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## Comments from International Air Transport Association (IATA) on the report on an improved travel guarantee system (SOU 2023:33)

The International Air Transport Association (IATA) is a global trade association, representing some 300 airline members across the world and accounting for 83% of total global air traffic. Our members include approximately 50 airlines operating air services to/from Sweden. IATA supports many areas of aviation activity and helps to formulate industry policy on critical aviation issues to drive a safe, secure, and a sustainable industry. For more information on IATA and its work, you can visit [www.iata.org](http://www.iata.org)

IATA welcomes the opportunity to comment on the report SOU 2023:33 regarding the report on an improved travel guarantee system.

We thank you in advance for taking these comments into account. If you have any questions or concerns, please don't hesitate to contact us at IATA.

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## Summary

- IATA considers that the issue of passenger rights should primarily be regulated internationally. Aviation is a global industry which functions best when best practices, standards and regulations are harmonized at an international level.
- Indeed, IATA notes that there are multiple initiatives in play within Europe which overlap with themes raised in the current consultation. Against this background, IATA questions the proposal for increased national regulation in this area, given the potential for duplication or contradiction as well as likely confusion for travelers and operators alike.
- IATA does not support the introduction of either a comprehensive air travel fund for scheduled flights or a repatriation fund financed by scheduled flights. IATA considers that alternative solutions exist that can deliver similar policy objectives more efficiently at lower cost and with less disruption for travelers.
- IATA has long welcomed a revision of air passenger rights within the European Union. Updated EU-wide and transport-neutral rules are what can really increase confidence and certainty for passengers and industry stakeholders.

## Insolvency Protection: Refunds and repatriation

IATA generally supports the policy objective of ensuring that consumers have adequate financial protection from the potential insolvency of a travel operator or a travel agent, on the basis that giving consumers an added degree of reassurance and may further enhance consumer confidence.

However, IATA also notes that the risk of airline insolvency is very low: 0.04% of total EU passengers were affected by insolvency from 2011-2019. Accordingly, introducing a specific insolvency scheme for flight-only tickets would be disproportionate relative to the low risk in normal times and would reduce the competitiveness of Swedish airlines (if applied to Swedish airlines only) or the competitiveness of Sweden as a whole if applied to all carriers - resulting in less choice and connectivity and higher fares for consumers.

### **Package Travel Directive and the Air Services Regulation**

The consultation document notes that the Package Travel Directive requires vendors of travel packages to have adequate insolvency protection and suggests that passengers purchasing flight-only fares are somehow at a disadvantage due to the absence of such a requirement. However, the consultation does not make reference to the financial oversight obligations to which airlines are subject under Regulation 1008 / 2008 (the Air Services Regulation) and for which no similar regulatory obligation exists for travel agents.

IATA's experience is that the obligations contained in the Air Services Regulation generally work well. To the extent that additional protections are judged to be desirable, IATA's view is that such measures should be progressed through a revision of Regulation 1008 / 2008, something that the European Commission has already consulted extensively on.

### **Guarantee Funds**

IATA does not support the introduction of either a comprehensive air travel fund for scheduled flights or a repatriation fund financed by scheduled flights. IATA considers that alternative solutions



exist that can deliver similar policy objectives more efficiently at lower cost and with less disruption for travelers.

In particular, IATA notes that while a repatriation guarantee fund could provide financial compensation to consumers for costs associated with repatriation it does not address the delay, disruption and stress caused to travelers who need to make alternative arrangements at short notice, most likely at a time close to the scheduled time of travel when availability may be limited, especially at peak travel periods. These challenges would be avoided in the case of a managed wind-down of operations.

### **Managed wind-down of operations**

IATA considers that enabling airlines to continue operating, even for a short period, following insolvency would allow passenger tickets to be honored in the normal course of business. Legislation around bankruptcy protection is a measure that would allow airlines to continue operating even if insolvent, and provide services to ticket holders.

The managed cessation of operations in the case of Air Berlin is a positive example and IATA understands that some European Member States are moving towards adopting such restructuring rules, which would adequately protect consumers in situations of insolvency.

#### *Air Berlin: A case study of a managed wind-down of operations*

*On 15 August 2017, Germany notified the European Commission of its intention to grant a bridging loan to Air Berlin. The German public credit institution KfW provided a credit facility of up to €150 million to Air Berlin in order to allow Air Berlin to continue operations, with the aim of maintaining its services while the airline concluded negotiations to sell its assets. At the end of the process, Air Berlin was expected to cease operating and exit the market.*

*The EU Commission found that the measure was helpful to protect the interests of air passengers and to maintain air passenger services. At the same time, the strict conditions attached to the loan, its short duration, and the fact that Air Berlin was expected to cease operations at the end of the process, reduced to a minimum the distortion of competition potentially triggered by the state support. The Commission, therefore, concluded that the measure was compatible with EU state aid rules.*

*The Commission's guidelines on rescue and restructuring aid allow Member States to support companies in difficulties could be modified in order to make this orderly liquidation of an airline, which ensured repatriation of all passengers, to become the common practice for Member States to tackle with airline bankruptcy cases.*

A managed wind-down of operations would allow the majority of passengers to return home on their originally booked flights without disruption or the stress of trying to make alternative travel arrangements at short notice – an issue that would not be addressed by a guarantee fund.

Also, a managed wind-down of operations, even if only for as short as 14 days, would provide valuable time to trigger voluntary agreements for repatriation or "rescue" fares, set up a central coordination system and communicate the availability of such fares to those consumers who would require repatriation beyond a 14-day wind-down period. Importantly, by allowing repatriation of the majority of passengers on their originally booked flights, the quantity of passengers requiring rescue fares would be reduced, facilitating the task of matching demand to the available supply.



With regard to the costs of a managed wind-down, existing liquidation rules allow States to be preferential creditors and therefore cost to taxpayers of any government loan should be very limited or inexistent. Similarly, mechanisms such as Schedule Airline Failure Insurance (SAFI) are available for passengers who want to add comfort prior to travel. In addition, passengers who purchase travel with a credit card are already protected. If a carrier becomes insolvent, the passenger has a chargeback right with their credit card company. The credit card company can then turn to the carrier to get reimbursed, which is why they require that carriers preserve sufficient cash balance in case they become insolvent or, if their unrestricted cash balance is insufficient, to make a deposit with credit card processors.

## Refunds

### **Reimbursement of air passengers booking via an intermediary vendor**

As a matter of course, customers should always claim from the entity which sold the ticket. This entity will have the contact and payment details of the purchaser and can provide swift reimbursement. An unflown ticket paid by credit card remains a liability for Acquirers until the flight is either flown or reimbursed, because of the risk of chargeback for services not rendered. If the refund would be performed using a different card or payment instrument, this creates an unnecessary obstacle for Airlines to access liquidities, as the acquirer of the original purchase transaction would not know that it has been refunded and would continue to treat that purchase as a liability.

For tickets purchased through intermediaries, even if the airline has the customer's contact information, the amount paid to the airline may not be the same that the customer paid to the travel agent if the travel agent offers special fares. In addition, depending on how the customer information is passed to the airline, there may be manual processing needs that could delay the reimbursement process.

A clear and consistent position on who the customer should approach for reimbursement will also reduce the risk of duplicate payments and legal issues, including data protection issues. IATA considers that providing very clear consumer information using for example a government or regulator website on how to request refunds, rebook a journey, or request a voucher would benefit all parties.

### **Reimbursement for tickets cancelled as a result of a major crisis**

Based on IATA's data for the decade prior to COVID, refund ratios were very consistent from 2010 to 2019 at around of the tickets sold. Accordingly, ticket refunds were never a systemic issue with the vast majority of refunds being processed quickly and without incident. COVID-19 was one of the worst crises in the history of commercial aviation, driven by States' decisions to close borders which resulted in the suspension of more than 80% of flights at the beginning of the crisis between April and June 2020 (Q2 2020).

These decisions triggered a chain reaction of adverse events, starting with the need to refund or rebook all these flights that could not be serviced anymore. Airlines' sales were literally negative for several months as the refunds exceeded new ticket purchases. Airlines' card acquirers, which are the intermediaries between merchants and card schemes responsible to provide the payment of the card transactions, started to withhold liquidities or ask for financial guarantees as collateral, which immediately affected the liquidities available for these refunds. States' Aids were only decided and granted several months after the decisions to close borders, which delayed the liquidities available.

Additionally, airlines were evidently not equipped with the processes, tools, and manpower to perform refunds at this scale. IATA assesses that most cases of tickets which took a long period to be reimbursed or exchanged for future flights / vouchers relate to the flights cancelled during Q2 2020, Even though borders were not consistently reopened after Q2 2020, the data shows that refunds were performed more rapidly as



Airlines had started to automate the refunds or rebooking processes and liquidities started to flow in again (sales, States Aids, ...) but Card Acquirers holdback remained and still are to date.

IATA believes that the processes and offerings are now fully functional even for limited crisis situations. Preparing for future potential shocks of similar amplitude such as Covid-19 will require taking into account all the above aspects, such as allowing for a longer than 7 days delay to ensure that all conditions are in place and regulating the ability for actors such as, but not limited to, card acquirers to withhold or reduce cashflow and ensuring that sufficient liquidities will be available.

### **Reimbursement for tickets cancelled by consumers in a major crisis**

Passengers are entitled to a refund if the carrier cancels their flight. Passengers are also entitled to a refund when they cancel their flight if it is permitted by the Contract of Carriage that applies to their ticket, for example in the case of a fully refundable fare.

It is a well-established principle, however, enshrined in the vast majority of Contracts of Carriage, that a passenger is not entitled to a refund if they decide not to travel where the carrier has not cancelled the flight. This principle underpins the airline business and provides benefits for both consumers and carriers; passengers benefit from lower fares and airlines benefit from increased certainty over both revenue and loads.

IATA considers that the *status quo* should be maintained and that authorities could encourage passengers to purchase travel insurance to cover their losses in case they are forced to change their plans. Individual carriers would reserve the discretion to provide a refund, vouchers, or other benefits where they determine that circumstances warrant and as part of their individual service offering. This would be consistent with the principle that airlines should be encouraged to innovate and compete in terms of customer service.