



eu travel tech

Mrs Adina Vălean
Commissioner for Transport
Mr Didier Reynders
Commissioner for Justice
European Commission

By email:

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Brussels, 7 December 2022

Subject: Joint call from European consumers, industry, and insurance providers on urgent need for mandatory insolvency protection scheme in the airline sector

Dear Commissioner Vălean,
Dear Commissioner Reynders,

The undersigned **representatives of European consumers, the package travel industry, online intermediaries and insurance providers¹ jointly call on the European Commission to introduce a mandatory insolvency protection scheme in the airline sector.**

On average it is estimated that passengers lose **€431** when an airline goes bankrupt, according to a DG Move study on air passenger rights in the EU.² **87% of this is not recoverable at all because** there are no mandatory insolvency protection schemes in the airline sector, contrary to the package travel sector.³ In addition, when an airline goes bust, **passengers can be left stranded abroad without any solution to be repatriated.** Passengers are not only left with worthless tickets of a bankrupt airline; they also have **to purchase new tickets often at short notice at very high prices.** Even the so-called "rescue fares" on other airlines are often expensive and only offered when there are empty seats available on flights.

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¹ AGE Platform Europe, BEUC (The European Consumer Organisation), the European Consumer Centres Network (ECC-NET), the European Disability Forum (EDF), the European Passenger Federation (EPF), European Travel agents and Tour Operators' Association (ECTAA), European Guarantee Funds' Association for Travel and Tourism (EGFATT), ETOA - European tourism association, and EU Travel Tech.

² Commission européenne, Direction générale de la mobilité et des transports, Kouris, S., Study on the current level of protection of air passenger rights in the EU : final report : study contract, Publications Office, 2020, <https://data.europa.eu/doi/10.2832/529370>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L2302>

Unfortunately, sudden disappearances of airlines **are not a rare phenomenon** and have even multiplied in the recent years. **There were 87 airline insolvencies from 2011-2019, affecting 5.6 million consumers.**⁴ The COVID-19 crisis also greatly impacted airlines' finances as they had to resort to massive and unprecedented state aid⁵ to survive the crisis. All types of airlines are now concerned by bankruptcies⁶ or serious liquidity issues.^{7,8,9}

Faced with these facts, the co-signatories of this letter strongly welcomed the European Commission's "Sustainable and Smart Mobility Strategy"¹⁰ and its statement that, **"The EU must help passengers when transport operators go bankrupt or are in a major liquidity crisis as in the context of the COVID-19 pandemic.** Stranded passengers need to be repatriated and their tickets have to be reimbursed in case of cancellations by carriers."¹¹ This was concretised in December 2021, with the announcement of a new initiative called "Better protection of passengers and their rights"¹² aiming notably to, "assess the options and propose, if appropriate, an adequate financial protection scheme to protect passengers against the risk of a liquidity crisis or insolvency regarding the reimbursement of tickets and, if needed, their repatriation".

In their respective position papers and contributions to the initiative,^{13 14} all co-signatories supported the Commission's willingness to focus on the lack of an insolvency protection scheme in the airline sector and encouraged it to correct the inconsistencies between travellers' rights legislation, particularly with the Package Travel Directive (PTD) and the absence of an equivalent mechanism for stand-alone airline tickets. **This long-standing¹⁵ and well-identified legal gap** leads to situations that are detrimental both for passengers and tour operators/travel agents, as well as organisations for the financial protection of travellers under the PTD:

- *Firstly*, standalone ticket travellers do not have the same level of protection despite being affected by the same bankruptcy as package travellers,
- *Secondly*, when dealing with an airline insolvency, intermediaries, mostly SME-sized will have to foot the costs of the lost tickets towards the consumer.^{16, 17} This applies both in the context of a package deal, but also in some situations when a standalone ticket had been purchased via a travel agent.

⁴ Commission européenne, Direction générale de la mobilité et des transports, Kouris, S., Study on the current level of protection of air passenger rights in the EU : final report : study contract, Publications Office, 2020, <https://data.europa.eu/doi/10.2832/529370>, points 8.3

And 8.17.

⁵ Special Report 15/2021: Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts

⁶ Norwegian Air, Virgin Atlantic, Czech Airline, Jet Time, SunExpress Deutschland, Flybe, WOW Airline, to provide only a few examples.

⁷ <https://www.lesechos.fr/industrie-services/tourisme-transport/le-sauvetage-dair-france-klm-a-mobilise-plus-de-15-milliards-deuros-1409161> , last consulted on 19/10/2022.

⁸ <https://www.bloomberg.com/news/articles/2022-02-24/the-airlines-still-facing-risk-of-bankruptcy-as-travel-returns?leadSource=verify%20wall> , last consulted on 19/10/2022.

⁹ <https://www.bloomberg.com/news/articles/2022-09-05/bankruptcy-risk-seen-higher-for-europe-s-airlines-this-winter>

¹⁰ Sustainable and Smart Mobility Strategy – putting European transport on track for the future, {SWD(2020)331 final}.

¹¹ Point 91 of the Sustainable and Smart Mobility Strategy.

¹² https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13290-Travel-better-protection-for-passengers-and-their-rights_en , last consulted on 05.10.2022.

¹³ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13290-Travel-better-protection-for-passengers-and-their-rights/F2785548_en , last consulted on 05.10.2022 (see pdf in the page).

¹⁴ <https://www.eccnet.eu/sites/default/files/2021-11/ECC%20Network%20-%20position%20paper%20-%20APR.pdf>

¹⁵ See for instance the [2013 Commission Communication](#) on passenger protection in the event of airline insolvency (COM/2013/0129 final)

¹⁶ <https://www.ectaa.org/Uploads/documents/Reforming-Package.pdf> , Point 1.1.1, last consulted on 07.10.2022.

¹⁷ EU Travel Tech position on the revision of the Package Travel Directive, September 2021, last consulted on 07.10.2022.

Unfortunately, the European Commission, in its open public consultation and targeted questionnaires is only considering policy options that are **far from sufficient to remedy the damage to all those affected by an airline bankruptcy**, namely consumers and booking intermediaries. At best, they will only very partially solve certain problems raised by airline insolvency.

The policy options proposed – such as better informing passengers about optional insolvency insurance policies available on the market or offered by airlines or protection granted via certain payment methods - have **already been identified by successive DG MOVE studies and Commission Communications** (from 2011,¹⁸ 2013¹⁹ and 2020²⁰) **as partial and insufficient to protect all consumers in the same way**. If these policy options are selected, most consumers would still be exposed to significant losses and all actors in the value chain will continue to shoulder the risks of airlines' failures.

For the co-signatories, an effective protection of all actors impacted by an airline bankruptcy **can only be achieved by an obligation to introduce a mandatory insolvency protection mechanism in the airline sector, mirroring the existing obligations in the Package Travel Directive**.

Signatories urge the European Commission to take inspiration from already existing and effective examples:

- *In the airline sector:* In 2015, the Danish Government introduced a mandatory insolvency protection for airlines²¹ covering standalone tickets. Under the scheme, all airlines departing from Danish airports have to contribute to the fund with a small fee per passenger (€0.30/pax), and all passengers departing (or planned to depart) from Danish airports are covered, irrespective of the nationality of the airline or the passenger. For now, **this mechanism has proven to be effective** and is recognised and well accepted.²²
- *The Package Travel Sector:* The European Commission **should also take inspiration from the Package Travel Directive regime**²³ where such mandatory insolvency protection schemes have existed for a long time and have proven to be effective in fully repatriating stranded passengers and ensuring a refund for passengers.²⁴

In addition, the co-signatories would like to underline that the creation of mandatory airline insolvency protection should be coupled with a strengthening of the licensing oversight of EU air carriers under Regulation (EC) No 1008/2008 (stronger monitoring of airlines' financial health of airlines by national authorities etc.), **but stronger monitoring can under no circumstances replace the need for mandatory airline insolvency protection**.

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¹⁸ European Commission impact assessment on passenger protection in the event of airline insolvency, Final Report, February 2011, prepared by Steer Davies Gleave.

¹⁹ [Communication from the Commission](#) to the European Parliament, the Council, the European Economic and social committee and the Committee of the Regions on Passenger Protection in the event of Airline Insolvency, COMM(2013), 129 final, see in particular points 2.4 and 2.5.

²⁰ Commission européenne, Direction générale de la mobilité et des transports, Kouris, S., Study on the current level of protection of air passenger rights in the EU : final report : study contract, Publications Office, 2020, <https://data.europa.eu/doi/10.2832/529370>, table 8.4, p. 194.

²¹ The Rejsegarantifonden is a fund created in 2015 to offer passengers the option of protection standalone air tickets. Under the scheme all airlines departing from Danish airports have to pay a small fee per passenger, and all passengers departing (or planned to depart) from Danish Airports are covered, no matter the nationality of the airline or the passengers' one.

²² Regeringen foreslår bedre forhold for flyrejsende (em.dk) , last consulted on 19/10/2022.

²³ Article 17 of the Package Travel Directive

²⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:90:FIN>, see notably point 4, last consulted on 18/10/2022.

The co-signatories therefore urge the European Commission in its "Better protection of Passengers and their Rights initiative," **to oblige airlines to provide financial guarantees covering their liabilities towards passengers in case of insolvency or removal of their operating license which covers - at minima - the full refund of travellers' pre-payments, voluntary vouchers accepted by consumers, and their repatriation, if needed.**

Only airlines should support the risk of their activities, not consumers, nor taxpayers. Nor should package guarantee providers have to extend their protection to cover airline failures, which is a whole new and different risk. Finally, it is also a question of fairness for package organisers - often SME-sized - which currently bear the risks of airline failures.

We remain at your disposal to continue our constructive discussions on the topic.

Yours faithfully,

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²⁵ Co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Innovation Council and Small and Medium-sized Enterprises Executive Agency (EISMEA). Neither the European Union nor the granting authority can be held responsible for them.