Should the EU act?

According to Article 4 of the TFEU, and without prejudice to Article 3(2) of the same treaty and to the Court of Justice of the European Union's case law, EU action regarding passenger rights, as part of the common air transport policy, has to be justified. In the present case, it is therefore necessary that the subsidiarity principle set out in Article 5(3) of the Treaty on the European Union is respected. This involves assessing two aspects.

Firstly, it has to be assessed if the objectives of the proposed action could not be achieved sufficiently by Member States in the framework of their national constitutional system, the so-called necessity test. In the present case, there is limited scope for Member States to act alone to protect consumers, as the Air Services Regulation 1008/2008[29] does not allow scope for them to place additional requirements (other than

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[28] See the 2012 study by Steer Dvaies Gleave, appendix C, page 38 or the IATA economic briefing No 9 of April 2008

[29] Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 establishing common rules for the operation of air services in the Community, OJ L 293 of 31.10.2008.

those specified in the Regulation) on Community air carriers seeking to operate intra-Community services.

Secondly, it has to be considered whether and how the objectives could be better achieved by action on the part of the EU, the so-called “test of European added value". Most of the problems identified above refer to divergences of application/enforcement of Regulation 261/2004 across Member States which weaken passengers' rights and the level-playing field between air carriers. The EU level appears to be the appropriate level to address these problems in order to ensure uniform passenger rights across all Member States (and across third countries effectively taking part in the single air transport market via international agreements).

Indeed, addressing regulatory gaps and inconsistencies in EU law in an uncoordinated manner generates more fragmentation and exacerbates the problem. Only coordinated EU intervention can contribute to the completion of the internal air transport market by solving these problems. Article 100(2) of the TFEU allows the European Parliament and the Council to lay down appropriate provisions for air transport.

5. OBJECTIVES

5.1. Policy objectives

5.1.1. General objectives

In light of the problems identified in section 4 above and pursuant to article 100(2) of the TFEU, the general objective of this initiative is to promote the interest of air passengers by ensuring that air carriers comply with a high level of air passenger protection during travel disruptions, while ensuring that air carriers operate under harmonised conditions in a liberalised market.

5.1.2. Specific objectives

Based on the root causes of the problem identified in section 4, the general objective above can be translated into more specific objectives:

1. To ensure effective and consistent enforcement of passenger rights across the EU by:

    1.1. Clarifying definitions and key principles underlying passenger rights and simplifying the rights;

    1.2. Ensuring effective and consistent sanctioning policy;

    1.3. Ensuring effective complaint–handling processes and means of redress for passengers

2. To reduce the disincentivising effects on airlines of certain costs of the Regulation by:

    2.1. Ensuring that airlines obligations with regard to passenger rights cover risks that are limited in time and/or in size (so as to allow for potential insurability);

    2.2. Ensuring that financial compensation in certain situations does not translate into decisive disincentives for compliance;

    2.3. Ensuring that third parties are incentivised to address the causes of the travel disruptions for which they are responsible.

Table 2: correspondence between the objectives and the above described problems

Identified problem		General objective	
Insufficient compliance with passenger rights		Ensuring compliance of airlines with a high level of air passenger protection	
Drivers		Specific objectives	
Insufficiently effective and uniform enforcement across Europe	Difficulty to interpret key aspects of the Regulation (grey zones), regulatory complexity	Ensure effective and consistent enforcement	Clarify definitions and key principles, simplify rights
	Inconsistent and insufficiently effective sanctioning policies		Ensure effective and consistent sanctioning policy
	Inadequate complaint-handling process		Ensure effective complaint-handling
Disincentives for compliance with passenger rights	Strong disincentives from costs in specific situations (extraordinary events of long duration; small-scale operations)	Reduce disincentives for compliance	Ensure that airlines' obligations cover risks that are limited in time and/or size.
	Certain aspects of financial compensation discourage compliance, especially for long delays		Make financial compensation less desincentivizing, especially for long delays
	Lack of economic incentives for responsible third parties		Introduce economic incentives for responsible third parties to address disruptions

5.1.3. Operational objectives

The defined specific objectives can be translated into operational objectives which will be useful for future monitoring and evaluation (see section 8):

In relation with the objective of effective and consistent enforcement

1. Reduce the number of prejudicial questions;

2. Ensure that airlines can expect to be sanctioned for similar infringements across the EU;

3. Reduce the number of disputes between passengers and airlines.

In relation with the reduction of the disincentivizing effects on airlines of certain costs of the Regulation

4. Ensure the predictability of the cost of the Regulation's obligations;

5. Ensure that the total amount of compensations paid, especially for long delays, does not take a disproportionate share of the total cost of compliance;

6. Ensure that third parties share their part of responsibility.

5.2. Possible trade-offs between policy objectives

The two specific objectives correspond to the two main drivers for insufficient compliance with air passenger rights. As both, a stronger enforcement and a reduction of the disincentives flowing from certain costs, contribute to improving compliance, a trade-off between these policy objectives is possible, putting either more weight on the first or on the second, or finding a balance between both policy objectives. This trade-off will be translated into the selection of the policy options (see section 6.3).

Note that this also implies a trade-off between the general objective of protecting passenger rights and the specific objective of reducing the disincentivising effects of certain costs of the Regulation. Indeed, ensuring that the costs induced by the Regulation can be limited for airlines in specific situations (see objectives 2.1 and 2.2), where this is not the case now, may weaken in some cases certain passenger rights. It follows that passengers' rights may be limited in specific circumstances (e.g. in extraordinary events of long duration) while they are being reinforced in others (e.g. better enforcement; clarification of rights). The assessment of the options will pay special attention to these trade-offs.

5.3. Consistency with other EU policies

The **Package Travel Directive** 90/314[30] is currently under review. DG JUST, which is in charge of the Directive, and DG MOVE will ensure the consistency between both revisions.

On some issues, passengers that have acquired the air transport as part of a travel package enjoy the protection of both Regulation 261/2004 and Directive 90/314 on package travel. These rights do not conflict: appropriate clarifications already exist in Regulation 261/2004[31]. And as the Commission already clarified on several occasions (e.g. in informal guidelines), passengers cannot enjoy double compensation under both pieces of legislation; to ensure clarity, this could be explicitly mentioned in the text of a revised Regulation.

It must be stressed that consistency between both pieces of legislation does not necessarily imply that "flight only" travellers must enjoy exactly the same rights as "package travellers". It is rather the aim of EU law to better protect "package travellers" as package travel involves a very complex and atypical contractual relationship, involving several service providers, covering longer time spans, with significant costs often pre-paid in advance. Ensuring consistency between both pieces of legislation

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[30] Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, OJ L 158, 23.6.1990, p.59

[31] For example, article 8(2) of Regulation 261/2004 excludes passengers from the right of reimbursement where such right already arises under Directive 93/114.

means avoiding any conflicts of law. The most important common issues where consistency must be ensured are the following:

- **Advance rescheduling**: the Regulation is not clear at present what rights and obligations apply with respect to schedule changes, which would generally be notified in advance to passengers. In contrast, for package travel, Article 4(5) of the Package Travel Directive is clear that the passenger has a right to an alternative or a refund if the organiser makes a significant change to the agreed package. A clarification of this right in Regulation 261/2004 (as recommended in the present report) would clarify that "package travellers" and "flight only" travellers have similar rights in this respect.
- **Extraordinary events of long duration**: the revisions of both pieces of legislation will be coordinated in order to ensure that any limits to liability of operators in such events would be consistent between the Package Travel Directive, Regulation 261/2004 and passenger right regulations for other transport modes.
- **Insolvency**: a notable difference between "flight only" travellers and package travellers is the protection provided to the latter in case of insolvency of one of the parties performing the contract. No such protection exists for "flight only" travellers. Such protection flows again from the underlying principle that a better protection of package travellers is necessary as purchasing a package holiday involves several service providers where usually the one providing transport is not the result of an informed choice by the traveller and where bigger amounts have to be advanced than when buying only the air ticket[32].

6. POLICY OPTIONS

6.1. Possible types of EU intervention

The Commission has envisaged three possible interventions at EU level to address the problems identified above, but which were discarded at an early stage of the assessment for the following reasons.

Some air carriers requested a **repeal of the Regulation**. Note that in such event, other applicable law, in particular the Montreal Convention and Directive 93/13 on unfair contract terms would remain in force (see annex 7, p. 78). A repeal of Regulation 261/2004 would lead to a substantial reduction in the level of protection of passengers' rights and would thus be inconsistent with the general objective of ensuring a high level of protection of passengers.

The second discarded policy option is the introduction of an **industry fund** that would take charge of all expenses linked to care and compensation. Although it would present the advantage of breaking the link between cost and application of passenger rights in

[32] Note that the Commission services are currently assessing possibilites to improve "flight only" passenger protection in case of airline insolvency. For the moment, non-legislative ways are being investigated; therefore a revision or the introducion of new legislation on this issue is not considered as long as non-regulatory measures have not been fully investigated and tested. In this context, the Commission has sought the views of Member States' regulatory authorities which it is currently assessing in view of issuing **best practice guidelines** to national regulatory authorities.

individual cases and therefore of reducing the incentive not to comply, it also presents many disadvantages that appear to be outweighing its advantages:

- an industry fund would not be able to take charge of all types of passenger rights. For example, rerouting can be organised the most efficiently by the airline itself;

- although a fund could, theoretically, pay out compensation, the latter would lose its incentivizing effect on the air carriers to reduce disruptions;

- there may be difficulties in applying such fund to non-EU air carriers;

- the administrative cost linked to such a fund would increase the total compliance cost.

Note that in option 1 presented below, a similar idea in the form of optional insurance was taken up, but it was limited to care to avoid the mentioned lack of efficiency with regard to rerouting and compensation. As this type of insurance already exists, it was assumed that building on something already existing would be more promising than inventing a new industry fund, the setting up of which would cause additional costs. But the idea of an industry fund was partly taken up in options 3 and 4 to cover accommodation costs in extraordinary events of long duration, for which only limited insurance coverage exists.

The third discarded policy option is strict implementation of the existing, unchanged Regulation coupled with **guidance material and voluntary commitments** from industry and enforcement bodies. This policy option has been preferred by some stakeholders (e.g. some air carriers) over a revision of the Regulation. However, existing voluntary agreements with the air carriers and between the NEBs[33] and guidelines issued have not allowed lifting all the problems identified above and, coupled with the interpretation provided by the ECJ rulings, they do not leave much scope for further progress via non-regulatory measures.

A proposal of the European Commission to update the current EU regulatory framework is therefore the only form of EU intervention that could address all root causes of the identified problems.

6.2. Initial screening of the policy measures

The stakeholder consultations and interviews identified a broad set of individual measures having the potential to address the individual drivers mentioned above.

In a first stage, all the policy measures were submitted to a preliminary screening, thereby discarding those that did not bring sufficiently high benefits in comparison to their costs and disadvantages. The following criteria were used for this initial assessment:

- Stakeholder opinion
- Legal and practical compatibility (in particular, the compatibility with international law)
- Effectiveness of the measure to achieve its objective

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[33] Agreement between NEBs: http://ec.europa.eu/transport/passengers/air/doc/neb/neb_complaint_handling_procedures.pdf Agreement between airlines and NEBs: http://ec.europa.eu/transport/passengers/air/doc/neb/neb_airlines_procedures.pdf

- Complementarity with other policy measures

The policy measures have also been assessed in light of the subsidiarity and proportionality principles. Annex 10 (p.105) gives an overview of the initial screening of the policy measures; it also show the main positions expressed in the public consultation for each of the assessed measures.. The most important (retained and not retained) policy measures are analysed in detail in annex 11 (p.124).

The following table gives an overview of the retained policy measures. The last column also shows which measures are retained in which policy option. The construction of the policy options is explained in the next section.

Table 3: retained policy measures

Specific policy objectives	Main policy measures	Content of policy measures		Options			
			1	2a	2b	3	4
Ensure effective and consistent enforcement of passenger rights across the EU							
Clarify definitions and key principles, simplify rights	Clearly define extraordinary circumstances (2 alternatives retained)	1. Clearly define extraordinary circumstances and provide a non-exhaustive list of such circumstances in line with the strict interpretation provided in the Wallentin judgement and hence excluding many technical defaults (if such list is included in the Regulation it can be amended by implementing/delegated act)	X	X		X	X
		2. Clearly define extraordinary circumstances and provide a non-exhaustive list of such circumstances but extend their scope such that most technical defaults would be covered by the definition (and therefore not give rise to compensation) – the definition would thus deviate from today's definition as interpreted by the Walletnin judgement in order to cover all events outside the direct control of the air carrier.			X		
	Clarify the right of rerouting (2 alternatives retained)	1. Clarification of today's notion of "comparable transport conditions". If the air carrier cannot reroute on its own services on the same day, it must consider other carriers or other transport modes in so far as seats are available at reasonable cost.	X	X	X	X	
		2 . Rerouting with other carriers or modes would have to be provided if not possible on own services within 5 hours[34], and even for delayed passengers (at present, rerouting is only offered for denied boarding and cancellation).					X
	Simplify right to	1. Consistent time thresholds for assistance at delays: instead of different thresholds depending on flight distance (as today), meals and refreshments would have to be		X	X		X

[34] Which would be the same delay after which the right to reimbursement arises

	care (2 alternatives retained)	provided for delays of more than 2 hours for all flight distances and for all events (delays and for passengers awaiting rerouting in case of denied boarding or cancellation)					
		2. Replace current rights for meals/refreshments/accomodation by an obligation imposed on airlines to offer passengers optional insurance to cover such care	X				
	Further clarification of rights	- Missed connecting flight: clarify right to care and right to compensation - Mobility equipment: inform PRM on the possibility – under Montreal – to make (without fee) a declaration of special interest to declare the actual value of mobility equipment - Rescheduling: clarification that rescheduling is similar to cancellation/delay if it is notified less than 2 weeks before the initially scheduled time. When the change in schedule is of more than x hours (x is equivalent to the delay triggering the right to compensation and depends on the option), than rerouting must be offered and compensation may be due. - Tarmac delays: clarification that Regulation applies also to delays on the tarmac: right to free drinking water after 1 hour, right to disembark after 5 hours[35] - "No show" policy: clarify – in line with the Directive on unfair contract terms - that passengers could use the return journey of a ticket even if they had not used the outward journey, but without a more general right with regard to the different segments within the inbound or outbound journeys. - Airports to provide basic information on passengers' rights (notices, posters)	X	X	X	X	X
Ensure effective and consiste	1. Better flow of information between NEBs and Commission	- NEBs to inform COM on their sanctioning policy - Clarification of the role of the NEBs (sanctioning versus complaint handling) - Proactive policy by checking manuals and ground handling agreements	X				

[35] Under the current Regulation the right to renunciation and to reimbursement arises after 5 hours

nt sanctioning policy (3 alternatives)	2. Formal coordination of NEBs by the Commission	- NEBs to inform COM on their sanctioning policy - Clarification of the role of the NEBs (sanctioning versus complaint handling) - Proactive policy by checking manuals and ground handling agreements - Use of implementing or delegated acts for decisions over common interpretations and common actions (comitology) - Right for COM to require investigation by one or several NEBs (especially for multi-country cases)		X	X	X	
	3. Centralisation in an EU enforcement body	- Setting up of an EU enforcement body of which NEBs would be local branches - The EU enforcement body would have the right of investigating and of sanctioning infringements - Proactive policy by checking manuals and ground handling agreements					X
	NEBs to check on compliance with Montreal on baggage issues	The NEBs (or the EU enforcement body) would also ensure the enforcement of the provisions of the Montreal Convention and Regulation 2027/97 with regard to mishandled baggage; this means that they would monitor the terms and conditions of the airlines and sanction where necessary (this measure only covers general enforcement, it does not include the handling or the mediation on individual complaints on baggage issues which is being taken care of by the EU proposal on ADR)	X	X	X	X	X
Ensure effective complaint-handling	Definition of minimum complaint handling procedures	- Air carriers to provide information on complaint handling procedures (e.g. contact addresses, e-mail) - Maximum time periods for airlines to respond to complaints - Compel air carriers to recognise Property Irregularity Report (PIR) as baggage complaint under the Montreal Convention	X	X	X	X	X
	EU centralised body for	The same EU body as mentioned above would centralize all passenger complaints					X

	complaint handling						
	Clarify exchange of info between ADR and NEB taking into account the existing ADR proposal	- Building up on the new ADR Directive, the Regulation would clarify that mediation is the role of the ADR while NEBs concentrate on general enforcement, complaints should therefore primarily be addressed to ADR bodies (where NEBs and ADR are different bodies, the NEB will inform about the respective roles) - The NEBs would offer their expertise to the ADR and investigate complaints where necessary - ADR would provide NEBs with information on complaints useful for general enforcement	X	X	X	X	X
Reduce disincentives for compliance							
Ensure that airlines' obligations cover risks that are limited in time and/or in size	Increase predictability of costs in exceptional events of long duration (3 alternatives)	1. Obligation on airlines to offer optional insurance for care (as above)	X				
		2. Time limit on accomodation in events of long duration (2 sub-options: 3 or 4 nights - with a maximum amount per day per passenger). PRM would not be impacted by this limitation.		X	X		
		3. No limit on care but where an extraordinary event lasts longer than a predetermined time limit (2 sub-options: 3 or 4 nights), an industry fund would reimburse airlines within the limits of its finances. Such an industry fuind would be organised on a national or EU level and would be financed via a levy on every airline ticket.				X	X
	Reduce	1. Obligation on airlines to offer optional insurance for care (as above)	X				

	compliance cost for small-scale operations (3 alternatives)	2. Derogation for small-scale operations with regard to accomodation (small-scale operations would be defined as flights with aircraft with less than 80 seats over distances of less than 250 km[36])		X	X		
		3. No change on care and assistance				X	X
Make financial compensation less disincentivizing, especially for long delays	Increase time threshold for compensation for delay	Instead of 3 hours, the right to compensation would arise after a delay at destination of at least 5 hours[37]	X	X			
	Adjust lump-sum compensation, especially for short distances	Increase progressivity of compensation amounts from short to long distances (€75 for 0-750km, €150 for 750-1500 km, €300 for 1500-3500 km, €500 for more than 3500km)[38]	X	0 / X	0 / X		
Introduce economi	Involve all players of the air transport chain in	- Airports to set up contingency plans in cooperation with airlines and other airport users - Possible recourse against third parties: national and contractual provisions cannot stand	X	X	X	X	X

36 80 seats was chosen as that is about the maximum capacity of turboprop aircraft used on this type of operations and 250km was chosen as reference to short operations and establishing a parallel with the most recent passenger protection regulation – regulation 181/2011 on the rights of passengers in bus and coach transport – which derogates routes with a distance of less than 250km.

37 During the screening of individual measures, both a 5-hour threshold and longer thresholds for long-haul flights were considered. See section 6.3.for more information and the assessment of these sub-variants.

38 It is important to note that the indicated amounts have been chosen for the purpose of calculation of the impacts on airline costs and should rather be understood as orders of magnitude. Small variations of these amounts (e.g. increasing the €75 for short distances up to €100) will only have a small additional impact on the estimated cost of the entire regulation for the combined option packages indicated in the assessment section and will therefore not alter the conclusions of the present report (this is because other measures such as an increased time threshold for compensation for delay, already significantly reduce the total amount of compensation; the percentages in the table 56 of annex 13 would only slightly be altered; of course only as long as the amounts are not modified too much).

c incentives for third parties to address disruptions	the provision of passenger rights	in the way of claiming redress from third party responsible for disruption					

6.3. Description of policy options

In a second stage, the retained policy measures were packaged into policy options that constitute viable policy alternatives for achieving the above defined policy objectives.

Four policy options are considered by combining the different policy measures retained after the initial screening. The four have in common a certain number of policy measures. What distinguishes them is the chosen trade-off between stronger enforcement and adjusted economic incentives for airlines. As shown above, a heavier cost is an incentive for airlines for minimising costs of compliance and trying not to grant passengers their rights. A stronger sanctioning policy is an incentive for compliance. Therefore, in light of the general objective of promoting the interest of air passengers, for options where the cost imposed by the obligations of the Regulation is higher, the enforcement policy must be stricter and better coordinated, and vice versa.

Such a selection is considered because a full focus on enforcement without addressing the economic disincentives would require very considerable resources to be devoted to the enforcement bodies. To avoid such public cost, different trade-offs are considered to mitigate the public resources needed while keeping a high level of protection for passengers.

(1) **Focus on economic incentives (moderate change of enforcement):** under option 1, enforcement is better coordinated, mainly via a better stream of information between the NEBs and the Commission. The option mainly focuses on the reduction of costs by replacing some of the obligations with regard to care (i.e. refreshments, meals, accommodation) by the obligation for airlines to propose optional insurance to passengers at the moment of booking. Other obligations such as rerouting are left under the responsibility of the airlines as an insurance company could not organise the rerouting as efficiently. Also compensation is left to the airlines as it plays an incentivizing role. This option is inspired by the opinions expressed by many airlines that a greater role should be given to the insurance market although this option goes not as far as proposing a complete replacement of the current passenger rights by insurance (which would be incompatible with the stated policy objectives).

(2) **Balancing stronger enforcement policy with economic incentives:** under option 2, enforcement policy is reinforced via a strong coordination of NEBs with a central and formal coordinating role for the Commission. The option mainly focuses on reinforcing care and assistance while additional costs flowing from this are compensated by adjustments in the global amount of financial compensation to be paid. Option 2 modifies this global amount by reducing the frequency of compensation payments via two variants:

    (a) Either by increasing the time threshold after which the passenger has a right to compensation in case of delays from the current three hours to at least five[39];

    (b) Or by extending the scope of "extraordinary circumstances" to include most technical defaults.

[39] Note that to respect the principle if equal treatment confirmed in the Sturgeon judgement, this implies an equivalent change in Article 5(1)(c) of the Regulation with regard to cancellations. This has been taken into account in the calculations.

For both variants 2a and 2b, the report assesses whether an additional adjustment of the lump-sum compensation amounts would be useful to reduce the disincentives in specific situations and to further focus on the specific problems identified for small-scale operations (stronger progressivity of amounts in function of flight distance).

Moreover, option 2a implies an increase of the one-trigger delay threshold for compensation from the current three hours to at least 5 hours. A further subvariant of option 2a was assessed to determine whether a further fine-tuning of this option could add value. The subvariant implies multiple delay thresholds for compensation depending on the flight distance: 5 hrs for flights shorter than 1500km, 9 hrs for 1500-3500km and 12 hrs beyond 3500km[40]. This subvariant was tested in order to take into account the practical difficulties of long-haul flights to deal with delays (e.g. time needed to fly in spare parts or replacement aircraft). At the same time, there is a rationale of proportionality in linking the compensation to the duration/distance of the flight as long delays appear to be more frequent for long-haul flights than for short-haul flights.

Option 2 is a mix of policy measures including elements from various stakeholder groups. The stronger enforcement policy and the clarification of a certain number of rights is backed by consumer groups. Airlines are opposed to the compensation in case of long delay but it was included in this option to avoid a weakening of passenger rights contrary to the policy objectives; therefore it was rather considered how the parameters of compensation in case of long delay could be modified to take into account the financial concerns of the airlines. Finally, a time limit on the liability of airlines in cases of extraordinary events of long duration is clearly an airline request (we consider two sub-options: a limit of 3 days or 4 days), but its impact on passengers is being mitigated by accompanying measures such as a quicker rerouting or the introduction of contingency planning.

(3) Focus on enforcement: option 3 entirely focusses on stronger enforcement and clarifies existing passenger rights to render their application more effective. The compliance cost is not expected to decrease under this option, but it adds a measure where air carriers must designate a responsible for each airport that would have the power to take decisions with regard to care and compensation. Such an obligation of means would be easy to check by the enforcement bodies and is expected to ensure a better application of passenger rights "on the spot".

Option 3 is inspired from those elements of the EP resolution mentioned above (page 11) which refer to Regulation 261/2004 or to baggage issues. However, the EP resolution could not be translated directly into a policy option as its elements did not respond to all the policy objectives set in the present impact assessment. Therefore, a number of elements were added to ensure that the option would stand as a full policy alternative in view of the set objectives (e.g. the common elements mentioned in table 4, but also an industry fund to tackle the problem of unlimited liability in extraordinary events of long duration).

[40] This subvariant has been taken as an example for calculation purposes. Other possibilities exist, such as a double threshold, distinguishing only short-haul flights and long-haul flights (e.g. 5 hours for the first and 12 hours for the latter).

Furthermore, while the EP resolution calls for an inclusion of compensation for long delays into the text of the Regulation, it remains vague with regard to the time threshold that would apply and only refers to the need to take into account that such compensation could trigger more cancellations. In option 3, the judgements of the Court in the cases Sturgeon (compensation for long delay) and Wallentin (technical defaults) are integrated as such into the Regulation. Note that a policy measure that would introduce a compensation for delayed baggage was discarded because of its likely incompatibility with the Montreal Convention (see annex 10, on p.122).

(4) **Centralised enforcement:** option 4 entirely focuses on a powerful and centralised enforcement policy which must counteract the negative incentives from the compliance cost: a central EU enforcement body is therefore part of this option. Like option 3, option 4 also introduces the principle of an industry fund to ensure continued care in cases of mass disruption[41].

Option 4 is inspired from the contributions of consumer groups to the public consultation: centralised enforcement and an obligation of rerouting in case of long delays were requests by some consumer groups and are therefore integrated into this option. Note, however, that an obligation to have airline representatives in every airport as in option 3 is not included in this option because, under this option, enforcement is directly ensured by a centralised and stringent sanctioning policy.

As a number of alternative policy measures were discarded already in the preliminary screening, the policy options have some common features such as:

- the clarification of a number of issues (e.g. rerouting obligations, care during tarmac delays, passenger rights for missed connections, etc.);
- better claim and complaint handling by both, the air carriers and the national bodies in charge of individual complaints (information to be provided on complaint-handling procedures; maximum time periods for airlines and such bodies to respond to claims and complaints; coordination and cooperation between NEBs and future ADR bodies under the new ADR Directive);
- involvement of other market players: enhanced possibility for recourse of airlines against third parties responsible for disruptions; setting up of contingency plans among airport users).
- Note that option 1 does not include a specific measure to address the problems of regional carriers as the replacement of care obligations by optional insurance would already tackle one of the main problems of regional carriers in this context (i.e. the provision of accommodation). Option 2 includes derogation from the accommodation obligation with regard to operations on short routes with small aircraft. Options 3 and 4 do not include a specific measure for this

[41] The industry fund would be organised on Member State level or on EU level. It would be financed via a levy on every airline ticket. It is assumed that the fund would gradually build up the necessary resources to carry the costs of an "ash cloud" similar event, from the third or fourth day of the event. It would intervene in function of the resources available at the time of the event (hence, there is no guarantee that it would cover the full costs of the airlines for the period beyond the three or four days).

kind of operations as those options mainly focus on the enforcement of existing rights.

Table 4: overview of main differences between the policy options

	Option 1	Option 2a	Option 2b	Option 3	Option 4
Improved enforcement	*"Light" coordination*	*"Medium" coordination*		*"Medium" coordination + stronger enforcement via obligation of means*	*"Strong" coordination*
How?	- Better flow of information between NEBs and Commission - clear distinction between general enforcement and complaint handling – NEBs to support ADR for the latter	Formal and centralised coordination via Commission: - Commission can take initiative to request investigations by NEBs or to coordinate common action of several NEBs - A formal committee can decide on common procedures (e.g. transfer of complaints, exchange of information, etc.) - clear distinction between general enforcement and complaint handling – NEBs to support ADR body for the latter		In addition to option 2: Obligation for airlines to have a representative in each airport competent for taking decisions with regard to care and compensation	EU enforcement body: - NEBs would be subsidiaries of the central body - clear distinction between general enforcement and complaint handling – EB to support ADR for the latter
Economic (dis)incentives	*Low cost*	*Medium cost*		*High cost*	*High cost*
Care	- Optional insurance for passengers	- Time limit on accommodation in extraordinary events of long duration[42] - Partial derogation for		- Industry fund for extraordinary events of long duration	- Industry fund for extraordinary events of long duration

[42] In practice, this time limit can be implemented in various ways. One possibility is to introduce a new definition in the Regulation that would define the type of rare events to which the time limit would apply (e.g. max 3 or 4 nights in mass disruptions). Another possibility would be to define a time limit for accommodation for all extraordinary circumstances, which would avoid introducing a new definition, especially in option 2a where extraordinary circumstances are anyway already defined in a restrictive way (Wallentin). .

		small-scale operations			
Compensation payments	Right of compensation for delay of more than 5 hours	Right of compensation for delay of more than 5 hours (and a subvariant with longer delays depending on flight distance)	Right of compensation for delay of more than **3 hours**	Right of compensation for delay of more than **3 hours**	Right of compensation for delay of more than **3 hours**
	Definition of extraordinary circumstances in line with Wallentin judgement	Definition of extraordinary circumstances in line with Wallentin judgement	Larger scope for extraordinary circumstances	Definition of extraordinary circumstances in line with Wallentin judgement	Definition of extraordinary circumstances in line with Wallentin judgement
	Reduced lump-sum amounts of compensation with focus on short distances	Two sub-variants: with or without reduced lump-sum amounts of compensation with focus on short distances	Two sub-variants: with or without reduced lump-sum amounts of compensation with focus on short distances	Unchanged lump-sum amounts for compensation	Unchanged lump-sum amounts for compensation
Common features	- Clarification of rights for missed connecting flights, advance rescheduling, mobility equipment, tarmac delays and "no show" policy - Enforcement body for existing rights in case of mishandled baggage - Minimum claim handling procedures for airlines - Sharing of the compliance cost with third parties				

The full details of the policy options can be read from table 3 and from the table in annex 10 (p. 105).

7. ANALYSIS OF IMPACTS

The analysis of the impacts has been divided into:

- Economic impacts;
- Social impacts;
- Environmental impacts.

The assessment of impacts is supported by quantitative data provided by the external study and/or by academic research where necessary. Annexes 8a and 8b provide a detailed description of the underlying assumptions of the external study. Given the strong focus on enforcement and more appropriate cost recovery mechanisms for airlines, the core impacts of this initiative are economic and social (consumer impact) while environmental impacts are mostly indirect and sometimes negligible. Summary tables of the assessment of impacts are presented throughout this section.

7.1. Economic impacts

7.1.1. Impact on enforcement

a. Enforcement policy

The options differ with regard to the level of coordination between national enforcement policies:

In <u>option 1</u>, a better stream of information from the NEBs to the Commission on their enforcement actions is very useful to fulfil its monitoring and coordinating role; reports by the NEBs give the Commission a direct insight into the activities of the NEBs and allows it to take action when NEBs fail to fulfil their obligations or when NEB actions need coordination.

In <u>options 2 and 3</u>, in addition to the above, consistency between the enforcement policies of the various Member States would be improved as the room for interpretation of the existing rules is reduced thanks to their clarification (see below) and thanks to a stronger coordination between NEBs via a **formal coordinating role** for the Commission and a formalisation of the existing network of NEBs which could then take binding decisions in the context of implementing acts ("comitology")[43]. Divergent interpretations between NEBs can more easily be prevented.

In addition, **option 3** includes an obligation for airlines to designate a representative in every airport served by the airline, who would be entitled to take the necessary decisions with regard to care and assistance. The measure was strongly supported by consumer groups, airports and NEBs, but opposed by airlines. A major advantage is that compliance with this obligation would be relatively easy to check by the NEBs and the presence of such entitled person increases the chances that passengers receive the rights to which they are entitled (indeed, a frequent passenger complaint is that they cannot find an airline contact when stranded in an airport). However, the measure has some drawbacks:

- it is a rather costly measure (estimated at €340 million NPV); indeed, given the financial significance of the decisions they would be making, the staff would probably need to be better qualified and hence better paid and trained than standard passenger

[43] For example a non-exhaustive list of extraordinary circumstances.

service staff. The relative cost of such staff would be higher at airports served at low frequencies by the air carriers and could therefore have a more significant impact on regional carriers and low-cost carriers;

- as it is an obligation of means, it is not guaranteed that compliance with this measure would indeed automatically imply better compliance with the obligations of care and assistance, thereby raising some doubts as to the cost efficiency of such a measure.

In option 4, a central EU enforcement body of which the NEBs would only be the local antennas, would interpret and enforce EU law in the most consistent and uniform way across the EU. It would achieve operational efficiencies, as there would be no need to forward complaints or seek coordination between NEBs.

There are also **common elements** among the policy options. **In all options**, enforcement policy would be clearly distinguished from complaint handling, NEBs would focus on general enforcement and would take a more **pro-active role** by checking airlines' manuals, terms and conditions and contingency plans for compliance with Regulation 261/2004[44]. Some NEBs already do this, but introducing this requirement at EU level would be useful for those NEBs that do not already have the power to request such documents, or where they only have this power in relation to intra-Community infringements.

For the air carriers, such a pro-active role would require airlines to put in place and then follow procedures which are sufficient to ensure that they comply with the Regulation effectively and consistently, including during periods of major disruption. On request, airlines would have to provide these procedures, evidence that they followed them, and all other information necessary to the NEB. This measure could have a beneficial effect on the resources that airlines and NEBs currently spend on the investigation of individual complaints. Indeed, enforcement at present consists almost entirely of investigation and (potentially) sanctioning of individual incidents. The Regulation is inherently difficult to enforce through investigation of individual incidents, because it creates obligations in respect of approximately 40,000 passengers on 700 flights each day at airports across the EU and beyond. It is very difficult for NEBs to ensure compliance in respect of each of these cases, and it is difficult to determine definitively on the basis of individual incidents that an airline has non-compliant or insufficient operational procedures in place, or a policy of consistent non-compliance.

In this context, a more pro-active approach towards enforcement would be more efficient in terms of resources used as it would be directly addressing the source of the problem and could therefore reduce the quantity of individual complaints to be investigated.

Furthermore, the measures with regard to complaint handling and clarification are expected to reduce the number of complaints and disputes and therefore further **reduce the cost of enforcement policies**. Unfortunately, while the administrative cost of the new missions can be estimated (see section 7.2.6), the cost savings from this expected reduction in complaints and enforcement actions cannot be estimated although it could

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[44] Note that the proposed requirements with respect to procedures and contingency plans would be consistent with and complementary to the requirements for minimum quality standards and contingency plans in the already proposed Regulation on ground handling services - proposal for a Regulation of the European Parliament and the Council on ground handling services at Union airports and repealing Directive 96/67/EC, COM (2011) 824

be expected that – given the moderate administrative costs – the cost savings would be bigger than the new costs.

Another common feature of all options is that a new and similar monitoring role with regard to **mishandled baggage** is introduced where NEBs would check that terms and conditions and information by airlines are consistent with the requirements of the Montreal Convention and of Regulation 2027/97 with regard to mishandled baggage. Although, in the retained policy options, the NEBs would not engage in complaint handling, information provided by ADR bodies could be used to detect possible recurrent infringements of baggage rules.

Note, however, that some consumer groups have called for the NEBs also to look into individual complaints on baggage. Such measure was not retained in the policy options because of its significant cost impact on NEBs, which is unrealistic to expect especially in the **present economic context** where budgetary restraints are unlikely to lead to substantial increases in the NEBs' resources (indeed, the measure could increase NEB costs by more than 50% on average) and because most of the complaint handling would be shifted to the future ADR bodies anyway.

A focus on general enforcement by NEBs and a pro-active approach could also have an impact on the working of Regulation 2006/2004 on **consumer protection cooperation (CPC)**[45]. Currently, NEBs act mainly with regard to individual complaints concerning incidents under their jurisdiction (by airlines of any nationality). The CPC system is devised for cross-border cases of unlawful practices harming collective consumer interests and not for individual complaints. In the context of the review of the Regulation 2006/2004, the relevance of the CPC system for the cross-border enforcement of the Regulation 261/2004 is being assessed. If a more pro-active policy is adopted, it needs to be analysed what coordination may be necessary between the CPC system and a formalised network of NEBs (note that in most Member States the NEBs were designated as enforcement authorities under the CPC system, but not in all).

b. Clarification and simplification of rights

In **all policy options**, existing rights for air passengers are clarified. The most impact is expected from the clarification of the notion of **extraordinary circumstances**, via a more precise definition. Reducing the room for interpretation will significantly reduce the disputes between airlines and passengers and should reduce the number of complaints (with a positive effect on the cost of enforcement). It will also reduce legal costs for airlines and passengers.

Further clarifications of rights, with regard to connecting points, tarmac delays, flight diversions, advance rescheduling, “no show” policy, booking errors and mishandled mobility equipment reinforce passengers’ rights and simplify their enforcement (see also annex 11, p.124).

Under options 2 and 4, the rights are further simplified by the measure implying that **care in the form of meals and refreshments always be provided after a delay of two hours**, irrespective of the flight distance and the origin of the traveller’s delay. Indeed, present rules where this care has to be provided immediately (denied boarding and

[45] Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, OJ L 364, 9.12.2004, p. 1

cancellation) or after two, three or four hours depending on flight distance are very confusing for the passenger and for airline staff[46].

Under option 2a, there is a further simplification for long delays as the right for compensation would arise after 5 hours which is the same delay as the right to reimbursement. This way, instead of multiple delay thresholds, the passenger would have to know only two thresholds: 2 hours for care and 5 hours for reimbursement and compensation. However, this simplification advantage would be lost in the sub-variant of option 2a in which there would be multiple thresholds for delay compensation depending on the flight distance (5, 9 or 12 hours).

c. Complaint handling

A **common feature of all options** is that passengers will find it easier to introduce complaints to the airlines as the information on contact addresses and complaint handling procedures will be improved and airlines will provide replies within a clear timeframe. The difference between general enforcement (sanctioning) and complaint handling will be clarified for passengers. The respective roles of NEBs in enforcement and of ADR bodies (under the new ADR Directive) in individual complaint handling will be clarified so that passengers know what to expect from these bodies. Complaints should as far as possible be submitted to the ADR body; where the NEB and the ADR are two different bodies, the NEB would inform the passenger about the ADR and its role. NEBs will use information on complaints provided by the ADR bodies in their enforcement policy, while ADR bodies can make use of the aviation expertise of the NEBs.

Under **option 4**, in addition to the above, there would be one single enforcement body to which passengers can complain. The EU enforcement body would then allocate the complaints (or the requests from the ADR bodies) to the most appropriate national branch (taking into account for example the language of the complaint and the place of the incident), thereby ensuring a more effective allocation of the requests to the most appropriate body.

An important impact of better enforcement and complaint handling is the **likely increase of the claim rate** for compensations in cases of delay and cancellation. If passengers are better aware of their rights (note that the information obligations would also be better enforced) and if better enforcement makes them more confident that airlines will meet their claims (when justified) then a greater proportion of passengers would claim the compensation in the cases where this right arises. This has a significant impact on the compliance cost as will be shown in the next section.

[46] Option 3 does not include this simplification: the option was inspired from the EP resolution which makes no reference to such a unified 2-hour threshold for care

Table 5: summary table of impacts on enforcement

	Option 1	Option 2a	Option 2b	Option 3	Option 4
Impacts on enforcement policy	+	++	++	++	+++
Impacts on clarification/simplifaction	+	+/++[47]	++	+	++
Impacts on complaint handling	+	+	+	+	++

"-" means less than baseline – "+" means better than baseline

7.1.2. Impact on compliance cost

To evaluate the compliance cost under the baseline and under the policy options, the consultant has developed a quantitative model. This model was based on the database for flight disruptions and disaggregated by type of airline and route in order to measure the impact of various policy options on the compliance costs of the different airline types. More information on the used model and the underlying assumptions is given in annex 15 (p.152).

The compliance cost under the policy options is compared with the cost under the baseline scenario. To this end, the compliance cost was first estimated under the baseline scenario, based on the asssumptions and the methodology explained in annexes 8 (p. 81) and 15 (page 152). A net present value (NPV) of the compliance cost over the period 2015-2025 was first calculated. The policy measures are then assumed to be implemented with effect from 1 January 2015, and the NPV of the compliance cost is then calculated for the same period 2015-2025.

Most proposed measures, such as clarification of rights, have a very limited cost impact. The calculations have shown that a limited number of the measures contained in the policy options explain most of the cost impact: these are changes to the time thresholds for care, modifications of the scope of "extraordinary circumstances", modifications of the time threshold for compensation for long delays, modifications in the compensation levels, derogations for care (limited liability in extraordinary events of long duration and small-scale operations) and optional insurance in place of care.

Table 6 compares the NPV of the compliance costs for the airlines over the period 2015-2025 for the different policy options (detailed data for the various types of air carriers are provided in annex 13). Given the uncertainty surrounding the evolution of the claim rate for financial compensation, the results are first shown for a claim rate that is kept constant between the baseline and the policy options in order to show how the options modify the theoretical cost of the Regulation. The table shows results for a low claim rate (the current claim rate of 10% which is assumed to increase only slowly at a

[47] A subvariant that introduces multiple delay thresholds for compensation would add complexity to the Regulation and take away a part of the simplification gain.

rate of 0.5% per year) and for the maximum claim rate (i.e. when all entitled passengers would claim their compensation).

Table 6: Impact on total cost of Regulation for airlines at constant claim rate

Impact of the full policy packages compared to the baseline scenario		Total cost at current claim rate (assumed to increase slowly over time)		Theoretical maximum cost of Regulation (if all entitled passengers claim compensation)	
		NPV (2015-2025) In € million	% change compared to baseline	NPV (2015-2025) In € million	% change compared to baseline
Baseline		10.4	-	23.6	-
Option 1		2.1	-80%	8.0	-66%
Option 2a	Unchanged compensation levels	9.8	-6%	18.4	-22%
	Adjusted compensation levels	9.1	-13%	15.1	-36%
Option 2b	Unchanged compensation levels	9.6	-8%	17.5	-26%
	Adjusted compensation levels	8.9	-14%	14.2	-40%
Option 3		11.3	+9%	26.0	+10%
Option 4		11.6	+12%	26.2	+11%

As these estimates are sensitive to the underlying assumptions, a number of **sensitivity tests** were carried out. These tests have shown that variations in the underlying assumptions do not modify the ranking of the options in terms of their quantitative impact and that the order of magnitude of the options' impacts is not significantly alterered. More information on these sensitivity texts can be found in annex 15 (p. 152).

As expected, **option 1** implies the strongest cost reduction as refreshments, meals and accommodation are the main cost drivers of the Regulation (about two thirds of the total cost); their replacement by optional insurance for the passengers therefore significantly reduces the total cost of the Regulation[48].

[48] As option 1 mainly impacts on the cost of care and assistance (which is not influenced by the claim rate for compensation), the cost reduction from option 1 is less under the 100% claim rate than under the current claim rate. Indeed, under the 100% claim rate the share of compensation in the total cost is higher and therefore cost reductions on care and assistance will have less impact on total cost that under the current claim rate where care and assistance is the main cost factor.

Option 2 has a more moderate impact (it is very similar for options 2a and 2b), but annex 13 (p. 139) shows that is has a more pronounced impact on the regional carriers than on other carriers. This is due to the derogation for accommodation for the smallest regional operations. Note that the adjustment of the lump-sum amounts for compensation has a limited additional impact on costs as the overall amount spent on compensation is already reduced by the increase of the delay threshold or the extended scope of extraordinary circumstances. Still, it would add a further reduction to the compliance cost, especially for network carriers (see annex 13, p. 139).

Table 7 looks more closely at the sub-variants of option 2a, where instead of a 5h threshold for delay compensation, there would be multiple thresholds: 5 hours for flights up to 1500 km, 9 hours for flights between 1500 and 3500 km and 12 hours for flights of more than 3500 km. Overall, the table shows that such a sub-variant would significantly reduce the compliance cost especially for higher claim rates. More detailed results per carrier type are provided in annex 13; they show that in comparison to the single 5-hour threshold, the multiple thresholds would mainly benefit carriers operating long-haul flights, i.e. charter carriers and network carriers (non-EU carriers appear among the main beneficiaries of such a sub-variant as they mainly operate long-haul flights from the EU).

Note that the subvariant presents the advantage that it might create an additional incentive to reduce delays. As 5 hours could always be too short to deal with technical problems on long-haul destinations and compensation would then always be due, the compensation would not present an incentive. But setting more realistic time thresholds within which the airlines could indeed remedy the problem might create an incentive to do so as quickly as possible in order to avoid the compensation payment.

Table 7: Impact on total cost of sub-variants of option 2a

Impact of the full policy packages compared to the baseline scenario		Total cost at current claim rate (assumed to increase slowly over time)		Theoretical maximum cost of Regulation (if all entitled passengers claim compensation)	
		NPV (2015-2025) In € million	% change compared to baseline	NPV (2015-2025) In € million	% change compared to baseline
Baseline		10.4	-	23.6	-
Option 2a with unchanged compensation levels	5h threshold for delay compensation	9.8	-6%	18.4	-22%
	5-9-12h thresholds for delay compensation	9.4	-10%	15.8	-33%
Option 2a with adjusted compensation levels	5h threshold for delay compensation	9.0	-13%	15.1	-36%
	5-9-12h thresholds for delay compensation	8.9	-14%	13.2	-44%

Source: Commission estimates based on SDG data

Note that the tables in annex 13 (po.139) - which give the results of these estimations by carrier type -show that the total effect of policy option 2 is especially strong for the **regional carriers**, because of the effect of the derogation from accommodation for the small-scale operations. Compliance cost would be reduced by about 40% for these carriers (note that this brings the absolute cost per passenger for the regional carriers close to the average for the other carrier types). As mentioned before, options 3 and 4 do not address the specific situation of regional carriers.

Under **options 3 and 4**, air carriers would experience cost increases the scale of which depends on the weight of financial compensation in their total compliance costs.

Tables 6 and 7 were estimated under the assumption of no significant changes in the ***claim rate for compensation****. However, as we noted before, the claim rate is likely to increase thanks to the better enforcement of passenger rights. If, in table 6, we compared the baseline cost at the current claim rate (i.e. € 10.4 million) with the estimates under the 100% claim rate, we could be looking at the theoretical maximum cost increase that an increasing claim rate could trigger: if the claim rate went up to 100%, costs would more than double under the baseline (from €10.4 million to €23.6 million) and increase even more under options 3 and 4 (from € 10.4 million to €26*

million), but option 2 would limit the increase (from €10.4 million to max €18.4 million) while option 1 would decrease the compliance costs (from €10.4 million to € 8 million).

Such an increase of the claim rate to 100% seems unrealistic; therefore we talk about a theoretical maximum. Note, however, that if compensation were made automatic (instead of the passenger having to claim it), these costs increases would no longer be theoretical. Given the high cost of such automatic compensation, an automatic compensation was not considered in the policy options as it would fail to address our policy objectives.

For better understanding, tables 6 and 7 and the annex 13 (p. 139) can be summarized as follows in an approximative but illustrative way:

- The average cost of the **current Regulation** in a "regular" year (i.e. without major extraordinary events)[49] is approximately between €1 and €3 per passenger, depending on the claim rate; but it may take unlimited proportions in extraordinary events of long duration and weighs very heavy on small regional carriers.
- Under **option 1**, this cost would be approximately between €0.20 and €0.75; an extraordinary event of long duration would have very limited impact; costs would remain similar for regional carriers.
- Under **option 2** (and its variants and sub-variants), this cost would be approximately between €1 and €2, with a limit on cost developments in an extraordinary event of long duration; the cost for regional carriers would be within the same bracket.
- Under **options 3 and 4**, the cost would be approximately between €1.20 and €3.20, with a limitation on cost developments in an extraordinary event of long duration (but only as long as the industry fund has enough resources); the cost for regional carriers would remain very high in proportion to their revenues.

Tables 6 and 7 show the compliance cost in "regular "years, i.e. years without major events. In order to measure the impact of the **time limit on accommodation in extraordinary events of long duration,** we tested such a limit on the cost calculations for the ash cloud crisis in April 2010. For the purposes of the calculation we looked at a limit on accommodation of 3 or 4 days with a maximum of €100 per passenger. If an exceptional event equivalent in scale to the volcanic ash crisis occurred again, option 1 would strongly limit any costs as there is no obligation for accommodation under that option. **Options 2, 3 and 4** would reduce the assistance costs incurred by airlines by about 40% with a 3-day cap and by about 20% with a 4-day cap (under the assumption that, in options 3 and 4, the industry fund would have enough resources when the event occurs). Most importantly, it **would put a clear time limit on these costs**: their level would remain approximately the same even if the crisis would last longer. On the basis of information obtained from airports, which indicates that PRMs account for 0.44% of passengers, excluding PRMs from the application of the cap would only have a minor impact on the costs while keeping a maximum protection for the most vulnerable passengers.

[49] We used the average disruption rates for the period 2007-2009

Note, however, that options 3 and 4 imply the payment of a contribution per passenger to the industry fund which weighs on the compliance cost in normal times (and which is included in tables 6 and 7). If we assume that the reserve fund would build up reserves needed for a "ash cloud" type event over a period of 10 years, then the cost could be estimated at €0.06 per passenger[50].

The four options also imply a cost for airports as they contain two measures that impact **airports**: the obligation for airports to provide some basic information to passengers (notices on passenger rights) and the obligation to prepare contingency plans in cooperation with the airport users. The cost of these measures has been estimated as quite modest (around €200 000 per year for all airports combined – see annex 12). However, airports and other third parties (such as ground handlers or air navigation services) could share a part of the above-mentioned airline costs as the three options give airlines enhanced possibilities to claim compensation for incurred costs from **third parties** which were responsible for delays or cancellations.

"Recourse against third parties": the maximum potential for recovery is about 30% of the costs of the Regulation[51], i.e. if airlines are willing to exploit this new possibility. But it must be underlined that since many airports and ANSPs operate on a cost-recovery basis, one consequence of such a change would be to increase charges to the airlines. Therefore this would not necessarily result in a reduction in the economic cost on airlines, especially if there would be increased legal costs linked to disputes between airlines and third parties over the responsibility for certain flight disruptions. Ultimately, most industry costs must be covered by the fares paid by passengers to airlines, part of which cover airport and ANSP charges. Note, however, that charges on airlines and their passengers are not the only sources of revenue of the airports.

Although such a regulatory change might lead to higher airport and ANSP charges, overall costs could be reduced over the longer term, because airports and ANSPs would have an **economic incentive** to improve their service quality. Indeed, the measure would introduce more transparency into the air industry chain on the respective responsibilities for flight disruptions and generally raise awareness, also among other airport users, about the need to optimize measures to reduce the occurrence and the severity of flight disruptions.

7.1.3. Impact on the functioning of the internal market and competition

The four policy options should contribute to maintaining the level-playing field between the air carriers operating in the internal air transport market, by ensuring a consistent enforcement of air passenger rights across the EU. The strength and coordination of

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50 For these indicative calculations, the consultant assumed that the charge would apply to all flights covered by the Regulation - although there might be problems to apply it to non-EU airlines - and that the overhead cost of the fund would be about half of the overhead cost of existing tour operator insolvency funds in the UK and Denmark as it operations would be less complex (but these overhead costs would still increase the total cost of the fund by about 40%).

51 To get an idea of the part of the total cost that could be affected by this measure, the consultant used eCODA data from Eurocontrol to identify the proportion of non-reactionary delays where airports or air navigation service providers were clearly indicated as being at the source of the delay. eCODA data indicate that airports or air navigation service providers (ANSPs) are responsible for 28% of non-reactionary delays. Assuming the proportion of reactionary delays attributable to these entities is equivalent to the proportion of primary delays, this could be equivalent to an average of 28% of delays and 38% of cancellations. More details on the calculation are given in annex 13.

enforcement policy increases from option 1 to option 4. If the enforcement bodies had unlimited resources, option 4 would be the most successful in establishing a level-playing field but, in view of their limited resources and the counteracting force in terms of economic disincentives, it is difficult to judge which option would attain the highest level of compliance in real practice.

Micro-entreprises: as noted before, among the airlines covered by this Regulation, there are no micro-entreprises[52]. Given the required technical resources to set up an airline carrying out regular air services, it is highly unlikely that a micro-entreprise could fall within the remit of this Regulation.

Impact on SMEs: only a very limited number of SMEs are concerned by the Regulation (about 30). The latter are mainly small regional carriers that benefit from the specific measures proposed for **small-scale operations** in option 2. Among the other stakeholders impacted by the options, there are some SMEs active among the ground handling companies. Enhanced recourse of airlines against responsible third parties could impact them (insofar as their ground handling contracts do not already include provisions that vary their remuneration in function of service quality criteria).

7.1.4. Impact on competitiveness of EU airlines

As shown in annex 6 (p.76), where EU airlines compete with non-EU airlines on routes from third countries to the EU, they suffer a cost disadvantage, though limited, versus these non-EU airlines. Options 1 and 2 would reduce this disadvantage by reducing the compliance cost with air passengers' rights. On the contrary, options 3 and 4 could increase the competitive disadvantage.

7.1.5. Impact on administrative costs/burden

The main measure with administrative costs is that airlines would have to set up the contingency plans and provide the requested information to the NEBs (see annex 12 for detailed calculations using the Standard Cost Model[53]). This would cause the airlines additional administrative costs of about € 445 000 in the first year and about € 115 000 for each of the following years (all airlines confounded).

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52 Micro-enterprises are defined as companies with fewer than 10 employees and a turnover or balance sheet total equal to or less than €2 million. For example, Astraeus (one of the smallest airlines in the UK) in 2010 had 260 employees and a turnover of more than €65 million. The only aviation enterprises which might fit this definition could be small business aviation operators, but these are beyond the scope of the current Regulation and any of the proposed options (no scheduled services).

53 See page 42 on the Commission Guidelines for impact assessments (http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf)

Table 8: contingency planning – administrative costs for airlines

Type of obligation	Action	Cost
Submission of the first report	Compilation of report (first year only)	€ 328,459
Submission of (recurring) reports	Updating	€ 65,692
Submission of (recurring) reports	Answering questions from authorities	€ 50,149

7.1.6. Impact on public authorities

A number of policy measures (contained in all options) entail new administrative costs for NEBs, in total for a Net Present Value (NPV) of about €2 million over the period 2015-2025:

- the NEBs would have to prepare the annual reports to the Commission, where the estimated cost is €70000 per year or a NPV of €420000 over the period 2015-2025. This corresponds to an increase of 0.12% over the baseline NEB costs.
- The NEBs would have to check airlines' policies with regard to baggage, with an estimated cost of NPV €500000 over the period 2015-2025. This corresponds to an increase of 0.15% over baseline NEB costs.
- The NEBs would have to check airlines' procedures and contingency plans with regard to their rights under Regulation 261/2004 with an estimated cost of NPV €0.9 million which is an increase of 0.25% over baseline costs.

Note that there are compensating factors that may reduce these costs (for NEBs and ADR bodies) but which cannot be estimated. Indeed, the clarification of rights and the pro-active action of checking procedures and manuals could demand fewer resources if it leads to a reduction of the number of complaints.

Furthermore, under **option 1,** as meals, refreshments and accommodation are no longer provided under the provisions of the Regulation, the number of complaints is likely to diminish more significantly than in the other options.

As for **option 4**, which includes the setting up of an EU enforcement body, according to the consultant's study such a measure might lead to economies of scale of about 20% of the combined costs of the current NEBs. However, these savings would be partly counteracted by the higher travel costs (to the local branches, and possibly to visit airports and carry out inspections), by higher staff costs (need to attract competent staff to a central location) and high set-up costs (although the latter are one-off costs).

Such a centralised system entails a transfer of the required resources from the Member States to the Commission. It is a matter of political judgement whether to pursue such option. But it could be justified on the grounds of subsidiarity as it would be a more

efficient way (in the sense of more effective at similar cost) to enforce an option with higher compliance costs than the present Member-State based enforcement.

7.1.7. Overview of economic impacts

Table 9: summary of the economic impacts of the policy packages

	1	2a	2b	3	4
Impacts on the functioning of the internal market and competition	0/+ Positive impact on the level-playing field	0/+ Positive impact on the level-playing field	0/+ Positive impact on the level-playing field	0/+ Positive impact on the level-playing field	0/+ Positive impact on the level-playing field
Impact on competitiveness of EU airlines	0/+ Slightly positve impact because of lowering cost for EU airlines	0 Marginal impact on competitiveness vis-à-vis non-EU airlines	0 Marginal impact on competitiveness vis-à-vis non-EU airlines	-/0 Slightly negative impact because of increasing cost for EU airlines	-/0 Slightly negative impact because of increasing cost for EU airlines
Impacts on operating costs and conduct of businesses	++ Strong cost reduction	+ Cost reduction and clear limit to costs in cases of mass disruptions	+ Cost reduction and clear limit to costs in cases of mass disruptions	-- Cost increases	-- Cost increases
Businesses - administrative burden (AB) after 5 years	-/0 Slight increase of burden	-/0 Slight increase of burden	-/0 Slight increase of burden	-/0 Slight increase of burden	-/0 Slight increase of burden
Public authorities - AB after 5 years	+ Decreasing costs for enforcem	-/= Slightly increasing costs for enforceme	-/= Slightly increasing costs for enforcem	-- Increasing costs for enforcem	-- Increasing costs for enforcem

		1	2a	2b	3	4
		ent policy	nt policy	ent policy	ent policy	ent policy
	Member States	+	-	-	+	+ Cost shifts to Commission
	European Commission	0	-	-	-	--

7.2. Social impacts

7.2.1. Impact on passengers/consumers

All options present common features:

- Better enforcement of passengers' rights (including for mishandled baggage): NEBs can better concentrate on general enforcement (thanks to the complaint-handling of ADR bodies under the ADR proposal) and would implement a more pro-active approach aimed at preventing infringements.
- Improved means to submit individual complaints when rights are not respected: passengers will have more information on how to contact the airline for submitting complaints and airlines will have to give a reasonable reply within a fixed deadline; in addition, thanks to the ADR proposal, passengers can turn to the ADR with their individual complaints and the NEB will provide technical support (see complaint handling below).
- A simplification of rights (e.g. time thresholds) and a clarification and strengthening of rights in many instances: this will provide passengers a better understanding of their rights, may reduce disputes between parties on the correct interpretation of law and provide a more effective legal framework for enforcement bodies and courts.

Option 1 significantly reduces the obligations of airlines versus passengers during flight disruptions and only insured passengers will remain protected. Optional insurance presents advantages and disadvantages to passengers.

Advantages of option 1:

- Airlines would have a financial incentive to comply with the obligation to offer optional insurance; indeed, if they did not offer it, they would not earn any revenue from the sale of these insurances. Moreover, the passenger could possibly acquire the insurance via other channels as well (travel agent, tour operator, etc.). The passenger would be able to make an informed choice.
- The passenger would be able to make a choice for or against insurance in function of his individual situation. For example, a passenger visiting friends or relatives may avoid the expense for insurance when he is assured that in case of flight disruption he would anyway be able to stay with his friends or relatives. He would thus not be paying for an insurance he is unlikely to enjoy.

- Different types of insurance policies are likely to be developed, offering different levels of quality of service at different prices. Consumers would be able to take out insurance in function of their individual capability or desire to organise their care and assistance (e.g. with or without assistance to find accommodation, different hotel categories, etc.).
- Air fares would be reduced by between 0.5 and 1 per cent compared to their evolution in the baseline scenario if the cost reduction were translated into the air fares.

Disadvantages of option 1:

- Many passengers, in the light of the low occurrence rate of delays and cancellations, may misjudge the risk of not being insured. Although one might consider that this is an individual choice, and although many of the operational objectives defined above are well met by this option, it is questionable whether this option does fully respond to the general objective of ensuring a high level of protection to passengers in cases of travel disruption.
- Insurance companies are likely to introduce some caps on liability which will not allow the passenger to attain the same level of coverage as today or under the other options, even if he takes out insurance.
- The positive impact on air fares would be counterbalanced by the price to be paid for optional insurance in case passengers would like to keep approximately the same level of protection as today. The cost of insurance will probably vary depending on circumstances (e.g. insurance policy for single flight or covering a certain period), but existing insurance policies in the EU and the US show that the price could easily be higher than the above-mentioned gain in air fares.

Under **option 2**, the airline remains compelled to provide the care and assistance.

Advantages of **option 2a:**

- It further contributes to the **simplification** of passenger rights: the right to care arises always after 2 hours of delay; the right to financial compensation in case of delay will not arise before the right to reimbursement (5 hours), which increases the consistency of the passenger rights. However, as noted earlier, this simplification advantage would be lost in a sub-variant of option 2a with multiple time thresholds for delay compensation depending on the distance of the flight (where the passenger would need to know the different thresholds of 5, 9 or 12 hours and in which category fits his flight).
- It **avoids cancellations** that risk arising under a strict application of the 3-hour delay for compensation for delay. Indeed, airline schedule optimisation models show that a short threshold may increase the number of flight cancellations where airlines reduce the knock-on effects of delayed flights on the subsequent flights by cancelling one or several flights to reposition the aircraft for a next

flight[54]. As in most circumstances, the passenger will still prefer a delay over a cancellation, this measure therefore also presents an advantage for him or her.

- It **reduces the cost** of the compensation for delay for the airlines and thereby reduces the disincentive for compliance with passenger rights. This impact would be stronger in case the subvariant with reduced compensation levels was chosen (and even stronger if this was combined with multiple time thresholds for compensation in case of long delay).

Disadvantages of option 2a:

- The right to claim compensation for delay only arises after a delay of 5 hours instead of 3 hours (although this may reduce cancellations) and the amount of compensation may be lower (depending on the sub-variant). The cost reductions for the airlines are the mirror image of the monetary loss of passengers. In the sub-variant with multiple time thresholds, the right to compensation for delay arises even later (e.g. already for flights of more than 1500 km, a threshold of 9 hours would apply instead of the current 3 hours).
- In case of mass disruption, passengers (except PRM) would have to pay for their accommodation if the disruption lasts longer than the introduced time limit (e.g. 3 or 4 nights).
- The protection of passengers is reduced on regional flights: for the passengers of these flights, this is of course a significant reduction of their rights although the question arises in how far small regional carriers are, under the current rules, able to provide these rights. In total, based on 2011 data, between 200 and 260 small routes in the EU would be touched by this measure, implying the offer of about 680 000 seats yearly or, assuming an average load factor of 61.4% for regional carriers (see annex 8a), about 417 000 passengers, that is less than 0.05% of all passengers covered by this Regulation.

Although **option 2b** is very similar to option 2a, there are differences for passengers:

- Under 2b, the right to compensation already arises after 3 hours, but there will be more circumstances where the airline can invoke extraordinary circumstances;
- It appears inconsistent and confusing that the right to compensation (3 hrs) arises before the right to reimbursement (5 hrs);
- There is a risk of more cancellations if the right to compensation after a 3-hour delay is better enforced.

Options 3 and 4 contain many advantages for passengers such as a reinforcement of their existing rights and a better enforcement of these rights. However, it may also translate – compared to the baseline - into higher ticket prices to finance the costs for airlines and the contribution to the industry fund and, as tax payers, passengers will also contribute to the higher enforcement cost.

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[54] To see how increasing delay costs may increase cancellations in schedule optimisation see for example "Sensitivity analysis of airline schedule optimization (ASO) - advanced model" by Danica Pavlovic, Journal of Air Transport Studies, volume 1, issue 2, 2010

Table 10 shows the impact of the policy options on quantifiable consumer benefits. It should be recalled that estimates are made under the assumption of full compliance. Where a reinforcement of enforcement would improve actual compliance, these figures could become positive again.

Table 10: impact of policy options on consumer benefits[55]

Impact of the full policy packages compared to the baseline scenario		Total passenger benefits at current claim rate (assumed to increase slowly over time)		Total passenger benefits (if all entitled passengers claim compensation)	
		NPV (2015-2025) In € million	% change compared to baseline	NPV (2015-2025) In € million	% change compared to baseline
Baseline		13.1	-	26.3	-
Option 1		4.7	-64%	10.6	-60%
Option 2a	Unchanged compensation levels	12.5	-5%	21.0	-20%
	Adjusted compensation levels	11.7	-11%	17.6	-33%
Option 2b	Unchanged compensation levels	12.3	-6%	20.0	-24%
	Adjusted compensation levels	11.5	-12%	16.8	-36%
Option 3		13.3	+2%	27.8	+6%
Option 4		13.8	+5%	28.4	+8%

Source: 2012 SDG study + Commission estimates

Overall, as announced in section 5.2, the assessment shows the unavoidable trade-off to be made between the objective of reducing disincentives and the protection of passengers; indeed, reductions in compensation payments take into account the financial capacities of the air carriers, but at the same time reduce benefits to consumers. But this trade-off only touches upon financial compensation rather than on care and assistance;

[55] Many of the passenger benefits required by the Regulation are either monetary amounts or directly quantifiable in monetary terms (for example, monetary compensation, refunds, hotel accommodation and refreshments). These passenger benefits are therefore expressed in monetary terms and are equivalent to the costs the airline has to incur. However, by changing the circumstances under which rerouting should be offered, a number of the policy measures could result in changes to the total level of passenger waiting time. The consultant calculated the waiting time impact by estimating how much more or less time a passenger would have to wait, and attaching a value to this time (see also footnote 23).

this is the result of how the policy objectives were set (section 5.1); policy options 2 to 4 protect and reinforce passenger rights with regard to immediate help in the form of care and assistance, but they may weaken the aspect of financial compensation that comes on top of this care.

Table 11: summary of impacts on consumers/passengers.

	Option 1	Option 2a	Option 2b	Option 3	Option 4
Impacts on consumers/passengers	- Less protection in flight disruptions if passenger misjudged the risks Slightly lower fares	+ Better enforcement, better defined rights and new rights	+ Better enforcement, better defined rights and new rights	++ Better enforcement, better defined rights, new rights (and unlimited rights even in mass disruptions) Slightly increased air fares	++ Better enforcement, better defined rights, new rights (and unlimited rights even in mass disruptions) Slightly increased air fares

"-" means less than baseline – "+" means better than baseline

7.2.2. Impacts on employment

The employment impact of the assessed policy options remains limited as the options mainly aim at fine-tuning existing passenger rights and improving their enforcement. There are some indirect effects on employment, mainly via the impact that changing costs can have on air fares and hence on demand for air services. As shown in the table below, these effects remain quite limited but are positive for most options (except option 4).

To obtain these figures, it was assumed that the number of jobs per passenger (in the case of airports) and per passenger-kilometer (in the case of airlines) is relatively constant (see page 155 of annex 15 for more information on the underlying assumptions). The global employment figures shown in table 12 correspond for about 55% to airline jobs and 45% to jobs located at airports (airport staff, ground handling staff and other).

Table 12: expected variation in average employment (2015-2025) under the various policy options (compared to baseline)

Full-time equivalents		Estimated under current claim rate
Option 1		+10 000
Option 2a	Unchanged compensation	+ 750

	Adjusted compensation	+1 800
Option 2b	Unchanged compensation	+1 000
	Adjusted compensation	+1 800
Option 3		-1 100
Option 4		-1 500

Source: Commission estimates based on SDG data

7.2.3. Impacts on fundamental rights

The policy options have no adverse effects on the **fundamental rights** of citizens. The policy options 2, 3 and 4 enhance consumer protection and are therefore in line with Article 38 of the Charter on fundamental rights; however, there are doubts with regard to option 1 where the protection depends on the willingness of the passenger to acquire insurance. With regard to the protection of personal data (article 8 of the charter), note that the option includes an obligation for travel agents to provide passengers contact details to the airline (to contact them in case of flight disruption), but the travel agent cannot do so without the explicit consent of the passenger and the data can only be used for this specific purpose.

With regard to the integration of **persons with disabilities** (article 26), the options include a clarification with regard to the compensation for mishandled mobility equipment (enabling compensation up to the full damage), and option 2 excludes disabled passengers and passengers with reduced mobility from the applicability of a cap on accommodation in extraordinary events of long duration. In option 2, such exclusion could also be added with regard to the derogation from accommodation for regional operations without significantly increasing the compliance cost, given the low proportion of persons with disabilities in total passenger numbers.

7.3. Environmental impacts

The environmental impacts of the policy options mainly derive from the indirect effects from cost variation on air fares and from there on demand for air travel using standard price elasticities (see annex 15, page 152, for the assumptions underlying the calculations). The table below shows the impact on emissions: options 1 and 2 slightly increase emissions while under options 3 and 4 emissions are almost unchanged. Note that any increases will be addressed by the inclusion of the air transport sector in the emission trading system.

Table 13: impact on average CO2 emissions between 2015 and 2025 (compared to baseline)

In thousands of tonnes of CO2		Estimated under current claim rate
Option 1		+900
Option 2a	Unchanged compensation	+70

	Adjusted compensation	+150
Option 2b	Unchanged compensation	+90
	Adjusted compensation	+160
Option 3		-130
Option 4		-100

Source: Commission estimates based on SDG data

7.4. Comparing the options

The policy packages are assessed against the criteria of effectiveness, efficiency and coherence.

From an effectiveness point of view, option 2 (a and b) offers the highest potential achievement of all specific goals, while 1 and 4 offer a good effectiveness in general.

In terms of efficiency, options 3 and 4, are the most costly and are less efficient than the other options.

In terms of coherence, option 1 risks missing the general objective of reinforcing passenger rights if most passengers were not ensured.

Table 14: comparion of the options

Effectiveness, efficiency and coherence of the policy packages					
	1	2a	2b	3	4
Effectiveness with regard to specific objectives (see annex 16 for details)	+ (some weakness on coordination of enforcement policy, but good on other objectives)	++ (addresses all specific objectives)	+(+) (addresses all specific objectives but some weakness on clarification/ consistency)	-/+ (strong enforcement but unsure whether this can compensate disincentive for compliance from increased costs)	-/+ (strong enforcement but unsure whether this can compensate disincentive for compliance from increased costs)
Efficiency	+ (strong cost reduction for airlines and authorities)	+ (moderate cost reduction for airlines and authorities)	+ (moderate cost reduction for airlines and authorities)	- (costs increase for both airlines and authorities)	- (costs increase for both airlines and authorities)

Coherence	-/+ (while the option ensures better compliance with passenger rights, these rights are weakened)	++ (better enforcement of existing rights, marginal environmental impact)	++ (better enforcement of existing rights, marginal environmental impact)	++ (better enforcement of existing rights, marginal environmental impact)	++ (better enforcement of existing rights, marginal environmental impact)
Global assessement	+	++	+(+)	-/+	-/+

'-" means worse than baseline, "+" means better than baseline

Overall option 2 is preferable over the others as it is effective and efficient to meet the policy objectives and remains coherent with the overall objective of ensuring minimum rights to all passengers.

Although very similar in the outcome, option 2a is slightly preferred over 2b for two reasons:

- In option 2b, the delay threshold is kept at 3 hours (as in Sturgeon), but this might incur more cancellations than if the threshold were increased as in option 2a.
- It also follows from this that in option 2b, the right to reimbursement only arises after 5 hours while the right compensation already arises after 3 hours: this appears inconsistent and may confuse passengers.

It comes as no surprise in the light of the policy objectives that the preferred policy option 2a presents a **compromise** between the positions expressed by the air carriers and the consumer groups in the **public consultation**. In line with consumers' wishes, the option enhances enforcement and individual complaint handling, clarifies a number of rights that are at best implicit in the present Regulation (e.g. missed connections or tarmac delays), confirms the right to compensation in case of long delays and introduces contingency planning. And in view of taking into account the concerns of the air carriers, the option includes an increased time threshold for the delay compensation, a time limit on the care to be provided during exceptional events of long duration and a measure to take into account the specific problems of regional flights. It includes the possibility of recourse against third parties such as airports or ground handlers but without introducing any automatic rights in this regard, thereby taking into account the concerns expressed by these stakeholder groups.

Table 15: Summary quantitative impact on compliance costs and consumer benefit (at current claim rate, unchanged compensation amounts)

	1	2a	2b	3	4
Impact on compliance cost	-80%	-6%	-8%	+9%	+12%
Impact on consumer benefit	-64%	-5%	-6%	+2%	+5%

Source: tables 6 and 10

With regard to the assessed **sub-variants of option 2a**, there is no objective criterion to mark a preference between them. The choice of subvariant mainly depends on the political choice being made with regard to the trade-off between the passengers' rights and the compliance cost for the airlines:

- a possible change of the lump-sum amounts of compensation (see section 7.2) would provide an **additonal** reduction in the compliance cost, but this reduction implies an equivalent loss of compensation for the passengers (both are reduced by about 10%).

- the same is valid for the possible introduction of multiple delay thresholds for compensation in function of the flight distance. This measure would mainly benefit air carriers operating long-haul flights and would mainly impact on passengers of the same flights.

It is a matter of political judgement to weigh such additonal cost reduction against the reduced possibilities for compensation for the passengers on the concerned flights. Hence, the choice between the sub-variants of policy option 2a is a matter of political consideration.

8. MONITORING AND EVALUATION

Providing for a robust monitoring and evaluation mechanism is crucial to ensure that the rights envisaged in the Regulation are complied with in practice and that its costs remain proportional to its objectives.

Under the revised Regulation, the NEBs will provide annual reports on their activities to the Commission; these reports will provide a valuable overview of the application of passenger rights.

The annual reports of the NEBs will be the main tool for monitoring the level of compliance and the consistency of national enforcement policies. Among other, they will provide information with regard to the following parameters:

- Number and type of enforcement actions and sanctions imposed (and effective payment of penalties), especially in view of evaluating the effectiveness of the enforcement policies; in this context, also the new areas of competence of the NEBs with regard to baggage will be evaluated.

- Number and type of founded complaints: their analysis should provide insight into the main problem areas of the passenger rights (i.e. to which rights do most complaints refer) – the information should be compared, where available, with surveys on compliance in order to obtain a full understanding of the explanatory factors underlying the data. Special consideration should also be given to specific problems reported with regard to passengers with reduced mobility.
- Where available, cases before national courts and their outcome: again, this information is valuable to get insight into possible shortcomings of the revised passenger rights or of their application. This can be cross-referenced with possible prejudicial questions before the ECJ.
- Resources employed by the NEBs in order to evaluate the impact of the modifications to complaint handling and enforcement on the cost of implementation.

Furthermore, the Commission can carry out ad-hoc studies on the application of air passenger rights as it has already done in the past on several occasions (see section 3.2, p.10). More information can be gathered from possible common surveillance actions by the NEBs, from consumer organisations and the surveys they carry out, and from airline associations. Such studies will also provide further information on the evolution of the compliance cost and the evolution of actions for redress against third parties ("burden sharing").

Based on the gathered information, the Commission would properly evaluate the implementation of the Regulation 4 years after its adoption and report to the Council and the Parliament on possible legislative or non-legislative action to be taken.

ANNEX 1: Public consultation - participation

A public on-line consultation has been carried out between 19 December 2011 and 11 March 2012 which focussed on questions with regard to a possible revision of Regulation 261/2004. A total of 410 submissions to the consultation were received:

Consumer and passenger associations: 28

EU-wide associations of consumer and passenger associations: 2

Airline associations: 16

Individual airlines: 46

Airport associations: 9

Individual airports: 17

Tour operators' associations: 8

Individual tour operators: 3

Travel retailers and suppliers: 56

National and subnational authorities: 18

Individuals: 181

Other: 26

Given the high number of issues covered, the Commission instructed its consultant (Steer Davies Gleave) to carry out – complementary to the public consultation - individual interviews and consultations with 98 stakeholders selected in order to cover all stakeholder groups:

Consumer and passenger associations: 28

Airlines' associations: 6

Individual airlines: 18

Airports' associations: 1

Individual airports: 6

Tour operators' associations: 2

National Enforcement Bodies: 32

Other: 5

These individual consultations allowed to deepen the issues with regard to the specific interests and know-how of the stakeholders concerned. In total, 41 face-to-face interviews were carried out with the main pan-EU industry and consumer associations, with airline and with national enforcement bodies and national consumer organisations in 14 case study countries. The other stakeholders contributed by direct written submissions and/or telephone interviews.

Finally, on 30 May 2012, the Commission and the Economic and Social Committee co-organised a conference presenting the main results of the public consultation, and giving stakeholders the opportunity to react to these results. The representative organisations that responded to the public consultation were invited to this conference.

For the results of the consultation, please see the Commission's website: http://ec.europa.eu/transport/passengers/consultations/2012-03-11-apr_en.htm.

ANNEX 2a: Basic data and estimates

Table 16: Total disrupted passengers (millions)

OD / length	Delay type	2007	2008	2009	2010	Proportion of total passengers (average 2007-2009)
Delay						
EU <1500km	Delay > 120 mins	6.425	5.842	5.017	8.853	1.20%
EU 1500-3500km	Delay > 180 mins	1.119	1.154	0.842	1.634	1.00%
EU >3500km	Delay > 180 mins	0.024	0.027	0.027	0.051	1.47%
Non-EU <1500km	Delay > 120 mins	0.476	0.478	0.514	1.040	1.77%
Non-EU 1500-3500km	Delay > 180 mins	0.603	0.764	0.603	1.485	1.17%
Non-EU >3500km	Delay > 240 mins	1.530	1.467	1.140	1.756	0.93%
Other disruption						
Cancellation		8.035	7.864	7.416	23.705	0.9%
Tarmac delay	Delay > 60 mins	1.017	1.048	1.078	2.087	0.13%
Denied boarding	Voluntary	0.176	0.144	0.133	0.135	0.02%
	Involuntary	0.233	0.185	0.173	0.170	0.02%
Downgrading		0.224	0.153	0.109	0.123	0.02%
Baggage	Lost	0.036	0.029	0.020	0.025	0.003%
	Delayed	8.194	6.739	4.844	5.585	0.79%
	Damaged/pilfered	1.613	1.418	1.158	1.340	0.17%

ANNEX 2b: breakdown of delays by cause

Cause of Delay	Proportion of all delays				
	2007	2008	2009	2010	Average 2007-10
Technical	10.3%	10.9%	11.5%	8.6%	10.3%
ATFM and airports	14.7%	16.0%	15.9%	18.3%	16.2%
Weather	2.9%	3.4%	5.1%	6.1%	4.4%
Aircraft and ramp handling	5.1%	4.9%	4.5%	3.7%	4.6%
Operations and crew	3.5%	3.8%	3.9%	3.7%	3.7%
Passengers and baggage	5.1%	4.2%	4.7%	3.6%	4.4%
Mandatory security	2.2%	1.9%	2.2%	1.9%	2.1%
Reactionary	46.8%	45.8%	43.8%	46.3%	45.4%
Other	9.3%	8.6%	8.4%	7.9%	8.5%

Table 17

Source: Eurocontrol eCODA

ANNEX 3: Passenger surveys on airline compliance with air passenger rights

During the individual interviews, four stakeholders presented evidence from surveys of airline compliance with the Regulation:

- Verbraucherzentrale Brandenburg (VZB; the consumer association of Brandenburg, Germany);
- The Danish Consumer Council;
- Which; and
- The UK CAA.

VZB surveyed 1,184 consumers across all German states in 2010, of which 1,122 submissions were included in the survey. It found that:

- In 84% of cases passengers were not informed of the disruption until they arrived at the airport.
- Over half of passengers were not informed of their rights, as required under Article 14;
- Where passengers complained, airline response times were long – 24% of complainants received a reply within 1 month, and 22% did not receive a response; and
- Only one in four airlines provided compensation, any in many cases this was only on request from the passenger.

The **Danish Consumer Council** has conducted two surveys over the past two years, which have found that:

- Delays were the most commonly experienced type of disruption, with 20% of passengers having been affected in the previous three years. 10% had been affected by cancellations, and only 2% had experienced denied boarding.
- More than 50% of passengers affected by delays and 40% affected by cancellations were not informed of their rights;
- 27% of delayed passengers and 11% due to travel on cancelled flights did not receive any assistance;
- Only 2% of delayed and 4% of cancelled passengers were offered telephone calls, telex/fax messages, or emails;
- Only 4% of passengers received compensation for delays, and 2% received compensation for cancellations; and
- None of the carriers serving Copenhagen airport followed the guidelines set by the Danish NEB regarding minimum allowances for refreshments and meals.

Which? undertook a survey in 2010 which indicated that 45% of passengers which experienced delays did not receive the care to which they were entitled. Very few respondents had tried to claim compensation for a long delay or cancellation, so no reliable conclusions could be drawn on this matter.

The **UK CAA** conducted a passenger survey following the heavy snowfall in the winter of 2010/11, which found that:

- Although 89% of respondents had experienced a delay or cancellation, less than 20% received refreshment or meal vouchers, and 60% received nothing;
- 74% of respondents were dissatisfied with the information they received during the disruption; and
- 75% were not informed of their rights when their flight was delayed or cancelled.

All of these surveys suggest that provision of information on disruption and the rights of passengers under the Regulation is poor, and in a large proportion of cases airlines are failing to offer disrupted passengers the assistance required under the Regulation. However, the respondents to the CAA and VZB survey were self-selecting, and therefore it is not clear that wider conclusions can be drawn about airline compliance from these surveys.

ANNEX 4: Unclear rights under Regulation 261/2004 and other EU consumer law

EU law - be it Regulation 261/2004 or general consumer law - remains vague with regard to the rights of passengers for the following issues closely related to flight disruptions:

- **the right of rerouting**: the public consultation has shown that in many cases airlines and passengers disagree on the meaning of the terms "re-routing under comparable transport conditions" given in Article 8.1.b of the Regulation, in particular whether this provision includes a requirement for rerouting via other carriers or other transport modes. In the interviews, the issue of the meaning of the term 'comparable transport conditions' was frequently raised by NEBs as an issue needing clarification, in particular with respect to whether and when rerouting on other carriers or other modes was required. All of the main airline associations and most of the individual airlines were opposed to further clarification of this Article, as they understand that rerouting by other carriers or modes would currently not be a requirement. In contrast, most tour operator and travel agent associations believed that there should be a requirement to reroute on other airlines after a certain time. Most public authorities and consumer representatives agreed that there should be a right to rerouting on other carriers after a certain period.

- **a missed connecting flight** due to the delay of a preceding flight: passengers who miss connecting flights due to cancellations are explicitly protected by the Regulation, but the protection of passengers who miss connections due to delays is not as clear. Although in its April 2010 Communication, the Commission clarified that connecting points are indeed covered by the provisions of the Regulation[56], NEBs or courts may not always share this view and the public consultation confirmed the disagreement between airlines and consumers/passengers on this issue: all consumer associations and almost all public authorities agreed that the Regulation should be amended to clarify explicitly that missed connections due to the delay or cancellation of a previous leg of a journey under a single transport contract are covered. In the bilateral interviews, most said that airlines generally already did provide rerouting and assistance in these cases, but that it depended on the airline and was not universally the case. It is one of the issues raised most often by NEBs and others in the interviews as being unclear in the current Regulation. There are no statistics on missed connecting flights, but estimates by SDG in its 2012 study – based on delay statistics and average connecting times – indicate that around 3.8 million passengers might miss connections due to delays every year.

- **advance rescheduling** of the flight[57]: the Regulation does not explicitly provide rights for the passengers in case their flight has been rescheduled in advance (although if the new flight times are not convenient for the passenger, the rescheduling may cause the same discomfort as a cancellation). Only if the flight was part of a package, passengers may be protected by the Package Travel Directive 90/314. Unfortunately, no data on advance rescheduling are available, although complaints and inquiries received by the European Direct

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57 Some NEBs and national courts assimilate rescheduling to cancellations

Contact centre and by NEBs indicate that confusion about the topic[58]. In the public consultation, almost all the consumer associations and public authorities asked for the explicit inclusion of passenger rights in case of advance rescheduling into the text of the Regulation, but airlines, travel agents and tour operators were opposed.

- **denied boarding** because the passenger did not use consecutively the flights bought under the same travel contract ("**no show**" policy): many airlines require their passengers to use flights bought under the same travel contract consecutively, otherwise they may not be allowed to board the subsequent flight(s). Passengers who decide not to take, for instance, the first leg of a flight with one or more stops, but wish to board the flight at the first transit point (or are unable for whatever reason to take the outbound flight of a return ticket) may be denied boarding for the next leg of the flight or the return flight by the airline, which considers their ticket no longer valid. The practice appears to be banned in some Member States but not in others depending on the way Directive 93/13 on unfair terms in consumer contracts has been translated in national law and has been interpreted by national courts[59]. Unfortunately, no data is available on the number of passengers that suffered from this practice but associations of consumers and of travel agents indicate that this is a recurrent problem. In the public consultation, most consumer organisations back an explicit ban of no-show policies while airlines and their associations were clearly opposed.
- risk of denied boarding because of **booking errors**: consumer organisations point to the costs that consumers incur with some airlines when they wish to correct mistakes in their bookings. Unfortunately, no data are available on the number of passengers affected. In the public consultations, there was general support across stakeholder groups that clear spelling mistakes should be easily corrected within a short time period (and as long as allowed under applicable legislation) but consumer organisations required a more general right (e.g. cooling off period within which the consumer may decide to renounce the booking).
- **long delays on the tarmac**: while the Regulation also covers delays of flights where the passengers are already on board the aircraft, it does not specifically refer to this kind of situation, nor does it include provisions with regard to tarmac delays on arrival. The problem is far less frequent in Europe than in North America; an explanation could be the European system of airport slot regulation, which ensures that the number of flights scheduled does not exceed the capacity of the airport infrastructure in normal circumstances. Still, over the period 2007-2009, about 1 million passengers annually were delayed on the

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58 There are no airline data available on the extent of rescheduling, but the number of inquiries received by the Europe Direct Contact Centre (EDCC) gives a rough idea: in 2011, the EDCC received 189 inquiries about rescheduling, to be compared to 2680 inquiries about cancellations, 2709 inquiries about delays, 724 inquiries about denied boarding and 21 inquiries about downgrading.

59 A study commissioned by the Commission gives an overview of existing practices and of the relevant European and national legislation: *Analyses of the European air transport market: airline pricing, ticketing rules an consumer rights*, Deutsches Zentrum für Luft- und Raumfahrt e.V., June 2009; see annex

tarmac by 1 hour or longer. In 2010, this figure doubled to about 2 million, most likely linked to the ash cloud crisis in April 2010 and the bad winter weather in December of that year. In the public consultation, there were again large differences of view, consumers being in favour of clarifying the issue in the Regulation, while airlines did not see the need.

- **flight diversion to another airport**: the Regulation does not explicitly mention rights to care/assistance/compensation in case the flight is diverted to another airport. Given the principles established by the ECJ in the case *Rodríguez and others v Air France*[60], where a return of the flight to the departure airport is considered as a cancellation, it might follow that an unscheduled diversion could also be considered as a cancellation. However, this is not explicitly stated in the Regulation and remains uncertain as long as the Court has not been seized on such a case. There are no data available with regard to flight diversions. The public consultation showed again large disagreement between consumers and airlines, the former considering that the issue needs clarification while the latter did not see the need to do so.

[60] Case C-83/10

ANNEX 5: Complaint handling by NEBs

Table 18: Complaint handling by NEBs between 2007 and 2011 - overview

	Complaints received in total	Delay	Cancellation	Denied Boarding	Others	Number of cases closed	Number of cases engaged for sanctioning
2007	41 740	8 543	10 260	2 357	4 828	7 726	185
2008	39 277	9 414	10 369	2 670	9 295	9 448	308
2009	33060	8 875	14 409	3 609	5 312	8 484	1 075
2010	80 832	15 426	47 731	2 902	10 433	na	na
2011	Not yet complete (see next table)						

Na = non available

Table 19: Complaint handling 2011 – detailed view

2007	Complaints received in total	Delay	Cancellation	Denied Boarding	Others	Number of cases closed	Number of cases engaged for sanctioning
AT	1062	364	476	48	174	1040	0
BE	1385	na	na	na	na	na	na
BG	120	59	22	14	25	104	0
CY	146	90	37	7	12	65	na
CZ	190	80	91	19	0	186	2
DE	4563	2419	1747	297	100	805	68
DK	na	na	na	na	na	na	na
ET	28	9	12	6	1	na	7
EL	556	254	153	28	121	na	32
ES	na	na	na	na	na	na	na
FI	291	173	92	20	na	266	na
FR	na	na	na	na	na	na	na
HU	181	64	80	9	28	118	9
IE	na	na	na	na	na	na	na
IT	na	na	na	na	na	na	na
LT	65	24	21	6	0	14	47
LV	151	23	47	10	43	25	na
LU	52	18	17	2	15	37	na
MT	124	58	40	3	23	105	0
NL	2933	1664	362	62	na	na	na
PL	2195	980	726	62	47	na	Na
PT	6454	1561	915	409	3569	9231	5
RO	na	na	na	na	na	na	na
SK	35	18	6	2	9	14	5
SV	45	15	13	4	13	25	6

SE	na	na	na	na	na	na	na
UK	3986	1294	na	255	30	na	11
Total	**na**	**na**	**na**	**na**	**na**	**na**	**na**

ANNEX 6: Competition with other modes and with non-EU carriers

Competition with other modes

Rail is likely to represent the most serious competition to air, given its speed, frequency and convenience; although coaches and ferries may offer viable options in isolated cases, or for particular types of passenger.

However, where air travel offers a faster alternative most passengers are unlikely to wish to travel for longer than 4 hours, which means that the rail option is only really feasible for journeys within the EU. In order to assess the potential for distortion of competition with rail, the top 50 intra-EU city pairs measured in terms of total seats scheduled in May 2012 (representing 18% of all intra EU city pairs) were analysed. On 7 of these 50 routes rail journey times are typically less than 4 hours. Almost all of these routes are domestic, and therefore Member States have the option of exempting rail services from Regulation 1371/2007; this suggests that Regulation 261/2004 might lead to a distortion of competition on a minority of routes. However:

- In practice, of the largest Member States, only the UK and France have exempted domestic long distance rail services from this Regulation, and some Member States have national laws or policies on compensation or assistance for rail passengers which are more generous than the Regulation (particularly Spain).
- For many network airlines, most passengers on these very short intra-EU routes are carried in order to 'feed' the wider network, and therefore competition with rail is not relevant. Any costs incurred by the Regulation on these short routes become insignificant in comparison to the long-haul routes they serve.

The proportion of routes on which coach services are viable competitors is likely to be even smaller, as in the vast majority of cases the journey times of coaches are even less competitive than those of rail services. However, some competition may exist at the margins for the most price-sensitive travellers, and again the difference in burden faced by the two types of operator may to some extent depend on the origin and destination of the route concerned. In addition, Member States are permitted to exempt domestic services from the application of most of the Articles of Regulation 181/2011, and therefore there is potential for competition to be distorted albeit in quite limited cases.

Similarly, although ferries would rarely offer competitive journey times in comparison with air, there are isolated instances where this might be the case – for example, on the Helsinki – Tallinn route the 2 hour journey time offered by the ferry service may be faster than the 30 minute air journey time when waiting times and travel to/from the airports are included. In other cases ferry services may be preferred for reasons other than price – for example, for holidaymakers may use ferries as they wish to take their car with them. Therefore, again there is some potential for competition to be distorted, but the proportion of European air traffic this impacts is likely to be very low.

Competition with non-EU airlines

There is most likely to be distortion of competition between EU and non-EU carriers operating flights into the EU, as the provisions of the Regulation do not apply to non-EU carriers. To assess the extent of competition between EU and non-EU carriers, we analysed routes to and from the EU to identify on what proportion EU and non-EU carriers competed directly. The table below shows the share of routes operated by EU

carriers to the EU from outside, together with the number of these routes on which non-EU carriers compete.

Table 20: Analysis of routes to and from EU, May 2012 schedules

	Routes	Flights	Seats
All routes into EU	**1,998**	**69,877**	**14,362,968**
EU carrier-operated flights into EU	1,384	34,787	7,406,845
EU carrier-operated flights to the EU on routes shared with non-EU carriers	458	18,381	4,035,142
As % of all flights to the EU operated by EU carriers	33%	53%	54%

On more than half of services into the EU operated by EU carriers, there is direct competition from non-EU carriers. 142 million passengers per year travel on EU carriers' flights outside the EU, on routes shared with non-EU carriers, equivalent to 17% of all passengers on flights to, from or within the EU. Even where there is no direct competitor, indirect services also often provide competition on non-EU routes.

An EU airline competing directly with a non-EU airline could either absorb the cost, reducing its profit margin, or pass it through to passengers. The consultant's modelling shows that, for a long haul route into the EU operated by a large EU traditional scheduled carrier, the average cost of the Regulation over the period was €1.63 per passenger, and the average fare €678 per passenger. If all the costs of the Regulation were added to the fare, the average fare might be increased by 0.24% relative to a non-EU carrier.

To calculate the potential impact on demand, a cross elasticity was used to calculate the impact of the fare increase applied by the EU carrier, in terms of the percentage of passengers which might switch to non-EU carriers' services. Unfortunately, although there is significant published research on overall price elasticities of demand, no published research on cross-elasticities between carriers was found. However, given a route level price elasticity is -1.4[61], the cross elasticity might be expected to be in the range -1.0 to -2.0. Consequently, the additional €1.63 charged by the EU carrier could result in a loss of between 0.24% and 0.48% of its passengers to the EU. However, since virtually all long haul passengers buy return tickets, and the Regulation applies to both EU and non-EU airlines from the EU, the overall reduction in volumes would be 0.12% to 0.24%.

This analysis indicates that the Regulation could in principle impact on competition between EU and non-EU carriers, but this impact appears to remain limited.

[61] Source: IATA economic briefing

ANNEX 7: Relation between Regulation 261/2004 and other EU and international law

The total cost of the correct application of Regulation 261/2004 has been estimated as the incremental cost of airline policies that would be followed in the absence of Regulation 261/2004. The consultant assessed airline polices in the absence of a legal framework (by looking at airlines in Europe before 2004 and at airlines operating in other similarly developed aviation markets but without passenger protection legislation) and assessed how general EU consumer law would apply to airline policies in the absence of Regulation 261/2004.

If the Regulation was repealed, there would still be some minimum standards of air carrier behaviour as a result of:

- Directive 93/13/EC on unfair contract terms; and
- the Montreal Convention and Regulation 2027/97.

Passengers who were not transported, because their flight was cancelled or because they were denied boarding, would most probably have a right to either rerouting or refund in any event (any restriction on this would be most likely to be an unfair contract term and thus be unenforceable – at any rate where the cancellation was within the carrier's control).

Passengers would not have any automatic right to assistance, such as refreshments or hotel accommodation. However, it could be considered to be an unfair contract term if passengers' right to claim for costs of assistance (i.e. their damages resulting from the carrier's breach of contract) was restricted in circumstances where the carrier was responsible for the delay or cancellation.

The Montreal Convention provides a right to compensation in the event of delay. However, the passenger would need to prove that he/she had suffered a loss, and the Convention would provide the carrier with a defence if it could prove that it and its servants and agents took all necessary measures that could reasonably be required to avoid the damage or that it was impossible for them to take such measures. This defence is relatively easy for carriers to establish where the delay is for reasons beyond their control and, in any case, experience has shown that there have been relatively few claims by passengers on this basis both due to the need to prove financial loss and because of the existence of the Regulation.

It is less clear what rights there would be to compensation in the case of cancellation as this is not covered by the Montreal Convention. Passengers could still claim against carriers for breach of contract under national law, but it is likely that they would have to prove a loss and a carrier could defend a claim on the basis that it was not responsible for the cancellation. Any term in Conditions of Carriage which restricted carriers' obligations beyond this would probably be an unfair contract term. In the case of denied boarding it would be harder for the carrier to prove that it was not responsible for the breach of contract but the passenger would still have to prove a loss in order to obtain compensation.

The consultant has assumed that if the Regulation was repealed, airlines would on average provide the minimum service level required for compliance with other EU law. The only exception to this is that some fixed compensation would be paid for denied boarding, partly because it would be easier in this case for the passenger to prove that

the carrier was responsible, but this compensation would not exceed the price of the ticket.

On this basis, for the purpose of quantifying the economic cost of the Regulation, it was assumed that if the Regulation was repealed the airlines would on average apply the policies in the following table.

Table 21: Likely airline policies in the absence of Regulation 261/2004

Disruption type	Policy
Cancellation	If flight cancelled for reasons that the airline defines as being within its control, it would offer the passenger a choice of: alternative service on same carrier subject to availability; a refund. The refund would be the fare paid, if no portion used; otherwise at least the difference between fare paid and applicable fare for the segment(s) used. No administration fee is charged. The airline would also provide a voucher for care, and pay for overnight accommodation where necessary (or reimburse reasonable costs). For cancellations outside the airline's control, the airline would provide either rerouting or a refund, but it would be at its discretion which of these was provided. There would be no payment for care or accommodation. The carrier would have no further obligation except as otherwise provided by the Montreal Convention, and therefore in most circumstances no compensation would be payable.
Delay	If the airline fails to operate a flight within 5 hours of the schedule, for reasons that it defines as being within its control, it would offer the passenger a refund if he/she did not wish to travel. The refund would be the fare paid, if no portion used; otherwise at least the difference between the fare paid and the applicable fare for segment(s) used. No administration fee would be charged. The airline would also provide a voucher for care and pay for overnight accommodation where necessary (or reimburse reasonable costs). For delays outside the airline's control, there would be no option of a refund and no payment for care or accommodation. The carrier would have no further obligation except as otherwise provided by the Montreal Convention, and therefore in most circumstances no compensation would be payable.
Denied boarding	First the airline would seek volunteers, who would be offered incentives according to airline policy. For modelling purposes we have assumed that this would include a refund or rerouting, plus compensation equivalent to 50% of the ticket price with a maximum of €200. For passengers denied boarding involuntarily, the airline would offer the passengers a choice of: alternative service on same carrier subject to availability; or a refund. The refund would be the fare paid, if no portion used; otherwise at least the difference between the fare paid and the applicable fare for segment(s) used. No administration fee would be charged. The airline would provide a voucher for care and pay for overnight accommodation where necessary (or reimburse reasonable costs). In addition the airline would provide compensation. This compensation would be equivalent to the ticket price except that it would not exceed a given amount (for modelling purposes we have assumed €400). The carrier would have no further obligation except as otherwise provided by the Montreal Convention, and therefore in most circumstances no other compensation would be payable.

Disruption type	Policy
Downgrading	For downgrading within the carrier's control, affected passengers would be offered the choice of: alternative service in the original class on the same carrier subject to availability; or a refund of the difference in fare between the original class and the downgraded class. Where downgrading is for reasons which the airline determines as being outside the its control, the choice between these may be at the carrier's discretion. No voucher for care or overnight accommodation would be offered.
Tarmac delays	No provisions – rare occurrence in EU.

Source: 2012 SDG Study

ANNEX 8a: Underlying assumptions of the baseline scenario

Traffic growth

Overall air traffic is assumed to increase at the rate specified in the Airbus Global Market Forecast.

With respect to specific traffic categories, it is assumed that on the basis of recent trends, for intra-EU flights of less than 1,500km, only low cost carriers (LCCs) will experience growth. In addition, given the long-term trends towards passengers arranging their own travel itineraries, charter traffic is assumed not to grow on any category of route.

For other market segments, future demand is estimated using Airbus' Global Market Forecast. The Forecast provides an average growth rate between pairs of regions, which is assumed to remain constant for each year covered by the impact assessment. Data for passengers (from Eurostat) and for seats (from OAG) are used to estimate current total passengers for each flow and carrier type. Airbus' growth rates are then disaggregated by carrier type, such that the growth for the carrier types for which growth is assumed to occur exceed the average for the inter-regional flow, whilst at the total level the flow grows at the average rate estimated by Airbus.

The forecast was benckmarked against Eurocontrol STATFOR long- and medium-term forecasts, and have found it to be generally slightly more conservative, although the difference is small, averaging 0.4% each year for both forecasts.

Trends in disruption

For all types of disruption it is assumed that the rate of disruption in future years will remain constant within each market segment, at the average for 2007-9. The basis for this assumption is a review of historic disruption data which indicated no discernible trend. 2010 is excluded due to the extraordinary effects of the volcanic ash crisis and the other disruption that year. The absolute number of passengers affected therefore grows at the same rate as overall traffic for each carrier and route type. In total, the number of cancellations increases slightly faster than the number of long delays (due to statistical effects such as the declining market share of charter carriers which basically have no cancellations).

Trends in complaint rates and NEB costs

It is assumed that complaint rates remain constant on a per-passenger basis, and consequently that the absolute number of complaints increases in line with traffic. Notwithstanding any potential scope for efficiencies we assume that NEB operating costs are related to the number of complaints, and therefore the impact of any options which relate to NEB complaint handling will also increase in line with traffic.

Claim rates

It is likely that the current 10% claim rates for compensation for delays and cancellations will increase, due to improved awareness of passengers' rights under the Regulation, increased activity by commercial claims agencies, and potentially introduction of measures on collective consumer redress in some Member States. It is not possible to know how much of an increase these factors will generate, and as the data on claim rates we have is limited, it is not possible to extrapolate from current trends. Therefore, an indicative 0.5% annual increase in the claim rate is assumed.

There is no change assumed to the claim rate for refunds for delays over 5 hours – most passengers are assumed still to wish to travel.

Inflation and discounting

Future costs are modelled in real 2010 terms. For most cost types, rates remain constant in real terms, so for most cost items no inflation is applied; historically air fares have fallen in real terms but due to carbon pricing and increased fuel prices, it is unclear this will be the case in future.

However, this means that any costs which are fixed in nominal terms have to be deflated. The only example of such a cost is fixed compensation of the type currently specified in the Regulation. The inflation rates applied in the impact assessment model are derived from the European Central Bank's inflation forecast of December 2011. A 4% discount rate is used to calculate net present values (NPVs) of impacts[62].

Results

If the Regulation is not amended, it is estimated that the incremental compliance cost of the legislation on airlines will increase from €0.9 billion on average over 2007-2009 to €1.7 billion in 2025, mostly due to traffic growth. As a share of airline revenue, the cost will increase from 0.6% to 0.7%.

Almost all of the compliance cost is carried by airlines (and ultimately passengers through higher fares) but costs are also incurred for States, due to the requirement to establish and fund NEBs. It is estimated that the cost for States will increase from approximately €27 million now (assuming full complaint handling) to €46 million by 2025.

[62] Source: European Commission Impact Assessment Guidelines, Annex 11.6

ANNEX 8b: Underlying assumptions of cost calculations

Introduction

This annex describes the process undertaken in the **2012 SDG study** to model the current economic cost of the legislation. The first stage comprises the disruption database, which calculates the number of passengers affected by each type of disruption. The second stage involves evaluating the cost of the obligations stipulated by the legislation. These obligations are then applied to the disruption types being evaluated to obtain a cost by disruption type. The application of the costs varies according to the assumptions behind each of the scenarios that have been modelled.

The focus is on the cost generated for airlines by the types of disruption specified in the Regulation, which form by far the largest element of the total cost. NEB enforcement costs are discussed separately in the final section of this appendix.

Unless otherwise stated, use of the term 'EU' refers to the 27 members of the EU plus Iceland, Norway and Switzerland. The flight disruption and economic burden models cover all of these States.

Flight disruption database

Flight and passenger numbers

Calculating the impact of disruption requires a complete record of passenger numbers, broken down by flight and carrier types, to which disruption data can be applied. This is based on flight and passenger numbers at EU airports, provided by Eurostat. For EU 27 countries, the Eurostat data is sufficiently detailed to allow a distinction between domestic flights, flights to other EU countries and flights to destinations outside the EU. For the other States, similar data from national organisations (Avinor, Statistik Schweiz and Statistics Iceland) allows to obtain the required level of detail.

Although Eurostat provides figures for domestic, EU and non-EU flights, it does not include Norway, Iceland or Switzerland in its definition of the EU. SDG therefore applied an adjustment so that the 'EU' category includes routes to/from these States. The adjustment is based on the relative number of seats and flights for these States in the schedule data provided by OAG.

Table 22: Total number of flights and passengers used in the consultant's model

	2007	2008	2009	2010
Flights	8,884,662	8,876,521	8,167,538	8,131,834
Passengers	849,355,876	853,387,770	800,981,473	831,476,369

Source: SDG 2012 study

The OAG data provides information on the number of flights and seats operated by route and carrier. This allows a more detailed categorisation of flights to include distance bands that match those used in the Regulation. Using this data, carriers have also been allocated to one of fourteen carrier types, based on three characteristics:

- Business model (Regional, Charter, Low Cost Carrier (LCC), Traditional Scheduled);
- Area of registration (EU, Non-EU); and

- Size of operations within the EU (Large or Small).

The categories used for the business model and area of registration characteristics match those used in the Eurocontrol eCODA data on departure delays.

Regional carriers are assumed to be those carriers who, on average, operate routes shorter than 1,500km and with fewer than 100 seats on each flight.

Large carriers comprise the 20 carriers with the highest number of seats flown in 2010; all other carriers are categorised as Small. This distinction is used because no airline operating a significant number of services would meet the normal categorisation for an SME (less than 250 employees).

The categories used are summarised in the table below. Combining the two classification systems yields 126 combined flight and carrier types which form the level of disaggregation of our analysis.

Table 23: Flight and carrier classification based on OAG data

Flight and destination types	Carrier types
National <1500km	Large Regional EU
National 1500-3500km	Large Regional Non-EU
National >3500km	Small Regional EU
EU <1500km	Small Regional Non-EU
EU 1500-3500km	Charter EU
EU >3500km	Charter Non-EU
Non-EU <1500km	Large LCC EU
Non-EU 1500-3500km	Large LCC Non-EU
Non-EU >3500km	Small LCC EU
	Small LCC Non-EU
	Large Traditional Scheduled EU
	Large Traditional Scheduled Non-EU
	Small Traditional Scheduled EU
	Small Traditional Scheduled Non-EU

Charter flights

Since Eurostat data includes charter flights while OAG data does not, the consultant required further information on charter flights to enable a reconciliation between the two data sources.

Eurocontrol data allows to calculate the proportion of all flights that are classified as charter flights by airport and route type. Data for Norwegian, Icelandic and Swiss airports is available only at an airport level (not by route type). For these countries, SDG has applied a weighted average to obtain the proportion of charter flights for each

flight type. Spanish airport data from AENA provides a breakdown of charter flights by carrier, from which SDG has calculated the proportion of charter flights operated by an EU-domiciled carrier for each year. These factors have been applied to all charter flights.

Table 24: Charter flights by carrier domicile

Year	Proportion of charter flights on EU carriers	Proportion of charter flights on Non-EU carriers
2007	96%	4%
2008	97%	3%
2009	97%	3%
2010	97%	3%

Load factors

A variety of sources have been used to calculate the load factors by flight and carrier type. This data is available for 2008 and 2009; a weighted average of the two years has been applied to all four years on the assumption that load factors have remained constant over the period. The load factors were adjusted to ensure that the passenger numbers match those provided by the Eurostat data.

Table 25: Load factors by carrier type and route length

Carrier type and route length	Load factor
Charter <1500km	85.9%
Charter 1500-3500km	88.3%
Charter >3500km	87.8%
LCC <1500km	76.6%
LCC 1500-3500km	84.9%
LCC >3500km	83.1%
Regional <1500km	61.4%
Regional 1500-3500km	70.0%
Regional >3500km	57.5%
Traditional scheduled <1500km	68.9%
Traditional scheduled 1500-3500km	71.6%
Traditional scheduled >3500km	77.5%

National data sources for the UK (CAA), Italy (ENAC), Spain (AENA), Portugal (INAC) and France (DGAC) were used to obtain the average number of passengers per charter flight. Weighted average figures have been used for all countries:

Table 26: Charter flights passenger loading

Year	Average number of passengers per charter flight
2007	91
2008	88
2009	87
2010	99

Final flight and passenger numbers

By the application of the load factors and adjustments for charter flights two key datasets were obtained:

- The number of flights by route and carrier type in each year; and
- The number of passengers by route and carrier type in each year.

These two outputs were then combined to calculate the number of passengers per flight by route and carrier type in each year.

Departure Delay

Departure delay rates by route type and carrier type have been obtained from Eurocontrol eCODA data, which provides the proportion of flights in each category that were delayed, broken down into ten delay time bands. These proportions were applied to the total flight numbers in each route and carrier category. Using the passengers per flight data, SDG then calculated the number of passengers affected by delays in each of the ten time bands, by route and carrier type:

Table 27: Total number of passengers by delay time band

Delay time band	2007	2008	2009	2010
Delay < 60 mins	799,941,444	806,575,332	765,686,555	773,236,179
Delay > 60 mins	49,414,433	46,812,438	35,294,917	58,240,190
Delay > 120 mins	15,141,197	14,491,552	11,800,846	21,106,978
Delay > 180 mins	6,893,665	6,896,591	5,600,730	10,422,270
Delay > 240 mins	3,770,330	3,897,191	3,122,383	5,837,397
Delay > 300 mins	2,166,654	2,539,871	1,996,811	3,825,507
Delay > 360 mins	1,556,331	1,819,443	1,405,955	2,743,211
Delay > 480	829,030	1,168,782	854,852	1,695,589

mins				
Delay > 720 mins	372,980	683,545	541,900	982,132
Delay > 1440 mins	20,755	20,584	73,932	126,508
Total	**849,355,876**	**853,387,770**	**800,981,473**	**831,476,369**

Cancellations

The number of cancelled flights is based on:

- the quarterly AEA Consumer Reports available for 2007 and 2008;
- ERA traffic and punctuality reports available for all four years 2007-10; and
- Data submissions provided by six airlines.

These sources enabled SDG to aggregate the responses according to carrier type. However, although AEA differentiates between Short/Medium-Haul and Long Haul, none of the sources provide sufficient detail to calculate an average by route type.

SDG therefore used three additional sources of cancellation data (UK CAA, Oslo Lufthavn, and the Spanish slot coordinator) to apportion the figures from AEA, ERA and the airline submissions between the route categories.

For some route and carrier type combinations, this process did not yield a sufficiently large sample to obtain reasonably valid cancellation rates. In these situations, the rates from comparable types were applied, adjusting them as necessary. Suitable comparators were determined according to a list of priorities:

- Same carrier type;
- Same distance band;
- Same area of registration (EU or Non-EU); and
- Same carrier size.

The cancellation rates refer to the number of flights so, as with departure delay figures, SDG used flight and passengers per flight data to calculate the number of affected passengers.

Since some costs associated with cancellations will depend on the time taken for the affected passengers to be rerouted, SDG have calculated the delay to passengers' journeys that will be caused by a cancellation. For each origin-destination pair, SDG used OAG data to calculate the average number of hours between flights on the same city pair and operated by the same carrier or one of its codeshare partners. This is then applied to the flight and carrier types, weighted by the number of flights operated on the routes.

Indirect routes were not explicitly considered as it was not practical to do so; identifying all the potential indirect routing options would have resulted in a very large number of route options and would be beyond the capability of the spreadsheet-based model.

However, although SDG have not explicitly considered indirect routes, they have in effect assumed rerouting via indirect routes with respect to very low frequency routes:

- routes less than 1,500km which operate less than daily; and
- other routes which operate less than weekly.

In these cases the waiting times for rerouting on direct flights would be very long, so it is assumed that the passengers are rerouted after the same waiting time as for other routes of equivalent length; this could only be via an indirect flight.

The mean wait time between successive flights is doubled to reflect the likelihood that, given typical load factors are around 75%, only a proportion of passengers on a cancelled flight can be rerouted onto the next flight. These wait times were then averaged by carrier and route type, and allocated to one of the ten time bands used in the delay data.

Table 28: Distribution of wait times in the event of cancellations

Delay time band	2007	2008	2009	2010
Delay < 60 mins	2.2%	0.7%	0.8%	1.0%
Delay 60-119 mins	1.4%	1.7%	0.8%	0.9%
Delay 120-179 mins	2.0%	2.3%	1.8%	1.4%
Delay 180-239 mins	4.0%	3.8%	2.7%	3.0%
Delay 240-299 mins	2.6%	5.4%	3.9%	3.8%
Delay 300-359 mins	2.3%	3.0%	3.7%	3.9%
Delay 360-479 mins	8.5%	9.8%	7.2%	7.8%
Delay 480-719 mins	14.2%	17.0%	14.4%	14.6%
Delay 720-1439 mins	34.1%	34.8%	36.3%	32.8%
Delay > 1440 mins	28.7%	21.4%	28.4%	30.8%

Tarmac delay

The analysis of tarmac delays is based primarily on Eurocontrol eCODA's average taxi-in and taxi-out times for all European airports. Since the definitions of taxi-in and taxi-out times do not include any delay between passengers boarding and alighting and off/on block times, the consultant used airline contributions to apply an uplift to take this into account.

Two traditional scheduled airlines provided tarmac delay information. SDG compared the proportions of flights in each tarmac delay time band from their submissions to the corresponding figures in the Eurocontrol data and calculated one factor for each time band, which was applied to the entire Eurocontrol dataset. No distinction was made between different years.

The table below shows the number of passengers affected by tarmac delays of different durations.

Table 29: Passengers affected by tarmac delays

Delay time band	2007	2008	2009	2010
Delay < 60 mins	848,338,429	852,339,329	799,903,629	829,388,998
Delay > 60 mins	1,017,447	1,048,440	1,077,844	2,087,371
Delay > 120 mins	86,248	51,804	76,679	168,069
Delay > 180 mins	29,439	6,619	18,039	55,078
Delay > 240 mins	23,457	1,795	10,811	34,066
Total	**849,355,876**	**853,387,770**	**800,981,473**	**831,476,369**

Denied boarding

Seven airlines provided data on the number or proportion of passengers who have been denied boarding. If data was missing for some years, an average of the available years' data was used. Four airlines did not differentiate in the data provided between voluntary and involuntary denied boarding; in these cases, an average from the other airlines was applied to the airline's overall denied boarding rate.

The United States Department of Transportation provides denied boarding figures for all US airlines. Although SDG did not use these figures directly, it included these in the averages used to apportion between voluntary and involuntary denied boarding when European airlines did not supply this level of detail.

The denied boarding rates were averaged by carrier type, and on the basis of the discussions at the bilateral interviews charter airlines were assumed to have no cases of denied boarding. The rates were applied directly to the number of passengers in each route and carrier category.

Table 30: Voluntary denied boarding rates used in the model

	2007	2008	2009	2010
Large Regional EU	0.010%	0.010%	0.009%	0.014%
Large Regional Non-EU	0.010%	0.010%	0.009%	0.014%
Small Regional EU	0.010%	0.010%	0.009%	0.014%
Small Regional Non-EU	0.010%	0.010%	0.009%	0.014%
Charter EU	-	-	-	-
Charter Non-EU	-	-	-	-
Large LCC EU	0.001%	0.001%	0.001%	0.001%
Large LCC Non-EU	0.001%	0.001%	0.001%	0.001%
Small LCC EU	0.001%	0.001%	0.001%	0.001%

Small LCC Non-EU	0.001%	0.001%	0.001%	0.001%
Large Traditional Scheduled EU	0.033%	0.028%	0.027%	0.027%
Large Traditional Scheduled Non-EU	0.033%	0.028%	0.027%	0.027%
Small Traditional Scheduled EU	0.033%	0.028%	0.027%	0.027%
Small Traditional Scheduled Non-EU	0.033%	0.028%	0.027%	0.027%

Table 31: Involuntary denied boarding rates used in the model

	2007	2008	2009	2010
Large Regional EU	0.010%	0.009%	0.008%	0.013%
Large Regional Non-EU	0.010%	0.009%	0.008%	0.013%
Small Regional EU	0.010%	0.009%	0.008%	0.013%
Small Regional Non-EU	0.010%	0.009%	0.008%	0.013%
Charter EU	-	-	-	-
Charter Non-EU	-	-	-	-
Large LCC EU	0.001%	0.001%	0.001%	0.001%
Large LCC Non-EU	0.001%	0.001%	0.001%	0.001%
Small LCC EU	0.001%	0.001%	0.001%	0.001%
Small LCC Non-EU	0.001%	0.001%	0.001%	0.001%
Large Traditional Scheduled EU	0.044%	0.036%	0.036%	0.035%
Large Traditional Scheduled Non-EU	0.044%	0.036%	0.036%	0.035%
Small Traditional Scheduled EU	0.044%	0.036%	0.036%	0.035%
Small Traditional Scheduled Non-EU	0.044%	0.036%	0.036%	0.035%

Some costs associated with passengers denied boarding vary according to the time that affected passengers must wait before being rerouted. The average wait time was calculated using OAG data as described above for cancellations. Since the number of denied boarders is likely to be small, SDG have assumed that all affected passengers will be accommodated on the next flight with the same airline or a similar type of carrier. The average wait time therefore equals the time between successive flights.

Downgrading

Three traditional scheduled airlines provided data on the proportion of passengers downgraded in each year. One of them only provided data for two years; an average of these figures was applied to the remaining two years.

Other categories of airline confirmed that downgrading was not an issue for them because they only offer one class of travel.

We have assumed that all incidents of downgrading occur on services operating outside the EU, since on short-haul services airlines can usually reconfigure space as needed by moving curtains or dividers.

A weighted average of the figures from the three traditional scheduled carriers was therefore used, adjusted based on the number of seats flown by the airlines to EU and non-EU destinations. The adjusted downgrading rates were applied directly to the number of passengers in each route and carrier category.

Table 32: Number of Downgraded passengers

Year	Total number of downgraded passengers
2007	224,407
2008	153,332
2009	109,156
2010	122,950

While these figures suggest a downward trend, it is based on a small sample size and we would be cautious about inferring long-term trends from this. It is possible that the decline in premium class travel due to the economic crisis may have reduced the need to downgrade passengers as premium classes are now less likely to be overbooked; this may explain this apparent downward trend. Premium class travel would be expected to recover after the crisis and therefore this trend may not continue. It is possible that the rise in downgraded passengers in 2010 is related to the volcanic ash crisis.

Mishandled baggage

The SITA Baggage Report provides total mishandled baggage numbers as a proportion of total passengers for all four years. In order to differentiate between lost, delayed and damaged baggage, SDG have used submissions from the seven airlines that provided the required level of detail in their responses.

Some airlines did not provide enough detail about all three categories of mishandled baggage; their data was used for calculations in as many categories as possible, and excluded where necessary. Most data for mishandled baggage was presented as a percentage of passengers, but where airlines provided the number of mishandled bags total passenger numbers were obtained from their websites in order to calculate the required percentages. If figures were not available for all four years, an average of the available figures for that airline was applied to the missing years.

The airlines' submissions were used to calculate the proportion of their total mishandled baggage that fall into each of the three categories (lost, delayed, damaged). The average split could then be applied to the total mishandled baggage figures from SITA. This proportion was used if a carrier type was not covered by the sample of airline submissions. For those carrier types covered by the airline submissions, an average figure was used.

Thus for each carrier type and each year the number of lost, delayed and damaged bags was obtained as a proportion of passengers. These rates were applied directly to the number of passengers in each route and carrier category.

Table 33: Number of passengers affected by mishandled baggage

	2007	2008	2009	2010
Lost	35,584	29,211	20,162	24,612
Delayed	8,194,307	6,739,360	4,843,722	5,584,657
Damaged	1,612,776	1,417,541	1,157,978	1,340,179

Cost assumptions

Compensation

Compensation values are as specified in the legislation and no further assumptions have been applied. The appropriate value of compensation to apply takes into account the route length and the wait time before rerouting can be offered.

Reimbursement and rerouting

The cost of the reimbursement specified by Article 8(1)(a) is assumed to be the cost of the ticket purchased by the passenger.

In order to determine the average ticket price by flight and carrier type, the financial statements for a sample of 28 airlines were analysed, obtaining the average yield per passenger kilometre (total passenger revenue divided by total passenger kilometres). The sample does not cover all carrier types, so the assumptions are:

- Carrier size does not affect the yield per passenger kilometre;
- Non-EU registered charter carriers have the same yield per passenger kilometre as EU charter carriers; and
- The average yield from 2007-2009 is a suitable substitute if the 2010 yield is not available.

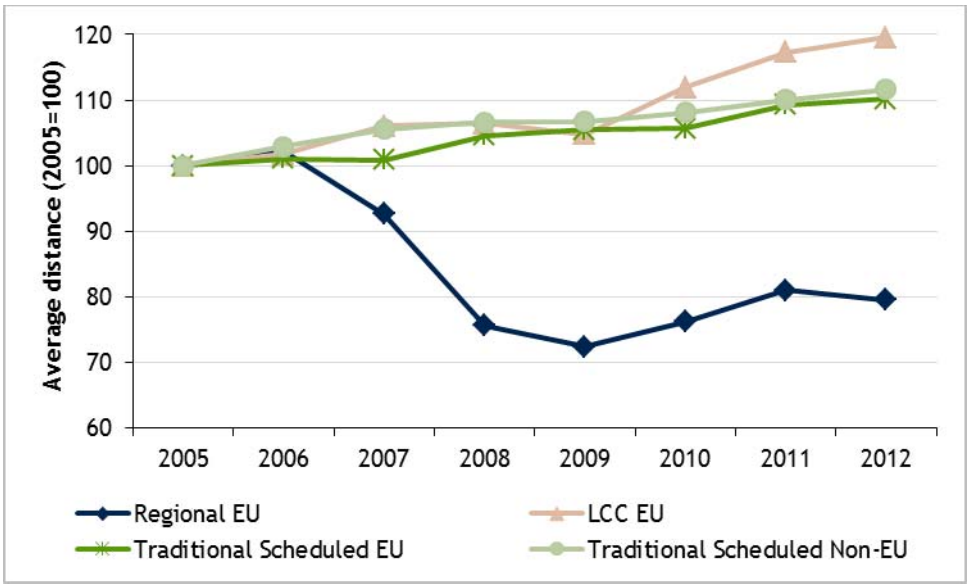
Table 34: Average yield (€ per pax km) by carrier type

Carrier type	2007	2008	2009	2010
Large Regional EU	0.156	0.155	0.139	0.137
Large Regional Non-EU	0.111	0.163	0.110	0.108
Small Regional EU	0.156	0.155	0.139	0.137
Small Regional Non-EU	0.111	0.163	0.110	0.108
Charter EU	0.055	0.057	0.062	0.058
Charter Non-EU	0.055	0.057	0.062	0.058
Large LCC EU	0.059	0.049	0.045	0.044
Large LCC Non-EU	0.050	0.053	0.180	0.070
Small LCC EU	0.059	0.049	0.045	0.044
Small LCC Non-EU	0.050	0.053	0.180	0.070

Large Traditional Scheduled EU	0.103	0.099	0.084	0.098
Large Traditional Scheduled Non-EU	0.067	0.072	0.073	0.066
Small Traditional Scheduled EU	0.103	0.099	0.084	0.098
Small Traditional Scheduled Non-EU	0.067	0.072	0.073	0.066

Airline schedule data from OAG was used to provide data on the average distance of flights operated by each carrier type, a summary of which is presented in the figure below. Some short term trends are visible, particularly the increase in sector lengths, although in other cases the trends tend not to have persisted over the whole period from 2005 to 2012. We have assumed that average flight lengths do not change within each of the distance categories modelled (flights less than 1,500km; 1,500-3,500km; and over 3,500km), but overall flight lengths for some carriers will change due to the different rates of traffic growth for different distance categories (overall longer distance traffic grows faster so average sector lengths are assumed to continue to increase). Combining the yield per passenger kilometre and the average distance provides the average ticket price for each route and carrier type.

Change in average distance flown 2005-2012



Food costs

The cost of selected food and drink items across eight European airports has been compiled. SDG have taken averages for each item, and grouped them into 'meals' and 'refreshments', which will be offered at different times during an event with a right to care as specified in Article 9(1)(a). Meals comprise a hot meal (burger and chips), a chocolate muffin, and either still water (500ml) or a small white coffee. A refreshment comprises a ham and cheese sandwich and either still water (500ml) or a small white coffee. The average costs are as follows:

- Refreshments €6
- Meal €14.50

Accommodation costs

Average hotel room prices are taken from the Hotel Price Index published by the website hotels.com, which provides an average value of €96 for EU States. This Index is compiled from transactions across all star ratings on the hotels.com website, weighted to reflect the size of each market. It is then assumed that:

- passengers travelling on business require their own room;
- passengers travelling for leisure share a room and therefore the cost per passenger is 50% of the price of a hotel room; and
- passengers travelling to visit friends and relatives can, in 50% of cases, return to their friends and relatives, and otherwise share a room.

Table 35: Accommodation rates per passenger

Journey purpose	Spend per night (EU average)
Leisure	€48
Business	€96
Visiting friends or relatives (VFR)	€24

European Tourism Insights 2009-10[63], prepared by the European Travel Commission, reports the number of trips made by Europeans, broken down by journey purpose. SDG have combined this data with information provided by a UK CAA report, 'No-Frills Carriers: Revolution or Evolution?'[64] to calculate the journey purpose split by carrier type. The market shares are as follows:

Table 36: Purpose of travel by carrier type

Purpose of travel	Carrier type			
	Traditional Scheduled	LCC	Regional	Charter
Holiday	40%	64%	52%	100%
VFR & other leisure	8%	14%	11%	-
Business	52%	22%	37%	-
Total	100%	100%	100%	100%

These rates were then adjusted to reflect the fact that not all travellers will require accommodation, based on the following assumptions:

- **Connecting passengers:** All passengers stranded overnight at a connection point require overnight accommodation. 37.5% of all passengers on regional or traditional scheduled carriers are assumed to be connecting passengers (based on data from a sample of European airports);

63 www.etc-corporate.org/resources/uploads/ETC_ETI_2009-10_with-cover.pdf
64 www.caa.co.uk/docs/33/CAP770.pdf

- **Passengers at destination airport:** All passengers stranded at their destination (half of non-connecting passengers) require overnight accommodation.
- **Passengers at origin airport:** In principle passengers stranded at the origin airport may be able to go home, but depending on the distance of their home from the airport, this may not be practical. Therefore SDG assume that 50% of passengers at the origin airport (25% of all non-connecting passengers) go home and so do not incur an accommodation cost.

Table 37: Adjusted accommodation costs per passenger by carrier type

Carrier type	Cost per night per passenger (€)
Regional	€53
Traditional scheduled	€60
Low cost carrier	€42
Charter	€36

Airlines are also obliged to pay for transport between the airport and the hotel. Taxi fares for a short (3km – approximately the distance from a terminal taxi rank to nearby hotels) journey were compiled for a sample of cities. The average transport cost calculated by this method is €9.77.

Communication costs

International telephone rates from landlines to overseas mobiles and landlines were obtained from a sample of European companies including BT, France Télécom (Orange) and Deutsche Telekom.

Assuming that the duration of the two calls offered under Article 9(2) is five minutes, the average cost used is €1.47.

WiFi and internet café pricing information were used to determine an average hourly internet access rate of €5.29. This would be sufficient time for passengers to send the emails provided for in Article 9(2)[65] .

Assuming half of all passengers choose to make phone calls and the remainder chooses to send emails, the average communication cost used in the model is €3.38.

Costs associated with mishandled baggage

Data provided by four airlines were used to determine the actual level of compensation that airlines pay for each item of lost, delayed or damaged baggage.

Table 38: Compensation costs associated with mishandled baggage

	Cost of compensation per incident
Lost baggage	€323

[65] One hour is often the shortest time period for which internet access can be purchased, so it would be unrealistic to reduce this time

Delayed baggage	€25
Damaged baggage	€78

Similarly, it is assumed that there is no compensation cost associated with the Montreal Convention in relation to passenger delays, as information from the airline interviews indicates that this is rarely paid.

Other airline costs

When airlines need to deny boarding to some passengers, they often offer incentives to encourage passengers to surrender their reservations voluntarily. It is assumed that the cost of these incentives is half the cost of a passenger who is denied boarding involuntarily, and that they take the form of compensation and care (refreshments, meals, accommodation, communication).

Applying the costs to the disruption types

The results are presented by type of disruption, and the levels of economic burden by a combination of scenarios:

- Total burden vs. burden in the absence of Regulation 261/2004;
- Theoretical maximum (all passengers claim compensation for delays and cancellations) vs. actual (current claim rates) liability; and
- Low, medium and high scenarios for the proportion of incidents which meet the criteria in Article 5(3).

The incremental economic burden caused by the Regulation is the difference between the total economic burden and the burden if Regulation 261/2004 was repealed.

Table 39: This results in the following 12 scenarios:

Scenario	Total burden vs. burden in the absence of Regulation 261/2004	Theoretical vs. actual liability	Proportion of incidents meeting criteria in Article 5(3)
1	Total economic burden	Current	Low
2	Total economic burden	Current	Medium
3	Total economic burden	Current	High
4	Total economic burden	Theoretical maximum	Low
5	Total economic burden	Theoretical maximum	Medium
6	Total economic burden	Theoretical maximum	High
7	No 261/2004 economic burden	Current	Low
8	No 261/2004 economic burden	Current	Medium
9	No 261/2004 economic burden	Current	High

10	No 261/2004 economic burden	Theoretical maximum	Low
11	No 261/2004 economic burden	Theoretical maximum	Medium
12	No 261/2004 economic burden	Theoretical maximum	High

This section considers each element in turn, explaining the calculations and underlying assumptions that determine how the costs have been calculated.

Total burden

Delays

For delays, the following costs have been assumed:

- Compensation costs were applied to delays over 3 hours, on the basis of the length of the flight and in accordance with the levels set out in Article 7.
- In the case of delays of over five hours, there is an additional reimbursement cost in line with Article 6 (1)(c)(iii). However, only 10% of passengers are assumed to claim this – most wait for the delayed flight.
- It is assumed that refreshments (as defined above) are offered after the time thresholds in Article 6 (depending on the length of the flight), and every five hours thereafter; meals are offered after five hours' delay and every five hours thereafter.
- Accommodation costs (and associated travel costs) are incurred for delays of over 12 hours.
- All delays over two hours incur the communication costs in Article 9 (2).

It is assumed that delays do not incur any costs associated with the Montreal Convention, as responses from airlines indicate that this is never paid.

Cancellations

For cancellations, compensation costs have been applied as defined in the Regulation, on the basis of the flight length and the waiting time, using the thresholds in Article 5(1) and Article 7.

It is assumed that, when offered the choice in Article 8 (1), 25% of affected passengers would choose to be reimbursed, while 75% would choose to be rerouted. This stems from the assumptions that:

- Half of all passengers are on the outward leg of their round trip and half are making the return portion of their trip;
- All passengers on the return portion of their round trip need to return to their origin, so they would all choose to be rerouted; and
- 50% of passengers on their outward journey may choose to be reimbursed instead and not make the trip.

Where a passenger accepts a refund instead of rerouting, no care and assistance costs are incurred.

It is assumed that an airline would only offer to reroute a passenger on another carrier after a delay of at least 12 hours, or 24 hours in the case of long haul flights. IATA

member carriers have reciprocal agreements in place to reroute passengers on each others' services and for these carriers we have assumed that rerouting costs are equal to the original fare reimbursement cost. However, low cost carriers tend not to have these agreements (although some examples of such agreements do exist), so their costs would be higher. It is assumed that the cost to a low cost carrier of rerouting a passenger on another airline's flight would be 100% higher than the cost of reimbursement and that 50% of low cost carrier passengers would be rerouted on other airlines.

Right to care and Montreal Convention-related costs are applied as for delays. No assistance costs are incurred for passengers that accept a refund rather than rerouting.

Denied boarding

Costs for compensation for involuntary denied boarding have been applied according to the flight length and waiting time, using the thresholds in Article 7. It is assumed that airline incentives to encourage passengers to surrender their reservations voluntarily cost half as much as the compensation and care costs for involuntary denied boarding set out in the regulation.

Costs for assistance, rerouting and reimbursement have been applied as for cancellations. As for cancellations, no assistance costs are incurred for passengers that accept a refund rather than rerouting.

Downgrading

Reimbursement costs as set out in Article 10 (2) have been applied to downgraded passengers. No other costs have been applied.

Actual (current claim rates) liability

The consultant asked airlines what proportion of passengers who were eligible for compensation actually claimed it, but they were not able to answer this question. Therefore, this was estimated based on data for complaints to airlines, as it would generally be necessary to complain to the airline in order to claim compensation for delays or cancellations.

Based on complaints data provided by five airlines (three traditional scheduled, one low cost and one regional carrier), SDG estimate that 5% of passengers affected by cancellations actually complain to the airline.

However, this is likely to underestimate the proportion of eligible passengers that might claim compensation:

- some complaints may cover more than one passenger;
- passengers would be more likely to complain in cases where the cancellation appears to be the fault of the carrier and therefore they may be entitled to compensation; and
- passengers would be more likely to claim if they knew they were entitled to compensation, and since stakeholders indicated that in many cases the information notices required by Article 14(2) are not given out, the number of claims is probably lower than it would be if airlines fully complied with the legislation.

These factors might be partly offset by the fact that not every complaint would necessarily be a claim for compensation.

On this basis it is estimated that 10% of passengers who could claim compensation for delays and cancellations would actually do so.

No information was available on the proportion of passengers facing delays longer than 5 hours that chose a refund rather than to wait for their flight. Therefore it was also assumed that 10% of the affected passengers chose a refund.

Extent of disruption subject to exemption from payment of compensation

The three levels (low, medium, high) reflect the level of disruption for which the airlines are not exempt from paying compensation as a result of the 'extraordinary circumstances' provision in Article 5(3). Delays and cancellations were estimated using data on the causes of delay provided by Eurocontrol eCODA reports, and it was assumed that all other types of disruption will be within airlines' control. More detail is provided in the relevant section of the main report.

Total economic burden

The total economic burden is calculated for each disruption type and scenario by bringing together the following figures:

- The number of passengers affected by the type of disruption
- Whether or not a particular type of cost is incurred in the given scenario
- The proportion of the cost that is incurred in the given scenario
- The cost per affected passenger for the given delay and scenario

This is calculated by carrier and flight type before aggregating by cost type and scenario.

The costs are presented both in Euros and as a proportion of airline revenue. The revenue is calculated using two sources:

- the average yield (revenue per passenger km) from airlines' financial statements; and
- the number of kilometres operated from OAG data.

ANNEX 9: Cost estimates

The limited availability of data has required the recourse to a number of assumptions in order to make the calculations of which the results are presented in this report. A full overview of these assumptions is given in the annex 8.

The sensitivity tests (annex 14) have shown that the results are especially sensitive to the assumptions with regard to refreshments costs and the proportion of passengers that are entitled to compensation and do effectively claim it ("claim rate"). The latter is particularly important, as it varies also with the degree of compliance of air carriers with the Regulation.

The cost of the Regulation needs, according to the Commission's Impact Assessment Guidelines, to be estimated under the hypothesis of full compliance with EU law. However, we do not know by how much the claim rate would increase in case the passengers were correctly informed about their rights and in case they expected that their founded claims would indeed be honoured.

Therefore calculations are presented under two extreme assumptions: once under the current claim rate, once under a 100% claim rate. The former corresponds to the 10% claim rate estimated on the basis of current data, but for which an increase of 0.5 percentage points per year is assumed to take into consideration the growing awareness of air passengers (due to information campaigns and to the action of agencies that claim compensation on behalf of passengers). The 100% claim rate gives the upper limit of the cost as it shows the maximum cost to which airlines would be exposed in the extreme case that all entitled passengers claimed their compensations.

The table below indicates the incremental economic cost on airlines, once under a 10% claim rate, once under a 100% claim rate.

Table 40: incremental economic cost on airlines of Regulation 261/2004 (in € million, based on 2007-2009 data)

€ million		**10% claim rate for compensation**	**100% claim rate for compensation**
Delay	Care	132.6	132.6
	Reimbursement/rerouting	38.3	38.3
	Compensation (Sturgeon)	111.6	1115.5
Cancellation	Care	479.7	479.7
	Reimbursement/rerouting	26.0	26.0
	Compensation	71.5	715.0
Denied boarding	Care	3.2	3.2
	Compensation	44.0	44.0
Total		906.9	2554.5

Source: Steer Davies Gleave, 2012

The following table shows the cost expressed in € per passenger and ventilated by carrier type.

Table 41: INcremental economic burden per passenger (€), average 2007-9

	Regional		Charter		Low cost		Traditional Scheduled	
Entitled passengers claiming compensation	Current claim rate	***100% claim rate***	Current claim rate	***100% claim rate***	Current claim rate	***100% claim rate***	Current claim rate	***100% claim rate***
Departure delay	**0.10**		**0.72**		**0.27**		**0.22**	
Compensation	0.02	*0.20*	0.26	*2.60*	0.10	*1.00*	0.07	*0.70*
Reimbursement	0.01		0.07		0.01		0.05	
Care	0.07		0.39		0.16		0.10	
Cancellation	**1.30**		**-**		**0.75**		**0.80**	
Compensation	0.14	*1.40*	-	-	0.08	*0.80*	0.11	*1.10*
Reimbursement / rerouting	-		-		0.12		-	
Care	1.16		-		0.56		0.69	
Voluntary denied boarding	0.01		-		0.00		0.03	
Involuntary denied boarding	0.01		-		0.00		0.07	
Total	**1.42**	***2.86***	**0.72**	***3.06***	**1.03**	***2.65***	**1.12**	***2.74***
Average revenue per passenger	59.98		90.86		61.02		197.35	
Incremental burden as % of turnover	**2.4%**	***5.3%***	**0.8%**	***3.4%***	**1.7%**	***4.3%***	**0.6%**	***1.6%***
Total passengers (millions)	18.3		89.2		215.8		401.1	
Total incremental cost (€ millions)	25.9		63.8		223.4		447.8	

Source: Stear Davies Gleave, 2012

Table 42: Estimation of the cost of the ash cloud crisis (April 2010) under the assumption of full compliance with Regulation 261/2004

Assistance type	Passengers entitled (millions)	Cost / passenger (€)	Total cost (€ millions)
Rerouting by surface transport	2.3	118.81	€276.4
Accommodation	7.4	51.60	€380.8
Travel to/from accommodation	7.4	9.77	€72.1
Meals / refreshments	7.4	30.83	€227.5
Total	**-**	**-**	**€956.8**

These figures cover all airlines that were supposed to operate in Europe. On average, 67% of European airspace was closed between 14 April and 22 April 2010. Given a total of 831 million passengers in 2010, this means 1.5 million passengers were affected each day during this period. Eurocontrol's Annual Report 2010 states that 101,127 flights were cancelled as a result of the volcanic ash cloud. The consultant's disruption database indicates that there were 252,160 cancellations in 2010, so the volcanic ash cloud accounted for 40% of all cancellations in 2010.

It was assumed that passengers at their point of origin would have abandoned their journey and gone home, probably seeking to travel after the crisis was over. The airline would therefore not have had an incremental cost of rerouting or care for these passengers (they would transport them after the crisis instead of during it). Passengers at their destination, or at connecting points, would have required rerouting or care, for which the airline would have been liable. It was estimated that passengers at their connecting point would have represented 14% of passengers. Therefore, overall 57% of passengers would have required care and rerouting during the crisis.

During the crisis, surface rerouting would have been much more attractive than under normal circumstances. It was assumed that surface rerouting would have been possible, on average, for distances less than 1,000km. Scheduled seats on flights of less than 1,000km account for 54% of all scheduled seats operated in 2010. Therefore it was assumed that 54% of all passengers would have to have been offered surface rerouting, while the remaining 46% could not be rerouted until the crisis was over. Those offered surface rerouting would have been given care and assistance for one day until they could have been rerouted; those who could not be offered surface rerouting would have to have been provided with care until they could be rerouted by air after the crisis.

For these passengers, the cost incurred depends on the time that they had to wait before being able to continue their journey. The length of the closure varied between different parts of the EU, but on average lasted around five days. It would have taken longer than this to clear the backlog of people, and using a standard assumption of a 75% load factor, the average wait time should have been 10 days ((5 + 15) ÷ 2). However, once the event occurs, fewer people would make bookings and some abandon their journeys altogether; it was assumed that this would reduce waiting times by 20%, giving an average waiting time of eight days.

For journeys under 1,000km, it was estimated from OAG data that the average journey length was 487km. Based on a sample of ten rail and ferry routes, it was estimated that surface rerouting would have cost, on average, €0.24 per kilometre. Using the average

distance for journeys under 1,000km, the average cost per affected passenger is €118.81 (487 km x €0.24 per km). The total cost for rerouting is therefore €276 million (1.5 million affected passengers per day x 5 days of closure x 57% of passengers requiring care or rerouting x 54% of passengers offered surface rerouting x €118.81 per passenger).

It was assumed that passengers who are not rerouted will be provided with the following care:

- Accommodation
- Travel to the accommodation
- Refreshments (three times a day)
- Meals (three times a day)

Accommodation costs vary by carrier type; a weighted average based on the number of passengers by flight and carrier type was taken, which produces an average cost of €51.60 per night. Travel costs are €9.77 (as used elsewhere in the model). It was assumed that refreshments and meals cost half as much outside the airport as they do in the airport, giving a cost of €3.00 for refreshments and €7.27 for meals. The total care cost per affected passenger is therefore €92.20 (€51.60 + €9.77 + €3.00 x 3 + €7.27 x 3).

The total cost for the provision of care is €680 million: (1.5 million affected passengers per day x 46% requiring care x €92.90 + 1.5 million affected passengers per day x 8 days x €92.90) x 57% requiring care or rerouting.

ANNEX 10: Preliminary screening of policy measures (table 43)

Effectiveness: + (positive effect on at least one objective, no conflict with other objectives), 0 (small/no effect), - (negative/conflicting on objectives)

1. Measures with regard to clarification of rights

Measure	Stakeholder opinion	Legal and practical compatibility	Effectiveness	Proportionality and subsidiarity	Complementarity	Retained for policy options
Clearly define extraordinary circumstances + non-exhaustive list	Positive on the principle for clear definition, mixed with regard to the content of the definition and with regard to the addition of a list (consumer organisations find the definition of Wallentin sufficient)	+ The list must remain non-exhaustive and be sufficiently flexible (could be adjusted via implementing/delegated act)	+ Greater legal certainty	+	+	Yes, for all options (but different definition for option 2b)
Clarify right to care and to compensation in case of missed connection	Mixed: consumers in favour, air carriers opposed	+ Already the case under current law	+ Clarification would increase legal certainty	+ No additional cost compared to present situation	+	Yes, all options
Ban "no show" policy	Mixed: air carriers opposed, most governments and consumers in	+ In line with provisions of the unfair contract	+	+ Measure to be limited to return flights, application	+	Yes, for all options

	favour	terms directive		to all segments could hurt competition		
Allow correction of booking errors	Positive: broad support in all stakeholder groups for a measure limited to clear booking errors	+	+	+	+	Yes, for all options
Clarify rights in tarmac delays	Mixed: consumers in favour, air carriers opposed	+ Mainly clarification of existing rights + provision of free drinking water after one hour + application at on-arrival delays	+ Legal certainty	+ Limited cost as rare event	+	Yes, all options
Clarify that diversion of flight to be treated as cancellation/delay	Mixed: consumers in favour, air carriers opposed	+ Seems to be in line with Court ruling in case Rodriguez	+ Legal certainty	+ Limited cost, rare event	+	Yes, all options
Clarify that rescheduling to be treated as delay if within 2 weeks before departure	Mixed: consumers and most governments in favour, air carriers and travel agents/tour operators opposed	+ Seems to be in line with Sturgeon ruling and principle of equal treatment for similar situations Difficult to apply to travel packages	+ Legal certainty, better protection	+	Careful about consistency with package travel directive	Yes, all options

		(exemption might be needed)				
Consistent time thresholds for assistance at delays (2h)	Mixed: Most governments and consumers in favour, mixed responses from other stakeholders, 2h is the most cited period	+	+ Simplification, passenger assistance no longer depending on flight length	+ Cost increase especially for charter carriers	+ Must be packaged with other measures to ensure proportionality (see Sturgeon)	Yes, for options 2 and 4
Consistent time thresholds for right to refund and rerouting at delays and cancellations	Mixed: airlines, airports and travel agents opposed, governments and associations in favour (preference for 3h delay for rerouting)	+	+/- Increases passenger protection for delays, but decreases it for cancellations	- Very short rerouting/refunding option would considerably increase cost;	- Conflicts with other measures aimed at greater proportionality	no
Right of rerouting with other carrier or mode if rerouting cannot be offered on own services the same day	Mixed: consumer associations and governments support such clarification but airlines are opposed	+	+ Legal certainty + shorter waiting times for passengers	+/- High cost for carriers without rerouting agreements or operating on thin routes (exceptions should be foreseen where no seats available at reasonable cost)	+	Yes, for options 1 and 2
Airlines to offer rerouting in cases of	Mixed: airlines opposed, consumers	+ Equal treatment of	+	- Very short	+	Yes, for option 4

long delay	in favour	delayed and cancelled passengers		rerouting/refunding option would considerably increase cost;		
Right to compensation when carrier fails to offer rerouting or other care/assistance	Mixed: air carriers and governments are opposed, consumer associations are in favour	- Practical problems for application: not always clear if passenger chose to be rerouted; problems to contact passengers in mass disruptions	+/- Could create additional incentive for compliance; however, effective enforcement would already create this incentive	+/- Would need to be modulated in function of exceptional circumstances (makes application more complicated)	- Not needed if new measures for enforcement are effective	no
Airlines to provide more information during disruptions	Positive: majority support in all stakeholder groups	+	+	+	+	Yes, for all options
Obligation on travel agents to give passenger contact details to air carrier	Mixed (opposed by travel agents)	+ Subject to passenger's agreement (data protection)	+	+ Some implementing costs	+	Yes, for all options
Better information of passengers on declaration of special interest (and no fee for declaration) concerning mobility equipment	Large support for better information on declaration; howveer, mixed views with regard to the zero fee	+ Measure takes into account legal constraints	+	+ Moderate cost, few passengers concerned	+	Yes, for all options
Extend scope of the	Mixed (airlines	-	-	/	/	no

Regulation to the contracting carrier if the latter is an EU carrier while the operating carrier is a non-EU carrier (for flights from third countries to the EU)	mixed, consumer organisations not opposed but in favour of extension to all flights by non-EU carriers, see next measure)	Risk of problem of extra-territoriality, most events triggering the rights would occur in a non-EU airport Practical difficulty to apply with regard to assistance	Covers only 10 to 20% of the passengers on non-EU flights			
Extend scope of the Regulation to non-EU carriers for flights from third countries to the EU	Mixed (airlines mixed, consumer organisations in favour)	- Risk of problem of extra-territoriality, most events triggering the rights would occur in a non-EU airport	/	/	/	no
Extend scope of Regulation to helicopter services	Negative: low response rate, a majority of responses favoured no change to present rules	+	+	- Large cost impact on small scale operations done with helicopters	Conflicts with measure that would exempt small scale operations	No
Airlines to designate responsible staff member in all served airports	Mixed: most airlines, travel agents and tour operators opposed, governments and consumers in favour	+	- Questionable effectiveness as this is an obligation of means that does not guarantee that airlines will indeed correctly grant passengers' rights	- High cost especially at low frequency destinations – furthermore the measure does not take into account future development and market penetration of	+	Option 3

				communication technology		

2. Measures with regard to enforcement policy

Measure	Stakeholder opinion	Legal and practical compatibility	Effectiveness	Proportionality and subsidiarity	Complementarity	Retained for policy options
Stronger coordination of NEBs via formal comity (implementing act) and right for COM to require investigation of NEB	/	+	+ Increases legal certainty and consistency of NEB policies	+ Limited cost	+	Yes, for options 2 and 3
Set up EU enforcement body instead of NEBs (COM can then impose sanctions on carriers)	Mixed (support from some consumer groups)	+	+ Would ensure consistent enforcement	- Would increase total cost of enforcement by ca. 15% and shift cost to EU budget	+	Yes, for option 4
NEBs to carry out proactive policy by checking manuals and ground handling agreements	Mixed: airlines and travel agents/tour operators opposed, consumers in favour, mixed responses from governments	+	+ Proactive policy may reduce other enforcement actions, enhances consistency of NEB	+ Limited costs for NEBs	+	Yes, all options

			policies			
Airlines to provide manuals and contingency plans	Mixed: airlines and travel agents/tour operators opposed, consumers in favour	+	+ Proactive policy may reduce other enforcement actions, enhances consistency of NEB policies	+ Limited costs for airlines	+ To be linked to airport contingency plans	Yes, all options
NEBs to inform COM on their complaint handling, on sanctions	/	+	+ Improves COM monitoring of NEBs and consistency of NEB policies	+ Limited cost	+ To be linked with other measures that enhance coordination of NEBs	Yes, all options
NEBs to check on compliance with Montreal on baggage issues	Mixed: airlines and travel agents/tour operators opposed, consumers in favour, mixed responses from governments	+	+	+/- Potentially substantial additional cost for NEBs: - with complaint handling: NEB costs increase by 70% - without complaint handling, focussed on terms and conditions and airlines' manuals: less than 1% cost increase	+	Yes, all options

Compliance to become licence condition	Mixed: airlines and travel agents/tour operators opposed, consumers in favour, mixed responses from governments	+/- Necessitates change of Regulation 1008/2008 which is not under revision	- Ineffective measures as the treat of such drastic sanctions is not credible	+	+	no
NEB to publish information on sanctions and complaint handling	Mixed	+	+	+ Limited cost	+	Yes, for all options
Impose on carriers to designate person or body in each Member State on which sanctions can be notified	/	+	- Problems to sanction carriers of other Member States have been solved by most MS concerned	- Unreasonable cost seen the limited result of the measure	+	no
Require airlines to provide contact details to NEBs and COM	/	+	+ Facilitates contacts between NEBs and air carriers	+ Very limited cost	+	Yes, all options

3. Measures with regard to complaint handling

Measure	Stakeholder opinion	Legal and practical compatibility	Effectiveness	Proportionality and subsidiarity	Complementarity	Retained for policy options
Air carriers to provide information on complaint handling procedures	Positive: broad support across stakeholder groups	+	+ More effective complaint handling	+ Limited cost	+	Yes, all options
Impose time limits on carriers' response to complaints	Mixed: support by consumers and governments; mixed replies from air carriers and travel agents/tour operators	+ Needs to take into account special circumstances in which such deadlines would be too short (e.g. mass disruptions)	+ More effective complaint handling	+ Limited cost – some airlines already adopted deadlines in voluntary agreements	+	Yes, all options
Impose time limits on NEB's response to complaints	Mixed: consumers in favour, mixed responses from air carriers and governments	+ Needs to take into account special circumstances in which such deadlines would be too short (e.g. mass disruptions)	+ More effective complaint handling	+ Indicative times already in voluntary agreement between NEBs	+	Yes, all options
Clarify exchange of info between ADR	/	+	+	+	+	Yes, all

and NEB taking into account the existing ADR proposal (make ADR first receipient of complaints, with technical suppoprt from NEB)		Basis already given in ADR proposal	Better informed decisions at both, ADR and NEB			options
Make ADR participation mandatory for carriers	/	- Conflicts with legal systems in some MS	+/- Does not ensure compliance with results	- Subsidiarity – various legal systems – was already considered in IA on ADR proposal	/	no
Extend deadline to complain about baggage issues	/	- Incompatible with Montreal Convention	+	+	+	no
Compel air carriers to accept PIR for baggage complaints	/	+	+ Enhances also legal certainty	+ Already the case for many airlines	+	Yes, all options
Possibility for passenger to complain to marketing carrier as well	Mixed: support by consumers, air carriers and travel agents/tour operators are opposed	- Practical problems – marketing carrier has no control over events	+ May be interesting for passenger when the operating carrier is non-EU while the marketing carrier is EU	- Marketing carrier may have to assume costs unrelated to his own operations	+	no

Introduce liability of travel agents	/	- Practical problem: passenger would have to prove that the travel agent did not pass on information	- More effective for passenger if only the carrier is the contact for complaints and claims	/	/	no
Allow passenger to have complaint handled by NEB of his choice	Mixed: consumers in favour, air carriers and travel agents/tour operators opposed	+/- the NEB of the country where the incident took place has usually better information about the event – feasible via better exchange of info between NEB	+ Easier for passenger, also with regard to the language used	/ Limited cost	- If better coordination between NEB, then cases should be handled by NEB with most information over the event – help of other NEB may be useful for language and contact with passenger	no

4. Measures with regard to unlimited obligations in time and scale

Measure	Stakeholder opinion	Legal and practical compatibility	Effectiveness	Proportionality and subsidiarity	Complementarity	Retained for policy options
Exemption for accomodation for small-scale operations	Mixed: weak response rate, governments and consumers rather opposed, small airlines in favour	+	+/- Positive impact on small regional operations – but passenger protection decreases; clearly restrict to most expensive very small-scale operations to limit impact on consumers (small aircraft, short distances): 75seat/250km seems to farely well capture type of operations concerned	+ Smaller cost for small businesses (note that there are very few SMEs in the sector)	+	Yes, for option 2
Replace right to refreshments, means and accomodation with obligation to offer optional insurance	Mixed: airlines in favour, consumers opposed	+	-/+ Cost reduction but passengers not always protected	+		Yes, option 1

Limit care in extraordinary events of long duration	Mixed: airlines and most governments and travel agents/tour operators in favour, consumers and some travel agents are opposed to any limit	+	+/- Clear limit to airlines' liability, but passenger less protected in mass disruptions	+	Consistency with travel package directive to be ensured	Yes, for option 2
Industry fund to cover extraoridnary events of long duration	/	+ EU fund (instead of national fund) would be most effective to cope with mass disruptions that affect several MS	+ Passengers protected while higher cost predictability for airlines	- High cost of the fund, including administrative costs to manage fund	+ Would cover period after a certain deadline	Yes, for options 3 and 4

5. Measures with regard to financial compensation

Measure	Stakeholder opinion	Legal and practical compatibility	Effectiveness	Proportionality and subsidiarity	Complementarity	Retained for policy options
Increase Sturgeon delay to at least 5 hrs	Mixed: support from air carriers and travel agents, consumers opposed (favour 3h), mixed response from other stakeholders	+ Necessitates changes for cancellations as well to respect principle of equal	+/- + Consistency with right to reimbursement/rerouting + Diminishes risk	+ Positive impact on operating costs *NB the retained option is one where the minimum delay*	+	Yes, for options 1 and 2a

		treatment	of cancellations - Compensation less likely for passenger	*for compensation would be 5hours - an alternative option that was assessed would be multiple thresholds of 5 hours (fligths up to 1500km), 9h (1500-3500km-) or 12h (beyond 3500km) which takes into account specific operational problems of long-haul operations*		
Extend scope of extraordinary circumstances	Mixed: airlines in favour, consumers opposed	+	+/- Meets objective of greater proportionality but reduces passengers' protection	+	+	Yes, for option 2b
Express compensation as % of ticket value (with max 600 and min 50)	Mixed: opposed by consumers (who are in favour of alternative D1), mixed responses from other stakeholders	- Practical problems, especially for determination of compensation for package travel	+ Meets objective of more proportionate burden – but passenger will receive smaller compensations	+	+	no
More progressive lump-sum compensation with focus on shorter	/	+ But greater regulatory complexity (four	+ Meets objective of more proportionate burden (targets	+	+	Yes, options 1 and 2

distances		instead of three distance classes)	better the regional carriers) – but passenger will receive smaller compensations			
Link compensation to the delay at arrival	Only weak support across stakeholder groups	- Possible incompatibility with Montreal convention	+ Could create incentive for quicker rerouting of coupled with realistic time threshold	/	/	no

6. Measures with regard to burden sharing

Measure	Stakeholder opinion	Legal and practical compatibility	Effectiveness	Proportionality and subsidiarity	Complementarity	Retained for policy options
Airports to provide information on passengers' rights	Mixed: airports opposed, other stakeholder groups in favour	+	+ Less conflict of interest in providing information; economies of scale;	- Limited financial impact for airports	+	Yes, all options
Airports to set up contingency plan in cooperation with airlines and other airport users	Mixed: airports are opposed, but the all other stakeholder groups are in favour	+	+ Passengers better care about in cases of mass disruption	+ Limited cost increase – link with proposed ground handling regulation	+ To be built on similar measure in proposal for new ground handling regulation and to be linked with the	Yes, all options

					above-mentioned measure with regard to airlines' contingency plans	
Explicit right to claim from responsible party	Mixed: airports opposed, other stakeholder groups mostly in favour but a lot of practical problems are raised (mainly impact on airport charges)	+	-/+ Burden on airlines not expected to decline over longer term as costs are charged back to them – potentially higher legal costs – but more transparency in the system, party responsible for disruption better identified and incentivised	-/+ Increase in legal costs	+	Yes, all options

7. Other (non-retained) measures , mainly because outside the scope of the impact assessment

Measure	Stakeholder opinion	Legal and practical compatibility	Effectiveness	Proportionality and subsidiarity	Complementarity	Retained for policy options
Publish airline-specific statistics on delays, cancellations, denied boarding, mishandled baggage	Mixed	+	- No impact expected on compliance with air passenger rights; although passenger may make an informed choice of carrier, the impact would be very limited as this choice remains restricted (only one carrier on many routes, or limited choice of carriers depending on preferred travel time)	+ Limited cost to industry and authorities as most data are already being collected by Eurocontrol	+	no
Provision of a key facts document	Mixed: broad support from consumers and governments, air carriers and travel agents/tour operators are	+	- Issue not related to scope of travel disruptions	+	+	no

	opposed					
Define minimum baggage allowances	Mixed; air carriers and most travel agents/tour operators opposed, support from airports and travel retailers, mixed responses from other stakeholder groups	- Practical difficulties	0 Issue not related to travel disruptions	unclear	+	no
Define minimum standard airline product	Mixed; air carriers and most travel agents/tour operators opposed, support from airports and travel retailers, mixed responses from other stakeholder groups; also different views as to content of service	- Practical difficulties	0 Issue not related to travel disruptions	unclear	+	no
Airlines to give financial assistance when baggage delayed	Mixed: air carriers and travel agents/tour operators opposed, consumers in favour, other stakeholders mixed	- Risk of incompatibility with Montreal Convention	+	- Very costly, even if limited to overnight delays, would increase total cost of Regulation 261 by 10%	+	no

Prove content of baggage	Mixed responses, but most stakeholders pointed towards practical problems	+	0 Practical problems (e.g. X-rays, weight)	- Some measures too costly (e.g.X-rays)	+	No
Airlines required to transport delayed baggage to final destination	Mixed: air carriers opposed, other stakeholders mostly in favour or neutral	- Potential conflict with Montreal Convention	0 Limited impact, already done by most airlines (they are liable for cost anyhow)	+	+	no
Airlines required to refund baggage fees when baggage lost	Mixed: air carriers opposed, other stakeholders mostly in favour or neutral	- Potential conflict with Montreal Convention	+/0 No impact for air carriers that do not charge luggage separately	+	+	no
NEBs to check on compliance with consumer law	/ Requested by consumer organisations	+/- Measures for compliance already inserted in relevant consumer law, could be addressed by interpretative guidance	- Outside of scope of Regulation 261/2004, does not relate to travel disruptions nor to the policy objectives of this assessment	- Additional cost for NEBs (€0.9 million NPV without complaint handling and €278 million NPV with complaint handling)	+	no

ANNEX 11: Preliminary screening of policy measures – detailed analysis of some measures

1. Rejected measures enjoying stakeholder support

Express compensation as % of ticket value

The measure would allow adjusting compensation levels in relation to the revenues of the air carriers, thereby contributing to policy objective 2.2.

Many airlines and their representative associations supported such a measure although some legacy carriers do not support this, partly because there could be an increase in compensation payable to holders of premium class and flexible economy tickets. Consumer representatives and some NEBs argued that relating compensation to ticket price was not appropriate as the amount of inconvenience passengers suffer is not related to the amount they paid for the ticket.

However, the measure could not be retained due to practical and potential legal obstacles to its implementation:

- Practical obstacles: the calculation of the flight price - to which the compensation relates - could become complex in the context of multiple-leg tickets where part of the legs are affected by a delay or cancellation. More importantly, this measure would create difficulties with respect to flights sold as part of a package: in these cases it is not clear what the ticket price is, because there is a single price covering flights, accommodation and possibly other services. This could lead to disputes between consumers and tour operators/airlines.
- Legal issues: the consistency of such a measure with the Montreal Convention cannot be taken for granted. If the Court reconciles the Sturgeon judgement and the Convention in relation to compensation for delay, for example considering the compensation to be 'standardised assistance' in line with the recent opinion of the Advocate General[66], it would not be inconceivable that the Court would also consider compensation related to ticket price as being standardised, and therefore not inconsistent with the Convention. This view is supported by paragraph 46 of the IATA judgment which states that the measures in Article 6, including reimbursement of the ticket price (the amount of which can vary from passenger to passenger), are standardised assistance. However, it should also be noted that in paragraph 55 the Advocate General referred to the fact that compensation was 'flat-rate' contributed to the conclusion that this compensation was 'standardised assistance', and therefore it cannot be excluded that the Court could find compensation based on the ticket price to be inconsistent with the Convention even if flat-rate compensation was not.

To avoid the cited practical problems or to avoid possible legal uncertainty with regard to this measure, it has not been retained for inclusion in the assessed policy options.

Link compensation to delay at arrival

[66] Joined Cases C-581/10 and C-629/10

As an alternative to either fixed-rate compensation or compensation based on the value of the ticket, compensation could be based on the length of the delay. For cancellations or denied boarding this would, in line with Article 5(1)(c) and Article 7(2), be based on the amount of delay in arrival at the destination, based on when the passenger is first offered rerouting.

However, there are practical and legal issues with this measure:

- Practical problems: it may be very difficult to determine when a passenger was offered rerouting, and this may also depend in part on actions taken by the passenger. Many airlines will email or send SMS messages to passengers whose flights are cancelled and invite them to go to the website to rebook, rather than come to the airport. The passenger may not do so immediately and therefore may lose the opportunity to be rerouted at the first opportunity. Furthermore, the actual time of rerouting is not a helpful alternative to the time when the passenger was first offered rerouting, because passengers do not always prefer to be rerouted on the first flight. For example, if a passenger is required to stay overnight as a result of a cancellation, and the first available flight departs at 6am, the passenger might prefer to wait for a flight later in the day.
- Legal issues: there is a risk of inconsistency with the Montreal Convention, as this specifies airlines' liability for damage caused by delay. Even if the court were to consider fixed-rate compensation to be in line with the Montreal Convention as 'standardised assistance' or something similar, there could be an argument that per-hour compensation conflicts, as it is less standardised and a closer proxy to the actual damage that the passenger has suffered.

To avoid the cited practical problems or to avoid possible legal uncertainty with regard to this measure, it has not been retained for inclusion in the assessed policy options.

<u>Extend the scope of the Regulation to non-EU carriers</u>

Extend the scope of the Regulation to all flights to the EU operated by non-EU carriers

At present the Regulation applies to flights operated by EU carriers to the EU, except where passengers are offered compensation or assistance in the third country. There are two reasons why an extension was considered to flights into the EU operated by non-EU carriers:

- better protection of the concerned passengers

- further limit possible impact on passenger rights on competition between EU and non-EU air carriers

However, the option was discarded because of legal risks associated with this measure: the application of the Regulation to flights to the EU could be argued to be extra-territorial. In the public consultation some airlines argued that the CJEU's decision about the Emissions Trading Scheme (ETS) in the case *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change* (C336/10) provided a precedent that this would not be extra-territorial; however, in that judgment, the Court held that it is the act of arriving at or departing from airports located within the EU, which is conduct occurring within EU territory, that triggers the ETS scheme and it is irrelevant that part of the flight itself is carried out outside the EU. An event of denied boarding, cancellation and most delays in relation to flights to the EU by non-EU

air carriers would occur whilst the passengers and aircraft were in a third country and therefore there is a real risk that the argument that the triggering event occurred within the EU would not be accepted by the Court. An alternative was then considered:

Extend the scope of the Regulation to non-EU carriers where the marketing carrier is an EU carrier

This measure meets a number of practical obstacles with regard to care and assistance because the marketing carrier is not in a position to provide any as he is most likely not present in case of travel disruptions. It might be easier to implement with regard to financial compensation, but the measure would not help to balance the level-playing field, rather to the contrary as EU carriers would be liable for disruptions with flights operated by non-EU carriers.

Also for passengers, this measure is of limited use. The consultant estimated that 10 to 20% of passengers on non-EU airline flights to the EU would benefit from this change.

Given these limitations, the measure was not included in the assessed policy options.

2. Further explanations on some of the retained measures

Clarify that rescheduling to be treated as delay in certain circumstances

The Regulation is not clear at present what rights and obligations apply with respect to schedule changes, which would generally be notified in advance to passengers. Some NEBs considered that some advance schedule changes were in effect cancellations or long delays which were disguised as something else in order to avoid paying compensation. NEBs also considered that the lack of clear regulation of this issue was a barrier to effective enforcement and to passengers obtaining appropriate redress.

It may also be considered that airlines are already obliged to offer passengers alternatives or a refund in the case of significant schedule changes, as a refusal to do so would conflict with Directive 93/13/EEC on unfair contract terms. The UK Office of Fair Trading (OFT) took action on this basis in 2000 and 2003, requiring airlines to offer a refund in the event of significant schedule changes[67]. However, as with other rights based on this Directive, this is a matter of interpretation.

The present measure consists in clarifying passengers' rights in these circumstances. It basically consists in specifying that there is a right to refund when the schedule is changed by more than 5 hours (similar to delay); and a right to financial compensation where the schedule change is of more than 3 (options 2b and 3) or 5 hours (options 1 and 2a).

It is not possible to quantify the impact on passengers or the economic cost arising from this, as the existing legal provisions are not clear (so it is not clear what the baseline position would be), and also because no data on the proportion of flights with significant advance schedule changes is available.

NEBs to publish airline-specific information with regard to sanctions

Under this option, the NEBs (and the Commission) would render public the sanctions against airlines for non-compliance with Regulation 261/2004. This option also allows the passenger to make an informed choice of airline when booking a flight. Information on sanctions gives a view on the compliance of airlines with regulation 261/2004. The

[67] OFT (2000): Unfair contract terms case report bulletin 12

publication of sanctions would act as a deterrent for airlines to neglect passengers' rights.

Although also required by consumer associations, the publication of statistics on complaints would be less useful as such data would not necessarily properly reflect the level of compliance of airlines: airlines said that they would appear to have far more complaints if they operated in States where it was easier to complain to the NEB, or where commercial claims organisations were active and forwarded complaints to the NEB. Data on complaints also seem to indicate that the residents of some Member States are more inclined to complain than others, which would reflect badly on the airlines active in those States, even if this was not objectively founded. In this sense, the publication of sanctions appears to be less sensitive to such different "complaint traditions" as they result from the enforcement action of the NEBs and are not necessarily related to the number of complaints.

Care/assistance and compensation in case of missed connecting flights (incl. consideration of delay at departure vs delay at arrival)

Current situation

Whenever the flight or the connecting flight that was meant to take place from the airport of departure or of connection incurs a long delay or is cancelled, then the Regulation applies: in particular the right to assistance, to care (while waiting for the delayed flight or the rerouting) and to compensation (where certain time limits for rerouting are not respected and where extraordinary circumstances do not apply).

However, under the present Regulation 261/2004, where a passenger misses an onward connecting flight, the text of the Regulation does not explicitly state his rights but they have been interpreted by the CJEU and explained by the Commission:

- Cancellation of the incoming flight: if a passenger misses a connecting flight because the incoming flight was cancelled, he clearly has a right to assistance and care while waiting for the rerouting to the final destination and – except in extraordinary circumstances – he may claim compensation.
- Delay of the incoming flight: based on the wording of the Regulation, and the interpretation made by the CJEU and the Commission in COM of April 2011. If the passenger suffers a delay at the connecting airport that is longer than the time threshold for care and assistance (2, 3 or 4 hours depending on flight distance), then the passenger has a right to care and assistance at the connecting airport. He may also claim compensation if the delay at the final destination exceeds 3 hours (except exceptional circumstances).

In the Commission's view, the protection of Article 6 (rights at the departure) is not related to the right to compensation (rights at final destination). Therefore, in the calculations of the baseline scenario, the right to compensation in case of a short delay leading to a delay over 3 hours at the final destination due to a missed connection has been included.

In other words, the Regulation in its current wording seems to implement protection measures only for the inconvenience suffered by passengers resulting from an incident that affects the flight that they were going to take. The interpretations made by the Court and the Commission in order to take account of primary law (in particular the principle of equal treatment), have clarified that these rights also apply to the inconvenience

suffered by passengers resulting from an incident that affected a previous flight, for such inconvenience is similar to all stranded passengers whether the delay or the cancellation concern the first, the previous, or the following flight. The right to compensation for delay, by taking into account the arrival at the final destination, covers all passengers similarly (whether travelling on a direct flight or with successive flights).

Clarification

Notwithstanding the interpretation of the ECJ, it is obvious that the present text of the Regulation could be clarified and simplified to allow a more effective application.

Such simplification needs to take into account the link between passenger rights for connecting flights and the definitions for "delay" and for "flight". Clarifying and redefining these definitions could significantly help to simplify the regulation and clarify the existing situation in relation to connecting flights.

Definition of delay

The Sturgeon judgement refers to a right to compensation based on delay at the time of *arrival* at the final destination. This could be different from the delay on *departure*, for a number of reasons:

- particularly for long haul flights, the duration of the journey can be impacted by factors such as wind direction which are outside the control of the carrier, and therefore a flight could be delayed by more than 3 hours on arrival even if the delay on departure was 1-2 hours; and
- a small delay, for whatever reason, may nonetheless lead to a missed connection and therefore a significant delay on arrival at the passenger's final destination.

There are arguments in favour of using the time at *departure* instead of the time at *arrival*, mainly because it simplifies many issues. Calculation of delay based on the time of arrival raises practical difficulties:

- it raises difficult issues of territorial application and of allocation of responsibility between airlines in cases of connecting flights. For example, if a passenger takes a flight on an EU airline from London to Chicago and misses a connection onto a US airline, either due to a small delay to the first flight or even due to delays at the airport on arrival, it is not clear which airline is responsible or whether the event is within the scope of the Regulation at all.
- a requirement based on time of arrival would be harder to enforce: in cases of dispute, it may be difficult for the NEB to check the actual time a passenger arrived at their destination, particularly where the passenger has had to be rerouted on a connecting flight, as this will usually be in another Member State or a third country.

However, the Sturgeon judgement has clearly made the link between the right to compensation for long delays and the right to compensation for cancellations. Indeed, it refers to article 5.c(iii) where compensation for a cancellation is not due if the passenger is rerouted, allowing him to depart no more than one hour before the scheduled time of departure and to reach the final destination less than two hours after the scheduled time of arrival, thus resulting in a loss of time of no more than 3 hours in total. It would be inconsistent with the principle of equal treatment underlying the Sturgeon judgement, if

the delay at departure would be taken as a reference for long delays and delay at arrival for cancellations. But using the reference to delay at departure could entice the airline to quickly reroute the passenger with an (alternative) indirect flight, even if this indirect flight causes the passenger additional delays (e.g. long detour).

Determining the entitlement to compensation from the time of *arrival at the final destination* – in both instances, i.e. long delay or cancellation - would (particularly for connecting flights) benefit passengers by providing airlines with an **incentive** to reroute them to reach their destination sooner. And a reference to the time of *arrival* at the final destination, after all connecting flights, would better relate to the inconvenience (in terms of loss of time) that the passenger actually suffers.

Definition of flight

The rights arising on connecting points are also linked to the definition given to the concept of "flight".

A "flight" is not clearly defined in the Regulation, raising on occasions the question whether a journey with connecting segments is to be considered as a single flight from the origin to the final destination or as a combination of several flights (see ECJ case C-173/07 Emirates).

It appears to be consistent with the existing rights in the regulation to define a flight as an "air transport operation between two airports". Indeed, such definition would be consistent with references to "flight" in other parts of the regulation, such as in article 2h (definition of the "final destination" which refers to the "destination of the last flight") or the articles 4, 5 and 6 triggering rights for assistance in case of denied boarding, long delays or cancellations (in order for the passenger to enjoy a right to assistance in case of a long delay of the connecting flight at a connecting airport, every segment of his journey should be considered as a flight).

Moreover, such definition would be consistent with definitions of "flight" in other EU aviation law (e.g. the air services Regulation 1008/2008, see article 2.5).

Connecting flights – conclusion

In summary, to clarify the rights arising in case of missed connecting flights, the following clarifications/modifications to the regulation are included in the retained policy options. They do not fundamentally change the rights of passengers, but they re-establish legal certainty by clarifying and simplifying the text:

- a flight is defined as an "air transport operation between two airports; intermediate stops for technical or operational purposes only shall not be taken into consideration";
- a connecting flight is defined as "a flight which, according to the contract of carriage, is intended to enable the passenger to arrive at the destination of the flight in time to be able to depart on another flight, or, where appropriate in the context, that other flight."
- the right to assistance is determined on the basis of the delay over the scheduled time of the onward connecting flight
- the right to compensation is determined on the basis of the delay *at arrival at the final destination*

- the rights arising because of a missed connecting flight are explicitly specified in the regulation:
    - the carrier operating the onward connecting flight will offer assistance and rerouting (in so far that carrier is an EU carrier and/or the departing airport of the onward flight is situated in the EU)
    - the passenger can claim compensation from the carrier which failed to operate the flight to the connecting airport in a timely manner, if the rerouting causes a delay at arrival at the final destination of at least x hours (in so far that the operating carrier of the flight to the connecting airport is an EU carrier and/or the departing airport of this flight is situated in the EU)

Obligation on travel agents to provide passenger contact details to the air carrier

This measure is to be seen in conjunction with the measure to improve the provision of information on the flight disruption to passengers. Several stakeholder groups indicated that during disruptions, early information of the passenger on the cancellation or long delay of his flight is essential to prevent that the passengers travels to the airport in the first place. For doing so, the airline would need the passengers' contact details, which is often not the case when the flight was booked via a travel agent, and some travel agents cannot be reached outside the office hours.

A measure was considered that consisted in a requirement for travel agents to have to provide passenger contact details to airlines, so that:

- the airline can notify the passenger in advance if the flight is cancelled or rescheduled; and
- potentially, the airline can use electronic means to provide information or assistance in the event of disruption.

This measure is strongly opposed by travel agents, primarily because they are concerned that airlines would use the passenger contact details for commercial purposes, and therefore undermine their market position. However, it appears that IATA travel agents are already required to provide this information; IATA Resolution 830d on Reservations Procedures for Automated Accredited Agents requires the travel agent to provide passengers' contact details to airlines. However, many travel agents seem to enter their own contact details rather than those of the passenger.

If the Regulation was revised to require travel agents to pass this information to airlines, this concern could be partly addressed if the Regulation also prohibited the airlines from using the information for other commercial purposes. It should only be used for contacting the passenger in the event of disruption. However, some travel agent representatives were not confident that airlines would comply with such a restriction, and considered that it would be difficult to enforce, partly due to the difficulty of monitoring use of information within the systems concerned.

Travel agent representatives have suggested that as an alternative the travel agent could be responsible for contacting the passenger to inform them about disruption. Many already do this in any case, in the event of advance schedule changes or planned cancellations. However, it is not clear this would be sufficient to allow passengers to be contacted in the event of last-minute disruption, or to allow use of SMS or in the future

smartphones for airlines to provide information and vouchers for assistance to passengers in the event of disruption.

It should be noted that any such a measure would have to comply with Directive 95/46/EC on data protection. As contact details would be considered personal data, the travel agent would need to seek the passenger's consent to pass the details to the airline. This consent would have to be specific: it would not be sufficient for travel agents' Terms and Conditions to state that the data would be passed on, although a 'tick box' on the booking page of the website should be sufficient.

If the data was to be transferred to carriers based in non-EEA States, this would raise issues with respect to those based in States that do not have equivalent levels of data protection. In these cases the passenger would have to provide enhanced consent. This would mean that the travel agent would have to inform the passenger of the specific State that the data was to be transferred to, and obtain specific agreement to transfer the data to that State. This issue could be avoided by restricting the requirement on data transfer to EEA airlines. This might still enable most of the benefits to be generated, as airlines operating non-EU services would usually have more extensive staffing at each airport to inform and assist passengers in cases of disruption.

Cost

This measure would require a one-off change to be made to the GDS, to give the airline access to personal data subject a consent field, which would need to be added. On the basis of information provided by one of the GDS, this cost would be €1-4 million for each of the 3 main GDS. Although this is clearly a significant amount, it would be a one-off, and therefore the annual cost over the impact assessment period would be relatively low.

This option would also require a one-off change to be made to travel agent websites to introduce a 'tick box' consent to transfer of data. The costs of this should be relatively low as the consent is quite simple – a total one-off cost for all GDS and travel agents of approximately €31 million NPV has been estimated.

<u>Airlines to designate responsible staff member in all airports</u>

Consumer representatives showed strong support for an obligation for airlines to provide a contact person at the airport to assist in the event of disruption. Some highlighted that it can be difficult or impossible to contact anyone in the event of disruption who can arrange the care and assistance required; even if ticket desk or check-in staff are present, they are often third party contractors and may not have the authority to arrange any assistance. The option was also supported by most airport representatives, and NEBs.

It should be noted that the existing Regulation already requires carriers to provide information in the event of disruption. Article 14(2) requires airlines to provide passengers with a notice specifying their rights, and Article 5(2) requires airlines to inform passengers whose flights are cancelled about alternative transport options. Articles 5, 6, 8 and 9 are all clear that passengers must be offered care and assistance. It is difficult to see how these requirements could be met without adequate staffing at the airport, although this might be third party ground handlers rather than their own staff. In this sense, the suggested measure rather refers to the means employed than to the objective to be attained.

Cost estimation were made under the assumption that one member of staff would be required for all airlines at all airports within the EU at which they operate (on average) at least one daily departure, and that this obligation would be extended for EU carriers to EU-bound departures from non-EU airports. In this context, although in general airlines will use their existing ground staff or contractors (such as check-in agents), some issues would have to be taken into consideration:

- Given the financial significance of the decisions they would be making, the staff would probably need to be better qualified and hence higher paid than standard passenger service staff.
- If they were to make decisions about assistance, rerouting etc. without necessarily checking with central control, they would need reasonably detailed training in the approach to follow – 2 days per staff member per year were assumed.

The external consultant has estimated that this measure would require an incremental economic cost of €416 million NPV.

Hence, although the measure would be beneficial in addressing the policy objectives to maintain and improve passenger protection – primarily by providing a means for passengers to obtain the rights to which they are already entitled – it would be at the expense of a potentially relatively significant increase in the economic cost for airlines.

The measure was nevertheless retained for option 3 as that option is inspired by the EP report that included this measure.

<u>Ban "no show" policy</u>

Sequential use of coupons

Most network carrier Conditions of Carriage state that, if a passenger does not show up for a particular flight, return or onward reservations may be cancelled. Airlines argued that rules requiring the full and sequential use of coupons were necessary in order to reflect different levels of competition and protect their yield management systems. For example, a carrier may offer a lower fare for indirect transport from A via B to C than it does on the direct flight from B to C, because it has to offer lower fares for the indirect route in order to compete with other airlines serving the route directly; in contrast, it may face limited competition for direct flights from B to C and therefore be able to charge a higher price. The airline would not be able to do this if a passenger could buy a cheaper ticket from A to C, but then take the flight only from B to C only.

If such "no show" policies for the sequential use of coupons were banned, airlines would not able to offer lower prices in competitive indirect markets. This could lead to a reduction of competition on the affected routes and would be to the detriment of consumers, especially the less time-sensitive travellers that would have opted for a longer but less expensive indirect flight.

Use of the return ticket when the outward ticket was not used

The main argument presented by the airlines for why the rule may be in the public interest (by enabling indirect tickets which use up spare capacity to be sold at competitive prices) does not apply in this case. A rule such as this should not be necessary in most cases to protect airlines' revenue management systems: although some airlines still require passengers to buy return tickets to obtain lower fares, this

practice is becoming rarer, and in any case passengers can already circumvent it by buying a return ticket and not using the return segment.

Airlines said that some non-EU States only allow passengers to be carried to/from the State on return flights; this often applies to charter flights but can apply to other flights as well. In this case an airline might not be permitted to carry a passenger on a return segment if the passenger had not taken the outward segment, and so this measure was pursued, there would have to be an exemption for cases such as this.

This measure should have limited impact on the objective of avoiding an unreasonable economic burden - although it would have a negative impact on airline revenue management in some circumstances. There would need to be an exemption for transport to/from non-EU States where a rule to this effect is necessary to comply with local law; and to avoid undermining airlines' ability to offer lower fares on competitive indirect routes, any such provision should be clearly limited to a simple return flight where the origin and return points are the same.

NEBs to cover baggage issues of the Montreal Convention

At present, Regulation 2027/97 and the Montreal Convention define air carrier obligations with respect to baggage, but there is no requirement to have sanctions in national law or to ensure that the legislation is respected. Some States have undertaken enforcement: for example, in Spain, AESA has imposed sanctions for provision of inaccurate information on liability; and in the UK, the OFT has required various carriers to change their Conditions of Carriage. However, in most cases there is no enforcement.

Some NEBs including those for the UK and Spain do handle complaints about baggage issues. Their scope is however limited to informing passengers of their rights. Passengers must take civil court action themselves to obtain redress.

There is limited evidence available on compliance with these requirements. This was not generally raised as a significant issue by consumer representatives interviewed for this study, but the SDG 2008 study of airline Conditions of Carriage found that around 40% of carriers' Conditions of Carriage were significantly inconsistent with the Convention.

It could therefore be useful to extend the scope of action of the NEBs to the enforcement and/or the complaint handling of baggage issues.

In its 2012 study, SDG estimated the cost of complaint handling by taking as reference the number of complaints received by the UK authorities and the NEBs' current costs. It found that complaint handling for luggage issues would significantly increase the cost of the NEBs. Complaint handling of baggage related issues is so complex – compensation is not standardised but is evaluated on individual damage or loss - that national enforcement bodies would need to raise their resources by more than 50% to cope with such complaints. Additional costs for NEBs are estimated at €246.0 million NPV.

Costs would be much lower if NEBs limited their activity to review of carriers' general policies and procedures on baggage and Conditions of Carriage, undertaking spot checks and inspections where appropriate. If each NEB would be required to check the policies of 12 airlines, and if each inspection would take half a day, the cost to NEBs will be €50,149, or €0.5 million NPV.

Given the financial constraints on NEBs, only the measure with enforcement but without complaint handling was taken up in the policy options.

Compel air carriers to accept the Property Irregularity Report (PIR) for baggage complaints

Article 31 of the Montreal Convention defines quite short limits for complaints about delay or damage to baggage: there is a 7 day time limit from receipt for claims regarding damage to baggage, and a 21 day limit for delay. There is no limit for claims about loss of baggage, other than the general 2 year limitation period for claims in the Convention.

Consumer representatives and many NEBs argued that the current deadlines are unfair on consumers. They identified that there was a particular issue when:

- passengers are on holiday and there is a problem on the outward flight, they may not try to complain until they have returned home, by which time the deadline may have expired; or
- passengers submit a PIR (Property Irregularity Report) at the airport and therefore believe that they have submitted a claim, but do not realise that this is not always considered sufficient to constitute a claim under the Convention.

As it is not possible to extend the deadline without modifying the Montreal Convention, an alternative measure has been considered that would generate most of the benefits of such an extension. Under this measure, air carriers would be required in the event of lost, delayed or damaged baggage, reported at the airport, to issue a PIR to the passenger to complete at the airport, and then to accept this PIR as a claim which meets the time limits for the purposes of the Convention. If a carrier did not issue such a document and as a result the passenger failed to claim before the time limit in the Montreal Convention, the passenger could take action against the carrier for the damage he/she suffered from the carrier’s failure to issue the PIR.

There should not be any incremental economic burden associated with this option, as carriers should already issue passengers with a PIR at the airport in the event of delayed or damaged baggage.

Better protection for damages/loss of mobility equipment

Current international legal framework

Under the Montreal Convention, as mobility equipment is 'baggage in the sense of the Convention', if an item of mobility equipment is damaged or lost, the limit on liability specified in the Montreal Convention (1,131 SDRs) applies. The value of mobility equipment can however be higher than the limits of liability under the Convention.

When it comes to the liability of air carriers for the transportation of mobility equipment, it is necessary to put this aspect into a broader context, taking due account of the following elements and pieces of legislation:

- Under International Law, the UN Convention on the Rights of Persons with Disabilities, which has the same legal value as the Montreal Convention, aims at promoting, protecting and ensuring "*the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities*". Indeed, *"various barriers may hinder their full and effective participation in society on an equal basis with others"*.

- The EU principle of non-discrimination applies to discriminations on ground of disability; this is particularly highlighted in in Article 21 concerning non-discrimination of the Charter of Fundamental Rights of the European Union which is primary law[68]. Furthermore, Article 26 of the Charter on the integration of persons with disabilities stipulates that "*The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.*"
- Regulation 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, aims at ensuring that disabled persons and persons with reduced mobility have the same right as all other citizens to free movement, freedom of choice and non-discrimination. The Regulation notably ensures that PRMs and passengers with reduced mobility receive appropriate assistance so that they are protected against discrimination. In Article 12 the Regulation stipulates that in case of lost or damaged mobility equipment on board aircraft, the passenger shall be compensated, in accordance with rules of international, Community and national law. This provision does not address the issue further.
- In other transport modes (rail, bus and coach and waterborne transport), there are specific rules to protect disabled passengers and passengers with reduced mobility in case of loss, damage or delay of mobility equipment, notably by excluding a compensation limit but by relating the compensation to the cost of repair or replacement of the actual piece, of which value is refunded.
- This protection foreseen in other modes does not apply to aviation. The Commission signalled in its Communication of 2008 (COM 158 (2008)) that such a legal vacuum needs to be rapidly overcome.

Available legal options for clarification

Based on the above a specific measure could be taken under EU Law with regard to damage or loss of mobility equipment. Such measure should however take into account the Montreal Convention which set the legal regime applicable to the liability of air carriers for the transportation of baggage, including mobility equipment. Excluding mobility equipment from the notion of baggage could be an option, but this presents the inconvenience of being seen as a way to bypass an international convention by using a different vocabulary while the Convention already addresses the issue of liability for baggage in an exclusive way and is rather exhaustive in its terms. There is thus the risk of creating many legal issues and court proceedings.

It is however possible to find a solution that would not conflict with the Montreal Convention, as the possibility to waive the liability limit by making use of a special declaration of interest is foreseen in Article 22 (2). This Article stipulates that in the case of destruction, loss, damage or delay in the carriage of baggage, the liability limit is 1 131 SDRs, "*unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the*

[68] 2000/C 364/01

carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination."

Some conclusions can be drawn based on the Montreal Convention:

- the expression "if the case so requires" infers that depending on the case, the passenger may or may not have to pay a supplementary sum to raise the liability limit of the carrier, so that such increase of the liability limit can be for free. In fact, carriers do not have necessarily a right under the Convention to charge passengers doing a special declaration of interest. Imposing an obligation to offer such declaration for free when it comes to mobility equipment does not seem *a priori* to conflict with the Convention.
- a sum should be declared so that the carrier raises its liability up to such specific sum. The value of the mobility equipment should be therefore known. This could be based on the bill of the equipment, or simply the value declared by the passenger at the check-in. In case of a declared sum that would go beyond the actual value of the mobility equipment, the carrier would have to prove, in case of a problem, that the sum is greater than the passenger's actual interest in delivery at destination.
- the special declaration of interest concerns checked item only, the limit of 1131 SDRs would thus continue to apply to mobility equipment when it is transported on board the aircraft.
- although the liability limit for mobility equipment can be raised to cover the full damage, any action for damage in relation to mobility equipment should be brought subject to the conditions and the limits set out in the Montreal Convention, notably in terms of timeframes to make a claim and the defences of the carrier foreseen in the Convention.

Currently, it would appear that the concerned passengers are not adequately informed about the possibility to make such a *special declaration of interest in delivery at destination* at check-in or that air carriers sometimes request a high fee for making such a declaration.

Therefore, a clarification of the passenger's rights with regard to the specific transportation of wheelchairs and other mobility equipment and assistive device could be achieved by directly addressing these two shortcomings (via the addition of an Article in Regulation 889/2002):

- An obligation for carriers to inform all PRMs and disabled passengers and to give them the opportunity to make a special declaration of interest for their checked mobility equipment, of the value of the equipment concerned.
- The amount is declared by the PRM at the time when the checked mobility equipment is handed over to the carrier.

ANNEX 12: Administrative cost and burden calculations

Table 44: Require airlines to provide contact details to the Commission

Type of obligation	Required actions (category)	Action	Target groups	Tariff (€ per hour)	Time (hours)	Price	Frequency (per year)	Number of entities	Total number of actions	Equipment and outsourcing costs (€)	Total administrative costs (€)	Business as usual costs (%)	Total administrative burden (€)
Submission of (recurring) reports	Submitting the information	Send contact details to the Commission	Airline	38	1	38	1	360	360		13,790	30%	9,653
Submission of (recurring) reports	Filing the information	Update the list and send to NEBs	European Commission	50	7	352	12	1	12		4,221	30%	2,955
Total											**18,011**	**30%**	**12,608**

Table 45: NEB reports to the Commission

Type of obligation	Required actions (category)	Action	Target groups	Tariff (€ per hour)	Time (hours)	Price	Frequency (per year)	Number of entities	Total number of actions	Equipment and outsourcing costs (€)	Total administrative costs (€)	Business as usual costs (%)	Total administrative burden (€)
Submission of (recurring) reports	Retrieving relevant information from existing data	Compile data on complaints and sanctions	NEB	38	7	268	1	32	32		8,580	30%	6,006
Submission of (recurring) reports	Inspecting and checking	Check information with other sources	NEB	38	21	804	1	32	32		25,740	30%	18,018
Submission of (recurring) reports	Designing information material	Write and review the document	NEB	38	21	804	1	32	32		25,740	30%	18,018
Submission of (recurring) reports	Submitting the information	Provide the report to the Commission and reply to queries	NEB	38	7	268	1	32	32		8,580	30%	6,006
Total											**68,641**	**30%**	**48,049**

Table 46: Airlines to develop consistent procedures and contingency plans

Type of obligation	Required actions (category)	Action	Target groups	Tariff (€ per hour)	Time (hours)	Price	Frequency (per year)	Number of entities	Total number of actions	Equipment and outsourcing costs (€)	Total administrative costs (€)	Business as usual costs (%)	Total administrative burden (€)
Submission of (recurring) reports	Retrieving relevant information from existing data	Compilation of information (additional cost in first year only)	Airline	38	35	1,341	1	245	245		328,459	0%	328,459
Submission of (recurring) reports	Adjusting existing data	Updating the information every year	Airline	38	7	268	1	245	245		65,692	0%	65,692
Submission of (recurring) reports	Inspecting and checking	Annual checking of information	NEB	38	7	268	12	32	374		100,298	0%	100,298
Submission of (recurring) reports	Inspecting and checking	Answering questions	Airline	38	4	134	2	245	374		50,149	0%	50,149
Total											**544,597**	**0%**	**544,597**

Notes and assumptions:
We have assumed that this requirement would apply to every airline operating at least one daily scheduled or charter flight from an EU airport (245 airlines).
For EU airlines, NEBs for the airline's base state and any other state from which it had more than 10 departing flights per day, would check the information. For non-EU airlines, one NEB would check the information.
The total cost includes costs that would only be incurred in the first year. Costs for subsequent years would be lower.

Table 47: NEBs to check baggage issues (without complaint handling)

Type of obligation	Required actions (category)	Action	Target groups	Tariff (€ per hour)	Time (hours)	Price	Frequency (per year)	Number of entities	Total number of actions	Equipment and outsourcing costs (€)	Total administrative costs (€)	Business as usual costs (%)	Total administrative burden (€)
Inspection on behalf of public authorities	Inspecting and checking	Review of carriers' general policies and procedures on baggage and Conditions of Carriage	NEB	38	4	134	12	32	374		50,149	0%	50,149
Total											**50,149**	**0%**	**50,149**

ANNEX 13: Summary presentation of the impact of measures and options on the compliance cost

This annex only provides information with regard to the measures that were quantifiable based on reaosnably safe assumptions.

The compliance cost was first estimated under the baseline scenario, based on the asssumptions and the methodology explained in annexes 8 and 15. A net present value (NPV) of the compliance cost over the period 2015-2025 was first calculated. The policy measures are then assumed to be implemented with effect from 1 January 2015, and the NPV of the compliance cost is then calculated for the same period 2015-2025. The tables below indicate the difference between the NPV of the compliance costs calculated with the impact of the policy measures and options, on the one hand, and the NPV of the complaince cost under the baseline, on the other hand.

Each of the **individual policy measures** was first estimated on a stand-alone basis, i.e. assuming that all other elements of the Regulation were unchanged. A summary of the quantified impacts on compliance costs is presented in this annex.

The assessed policy options are packages of measures. As the combined impact of the policy measures is not necessarily the same as the addition of the indificual impacts, the **combined effects** are shown in two synthetic tables at the end of this annex.

As in the main text, the calculations were made first under the current claim rate (starting from 10% today and assuming a gradual increase by 0.5 percentage points per year) and then under the 100% claim rate (theoretical maximum cost when all passnegers claim compensation).

Table 48: Changing the frequency of compensation payments

(percentages show variations compared to baseline)	**Baseline** **NPV total cost 2015-25** **(in € million)**		**Extend the scope of extraordinary circumstances to cover most technical defaults**		**Increase the delay threshold for compensation from 3h to 5h**		**Increase the delay threshold for compensation from 3h to 5h (0-1500km), 9h (1500-3500km), 12h (more than 3500km)**	
	Current claim rate	100% claim rate	Current claim rate	100% claim rate	Current claim rate	100% claim rate	Current claim rate	100% claim rate
Regional carriers	215	397	-7%	-25%	-5%	-17%	-5%	-17%
Charter carriers	555	1819	-18%	-38%	-24%	-50%	-32%	-66%
Low-cost carriers	3516	7271	-9%	-28%	-8%	-25%	-11%	-34%
Network carriers	4501	10076	-10%	-30%	-8%	-23%	-12%	-36%
Non-EU carriers	1644	4088	-12%	-33%	-10%	-27%	-15%	-40%
Total	**10431**	**23653**	**-10%**	**-31%**	**-9%**	**-26%**	**-13%**	**-38%**

Source: 2012 SDG Study + Commission estimates

Table 49: **Stronger progressivity of compensation (0-750km: €75; 750-1500km: €150; 1500-3500km: €400; 3500km+: €500, (compensation adjusted for inflation)**

(percentages show variations compared to baseline)	**Baseline** **NPV total cost 2015-25** **(in € million)**		**Adjusted compensation levels**	
	Current claim rate	100% claim rate	Current claim rate	100% claim rate
Regional carriers	215	397	-8%	-26%
Charter carriers	555	1819	-11%	-22%
Low-cost carriers	3516	7271	-7%	-24%
Network carriers	4501	10076	-8%	-16%
Non-EU carriers	1644	4088	-4%	-9%
Total	**10431**	**23653**	**-7%**	**-18%**

Source: 2012 SDG Study

Table 50: Provision of care after 2h delay irrespective of flight distance

(percentages show variations compared to baseline)	**Baseline** **NPV total cost 2015-25 (in € million)**		**2h delay for all flight distances**	
	Current claim rate	100% claim rate	Current claim rate	100% claim rate
Regional carriers	215	397	-6%	-3%
Charter carriers	555	1819	+18%	+6%
Low-cost carriers	3516	7271	-2%	-1%
Network carriers	4501	10076	+0%	+0%
Non-EU carriers	1644	4088	+3.6%	+2%
Total	**10431**	**23653**	**+1%**	**+0.5%**

Source: 2012 SDG Study

Table 51: Rerouting

(percentages show variation compared to baseline)	**Baseline** **NPV total cost 2015-25** **(in € million)**		**Obligation to provide rerouting with other carriers/modes if not possible on own services on same day**		**Obligation to offer rerouting in case of delays of more than 5 hours**	
	Current claim rate	100% claim rate	Current claim rate	100% claim rate	Current claim rate	100% claim rate
Regional carriers	215	397	-	-	+1%	+0%
Charter carriers	555	1819	-	-	+11%	+3%
Low-cost carriers	3516	7271	+0%	+0%	+2%	+1%
Network carriers	4501	10076	-	-	+6%	+3%
Non-EU carriers	1644	4088	+0%	+0%	+10%	+4%
Total	**10431**	**23653**	**+0%**	**+0%**	**+5%**	**+2%**

Source: 2012 SDG Study

Table 52: **recourse against third parties: first round effect (before costs are charged back to carriers) – maximum possible cost recovery from third parties**

(percentages show variation compared to baseline)	**Baseline** **NPV total cost 2015-25** **(in € million)**		**Recourse against third parties – maximum amount**	
	Current claim rate	100% claim rate	Current claim rate	100% claim rate
Regional carriers	215	397	-51%	-28%
Charter carriers	555	1819	-33%	-10%
Low-cost carriers	3516	7271	-22%	-11%
Network carriers	4501	10076	-35%	-16%
Non-EU carriers	1644	4088	-29%	-12%
Total	**10431**	**23653**	**-30%**	**-13%**

Source: 2012 SDG Study

Table 53: Financing of industry fund under option 3

It is assumed that the industry fund builds up sufficient contributions over 10 years to cover the costs of providing assistance in an exceptional event on the same scale as volcanic ash (costs to incur after a cap on accommodation of 4 days), plus its management costs. The management costs from the consultant's study on insolvency[69] were 85% for the general reserve funds for insolvencies – here, half of this (42.5%) was used because the management of this fund would be simpler (general reserve funds have to take over holiday bookings, deal with hoteliers etc).

(percentages show variation compared to baseline)	**Baseline** **NPV total cost 2015-25** **(in € million)**		**Contributions to industry fund**	
	Current claim rate	100% claim rate	Current claim rate	100% claim rate
Regional carriers	215	397	+2%	+1%
Charter carriers	555	1819	+4%	+1%
Low-cost carriers	3516	7271	+2%	+1%
Network carriers	4501	10076	+2%	+1%
Non-EU carriers	1644	4088	+2%	+1%
Total	**10431**	**23653**	**+2%**	**+1%**

Source: 2012 SDG Study

69 Study on passenger protection in the event of airline insolvency, Steer Davies Gleave, February 2011 (http://ec.europa.eu/transport/air/studies/doc/internal_market/2011-insolvency_study_final_report_7mar.pdf)

Table 54: **Replacement of refreshments/meals/accomodation by insurance offered to all passengers**

(percentages show variations compared to baseline)	**Baseline** **NPV total cost 2015-25** **(in € million)**		**Insurance for care**	
	Current claim rate	100% claim rate	Current claim rate	100% claim rate
Regional carriers	215	397	-84%	-45%
Charter carriers	555	1819	-52%	-16%
Low-cost carriers	3516	7271	-69%	-33%
Network carriers	4501	10076	-68%	-30%
Non-EU carriers	1644	4088	-63%	-25%
Total	**10431**	**23653**	**-67%**	**-30%**

Source: 2012 SDG Study

Table 55: **Exemption from accomodation obligation routes of less than 250 km served by aircraft with less than 80 seats**

(percentages show variations compared to baseline)	**Baseline** **NPV total cost 2015-25** **(in € million)**		**Accommodation exemption for small-scale operations**	
	Current claim rate	100% claim rate	Current claim rate	100% claim rate
Regional carriers	215	397	-28%	-15%
Charter carriers	555	1819	-	-
Low-cost carriers	3516	7271	-0%	-0%
Network carriers	4501	10076	-1%	-0%
Non-EU carriers	1644	4088	-	-
Total	**10431**	**23653**	**-1%**	**-0%**

Source: 2012 SDG Study

Table 56: Policy options – combined impact on total cost of Regulation 261 for carriers – under current claim rate

(compared to baseline)	**Baseline** **NPV total cost 2015-25** **(in € million)**	**Option 1**	**Option 2a**		**Option 2b**		**Option 3**	**Option 4**
			Unchanged compensation levels	Adjusted compensation levels	Unchanged compensation levels	Adjusted compensation levels		
Regional carriers	215	-88%	-32%	-39%	-34%	-40%	+30%	+22%
Charter carriers	555	-80%	-4%	-10%	+3%	-5%	+9%	+34%
Low-cost carriers	3516	-81%	-8%	-14%	-9%	-14%	+6%	+3%
Network carriers	4501	-81%	-5%	-14%	-8%	-16%	+8%	+11%
Non-EU carriers	1644	-74%	-1%	-7%	-4%	-9%	+16%	+27%
Total	**10431**	**-80%**	**-6%**	**-13%**	**-8%**	**-14%**	**+9%**	**+12%**

Source: 2012 SDG study (except option 3: Commission estimate based on SDG data)

Table 57: Policy options: combined impact on total cost of Regulation 261 for carriers – under 100% claim rate

(percentages show variations compared to baseline)	**Baseline** **NPV total cost 2015-25** **(in € million)**	**Option 1**	**Option 2a**		**Option 2b**		**Option 3**	**Option 4**
			Unchanged compensation levels	Adjusted compensation levels	Unchanged compensation levels	Adjusted compensation levels		
Regional carriers	397	-77%	-28%	-50%	-38%	-55%	+21%	+16%
Charter carriers	1819	-74%	-42%	-53%	-28%	-44%	+9%	+17%
Low-cost carriers	7271	-72%	-22%	-40%	-25%	-42%	+8%	+7%
Network carriers	10076	-64%	-18%	-33%	-26%	-40%	+9%	+11%
Non-EU carriers	4088	-58%	-19%	-31%	-26%	-36%	+13%	+17%
Total	**23653**	**-66%**	**-22%**	**-36%**	**-26%**	**-40%**	**+10%**	**+11%**

Source: 2012 SDG study (except option 3: Commission estimate based on SDG data)

Table 58: Subvariant of option 2a – time threshold for delay compensation increased from 3 to 5h (0-1500km), 9h (1500-3500km) and 12 h (beyond 3500km) – impact on the comibned policy option

(compared to baseline)	**Baseline** **NPV total cost 2015-25** **(in € million)**		**Current claim rate**		**100 % claim rate**	
	Current claim rate	100% claim rate	Unchanged compensation levels	Adjusted compensation levels	Unchanged compensation levels	Adjusted compensation levels
Regional carriers	215	397	-32%	-39%	-28%	-50%
Charter carriers	555	1819	-11%	-12%	-56%	-65%
Low-cost carriers	3516	7271	-11%	-14%	-31%	-45%
Network carriers	4501	10076	-10%	-15%	-31%	-42%
Non-EU carriers	1644	4088	-6%	-8%	-33%	-40%
Total	**10431**	**23653**	**-10%**	**-14%**	**-33%**	**-44%**

Source: Commission estimates based on data from 2012 SDG study

ANNEX 14: Sensitivity analysis of the calculations

As shown in annex 8, the extent of data availability means that there is more certainty on some aspects of the economic cost calculation than others. However, this should be balanced against the impact these assumptions have on the overall result. For example, although the denied boarding figures could only be derived from a small sample of airlines and therefore this is quite uncertain, the data suggests that denied boarding rarely occurs, and therefore the impact of this assumption on the overall economic burden is relatively low.

In order to test the impact of the key assumptions the consultant undertook a number of sensitivity tests, for each of which he modified the relevant rate. The table below shows the impacts on the total economic cost, and evaluates the total importance of the assumption by combining this with the level of uncertainty based on the extent of the available data.

Table 59: Impact of assumptions on NPV of economic burden 2015-25

Sensitivity test		Impact of 50% increase in input on incremental economic burden		Level of uncertainty	Total importance
50% higher denied boarding rate		+2%	Low	Medium	Low
50% higher downgrading rate		+0%	Low	Medium	Low
50% higher cancellation rate		+32%	High	Low	Medium
50% higher hotel costs		+9%	Medium	Medium	Medium
50% higher refreshments costs		+20%	High	Medium	High
50% higher compensation claim rate (15% instead of 10%)		+7%	Medium	High	High
Compensation claim rate increases by 0.75% per year instead of 0.5%		+4%	Low	High	Medium
50% more passengers select a refund (instead of rerouting, where eligible)		-9%	Medium	Medium	Medium
15% of passengers delayed over 5 hours select a refund, instead of 10%		+3%	Low	Medium	Low
50% higher wait time for rerouting		+13%	High	Low	Medium
25% instead of 50% of passengers stranded overnight at origin airport return home		+2%	Low	Medium	Low
Extraordinary circumstances exemption	High	+12%	High	High	High
	Low	-10%			

Although the cancellation rate has the most impact on the total economic burden, the data sample is sufficiently good for its total importance to be low. Refreshments costs and the compensation claim rate emerge as the most important assumptions overall, other than the assumption for the extraordinary circumstances exemption on payment of

compensation. Refreshments costs are based on actual prices found across eight European airports but may not accurately represent costs at all airports. The compensation claim rate is an estimate based on airline complaint data and is quite uncertain (as already noted in the main report).

The consultant has then tested in how far the calculations for the **option packages** would be impacted by these uncertainties. These tests indicated that the results are most sensitive to the assumptions about the extent to which airlines are exempted from payment of compensation (uncertainty around the current definition of extraordinary circumstances) and the claim rate for compensation. Most of the other assumptions had a limited impact on the calculated deviations from the baseline mainly because they affected the baseline and the option scenario likewise.

Most importantly, the sensitivity tests have shown that variations in the assumptions do not modify the ranking of the options in terms of their quantitative impact and that the order of magnitude of the options' impacts is not significantly altered. Therefore, another choice of the assumptions would not have modified the conclusions of the impact assessment.

ANNEX 15: Underlying methodology for estimations

This section explains the methodology the consultant adopted for the calculation of the more complex policy measures.

Standard approach for flight disruption measures

Some of the policy measures have some form of flight disruption element, and their impacts are calculated in our impact assessment model by adjusting the base economic burden calculations to take into account the change.

The changes associated with each measure take at least one of the following forms:

- changes to the point at which assistance is provided;
- changes to the cost of providing this assistance;
- changes to the proportion of circumstances which might be considered extraordinary, and therefore eligible for an exemption under Article 5(3);
- changes to claim rates, or the percentages of passengers which receive the assistance to which they are entitled; or
- changes to the scope of flights covered by a particular obligation.

The impact assessment model builds on the current economic burden calculation. There is an individual input sheet for each policy option with a flight disruption element. The input sheet is based on the baseline (current economic burden) scenario and is altered in one of the ways described above to reflect the measure.

The unit (per disrupted passenger) costs are not altered but multipliers can be applied in the input sheet where necessary to achieve a change in the unit cost.

The model then calculates the economic burden of three scenarios:

- A baseline (current economic burden);
- No-261 (costs that would remain if the Regulation were repealed); and
- The measure being evaluated.

The incremental burden is calculated as the difference between the measure cost and the baseline cost, relative to the no-261 cost.

In the absence of any clear evidence of a trend, and due to the impossibility of separating the impacts of one-off factors such as the economic crisis, it is assumed that disruption rates will remain constant over time. If we were to assume a trend, we risk systematically over- or under-estimating the impact of policy changes.

Wider Impacts

The incremental burden of a measure serves as the basis for estimating its wider impacts such as the impact on fares, employment, the wider economy and CO2 emissions.

These results are inherently very uncertain, as it is not clear to what extent passengers value the additional services the Regulation requires them to be provided with, or are even aware of their entitlements. Therefore, a simple multiplier approach was used for these calculations and the results should be considered indicative only.

It was assumed that an increase (or reduction) in the costs of airlines, airports and ANSPs will be passed on to passengers through higher (or lower) fares. The percentage

impact on fares is calculated by dividing the change in economic burden by the total passenger revenue. This calculation is performed at an aggregated level by carrier type. NEB costs are assumed to be covered through government's general budgets and therefore do not impact fares.

Impact on passenger numbers

It is assumed that the price elasticity of demand for air fares is -1.10, based on IATA's Economic Briefing 2009. This report estimates a route-level elasticity of -1.4, a national-level elasticity of -0.8 and a supra-national elasticity of -0.6. Therefore a value mid-way between the national-level elasticity and the route-level elasticity was taken.

It is also assumed that 50% of any change in fares reflects changes in services which are noticed and valued by passengers, and therefore the impact of the change in fares on demand is lower than it would be if the change in fares was for some entirely external reason (such as a change in fuel costs). By multiplying the fare increase by these factors, we can calculate the resulting percentage change in passenger numbers, and then the actual change in passenger numbers resulting from the change in fares.

Employment

It is assumed that an airport requires 0.70 employees for every 1,000 passengers. This factor is based on figures reported by the Air Transport Action Group (ATAG)[70] , which estimated that 464,000 people were employed by the European air transport industry on site at airports. The factor is multiplied by the change in passenger numbers to estimate the change in the number of airport staff as a result of the change in fares.

The ATAG report also states that 748,000 people are employed by airlines, which equates to 1.13 airline and handling agent employees per 1,000 passengers. Trends in airline employment relate to changes in passenger kilometres rather than passengers, as long haul flights will generate much more airline employment per passenger. Operating a long haul route requires more staff per passenger due to the duration of each flight (for example, on a short haul route, the crew can work 4-6 flights per shift, whereas on long haul they would only be able to work one, and on very long flights relief crew are carried). Based on ICAO figures for global passengers and passenger kilometres, we estimate that airline employment is around 0.62 employees per million passenger kilometres.

The average distance travelled by passengers has been obtained from OAG as an input into the burden calculation (for calculating reimbursement, for example). This is available at an aggregate level by airline and flight type and can be multiplied by the number of passengers in each category to calculate the passenger-kilometres.

Economic benefits

There is extensive economic research on the economic impact of aviation, but most of this indicates total economic benefits per passenger, not the contribution for a marginal passenger that might be added or removed as a result of a marginal change to fares. This would probably be much lower, as these would be disproportionately low-value leisure passengers.

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[70] ATAG (2008) The economic and social benefits of air transport

The only study the consultant has identified which seeks to measure marginal contribution is referred to in a report by Oxford Economic Forecasting[71], which reports a Department for Transport estimate that each incremental passenger in the UK generates £30 of additional economic benefits. This is derived by applying the 'rule of a half' to changes in shadow costs. Adjusting for inflation and converting into Euros gives an additional economic benefit of €47 per passenger. This figure is then multiplied by the change in the number of passengers as a result of the option.

Impact on CO2 emissions

The consultant has used a report by Defra[72], which provides the following CO2 emission figures:

- Domestic flights (assumed regional) – 171.5 gCO2/pkm
- Short-haul flights (assumed intra-EU international) – 97 gCO2/pkm
- Long-haul flights (extra-EU international) – 113.2 gCO2/pkm

The report also provides assumptions about the load factors of these flights. The consultant applied these factors, adjusted to reflect the load factors that we have used elsewhere in the model, to each flight and carrier category. These emission rates could then be applied to the passenger kilometres as calculated above.

Changes to airline costs during extraordinary events

The disruption caused by the volcanic ash cloud in April 2010 has an impact on the model. The standard assumptions used for care and assistance costs are not appropriate to calculate the impact of the volcanic ash crisis, because:

- due to the scale of the incident, passengers would have been much more likely to abandon their journeys altogether or reroute by surface transport than in normal circumstances; and
- where it was not possible to do this, the length of time for which assistance had to be provided was much greater.

The consultant has calculated the impact of this event in an 'extraordinary event overlay'. The cancellations due to volcanic ash are deducted from the standard calculation of economic burden, and the economic burden calculated as arising from the volcanic ash crisis (surface rerouting and care costs) are added to the burden in 2010.

The consultant has calculated that, on average, 67% of European airspace was closed between 14 April and 22 April 2010. Given a total of 831 million passengers in 2010, this means 1.5 million passengers were affected each day during this period.

Eurocontrol's Annual Report 2010 states that 101,127 flights were cancelled as a result of the volcanic ash cloud. The disruption database indicates that there were 252,160 cancellations in 2010, so the volcanic ash cloud accounted for 40% of all cancellations in 2010.

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71 'The economic contribution of the aviation industry in the UK' www.oef.com/Free/pdfs/Aviation2006Final.pdf

72 '2011 Guildelines to Defra/DECC's GHG Conversion Factors for Company Reporting' www.defra.gov.uk/publications/files/pb13625-emission-factor-methodology-paper-110905.pdf

It was assumed that passengers at their point of origin would have abandoned their journey and gone home, probably seeking to travel after the crisis was over. The airline would therefore not have had an incremental cost of rerouting or care for these passengers (they would transport them after the crisis instead of during it). Passengers at their destination, or at connecting points, would have required rerouting or care, for which the airline would have been liable. The consultant estimates passengers at their connecting point would have represented 14% of passengers. Therefore, overall 57% of passengers would have required care and rerouting during the crisis.

During the crisis, surface rerouting would have been much more attractive than under normal circumstances. It was assumed that surface rerouting would have been possible, on average, for distances less than 1,000km. Scheduled seats on flights of less than 1,000km account for 54% of all scheduled seats operated in 2010. Therefore it was assumed that 54% of all passengers would have to have been offered surface rerouting, while the remaining 46% could not be rerouted until the crisis was over. Those offered surface rerouting would have been given care and assistance for one day until they could have been rerouted; those who could not be offered surface rerouting would have to have been provided with care until they could be rerouted by air after the crisis.

For these passengers, the cost incurred depends on the time that they had to wait before being able to continue their journey. The length of the closure varied between different parts of the EU, but on average lasted around five days. It would have taken longer than this to clear the backlog of people, and using our standard assumption of a 75% load factor, the average wait time should have been 10 days ((5 + 15) ÷ 2). However, once the event occurs, fewer people would make bookings and some abandon their journeys altogether; it was assumed that this would reduce waiting times by 20%, giving an average waiting time of eight days.

For journeys under 1,000km, the consultant estimates from OAG data that the average journey length was 487km. Based on a sample of ten rail and ferry routes, we estimate that surface rerouting would have cost, on average, €0.24 per kilometre. Using the average distance for journeys under 1,000km, the average cost per affected passenger is €118.81 (487 km x €0.24 per km). The total cost for rerouting is therefore €276 million (1.5 million affected passengers per day x 5 days of closure x 57% of passengers requiring care or rerouting x 54% of passengers offered surface rerouting x €118.81 per passenger).

It is assumed that passengers who are not rerouted will be provided with the following care:

- Accommodation
- Travel to the accommodation
- Refreshments (three times a day)
- Meals (three times a day)

Accommodation costs vary by carrier type; a weighted average was taken, based on the number of passengers by flight and carrier type, which produces an average cost of €51.60 per night. Travel costs are €9.77 (as used elsewhere in the model). The consultant assumed that refreshments and meals cost half as much outside the airport as they do in the airport, giving a cost of €3.00 for refreshments and €7.27 for meals. The

total care cost per affected passenger is therefore €92.20 (€51.60 + €9.77 + €3.00 x 3 + €7.27 x 3).

The total cost for the provision of care is €680 million: (1.5 million affected passengers per day x 46% requiring care x €92.90 + 1.5 million affected passengers per day x 8 days x €92.90) x 57% requiring care or rerouting.

ANNEX 16: Detailed table on comparison of options

Table 60

Effectiveness, efficiency and coherence of the policy packages					
	1	2a	2b	3	4
Effectiveness with regard to specific objectives (SO)	**+**	**++**	**+(+)**	**-/+**	**-/+**
SO1.1 (clarification and simplification)	+ (goes beyond clarification and simplification as some rights are weakened)	++ (rights are clarified and simplified)	+ (inconsistency between time thresholds for care/assistance and compensation are potentially confusing)	+ (inconsistency between time thresholds for care/assistance and compensation are potentially confusing)	+ (inconsistency between time thresholds for care/assistance and compensation are potentially confusing)
SO1.2 (effective santioning policy)	(+) (COM better informed to take action when needed but coordination remains weak)	++ (formal coordination will improve consistency)	++ (formal coordination will improve consistency)	++ (formal coordination will improve consistency)	++ (strong coordination but at possibly high cost)
SO1.3 (effective complaint-handling)	++ (clear procedures, respective roles of NEBs and ADR bodies are clarified)	++ (clear procedures, respective roles of NEBs and ADR bodies are clarified)	++ (clear procedures, respective roles of NEBs and ADR bodies are clarified)	++ (clear procedures, respective roles of NEBs and ADR bodies are clarified)	++ (clear procedures, respctive roles of EU enforcement body and ADR bodies are clearly defined)
SO2.1 (limitation in time or size of risks to be covered)	+++ (strong cost reduction, especially in situations where currently important risk for cost explosion)	+ (moderate cost reduction, limitation on cost increases in specific situations such as mass disruptions or small-scale	+ (moderate cost reduction, limitation on cost increases in specific situations such as mass disruptions	- (cost increase overall, though some limitations to cost increases in mass disruptions)	- (cost increase overall, though some limitations to cost increases in mass disruptions)

		operations)	or small-scale operations)		
SO2.2 (reduce most disincentivizing elements of compensation)	0/+ (if compenstaion levels changed, they are closer to actual damage)	0/+ (if compenstaion levels changed, they are closer to actual damage)	0/+ (if compenstaion levels changed, they are closer to actual damage)	/ (compensation levels unchanged)	/ (compensation levels unchanged)
SO2.3 (burden sharing)	+ (scope for burden sharing is anyway limited as costs are reduced)	+ (increased possibility for recourse to third parties)	+ (increased possibility for recourse to third parties)	+ (increased possibility for recourse to third parties)	+ (increased possibility for recourse to third parties)
Efficiency	**+** **(strong cost reduction for airlines and authorities)**	**+** **(moderate cost reduction for airlines and authorities)**	**+** **(moderate cost reduction for airlines and authorities)**	**-** **(costs increase for both airlines and authorities)**	**-** **(costs increase for both airlines and authorities)**
Coherence	**(+)** **(while the option ensures better compliance with passenger rights, these rights are weakened)**	++ **(better enforcement of existing rights, marginal environmental and social impact)**	++ **(better enforcement of existing rights, marginal environmental and social impact)**	++ **(better enforcement of existing rights, marginal environmental and social impact)**	++ **(better enforcement of existing rights, marginal environmental and social impact)**

ANNEX 17: Comparison of passenger rights between transport modes

Area	Right granted	Rail	Air	Maritime	Bus and coach
		Regulation 1371/2007	*Regulations 261/2004 and 2027/97*	*Regulation 1177/2010*	*Regulation 181/2011*
Information	Obligation of operator to provide information on rights under Regulation	Must be provided when selling ticket	Notice must be published at check-in desk, and provided in event of incident. NEBs have obligation to inform PRMs of their rights.	Must be published on board and in ports	Must be provided at latest on departure, and at terminals and on internet
Mishandled baggage	Right to compensation when baggage is lost or damaged	Up to 1400 units of account (€1285) per piece	Up to 1131 SDRs (€1344) per passenger	n/a	Up to €1200 per piece
Delays / cancellations / missed connections	Right to assistance/care (food and drink)	For delays of over 60 minutes, and where available or can reasonably be supplied	If denied boarding, cancellation or delay of more than 120 minutes (flights of 1500km or less), 180 minutes (intra-EU flights of more than 1500km and other flights between 1500 and 3500km) or 240 minutes (all other flights)	For delays of over 90 minutes, and where available or can reasonably be supplied	For journey of over 3 hours, where delay is over 90 minutes, and where available or can reasonably be supplied
	Right to accommodation where delay is overnight	Yes, with no limitations	Yes, with no limitations	Limited to three nights, maximum of €80 per night. No right where cancellation or delay due to severe weather conditions.	Limited to two nights, maximum of €80 per night. No right where cancellation or delay due to severe weather conditions or natural disasters. For journeys of over 3 hours only.

Area	Right granted	Rail	Air	Maritime	Bus and coach
		Regulation 1371/2007	*Regulations 261/2004 and 2027/97*	*Regulation 1177/2010*	*Regulation 181/2011*
	Right to abandon/return + refund	If delay at final destination of more than 60 minutes	If denied boarding, cancellation or delay of more than 5 hours	If cancellation or delay at departure of more than 90 minutes	If cancellation or delay at departure of more than 120 minutes
	Right to alternative	Choice between reimbursement, rebooking and re-routing under comparable transport conditions	Choice between reimbursement, rebooking and re-routing under comparable transport conditions	Choice between reimbursement and re-routing under comparable conditions	Choice between reimbursement and re-routing under comparable conditions
	Right to compensation	Where reimbursement not accepted, right to compensation varying between 25% of ticket price for short delays (1-2 hours) and 50% if longer	For cancellation causing delay over 2 hours, and delays over 3 hours, between €250 and €600 (depending on length of journey), but not paid if extraordinary circumstances can be proved	In event of delayed arrival at destination. Varies between 25% of ticket price for short delays (delay is approximately 25% of planned journey time) and 50% (for delay of 50%). Does not apply in the case of extraordinary circumstances or severe weather conditions.	Compensation of 50% of ticket price if choice between continuation / re-routing and reimbursement not offered
Enforcement bodies	Independence	Independent from operators in organisation, funding decisions, legal structure, decision-	Not required	Independent of commercial interests in terms of organisation, funding decisions, legal structure and decision-	Independent from operators in organisation, funding decisions, legal structure, decision-making

Area	Right granted	Rail	Air	Maritime	Bus and coach
		Regulation 1371/2007	*Regulations 261/2004 and 2027/97*	*Regulation 1177/2010*	*Regulation 181/2011*
		making		making	
	Where complaints should be made	To any NEB, no obligation to transfer complaint but general obligation for NEBs to co-operate No NEB for luggage issues	For liability: no right to complain. For delays, cancellations: To any NEB, no obligation to transfer complaint	To any NEB, no obligation to transfer complaint but general obligation for NEBs to co-operate	To any NEB, no obligation to transfer complaint, but general obligation for NEBs to co-operate

ANNEX 18: glossary of terms and accronyms

ADR: alternative dispute resolution

ANSP: air navigation service provider

CEA: Comité Européen des Assurances - the European insurance and reinsurance federation

Claim rate: where this term is used in this impact assessment, it refers to the proportion of passengers that are entitled to a compensation for cancellation or long delay that do indeed claim this compensation

COM: European Commission

ECJ: European Court of Justice

EP: European Parliament

IA: Impact Assessment

IAB: Impact Assessment Board

IATA: International Air Transport Association

Montreal Convention: Convention for the Unification of Certain Rules Relating to International Carriage by Air, agreed in Montreal on 28 May 1999 (OJ L194 of 18.07.2001) - sets global rules on liability of air carriers in cases of accidents and of damage to cargo/baggage

NEB: National Enforcement Body in charge of the enforcement of Regulation 261/2004

NPV: Net Present Value

ODR: Online dispute resolution (refers to the Commission proposal COM(2011) 794)

PRM: passenger with reduced mobility

SDG: Steer Davies Gleave (consultant)

SME: Small and medium sized enterprises

TFEU: Treaty on the Functioning of the European Union