

Consumer protection in aviation

OVERVIEW OF REFUNDS AND COMPENSATION PAYMENTS

Capacity and staff shortages, an excessive sickness rate and a simultaneous unexpected high demand led to flight cancellations and delays across Europe and the world, this summer. This has caused a revival of the discussion on air passenger rights. However, is there a need for political action?

The basis of consumer protection in European air transport is EU Regulation on air passenger rights (Regulation 261/2004). This Regulation distinguishes between the right to reimbursement on the one hand and the right to compensation on the other.

1. Reimbursement: Lufthansa ensures punctual payment of refunds

In case of denied boarding, a flight cancellation or a delay of at least five hours, passengers are offered a choice between a reimbursement of the full cost of the ticket and re-routing. Airlines are legally obliged to reimburse passengers within seven days. Despite the significant number of changes in flight schedules, Lufthansa has ensured that almost all refunds were paid within one week.

For this reason, the recent calls in some member states to abolish the practice of advance payment for flight bookings are unfounded. This current practice – where consumers have to pay the full airfare at the moment of booking – is also common in other services industries. However, this is usually without such strict reimbursement deadlines. Rail transport and the event industry are only two examples.

Maintain the practice of advance payment in air transport

A ban on advance payment in air transport would not be effective, since it benefits both passengers and airlines. While the airlines gain planning security to utilize capacities in an optimized economic and ecological way, customers benefit from early booking fares.

These fares, which are particularly important for leisure travelers, can only be offered due to advance payment. In fact, passengers already have a choice today: if they want to avoid paying a long time in advance of their departure, they can simply book their flight at short notice. Advance payment for flight bookings has significant benefit; a ban would be counterproductive.

2. Compensation: A need for political action at EU-level

Regardless of the right to reimbursement, passengers are under certain conditions also entitled to receive a

Benefits of advance payment for flight bookings



Favorable
early-booking fares



Optimized
capacity utilization



Fast payment
of refunds

compensation between 250 and 600 Euros – depending on the distance of their flight. This is applied, provided there are no “extraordinary circumstances”, such as a medical emergency or a thunderstorm. Airlines should only compensate passengers in case a particular flight irregularity was caused by a circumstance within the control of an airline.

However, “extraordinary circumstances” are not defined in Regulation 261/2004. The legal base is unclear to passengers whereas airlines lack clear criteria. Long waiting times for passengers to receive compensation and court proceedings are the result of this lack of a binding, non-exhaustive list of “extraordinary circumstances”. With 175 proceedings before the Court of Justice of the European Union (CJEU), this Regulation is one of the most controversial pieces of EU-legislation.

The rulings of the CJEU have questionably substituted the role of European legislators. For example, the obligation for airlines to compensate passengers in case of a strike is disproportionate and should be rejected outright. Therefore, a clear need for political action exists at EU level in order to improve legal certainty for all stakeholders involved. The introduction of a binding, non-exhaustive list clarifying “extraordinary circumstances” is a much-needed improvement. This would reduce the need for court proceedings, speed up compensation payment processes, and create a more balanced set of eligibility criteria for airlines to compensate passengers.

Payment deadlines and financial amounts:

Refunds



Clear legal provisions, reimbursement within 7 days



Reimbursement of the full ticket price

Compensation



Complex legal provisions, case by case assessment, no legal deadline to compensate passengers



Amount of compensation based on legal provisions

3. Automation of compensation payments: What exactly is meant?

The German coalition agreement of 2021 expresses the ambition to automate compensation payments for all transport modalities. However, when verifying the passenger's eligibility for the right to compensation in air transport, numerous individual factors need to be assessed. The decisive factor is always the passenger's specific travel itinerary. An example: a flight from Barcelona to Frankfurt is delayed. The final destination of one passenger is Frankfurt. This passenger might be entitled to compensation because of the delayed flight. The final destination of another passenger is Singapore and this passenger only transfers in Frankfurt. This passenger, however, still arrives on time in Singapore because of the long transfer time in Frankfurt. As a result, this passenger is not entitled to receive a compensation payment. Although both passengers were on the same flight from Barcelona to Frankfurt, both individual cases have to be treated differently.

In addition, the legal base describes that only the passenger is entitled to receive a compensation payment. Quite often, however, the passenger and the person who paid the ticket are not identical – for example in the case of a business trip. Although airlines have the account details of the payer, they do not have those details of the passenger itself. This clearly shows that although the idea to automate compensation payments might sound like a good idea, it would not be feasible in practice. Nevertheless, at the same time it is clear that additional processes must be further digitalized and simplified. It is for this reason that Lufthansa works on this goal every day. As a result, we can offer our customers more and more self-service applications, such as refund requests and rebooking requests via our own app or via a chat bot.