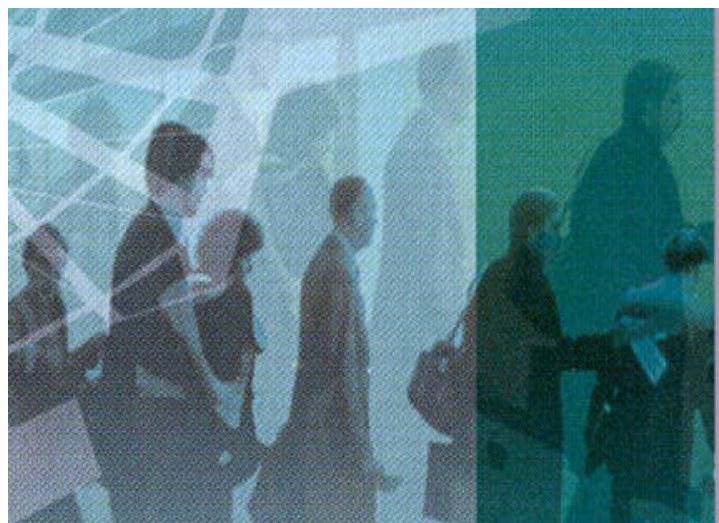




International Air Transport Association

Comments on the European Commission's Consultation Paper

Air Passenger Rights in the European Union



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I. INTRODUCTION TO THE IATA SUBMISSION

1. The Green Paper provides a structured approach to the topical questions of airline “passenger rights”, passenger protection and passenger expectations. It also examines the respective roles of the regulators (both European and national) and of the air transport industry, in continuing to ensure the high standards of safety and service offered to passengers in the European Union. IATA is pleased to contribute to finding appropriate solutions.
2. The Forward echoes a press comment that people love to hate the airline industry – although perhaps the word ‘complain’ would be more accurate.
3. To a certain extent the complaint culture that is implicit in this statement reflects the high standards that airlines and governments have met in developing a safe, efficient and cost-effective global transportation system. High standards create high expectations. But it is increasingly difficult in the mass transport industry that is air transport today, to consistently meet all expectations.
4. It is important therefore to clearly define passenger rights and to distinguish between rights and expectations. Passengers have a right to safe, efficient and cost-effective air transport. They also have expectations that arise from generally receiving a certain level of service. It is in meeting and possibly exceeding customer expectations that businesses, including airlines, compete to satisfy their customers.
5. The fundamental questions raised by the Green Paper are whether a liberalised and competitive industry can effectively respond to consumer concerns, or whether new regulatory measures are needed and, if so, how to address regional (or national) concerns within a global context.
6. Air transport is a global, culturally diverse business conducted by some 650 commercial air carriers. These airlines provide global and regional networks on two levels – both rely on a degree of industry co-operation. The first is supported by multilateral interlining between airlines which is made possible by common industry standards, financial mechanisms and coding systems developed and maintained through their trade association, IATA. The second, which is still evolving, is based on the networks of alliance partners that use these common industry standards in their collaboration. Air transport also caters to mass markets¹, with more than 650 million passengers passing through European airports annually (see **Attachment 1**). Airlines adjust their service to meet different market needs and expectations at different prices.
7. Common or compatible systems and standards are needed to enable international networks to meet increasing demand. These standards are developed and maintained by airlines in the framework of IATA or the Air Transport Association of America (ATA) and by governments through ICAO. Because the work involved is technical and represents 50 years of cumulative development, these systems are often overlooked or

¹ A typical busy airport handles 20-25 million or more passengers per annum, or 60-70,000 on an average day and 10,000 at peak hours.

taken for granted. Nevertheless, co-operation between governments and airlines has provided for safer, lower cost and more secure air transport.

8. These common practices are designed to improve customer service. During the past two to three years, as examples, IATA and its Member airlines have been working on such matters as:
 - A voluntary *Inter-carrier Agreement* to improve passenger liability that gave impetus to the signing of the Montreal Convention;
 - Revising the Recommended Practice (RP 1724) on the model agreement for *Conditions of Carriage*;
 - Co-operation between governments and airlines to develop guidelines for handling disruptive and unruly passengers;
 - Developing guidelines for the carriage of passengers with infectious diseases;
 - Agreeing procedures for electronic ticketing;
 - Producing a Code of Conduct for the protection of privacy and trans-border data flows of personal data;
 - A program known as *Simplifying Passenger Travel (SPT)* to improve customer satisfaction and to ensure that growth in air travel is not handicapped by congestion and delay in passenger handling;
 - Devising, in co-operation between IATA, UFTAA and ECTAA, a Consumer Protection Plan to provide protection against airline failure and travel agent default;
 - Setting up an *Inflight Services Council* to establish best practices in the area of cabin services;
 - Supporting the *Airline-Consumer Forum* (established in 1985) to facilitate the exchange of information and views between the airline industry and consumer organisations.
9. Progressive liberalisation, in Europe and elsewhere, has given airlines greater freedom in how they serve their customers by removing economic controls (market access, capacity, pricing). This has been accompanied by the adoption and application of competition laws and by the development of a new body of regulations covering consumer protection and information. Consumer measures can either apply to all business activity (horizontal) or specifically to air transport (vertical).
10. It is the emerging corpus of competition and consumer regulation that causes concern. Without adequate co-ordination or harmonisation between States, the application of these new regulations can create uncertainty as to how they will affect business decisions, cause problems of extra-territoriality and disadvantage airlines from outside those States that could be described as advanced 'consumer societies'. For example, the proposed Transatlantic Common Aviation Area (TCAA) would only lead to harmonisation within the TCAA geographical area.
11. Crucially, new regulations without harmonisation attack the common fabric of industry developed tickets, standards and recommended practices that enable co-operating airlines, whether alliance based or not, to provide a world-wide network of services that those outside the industry take for granted. Airlines cannot operate under different requirements imposed by various jurisdictions or legal systems without additional cost to passengers.
12. These observations also raise the question of the scope of application of possible measures envisaged by the Green Paper. Some measures would apply only to passengers

boarding flights at an airport in the EEA regardless of the nationality of the air carrier; others would apply only to the 250 EU air carriers; and yet others to EU carriers and their non-EU alliance and code-share or franchise partners. Some non-EU air carriers serving EU destinations have expressed legitimate concerns as to how they will be consulted and how they may be affected by any EU decisions.

13. Related to issues of scope, airlines have serious concerns about what appears to be the focus on air transport, to the exclusion of other public transport modes in the EU, for example with respect to conditions of carriage, compensation for delays and liability; or of business generally, as in the case of loyalty schemes.
14. Another important concern for the industry, is the repeated suggestion in the Green Paper that airlines carry responsibility for dealing with and compensating all complaints regardless of fault or cause (for instance, delay caused by ATC). Airlines would be obliged to insure against a wide range of events outside their control. This would have an effect on costs that would be passed on to consumers and involve insurance companies in defensive litigation which would not necessarily be in the consumer interest.
15. The challenge presented by the Green Paper is to find a series of reasonable balances, between the rights and obligations of airlines and consumers, between airlines and other transport modes and between different jurisdictions without affecting treaty obligations to provide *fair and equal opportunity to compete*.
16. Two additional points must also be recognised. The first is that improvements to airspace management and infrastructure are badly needed if one of the main causes of consumer complaints is to be remedied and if competition is to be able to play its role in providing consumer benefits. The second is that air transport is experiencing a fast-paced technological revolution arising from the application of information/communications technology. How these latter innovations can be implemented to improve passenger service and information will be influenced by culture and technological sophistication.
17. The industry clearly favours the mechanism of the market backed by a voluntary plan outlining service targets or best practice which individual airlines may agree to build upon according to the type of airline service they offer and alliance arrangements.
18. IATA has already made a commitment to seek an international approach to consumer issues, such as those raised on a regional or EU basis by the Green Paper. A multi-disciplinary group of airline representatives from around the world is assisting the IATA secretariat to prepare a Global Service Plan drawing on the experience of the Air Transport Association of America (ATA) and work now in hand within the Association of European Airlines (AEA). This will be considered by the IATA AGM in Sydney in June 2000.
19. IATA is committed to constructive co-operation and dialogue with the Commission, consumer groups and other industry associations to achieve the common goal of improving airline service to passengers.

This paper contains the international aviation industry's comments on specific aspects of the Green Paper. The extent of these comments and the effort that many persons have made to respond to the Green Paper, highlight the industry's positive response to the Commission's challenge and interest in moving towards a balanced and realistic outcome.

II. COMMENTS ON THE “INTRODUCTION TO THE GREEN PAPER”

The following are comments on the Introduction to the Green Paper under Section A, pages 3-4. Our comments refer to the paragraph numbers in this section.

Economic aspect of the Common Air Transport Policy (paragraph 1)

The opening paragraph rightly notes that with the creation of the liberalised internal market, Community airlines are free, within the basic competition rules, to decide fares, capacity, capacity, routes and service standards on the basis of their own commercial judgement.

Rights and expectations (paragraphs 3-5)

A clear difference should be made between passenger “rights” (as in title of the Green Paper) and passenger “expectations” (paragraph 2 of the Foreword). The difference is important, because it is in meeting “expectations” that competition and market forces can best work. Few mass industries deal with a clientele that has such high expectations of the service to which many feel they have a right. Where air travel was once the prerogative of the “rich and famous”, it is now accessible to all sections of society around the globe. What the rich and famous assumed as a ‘right’ because of their station in society, today’s consumer has also come to expect. So the concept of ‘rights’ has come to be confused in popular parlance with ‘expectations’. The notion of ‘rights’ can therefore be said to range from ‘hard’ legal rights to ‘soft’ commercial expectations (see **BOX I** on page 6).

These different levels of rights and expectations need to be properly identified. The rights that can be asserted, and the obligations that are owed depend on the proper categorisation of the rights attaching to the service delivered.

Cost of additional passenger protection measures (paragraph 8)

As paragraph 8 points out, additional passenger protection measures will cost money, as will measures that address or formalise passenger expectations. In the end the cost will be borne by the users of air transport. Proper cost/benefit analysis should be an absolute requirement underlying any proposed measures.

Research and statistics (paragraph 9)

The Commission lacks the statistical basis to judge the relative importance and incidence of complaints and eventually to establish the cost/benefit ratio of remedying alleged problems. The use of statements such as “a constant stream of complaints” and anecdotal evidence is not acceptable in a serious dialogue. Hard facts and figures can be the only basis for regulatory intervention in the commercial process. In the US complaint rates to the Department of Transportation are at about 2 per 100,000 embarking passengers. Given that there were some 325 million boarding passengers (scheduled and non-scheduled) within the EU in 1998, a consumer complaint rate similar to that of the US would give a figure of 7,500 a year.

IATA welcomes calls for research to provide clarification and an adequate knowledge base. For example, a frequent basis for complaints concerns delays. It is essential to establish if the delay was caused by the airport, a security alert, traffic control or by an airline for various reasons (passenger convenience, medical emergency, mechanical reasons etc.). Clarification is needed of the incidence. Where technical, medical or human factors are involved, research should also involve the relevant control authorities. But in no way should any measures or requirements influence decisions that concern the safety of the aircraft or passengers.

Any statistical reporting requirements, additional to those already provided to national governments, EUROSTAT, ICAO and US DOT and AEA, would be strongly resisted by airlines. IATA would be pleased to advise the Commission on any initiatives in this direction with a view to harmonisation and cost containment.

BOX I: Rights and Expectations

A first tier of rights is offered by the contract that is concluded when a ticket is purchased for transportation between two points. It is a contract for carriage. A contract confers rights and obligations on both the buyer and the seller. The ticket is subject to the Conditions of Contract, which incorporate by reference more detailed contractual terms – the Conditions of Carriage.

A second tier of rights is conferred by Consumer Protection law generally applicable to most commercial transactions and contracts (such as contracts for carriage). Consumer protection law applies *horizontally* across different sectors. In the European Union, consumer legislation is aimed at harmonising “the management and control of safety, information and redress”. Examples of Community law in this area that apply to air transport are the Directives on Unfair Terms in Consumer Contracts and on Data protection (see Annex to the Green Paper).

The third tier is legislation or regulation that defines the rights of consumers in a *vertical* or service specific manner. Examples in Community law are the Directive on Package Holidays and the Regulations on Air Carrier Liability in the Event of an Accident, on Denied Boarding Compensation and on CRS. The view has emerged that air transport should be subject to a higher degree of regulation than other economic sectors.

Finally, there is a *fourth tier* which the Air Transport Users Council has called ‘consumer principles’ – what it judges that all travellers have a right to expect. Many, but not all of the issues in this category concern customer service issues and are influenced by the competitive environment. These expectations relate to access, choice, information, value for money, redress and representation.

Clear reference point – Air Passenger Charter (paragraph 9)

IATA agrees that there is a need for a “clear reference point for consumers”. The growing number of government rules related to consumer protection under different regulations and provisions is confusing for both users and airline service staff. This is particularly so in a global industry like aviation. The training requirements involved are heavy and costly. A document modelled on the Annex to the Green Paper might provide a useful element of a ‘reference point’.

IATA has begun to consult Members to develop a set of service commitments that could be accepted by airlines on a world-wide basis. The goal is to present the proposal for consideration at the next Annual General Meeting of IATA in June 2000.

Consultation (paragraph 10-12)

IATA stresses the need for full and open consultation. The issues set down in the Green Paper are complex, wide-ranging and could have important cost implications for airlines and passengers. They need to be discussed fully and openly.

Special attention should be given to the scope of any new measures and how these might affect non-EU carriers, in particular the “fair and equal opportunity to compete” agreed by international air service agreements.

There is a danger in translating expectations into rights, limiting the scope of the service areas where competition should be the best means of improvement. For this reason the airline industry favours a voluntary charter in those areas where service goals can be defined in such a way as to leave each individual airline free to be creative in achieving them. IATA is therefore favourable to the approach proposed in the Commissioner’s Foreword, namely ensuring a better promotion of existing passenger rights and developing a passenger charter for other service areas, where passenger expectations can be met.

III. COMMENTS ON “THE CONTRACT”

The following are comments on the Introduction to the Green Paper under Section B, pages 5-12. Our comments refer to the paragraph numbers in this section.

B.1 Overview – The Airlines’ “Conditions of Carriage”

Assessment of the Situation (paragraphs 1.1 – 1.8)

Government approval of RP 1724 (paragraph 1.2)

IATA Recommended Practice RP 1724² has been subject to a number of revisions over the years. The current review, which began in 1998, was required by the need to accommodate new technologies (such as electronic ticketing), to incorporate “plain language” and to reflect consumer legislation introduced in various regions of the world since the previous version was adopted. This review included consultation with many entities, including the EC and consumer groups. Particular note was taken of the EC Study known as the *Balfour Report*.

A comparison of the most recent version of RP 1724 and that in force in 1997, shows that a number of the original comments by EC Member States and consumers have been satisfactorily addressed. In some cases, this was the result of substantive changes voluntarily agreed by the airlines, while in others it was a matter of redrafting to the satisfaction of all concerned. The remaining provisions are the subject of the ongoing discussions with the UK Office of Fair Trading (OFT). Although these changes have been approved by airlines, they have not yet been declared effective due to lack of necessary government approval.

Directive 93/13 and the balance of airline and consumer interests (paragraph 1.3)

IATA Members based in the EU tailor their own individual conditions of contract to comply with their national law, EU regulations and international obligations. The model conditions of carriage (RP 1724) as adopted by the IATA Passenger Services Conference (PSC) try to maintain a balance of interests between different jurisdictions to avoid disputes between governments.

Consecutive use of flight coupons (paragraph 1.4)

In discussion with IATA, the UK Office of Fair Trading (OFT) has taken note of the basic airline business requirement that passengers use flight coupons in the order in which they are issued. Discussions are continuing regarding the clarification of the options open to a passenger if he wishes to change his journey from that originally ticketed.

Seats for disabled passengers (paragraph 1.5)

Airlines do their utmost to ensure that disabled passengers are comfortably and safely seated. But, for reasons of safety, they reserve the right to assign a particular seat on an aircraft taking account of the extent and nature of the impairment.

² RP 1724 is a Recommended Practice of the IATA Passenger Service Conference (PSC) which provides a guideline to assist airlines in drafting their own Conditions of Carriage.

Legislative approach at the Community level (paragraph 1.6)

Individual “tinkering” by governments in different jurisdictions could put in jeopardy the IATA world-wide interline system, to the great detriment of the very people those governmental authorities are ostensibly trying to protect.

Distance Sales (paragraph 1.7)

Article 3.2. of Directive 97/7 on Distance Selling exempts two main categories of products from certain provisions of the Directive. These are (i) foodstuffs/beverages for immediate consumption, (ii) contracts for the provision of services (with reservation) for (hotel) accommodation, transport, catering or leisure. Both categories exempted concern perishable products and services.

Exemptions were introduced after careful review and an assessment of the damage the Directive (particularly Article 6 which gives a consumer the ‘right of withdrawal’ within seven days) would do to trade in these products and services. For example, an airline ticket with a one week advance purchase requirement would not be saleable if the passenger could had the right to cancel the arrangement within seven days of purchase. Were this provision to be applied, airlines would be forced to withdraw this popular product from the market. In the light of earlier review and decisions, proposals to go back on these decisions should be evaluated with care.

Possible Action (para.1.8)

The ‘legality’ of RP 1724 is put in question by EC Directive 93/13, but only in the European Union and only with respect to certain articles that are considered to conflict with provisions of the Unfair Terms Directive. Also, 93/13 only applies to non-business travel. RP 1724 has not been contested elsewhere, not least because it is a Recommended Practice and, where required, airlines in other jurisdictions adapt their own Conditions of Carriage accordingly.

Negotiate a voluntary agreement between airlines and consumer groups (paragraph 1.8(a))

Work is continuing on a voluntary agreement that would bring the RP more into line with existing Community law. The dialogue with the OFT is an important step in this direction.

Rely on national courts and the European Court of Justice (paragraph 1.8 (b))

This suggestion is impractical. It would be a lengthy and contentious process that would lead to implementation of different national rules at different times. The procedure followed by the UK OFT is more reasonable.

IATA and its Member airlines believe that they are close to being able to offer a revised Recommended Practice that is acceptable to the OFT and the Commission.

Community Legislation to provide enforceable levels of protection (paragraph 1.8 (c))

The Unfair Contract Terms Directive 93/13 is applicable to all general conditions within its scope. While it is therefore justified to assess the legality of the terms of Conditions of Carriage with reference to this Directive, it seems neither necessary nor fair to envisage a special regulation interpreting the unfair contract regulations with regard to air carriage.

Whatever procedure is adopted should be based on a co-operative approach with the industry and other governments to maintain, as far possible, a harmonised global system. The difficulties encountered in the past two years in agreeing on a common Ticket Notice

requirement between the EU and the United States suggest that this approach would not be easy.

B.2 Air Carrier Liability for Death and Injury

Assessment of the Situation (paragraphs 2.1 – 2.2)

IATA agrees with the Green Paper's assessment of the underlying situation. The new Montreal Convention, when ratified, will introduce liability rules for death or injury generally similar to those sought by the EU.

Planned Action (paragraph 2.3)

It is a matter of public record that IATA looks forward to the Montreal Convention coming into force and IATA is pleased to see that the Member States and the Community itself will be ratifying the Convention at the earliest possible date. It is hoped that this will provide additional impetus for other states to do likewise. IATA notes that the Green Paper recognises that EC Regulation 2027/97 needs to be amended and hopes that proper consultation with all industry stakeholders will avoid the criticism, practical problems and legal challenges that surround the current Regulation.

In particular, it is hoped that the Community will take immediate action to resolve the situation created by the conflicting notice requirements of the Warsaw Convention, EC Regulation 2027/97 and the Montreal 1966 Agreement.

B.3 Delays, Cancellations and Denied Boarding due to Overbooking

Assessment of the Situation (paragraphs 3.1 – 3.9)

Denied Boarding Compensation (paragraphs 3.2-3.3)

Denied Boarding Compensation (DBC) was introduced to balance the commercial 'advantages' which airlines obtain from overbooking. The practice of overbooking originates in passengers booking on a particular flight and then being unable to make the flight. Airlines often have passengers making multiple reservations on consecutive flights. Even if it may be true therefore that the effects of overbooking and delay are the same for the passenger, it would be inappropriate to extend DBC regulations to other situations to cover other situations outside of the control of airlines.

In the revised proposal for amendment of Regulation 295/91, the definition of overbooking has already been extended to cover the cancellation of flights for commercial reasons – airlines insist that this should read cancellation "on the same day".

Paragraph 3.2 of the Green Paper is misleading. Passengers are entitled to a maximum compensation of ECU 150/300 and the refund of their ticket, if that is their chosen option. However the amount of DBC should not exceed the price of the ticket.

The Green Paper erroneously states that "passengers delayed by eight hours, but who still fly on the original flight on which they were booked, are unlikely to receive anything to make amends for the inconvenience and discomfort, even if the carrier is clearly at fault". This is misleading. Most of IATA Member airlines offer their passengers vouchers for drinks and meals and provide accommodation for stranded passengers in transit. This is done as a gesture of goodwill and may vary according to the airline.

Finally, it should be stressed that while in a denied boarding situation only a small number of passengers are involved, in the event of a delay a large number of travellers, sometimes several hundred, can be affected. Airlines' airport staff cannot handle the formalities delay compensation would require for such large numbers of passengers which would contribute to further delays.

Warsaw system (paragraph 3.6)

The Warsaw Convention provided for a claim for damage occasioned by delay (but not by flight cancellation) with a limit per passenger of USD 8,300. The 1999 Montreal Convention reduces the limit to about USD 5,640 (SDR 4,150). However, under this international liability regime, the carrier is not liable if it has taken all measures that could reasonably be required to avoid the damage or if it was impossible to take such measures. This could mean that delays for mechanical or safety reasons, if they were preventable, could trigger the liability.

As stated in the Green Paper, the option of taking legal action to recoup damages is thus available. The legal system, in reviewing a situation of this kind will also take account of the important issue of reasonableness and it consider it on a case by case basis. The fact that few passengers are able to spend the time and money to take legal action should not trigger an automatic right to compensation, as in the denied boarding situations, without reference to reasonableness and causality.

Possible actions (paragraphs 3.9 - 3.10)

Voluntary agreement: Passenger Service Commitment

IATA agrees that there may be merit in studying scenarios under which an airline, airport or Air Traffic Control (ATC) provider is clearly at fault in causing passenger delay or inconvenience. It is important that the true cause of a delay is established³. Only then can the party responsible be held accountable. If the EC wishes to consider mandatory compensation to passengers in relation to the inconvenience incurred, then consideration should also be given to cases where passengers are clearly at fault in delaying or disrupting flight operations.

Extension of the DBC regulation

For the reasons explained above, IATA holds that DBC is already adequately covered by existing Community regulations. The Balfour Report concluded that the position was a reasonable compromise. The Regulation should not be extended to cover delays and cancellations.

Passenger compensation when ATC is at fault (paragraph 3.10)

Airlines should not be obliged to pay compensation when ATC is at fault. It would be fundamentally wrong to develop a system that publicly associates the airlines with this crisis by giving passengers a right to claim compensation for such delays from the airlines. The recent Ministerial Conference (MATSE/6) held in February on ATC matters showed that there will be no early resolution to the present situation.

³ The problem of delays and cancellations was an area of particular concern for passengers when Mr Balfour conducted his study about fairness of the IATA Conditions of Carriage. However, since 1997, these Conditions have been amended and the concerns have been addressed (see article 9 of RP 1724).

If ATC is at fault, passengers should clearly be able to claim compensation directly from ATC providers. Nobody could reasonably expect that the local bus company should pay passengers compensation because there is a traffic jam in the city centre, or because traffic lights are not working.

In discussing the role of the airport as ‘sub-contractor’, the Green Paper fails to recognise the often considerable imbalance in power between the airline, as a single user, and the airport, a monopoly supplier and often government owned. (See Section B.5, “*The Airport’s Responsibility*”). Airlines cannot, as in the case of normal sub-contractors, replace one airport by another if they are dissatisfied with the quality or price of the service. In fact, the relations between airports and airlines are essentially one-sided. While airlines have a legal obligation towards airports to pay user fees, airports have no such obligation towards airlines as regards the standard of the services to be provided.

From a practical standpoint, it is difficult to see how a right to reciprocal compensation could be negotiated with airports, and even less so with the governments of EUROCONTROL. At the same time, it is a generally agreed principle that as a matter of fairness, the party that causes the delay should be required to pay the compensation. In that context, a regulation, that would allow airlines to comply with this proposal and obligate airports and ATC suppliers to agree, would be the only fair course.

As the Green Paper cites the example of the high-speed train, it should be pointed out that there is no equivalent independent entity to ATC for railways and therefore the direct responsibility of operators is involved in most delays. Despite this fact, the “Eurostar Conditions of Carriage” stipulate that “Where delays, cancellations or poor service occur for reasons within our control, we may give *ex gratia* payments or other compensation, taking each case on its merits and at our discretion.”

From a contract law standpoint, an airline, can no more make a binding commitment to transport a passenger ‘on time’ than can a surface transport operator.

General comment

Common airline commercial practice is in line with the reasonable expectations recently expressed by the AUC⁴; “We don’t ask much, a drink after one hour, a meal after three, and a bed after eight.” If a Charter is viewed as an option, this might be an area where airlines could lay down their best practice.

The Community should also take into account efforts made by many airlines to inform passengers better. Some airlines seek to develop a competitive advantage in the way in which they use technology to transmit information; for example, by using e-mail or mobile telephone messages to advise passengers of delays. Passengers with more sophisticated WAP mobile telephones can even reschedule their flight by simply pushing a button.

It might also be argued that any mandatory compensation for delays and cancellations might influence carriers in financial difficulty in their decisions to cancel or delay flights not on the basis of safety but on one of avoiding compensation payments.

⁴ Philip Martin of the AUC speaking to the European Aviation Club in Brussels on 25 January 2000.

B.4 Lost and Damaged Baggage

Assessment of the Situation (paragraphs 4.1 – 4.4)

Improvements in systems and procedures (paragraph 4.1)

Over 1.5 billion passengers travelled in 1999 checking in an estimated 2.1 billion bags⁵. To ensure that passengers and their baggage travel together, IATA has developed industry standards and procedures, ranging from the format of baggage tags to sophisticated electronic messages that transmit baggage details to all involved stations. But, given the dynamics of modern travel (such as interline connections, weather delays, ATC delays, security issues, diversions) baggage is sometimes mishandled.

Most IATA Members measure their mishandled baggage against corporate standards. Many factors enter into this calculation, such as the facility, baggage handling systems, security requirements, seasonal weather conditions and the route structure. Airport systems supporting thousands of daily interline passenger and baggage connections may be subject to higher risk than smaller stations primarily handling local passenger traffic. There is no panacea to improving any one aspect of this very complex system.

There is already a very clear contractual obligation on airlines to handle baggage properly as well as obvious commercial reasons to do so. In response to this, carriers have established sophisticated mechanisms to correct baggage mishandling and to deal with this, when it happens, as efficiently as possible with passenger convenience given the highest priority. Baggage management systems such as SITA/IATA *WorldTracer* enable carriers on a world-wide basis to determine the location of missing baggage using details provided by the passenger quickly and efficiently. When such details are accurate (description of a bag, contact details), finding and repatriating the bag can be rapidly accomplished. IATA has industry standards that support these systems, including the widely used industry baggage identification chart used.

Liability limits (paragraph 4.2)

While paragraph 4.7 implies that any new measures would only apply to EU airlines, paragraph 4.2 does draw attention to the different liability limits for baggage under different jurisdictions. It also notes the improvements regarding compensation for lost or damaged baggage in the US domestic market and under the Montreal Convention, when it is ratified. IATA again urges that a universal approach should be taken, as opposed to a system that will discriminate against any group of carriers.

Additional insurance (paragraph 4.3)

It is not correct to assert that “under the Montreal Convention airlines should have a clear scheme available under which passengers can make a declaration at check-in if their baggage is of a higher value than the applicable limit”. Article 22.2 of the Montreal Convention states that:

... the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1,000 SDR for each passenger 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.

This does not impose an obligation upon a carrier to implement such a scheme at check-in.

⁵ This figure does not include carry-on bags.

Emergency assistance (paragraph 4.4)

Viewed in the light of the US experience, the actual implementation of a general principle agreed between carriers has allowed airlines to establish for themselves what their best practice should be. This is proving to be a practical, low intervention and effective solution.

Possible Action (paragraphs 4.5 – 4.7)

Montreal Convention (paragraph 4.5)

IATA supports early ratification of the Montreal Convention.

Excess valuation (paragraph 4.6)

The need for excess value declaration is outdated at a time when full insurance coverage of personal effects is automatically provided by credit cards, package tours or business contracts, to name a few.

Neither is it very practicable. For the few cases without any of the insurances referred to above, insurance coverage could be available at airports, but not at check-in desks.

Minimum level of assistance (paragraph 4.7)

Airlines consider emergency assistance as a commercial issue and most airlines have a plan to provide emergency assistance. Experience in the United States would support this assessment. Typically, this is an issue that could be examined in the framework of a voluntary program.

B.5 The Airport's Responsibility

Assessment of the Situation (paragraphs 5.1 – 5.2)

General Remark

Measures are in hand to develop a joint world-wide approach to reduce the inconvenience to passengers due to the increase in traffic at airports and to co-ordinate the efforts of the bodies concerned. In 1998, a program known as the Simplifying Passenger Travel Program (SPT)⁶ was set up as a joint initiative involving seven organisations representing airlines, airports, control authorities (i.e. police, customs, immigration and security), consumers, and broad government interests. The aim of the program is to improve passenger satisfaction and ensure that growth in air travel is not handicapped by congestion and delay in passenger handling.

⁶ The organisations participating in the program are the Airports Council International (ACI), the Air Transport Users Council (AUC), the Control Authorities Working Group (CAWG), the International Air Transport Association (IATA), the International Civil Aviation Organization (ICAO), the Société Internationale de Télécommunications Aéronautiques (SITA) and the World Customs Organisation (WCO). The US Immigration and Naturalization Service (INS) is joining the SPT Interest Group which will build on the experience of INSPASS and its ongoing industry co-operation through the IATA Control Authorities Working Group.

Responsibility (paragraph 5.1)

Many situations and problems occur at an airport⁷ that can result in an airline “not being able to fulfil its contractual relationship”. At a large airport, hundreds and thousands of staff are employed by the airport, airlines, control authorities, commercial service providers and concessionaires. Airports in Europe routinely and efficiently handle up to many thousands of passengers per hour from all over the globe, from different cultures and speaking as many languages.

There are clearly many potential complications that can occur at any of the interfaces between a passenger and a responsible authority from the moment of arriving at an airport property to boarding. This can rarely be attributed to an airline or its employees. Yet each incident has the potential to disrupt the smooth flow of passengers and cause bottlenecks which give rise to congestion. An unguarded bag may prompt evacuation of the terminal and a bag found to contain a python or drugs requires the professional co-operation of many different people employed by a number of different organisations.

Given the reality of these circumstances, it is clearly unreasonable for the Green Paper to assert that ‘the airline should usually bear responsibility towards the passenger, even where the airport is the weak link in the chain’. In many instances it is an individual passenger, possibly inattentive, sometimes aggressive or irresponsible (even criminally) who is responsible for disrupting the smooth flow of traffic.

Liability (paragraph 5.2)

The Green Paper states that there is flexibility in “deciding where the airline’s liability ends and where the airport’s liability begins” regarding events involving the “operations of embarking and disembarking”. Established jurisprudence concerning Warsaw Convention cases clearly define embarking and disembarking as the act of boarding or leaving an aircraft. Legal precedents limit the degree of flexibility envisaged in paragraph 5.2.

Possible Action (paragraphs 5.3)

IATA has no comment on the feasibility of establishing EU-wide airport passenger service standards. The Possible Action is generally more moderately phrased than the previous paragraphs. However, it raises the question as to the nature of the relationship between airlines and airport authorities and to what extent the airport, in the absence of a formal contract with airlines, can be compelled to be responsible for its shortcomings. Indeed, few airlines appear to have contracts with airports in Europe, which is not the case in the United States. The discussion on possible action does not address situations involving control authorities.

B.6 Bankruptcy of the Airline

Assessment of the Situation (paragraphs 6.1 – 6.2)

General overview (paragraph 6.1)

This is a factual description of the situation. However, no mention is made to two additional factors that reduce the level of risk for passengers. The first is the insurance cover provided

⁷ The complexities of managing the flow of passengers through a modern airport are extremely varied as shown in the BBC documentary series entitled “Airport” which portrays the experience of airport, airline, government and private employees at London Heathrow.

where payment for travel is made with a major credit card, as is generally the case. The second is the financial oversight of carriers that the national licensing authority is required to exercise under the Licensing Regulation, particularly where a carrier is known to be experiencing financial problems.

Regarding protection afforded by the Package Tour Directive (6.2)

The Package Tour Directive was designed to protect against the bankruptcy, not of an airline, but of a tour operator. The customer contracts with tour operator who in turn packages services provided by airlines, hotels and surface transport operators.

Possible Action (paragraphs 6.3)

Passenger insurance scheme (paragraph 6.3 a)

Few travel insurance policies include protection against the bankruptcy of an airline, because it does not often happen. This would not give overall protection to passengers as many choose to travel without specific travel insurance. Nevertheless, his approach would be the most equitable for all concerned.

Solidarity agreement (paragraph 6.3 b)

An informal solidarity agreement between airlines already exists under the interlining system, if only to avoid having to develop a complex insurance scheme and pay premiums. This may change as more airlines sell tickets outside of the interline agreements. A voluntary agreement between carriers would be contrary to EU Competition Law unless carriers were granted an exemption.

Insurance scheme (paragraph 6.3 c)

IATA, and two travel agency trade associations (ECTAA and UFTAA) are currently working on a 'project' to protect consumers when airlines cease operations because of financial difficulty or when travel agents default on their sales payments due to airlines. The project, known as the Consumer Protection Plan, is in the final stage of development.

Airlines do not often cease trading and the risk overall is therefore not high. However, if an insurance scheme were set up, underwriters would look at the overall risk that would include the high costs of a large airline going bankrupt. If carriers were to pay premiums based on their financial results, large carriers would have to pay the most in premium for their lesser risk. This would be unacceptable to these airlines, as the more financially stable carriers would pay for the less stable. It also means that the cost would be passed on to all European passengers.

IV. COMMENTS ON “AIRLINE BUSINESS PRACTICES”

The following are comments on the Introduction to the Green Paper under Section C, pages 13-19. Our comments refer to the paragraph numbers in this section.

C.1 Code sharing/franchising/sub-contracting

Assessment of the Situation (paragraphs 1.1 – 1.8)

General comment

Since 1996, various IATA committees and working groups have been working in co-operation with interested parties to meet the requirements of the EU CRS Regulation and of ECAC as well as US and Canadian requirements. This has involved defining what measures airlines, airports, CRS and schedules publishers can take to:

- make code-sharing arrangements as transparent and user-friendly as practically possible;
- arrive at agreed harmonised standards or recommended practices to achieve this on a world-wide basis;
- enable airlines to continue to develop global co-operative arrangements, of which code-sharing is a key component.

United States DoT (paragraph 1.4)

The US Department of Transportation issued two rules in 1999 revising consumer disclosure requirements. The new rules concerned:

- Code-sharing arrangements and long-term wet leases (14 C.F.R. Part 257) – The rules require notification of such arrangements to be posted in schedule information, to be given by oral notice to prospective customers and by written notice at the time of purchase.
- Change-of-Gauge (14 C.F.R. Part 258) – Notification must be provided to consumer where a service requires a change of aircraft but has only a single flight number.

EU requirements (paragraph 1.5)

The EC Regulation on CRS, as amended in May 1999, includes a number of requirements relevant to code-share flights:

- Accuracy of data – Carriers must provide accurate, non-misleading and transparent data to system vendors and a system vendor may not manipulate data. A system vendor shall not intentionally or negligently display inaccurate or misleading information in its CRS.
- Information – A subscriber (e.g. a travel or ticketing agent) must inform the consumer of any en route changes of equipment, the number of scheduled en route stops and the identity of the air carrier actually operating the flight.
- CRS principal display ranking criteria – The actual operator of the flight must be clearly identified when flights are operated by an air carrier which is not the carrier identified by the carrier designator code. Where a joint venture, such as a code-shared flight, is

involved, not more than two of the carriers concerned can have separate displays using their individual carrier-designator codes. The carrier actually operating the flight should designate which other carrier is to be shown in the principal display.

The disclosure requirements have been addressed by the industry groups referred to above to provide guidance to airlines as to how schedules information standards can be changed to meet some of the new requirements.

Solutions have been found to show the operating carrier on ATB tickets and electronic ticket (ET) itinerary receipts. However, a problem still exists for carbonised tickets.

Safety (paragraph 1.6)

Most European airlines already perform safety audits on their code-share partners according to existing standards. While ICAO does set minimum safety standard, it does not provide detailed guidelines or standards for purposes of auditing.

Liability (paragraphs 1.7 – 1.8)

The main reason why airlines code-share instead of interline with each other is to present the passenger with a seamless on-line service, where he will look to one carrier, the carrier who issues his ticket, for service. In this case it is the ticketing carrier who assumes responsibility.

United States regulations are very clear on this subject. Grants of approval for code-share operations involving international air transportation are expressly conditioned on the requirement that such transportation must be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere, and that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (i.e. the ticket).

An amendment to Recommended Practice 1724 to meet the US DoT requirement provides that the Conditions of Carriage of the carrier whose designator appears in the carrier code box on the ticket (the Marketing Carrier) will apply rather than the conditions of the operator of the flight (the Operating Carrier).

It should also be noted that inter-carrier code-share agreements will include provisions addressing issues of indemnity and assumption of liability between the two carriers (or their insurers).

In the final event, individual cases will be adjudicated by the courts, or, by a national authority where a regulatory infringement involving a code-shared operation is involved, such as a violation of the terms of the grant of approval for a code-shared operation. It will be these cases and rulings that will further clarify the responsibility of parties arising from code-shared operations.

Possible Action (paragraphs 1.9 – 1.11)

IATA agrees that the main issue is that of transparency and various industry groups have been working with CRS vendors to improve the delivery of information to passengers. The revised EU CRS Regulation that came into effect in 1999 requires that travel agents and air carriers (when bookings are performed directly by them) inform customers of “any en route changes of equipment, the number of scheduled en route stops, the identity of the carrier actually operating the flight and of any changes of airport required in any itinerary provided”.

The existing rules do not need further revision and should be applied.

C.2 Interlining

Assessment of the Situation (paragraphs 2.1 – 2.5)

Interlining – Clarification of definition (paragraph 2.1)

Interlining also includes the use of tickets or other documents by one carrier that have been issued by another carrier, as if it was issued by that other carrier. The issuing carrier need not be involved in the actual transportation.

Interline agreements (paragraph 2.2)

There needs to be recognition of the Multilateral Interline Traffic Agreement (MITA) which has over 300 participating airlines throughout the world. This agreement gives rise to common standards in the areas of tickets, baggage, handling and transfers. Tariff Co-ordination provides the economic foundation for this system with agreement on fares for interline transport and a system of sharing the revenue among the carriers involved in the transportation. It also provides common tariff conditions for journeys involving the services of more than one carrier.

Emergence of alliance and code-sharing (paragraph 2.3)

The emergence of alliances is a fact, but there is still a need for common standards, for participation by carriers, often smaller carriers, new entrants and carriers serving remote or peripheral areas, feeding an alliance. Standards are also needed for interlining between alliances to increase the choices available to consumers. Interline transport remains important accounting for over 15% of all international scheduled revenue of IATA Member airlines. Within Europe, the study on interline transport within EU undertaken for the Commission by CERNA in 1997, found that 27% of all intra-EU transport was interlining and that a further 30% of passengers had tickets that gave the passenger the right to interline. Alliances and code-shares are fluid arrangements that may change in the future.

Benefits of interlining (paragraph 2.4)

An assessment of the effects of the promotion by IATA of universal (or multilateral) interlining commissioned by DG Competition in September 1998 concluded that universal interlining is of higher quality than ‘club’ (which equates to bilateral) interlining. It also found that IATA protects the interests of small carriers slightly better than commercial agreements between smaller and larger carriers were able to and concluded that the price alignment of non-interlineable tickets is a phenomenon independent from the existence of an IATA tariff.

The following regional airlines participate in IATA tariff consultations for the purposes of interlining in addition to all the major European airlines:

Air Littoral	Icelandair
Air Malta	KLM UK
Air Nostrum	Luxair
British Midland	Maersk Air A/S
Cityjet	Meridiana
Crossair	Portugalia
GB Airways	TAT European Airlines

Role of Tariff Coordination (paragraph 2.5)

A second study (in 1999) by CERNA for the European Commission concluded that tariff co-ordination had no detrimental effect on competition within Europe. Another study by the UK Civil Aviation Authority (CAP 685 – *The Single European Market: The First Five Years*) found no evidence of negative effects. Furthermore, looking at Tariff Co-ordination in isolation is unrealistic.

The process of interlining requires three separate but interdependent structures. First, there is the physical infrastructure that is established by the Passenger Services Conferences of IATA. These conferences set the common standards for the interline system. Second, there is the agreement to participate that is normally done under the IATA Multilateral Interline Transport Agreement (MITA) whereby carriers agree to mutual acceptance of the standard documents. Finally there is the ‘economic foundation’ enabling ‘through prices’ from/to origin and destination to be agreed, the sharing of interline revenue sharing and the processing of revenue earned from the interline transportation through Clearing House. These structures are inter-linked and removing Tariff Co-ordination pulls down the entire system. The alternative is to follow the principle of ‘sum of sector’ fares. Many studies have demonstrated that such a scheme results in higher prices and inconveniences for consumers.

Possible Action (paragraph 2.6)

No alternative scheme for facilitation of multilateral interline transport has been discovered to date. The existing system has been shown to have benefits for consumers, airlines and regulatory authorities without impeding competition or preventing alliances and bilaterals from being established. Furthermore, studies confirm that online market prices are not affected by the IATA process.

In connection with the suggestion on mandatory rules governing interline it should be noted that a condition of the granting of a block exemption for tariff consultations is that all prices discussed must give rise to interlining.

C.3 Frequent Flyer Programmes

Assessment of the Situation (paragraphs 3.1 – 3.5)

Report of 1992 (paragraph 3.2)

In 1992, a study prepared jointly by DG-IV and DG-VII assessed Frequent Flyer Programmes (FFP) from a competition perspective (effects on new entrants) and examined options for regulatory intervention, one of which was a possible Council Regulation (“code of conduct”). After consultation with interested parties, this approach was not pursued. IATA does not believe that changes have occurred since then that would justify an intervention today. Rather, as the study mentioned, “the evaluation whether a particular FFP is to be considered as an abuse of a dominant position can only be made on a case by case basis”.

In both subsequent merger decisions (SN/SR, KL/AZ) and in decisions concerning intra-EU co-operation, the parties involved have been asked to offer to new entrants who do not already participate in a FFP the possibility to participate in theirs, under reasonable and non-discriminatory financial conditions. In the proposed remedies on transatlantic alliances, the Commission offers two options: either to refrain from pooling on transatlantic routes or to allow airlines without comparable FFPs to participate.

The 1992 report concluded that “such programmes appear to be an essential pre-requisite for competing successfully on certain long-haul markets”. Any Community action in this field

would necessarily have implications for third-countries and one should be careful not to jeopardise the competitiveness of European airlines outside the region in attempting to enhance intra-European competition.

Passengers belong to different FFPs (paragraph 3.3)

As the Commission points out, global alliances have common FFPs. Consequently, passengers are not focused on the FFP of one single carrier. Furthermore, it is estimated that business travellers in Europe belong to three different FFPs on average. FFPs are also moving away from being airline loyalty schemes to become mass marketing tools involving many other services including hotel accommodation, car rentals, insurance services and shopping. FFPs thus remain effective competition tools between airlines and similar schemes are used in other modern commercial activities.

Cost of FFPs (paragraph 3.4)

The Commission's statement regarding the cost of running an FFP is vague and the quoted cost is highly questionable. Costs as high as these would discourage not only low cost carriers but also many well-established airlines as well.

Personal use of points/taxation of FFPs (paragraph 3.5)

A growing number of corporations have very strict travel policies that make it less possible for staff to let their FFP influence the choice of airline. At the same time, businesses view FFPs as a way of compensating staff for time spent travelling. Besides, some FFPs already allow the credit of earned points to a single corporate account.

The Green Paper does not elaborate on the reasons why it is suggested that frequent flyer points should be made taxable and it is therefore difficult to comment except by noticing that, to our knowledge, no other loyalty programmes are considered as a taxable benefit.

Moreover, initiatives, for example in the USA, to tax air miles have so far failed because of the sheer complexity of the scheme.

Possible Action (paragraphs 3.6 – 3.7)

The suggestion of trading points would be counter-productive: most FFPs do not allow the transfer of points from one account to the other and do not even allow that the benefits of the miles accrue to others than the immediate family of the members, precisely in order to avoid the trading of points and the emergence of a grey market in which the value of the points would not be determined anymore by the airlines (and their partners in other industries party to the scheme). In such a situation, airlines would rapidly lose interest in this marketing tool and consumers would also lose the benefits of the schemes.

The Commission observes that FFPs are already subject to scrutiny under the competition rules. Besides, the Commission itself admits that it has received "only a very few complaints". For those reasons, IATA believes that the necessary steps have been taken and that no further action is required in this field.

C.4 Air Fares

Assessment of the Situation (paragraphs 4.1 – 4.7)

Concern about the level of fully flexible fares (paragraphs 4.1 – 4.2)

EU has not provided IATA or airlines with results of their study on airfares other than two charts presented at a forum in November which showed that business fares had decreased by 9.2% on southern EEA routes and by 3.8% in Trans-EEA routes. This is the opposite of the statement made in the Green Paper. No information has been provided on operating ratios and consequently it is not possible to make meaningful comments on this issue.

Availability at the lowest and most frequently published tariffs (paragraph 4.3)

Quoting a US figure of 87% of fares unavailable at any one time is irrelevant and misleading. Carriers hold this information as confidential as it has potential competitive implications. Furthermore carriers vary the number of discount seats made available to reflect the demand patterns for individual flights. The objective is to maximise revenue per flight. Throughout Europe the availability of discount fares on average exceeds 50% of the total.

Regulation 2409/92 (paragraph 4.4 – 4.6)

The safeguard rules in this regulation are no longer appropriate in the deregulated environment in which carriers operate today. It is competitive forces that drive air fares and no airline can price on the basis of a cost-plus formula, regardless of their efficiency.

Possible Action (paragraphs 4.8 – 4.10)

Require that a certain percentage of tickets be available at the lowest advertised price (paragraph 4.8)

This is unreasonable and extremely onerous. It will inevitably lead to abandonment of certain low fares thereby depriving consumers of low fare options. It should be enough to make it clear to passengers in advertising that the fare will not be available at all times. Yield management systems are designed to optimise revenue per flight and could not work effectively under the constraint of allocating set numbers of seats. There is a risk that to impose rules of this sort would discourage the introduction of new low fares. It is very difficult to see any way to enforce this requirement without seeing the EC regulating airfares.

Airlines in the United States have adopted the only practical approach that consists in the commitment to offer the lowest fare for which a customer is eligible through the airline's telephone reservation system for the date, flight and class of service requested.

More powers to Commission to look at fares (paragraph 4.9)

IATA has no objection to looking at fares, but questions the criteria for assessing fares and the sanctions or penalties for being outside these criteria. What is the role of the competitive process in this? Market forces provide the best mechanism for determining fares.

Stimulate competition (paragraph 4.10)

This is fully supported by IATA, especially if it means improving ATC to enable more flights to operate in European skies and airport development to meet growing demands. IATA would also like to see removal or reduction in taxes, levies and charges that push up prices compared to surface transport and the elimination of subsidies to rail transport that will distort competition.

Deregulation has helped to reduce air fares in Europe. Low-cost carriers have entered the market and brought about cut-throat competition on some routes. The suggestion that carriers should “always make sure that a minimum number of seats are available at the lowest rate” is neither practical nor realistic. Air fares should be determined by supply and demand in a competitive market environment and airlines should be free to price as they see fit within the limits of current Community legislation. If the Commission is committed to ‘liberalising’ the European aviation market, it should not introduce new regulations in this area.

V. COMMENTS ON “CONDITIONS IN THE AIRCRAFT CABIN”

The following are comments on the Introduction to the Green Paper under Section D, pages 18-19. Our comments refer to the paragraph numbers in this section.

D.1 Air quality / radiation

Assessment of the Situation (paragraphs 1.1 – 1.5)

Cabin Air Quality (paragraphs 1.1 – 1.3)

The issue was discussed by the IATA Engineering and Maintenance Committee (EMC) in June 1999. Earlier findings by the IATA medical advisors, addressing press reports on the issue, concluded that:

- the performance of air ventilation systems in modern aircraft has been considerably improved. These systems ensure proper control of the ozone level, air humidity and better control of the carbon dioxide level;
- cabin air is circulated at rates that are above approved health standards. However, the rate at which cabin air on a given flight is recycled may vary within defined limits depending on the number passengers;
- cabin air is filtered through a very effective system which is capable of screening particles the size of bacteria so ensuring a high quality of recycled air; and
- cases of disease transmission, where they have occurred, are more likely to result from being close to an infected passenger rather than from the air circulating in the cabin.

Numerous studies⁸ by aviation and government organisations over the past decade make it clear that none of the airline cabin environment characteristics present any unusual health risks and, in fact, are generally superior to comparable conditions elsewhere.

Airworthiness Authorities (e.g. the FAA in the US and the JAA in Europe) perform measurements of air quality in its many different attributes prior to certification of an aircraft. Further measurements may also be performed subsequently.

⁸ Studies on cabin air quality include:

World Health Organization (WHO), *Tuberculosis and Air Travel: Guidelines for Prevention and Control*, Geneva, 1998.

Airbus Industry, *Cabin Air Quality*, Fast 19 Magazine, March 1996.

Air Transport Association of America, *Air Cabin Air Quality Study*, April 1994.

Boeing, *Cabin Air Quality*, TTY M-7240-93-1476, 3 August 1993.

U.S. Federal Aviation Administration, *Notice of Proposed Rule Making 94-14*, US Federal register, 2 May 1994.

U.S. Department of Transportation, *Airliner Cabin Environment*, Report DOT-P-15-89-5, December 1989.

U.S. Department of Transportation, *Airliner Cabin Ozone: An Updated Review*, U.S. DOT/FAA/AM/-8913.

In the US, the cabin air standards used are those set by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) for indoor building spaces. ASHRAE is presently conducting studies and is expected to issue a North American Standard for aircraft cabins for review in early 2000. In addition a US Federal Aviation Administration regulation (FAR 121.578) addresses cabin ozone concentrations.

Transmission of airborne viruses including tuberculosis (paragraph 1.2)

In 1998, the World Health Organization (WHO) published the findings of an international multi-disciplinary Consensus Committee on *Tuberculosis and Air Travel*. A principal finding of the report, based on investigations by the US Centre for Communicable Diseases (CDC), was that airborne transmission of infectious diseases in aircraft appears to be limited to person-to-person spread within close proximity. This conclusion supports the conclusions of the IATA medical advisors referred to above.

Incontestable research results (paragraph 1.3)

The Green Paper asserts that “incontestable research results are ... often not available”. IATA urges the Commission to review this statement in the light of the studies referenced at footnote 7. With reference to other modes of transport, it is clear that there is some risk to the transmission of an infectious disease in any enclosed space where persons remain in close proximity to each other for a period of time. In February 2000, a public health warning was broadcast on French radio to occupants of a TGV car who had travelled with a person later found to be infected with meningitis.

Cosmic radiation (paragraph 1.4 – 1.5)

IATA notes that implementing legislation to give effect to Directive 96/29/Euratom is due to take effect from May 2000 and that this requires (Article 42) air carriers to take account of the exposure of air crew to cosmic radiation. It would be impractical for airlines to measure the exposure of any other group of users of air transport⁹.

Measures taken by IATA

In 1998, the IATA Passenger Services Conference adopted a Recommended Practice on the *Carriage of Passengers with Infectious Diseases* (RP 1798). This RP sets out measures to be taken if an airline learns that it has unknowingly or unwittingly transported a passenger with an infectious disease.

A newly-established medical working group of the IATA Inflight Council has been set up to examine on-board medical care and health related issues. It will review any existing work or research conducted in this area. It has been mandated to harmonise existing standards and develop, as necessary, recommended practices to the IATA Inflight Council. The medical working group plans to examine the occurrence of stress or diseases caused by cabin pressure levels and the quality of cabin air or cosmic radiation and their effect on crew and passengers

Possible Action (paragraph 1.6)

IATA agrees that the research that has already been carried by the WHO, US DoT, the FAA, ATA, Boeing and Airbus should be carefully examined. IATA supports additional research in

⁹ Richard Hillick, of safety consultants Sage Safety was recently quoted as saying: “Agreed procedures should be formed before cosmic radiation is considered to be a problem, starting with putting a price on the cost of safety. We are very much interested in this whole question: how much money does it take to make something a little bit safer?”

the event that the conclusions of these studies are considered to be inadequate or ‘contestable’.

D.2 Seats

Assessment of the Situation (paragraphs 2.1 – 2.2)

Seat pitch (paragraph 2.1)

The Green Paper remarks that ‘cramped seating’ can be the cause of thrombo-embolic episodes but that ‘confined seating’ offers better protection in the event of an emergency landing. ‘Confined seating’ also enables airlines to reduce costs per seat-kilometre and therefore average yields. These situations raise contradictions.

At the same time, IATA notes that several airlines have recently begun removing seats in economy class to increase seat pitch in response to consumer demand and for competitive reasons.

Child restraint systems (paragraph 1.2)

The Commission is currently funding a project to develop minimum operational performance specification for child restraint systems in passenger aircraft (the Improved Child Restraint System project – IMPCHRESS). The industry welcomes research in this area but it should also be borne in mind that no specification for improved child restraint devices exists at present and a number of critical questions would have to be addressed.

Child seats are usually relatively bulky items which, following impact can detach and become an obstacle to evacuation, thus rather creating an additional safety hazard. It is therefore advisable that research look into this aspect. On the economic side, the only practicable way to deal with child restraint devices would be to oblige parents to bring suitably certified seats with them (ideally seats which can also be used as child seats in cars.) Otherwise the need to provide child seats at any destination an airline operates to would create extensive logistical problems. Finally, if a child occupies a passenger seat, then it is appropriate that the cost should be borne by the accompanying passenger.

The Commission is also referred to the extensive research carried out in the United States¹⁰ on the costs and benefits of mandating obligatory child restraint devices for all children. The FAA is currently reviewing this question.

IATA measures

The effects on passenger health of cramped seating and immobility for long periods is on the work plan of the IATA Inflight Council’s medical working group. The working group on customer care will review the use of children’s belts. These groups will harmonise existing standards where they exist, with a view to recommending industry best practices.

Possible Action (paragraph 2.3)

More research and statistical analysis is needed on medical issues in general, in conjunction with serious cost/benefit analysis and consultation with industry. IATA supports the involvement of the JAA in connection with modification of JAR OPS 1.320 b2.

¹⁰ Apogee Research Inc., *Analysis of Options for Child Safety Seat Use in Air Transportation*, Report prepared for the Federal Aviation Administration (FAA), July 1993.

D.3 Air Rage

Assessment of the Situation (paragraphs 3.1 – 3.3)

General (paragraph 3.1)

The phrase ‘air rage’ is a misnomer although it is commonly used in the press to ‘create’ a good story. The ‘problem’ is more accurately described as being unruly, disruptive and potentially criminal behaviour by a relatively small minority of airline passengers. There can be no excuse for such behaviour whatever the circumstances or causes. Disruptive incidents on board are unpleasant for crew and passengers alike and the most serious ones could compromise aircraft safety.

Blacklisting of unruly persons is not confined to airlines, but is also used by ferry companies and football stadiums.

Reliable data (paragraph 3.2)

The UK DOT released the first fully co-ordinated survey of disruptive incidents on 18 February 2000. Out of almost 800 incidents during the survey period (April – October 1999), 336 were classified as ‘significant’ and 39 as ‘serious’. There was one incident for every 870 flights or one in every 66,000 passengers. Three quarters of all incidents involved male passengers and two thirds of offenders were in their 20s or 30s. Charter flights accounted for half of the total.

Measures taken (paragraph 3.3)

IATA and the airline industry are aware of the complexity of the problem and have been working since the mid-1990s to address the problem. The following measures have been taken:

- Adoption by the Passenger Services Conference of a Recommended Practice (PSC (20) RP 1798a) on “handling Disruptive/Unruly Passengers” which became effective on 1 June 1999.
- Publication of *Guidelines for Handling Disruptive/Unruly Passengers* by IATA Inflight Services in 1999. Drawing on the experience of Member airlines, this includes policy guidelines, a misconduct and action table to categorise incidents, sample passenger warning cards, sample incident reporting documents and examples of company policies in use.
- Preparation of a sample MOU that can be used or adapted as the basis for an agreement between an airline and control authorities at airports to deal with disruptive passengers according to applicable law, where this is possible.
- Organisation of a seminar *Disruptive Passengers 2000 – Abuse, Aggression and Hooliganism* in Geneva on 23 March 2000.

The ICAO Secretariat Study Group on Unruly Passengers set up in 1997 is also carrying out important work. The group is well advanced on work on model legislation and guidance material; an amendment to ICAO Annex 17; an amendment to the Tokyo Convention of 1963; a new international instrument or some combination of the above.

Possible Action (paragraph 3.4)

IATA asks the Commission to recognise the progress made by the industry in dealing with the unruly passenger phenomenon as detailed above and to continue support a co-ordinated

approach by the airlines, governments and law enforcement authorities is essential to devising appropriate responses.

IATA urges the Commission to give full support to the ICAO Study Group on Unruly Passengers and to use its influence with governments world-wide to support the industry's ongoing efforts by enacting domestic laws that facilitate the arrest, conviction and punishment of unruly passengers.

VI. COMMENTS ON “INFORMATION AND TRANSPARENCY”

The following are comments on the Introduction to the Green Paper under Section E, pages 20-22). Our comments refer to the paragraph numbers in this section.

E.1 The Gaps in Information

Assessment of the Situation (paragraphs 1.1 – 1.2)

The Green Paper raises the question as to what information passengers need from a legal and practical standpoint and how these requirements can be met in the least costly and most effective way. A European approach to this should also consider the global context.

The following aspects related to the provision of information need to be addressed:

- what information is required;
- who must be informed and when;
- what are the contractual and legal considerations;
- use of ‘plain language’;
- whether consistent obligations should be applied to all modes of transport;
- how this information can be delivered in the most effective way;
- the cost of implementing additional revised notices or information.

What Information is needed?

A wide variety of information must be available to airline staff and to airline customers in different circumstances and for different reasons, not least of which is to ensure that customers are satisfied.

The first category of information to be defined is what is mandatory and in which jurisdictions. Mandatory information to be provided to passengers boarding flights in the European Union includes notices regarding the contract of carriage, liability, the Warsaw Convention, denied boarding compensation etc. Notices are also given concerning carriage of hazardous items (including electronic equipment), cabin baggage allowance, code-sharing etc. But how many passengers actually read them?

A second category of information is needed only in particular cases, or when a problem arises. Airline staff manuals provide answers to the hundreds of situations and needs to which airline customer service staff may have to respond. This includes practical information (handicapped passengers, meals, seat assignment, safety and security measures, etc.) and procedural information, such as what to do in the event of denied boarding.

Who must be informed and when?

Providing too much information and at the wrong time is counter-productive, wasteful and costly.

Further study should examine the information requirements of different travel partners and the time dependency of the information. This will also influence where the information is to be made available.

Plain language

The Directive on *Unfair Terms in Contracts concluded with Customers* requires that written information (in Article 5) be delivered in a straight-forward way (“plain” language).

Nevertheless, a balance must be established between understandable language and a form that will be precise enough to clearly define the rights and obligations of the parties.

The charge is often made that the language used to convey mandatory notices or contractual terms is obscure. It is to be noted that the language of certain notices is dictated by international treaties or by various governments. It is also clear that notices of various kinds have been written over a period of decades and subjected to different considerations and specifications – including type-face and size.

Airlines, IATA and the ATA, have been working on ‘plain language’ versions of notices and Conditions of Carriage.

Another issue to be addressed is which languages are required.

Answers to these questions influence the practicality and cost of the delivery mode.

How can information be delivered in the most effective way?

A revolution in information technology is taking place that is being felt world-wide. This has completely changed the amount of information that can be processed, and the means, ease and speed by which it can be retrieved. Costs have been reduced to the point where information technology and communication are now within the reach of all, eliminating the disadvantages of geography and distance.

Any new research should examine how electronic media (digital telephones, Internet, Intranet, CRS, CD-ROM) can be used to deliver information to the appropriate person and place when it is needed.

IATA is working on an Industry Information Network (iiNET) strategy to maximise the synergy and benefits related to the distribution of information to the benefit of consumers.

CRS networks offer possible distribution systems, especially in supporting the sales activities of over 90,000 IATA and UFTAA agents. This approach has been used to deliver TIMATC, an electronic form of the TIM, the Travel Information Manual, directly to travel agents and airline ticket offices.

What contractual considerations are involved?

The contractual relationship between airlines and different parties concerned is continuously evolving. IATA suggests that consideration should be given to different methods of disseminating information when a contract is concluded by telephone, fax or other electronic media.

The role of travel agents should also be given further consideration.

Whether consistent obligations should be applied to all modes

Given the European Union’s interest in promoting inter-modality, the study should examine how information requirements required of air carriers will be applied to other modes.

How much would it cost

Full analysis should also determine an order of magnitude for the costs of implementing various proposals. It should also address how these costs would be apportioned.

Possible Action

No-one disputes that passengers need to be properly informed, in a timely manner and in a way that is clear and understandable. However, there is no practical benefit in simply imposing new information obligations on carriers without considering whether the information will be useful or welcome. As outlined above, there are a number of areas that would benefit from further study and dialogue.

E.2 The US Model – Consumer Reports and “Customers First”

Assessment of the Situation (paragraphs 2.1 – 2.3)

In September 1999, the Member airlines of the Air Transport Association of America (ATA) individually published their ‘Customers First’ policies. These voluntary performance service pledges, which entered into effect in December, address a similar range of issues – some of which are the same issues raised in the Commission paper – but are tailored to the specific circumstances of each airline. Individual airline Global Service Plans are available on airline Internet web sites; at airports and ticket offices upon request and to travel agents and reservation agents.

IATA has launched a similar initiative on a global scale, using the American experience as a starting point. It is hoped that a draft Global Service Plan, addressing many of the issues raised in the Green Paper, can be adopted at the next IATA Annual General Meeting in June 2000. Thereafter, airlines would be encouraged to publish their own individual and voluntary performance pledges.

It is important to note that the U.S. initiative applies only to the relatively homogeneous U.S. domestic market and has been adopted only by the 26 Member airlines of the ATA, while IATA Member airlines fly in a much more diversified global market. What might be considered ‘best practice’ in one country may be inappropriate or unacceptable in another. The IATA initiative will focus on a global level. For any EU Commission approach to be applied practically, it too should fit into a global framework.

Possible Action (paragraphs 2.4 – 2.7)

Clearly, the Commission is an important element in developing meaningful global customer standards and IATA would welcome the opportunity to work with the Commission on this project.

E.3 Complaints

Assessment of the Situation (paragraph 3.1)

Airlines consider information regarding the number and type of complaints to be a commercially sensitive matter. The points raised in the Green Paper clearly define the issues and will be considered by IATA in formulating its Global Service Plan with assistance from its Members.

The majority of complaints concern loss of baggage, overbooking and delays. It is in the commercial interest of airlines to resolve complaints as quickly as possible, bearing in mind that a certain proportion are frivolous in nature. Airlines are aware of the way in which better information can reduce complaints.

Possible Action (paragraphs 3.2 – 3.4)

Information on complaints is a commercially sensitive matter that should not become the subject of rulemaking. Most of the complaints are minor and airlines should be free to settle them according to their own judgment. The existence of a ‘complaints culture’ in several countries argues against the establishment of hard rules. For major complaints the option of legal action before the courts remains the appropriate way to obtain satisfaction. As regards the comparison with the US, the difference in litigation culture between Europe and the US suggests that arrangements on how to deal with customer complaints be bound to differ.

ATTACHMENT 1

30 BUSIEST AIRPORTS IN EUROPE IN 1998

Rank	Airport	Total Passengers	% Change 1997 - 98
1	London (LHR)	60,660,000	4.3
2	Frankfurt/Main	42,716,300	6.1
3	Paris (CDG)	38,628,900	9.5
4	Amsterdam	34,420,100	9
5	London (LGW)	29,173,200	8.2
6	Madrid	25,466,600	7.9
7	Rome	25,337,400	1.3
8	Paris (ORY)	24,952,000	- 0.4
9	Munich	19,321,400	8
10	Zurich	19,276,800	5.5
11	Brussels	18,481,900	16
12	Copenhagen	16,662,500	- 0.1
13	Stockholm	16,409,700	8
14	Barcelona	16,193,900	7.5
15	Dusseldorf	15,754,600	1.4
16	Milan (LIN)	13,611,700	- 4.6
17	Oslo (OSL)	13,308,000	4.3
18	Dublin	11,641,100	12.7
19	Vienna	10,639,100	9.3
20	Oslo (FBU)	9,444,300	- 19.2
21	Helsinki	9,367,300	10.6
22	Hamburg	9,126,200	5.5
23	Berlin	8,881,800	1.7
24	Nice	8,086,900	9.7
25	Stuttgart	7,237,200	4.7
26	London (STN)	6,862,900	26.5
27	Birmingham	6,710,500	11.3
28	Glasgow	6,566,900	7.4
29	Geneva	6,439,700	5.3
30	Milan (MXP)	5,919,600	51

Source: Airports Council International.

Note: Total Passengers: Arriving + departing passengers + direct transit passengers counted once.