Measures concerning the minimum content of the specific rights that users of air transport services can claim against service operators and their infrastructure with regard to the handling of complaints

IATA Comments

The International Air Transport Association (IATA) welcomes the opportunity to contribute comments to the consultation that the Autorità di Regolazione dei Trasporti ("ART") presents on proposed Resolution No. 34/2024 titled "Measures concerning the minimum content of the specific rights that air services users can request from the services and infrastructure managers with respect to the handling of their claims."

IATA is the trade association for the world's airlines, representing some 320 airlines and 83% of global air traffic. IATA's member airlines include many that operate flights to Italy, including ITA as well as many foreign-based airlines that serve the Italian market.

IATA supports many areas of aviation activity and helps formulate industry policy on critical aviation issues to drive a safe, secure, and a sustainable industry.

We have three preliminary observations:

- First, airlines are a service industry. As with any other service industry, particularly in a highly competitive market, the success of our members' business depends on their customer service offering, including complaint management. Given that clear, market-based incentives exist, we question the rationale for the introduction of burdensome and bureaucratic measures that do not apply to other, similar service industries.

- Second, we note that the impact assessment accompanying the proposed measures does not contain any quantitative assessment of the costs and benefits associated with the proposals. Given the lack of a clear policy rationale for the proposed measures or any obvious expectation that the measures would meaningfully improve consumer welfare, we would expect the cost-benefit case to be weak at best and negative at worst. For example, when the UK examined the possibility of introducing measures to regulate complaint handling, including making Alternative Dispute Resolution (ADR) mandatory, the Net Present Value (NPV) of the proposals was strongly negative[1].

- Third, as we are sure that the ART is aware, the European Commission has tabled a number of proposals around enforcement of passenger rights and complaint handling, some of which overlap with the measures proposed by ART. Given that duplication or even contradiction between regulations at European and national levels would cause confusion

[1] https://assets.publishing.service.gov.uk/media/61f3d2a1d3bf7f78dc2cd96d/mandatory-alternative-dispute-resolution-impact-assessment.pdf

for passengers and operators alike, we encourage ART to pause its regulatory initiative pending the outcome of the European process.

We would also like to make the following comments specific to the proposed measures

- **Measure 1**: To avoid conflict with other regulatory regimes, any new requirements should apply only to passengers departing Italian airports. We therefore propose amending paragraphs 2 and 3 to remove references to "point of disembarkation" in the case of paragraph 2 and "final destination" in the case of paragraph 3.

- **Measure 2:** With regard to paragraph 1 (f), IATA supports the recommendations of the European Commission that, in the first instance, passengers should always seek to resolve complaints with the airlines before considering other means to enforce their rights. Moreover, complaints should only be brought by the passenger or their formally designated representative. We do not support complaints being brought by user associations or so-called Claims Management Companies (or Claim Agencies) and consider that they should be explicitly excluded from the definition.

- **Measure 3**: IATA supports making complaint handling services available to passengers in English. However, we oppose amending paragraph 1 (a) to include all European languages as this would impose significant costs on carriers to address an issue that there is no evidence causes problems to consumers.

  With regard to paragraph 5, we strongly object to measures imposing additional, general reporting requirements on airlines. ART has provided no rationale or evidence to indicate that publishing the proposed information on airline websites would provide any benefit to consumers or influence their behaviour in any way.

  As for ART itself and any other relevant authorities in Italy, we assert that they already receive sufficient information relating to complaints made under EU Regulation 261 and other consumer protection legislation to perform analyses and publish reports without the need to impose additional reporting requirements on airlines.

- **Measure 4**: The list of information set out in Measure 4 is overly prescriptive and therefore IATA does not support it. As a general rule, we support the principle that air carriers should have the freedom to determine the most effective way to communicate the relevant information.

- In particular, we strongly oppose paragraph 1 (e). Airlines' focus should be on resolving complaints and not providing legal advice. Publicizing information about right of appeal and alternative channels or complaint mechanisms will only serve to make complaint resolution more litigious without benefitting passengers. If a customer is not satisfied with the way that their complaint has been handled, it should be their responsibility to identify and assess the various channels of appeal that are available to them.

  With regard to paragraph 2, we do not support these proposals, in particular (c) an (d). The airport environment is already very congested. For example, check-in desks must already display disclosures relating to dangerous goods and setting out rights under Regulation 261 / 2004. Adding further display requirements would end up interfering with the ability of check-in counters to perform their primary function of passenger processing. Similar arguments apply in respect of the boarding gate, electronic check-in kiosks or even the online check-in

process. There is no evidence that providing information at these stages of the journey would provide benefit to consumers while adding unnecessary friction to the journey experience.

In respect of paragraph 3, it may not be possible to identify *ex ante* (and therefore such that it can be displayed on the ticket) the carrier to whom the complaint should be addressed. This is particularly true in the case of complex itineraries involving multiple legs and/or multiple carriers. Such information will depend on the nature of the complaint and the responsible carrier, and it may be that neither of these can be anticipated at the time of purchase.

- **Measure 6**: in responding to customer complaints, we believe that carriers should only be required to provide information that is relevant to the complaint itself. On this basis, we consider that much of the elements that are set out in Measure 6 are superfluous. Specifically, carriers should not need to inform customers about remedial action to address the reported inefficiency or whether the response has been generated by Artificial Intelligence or any other means – neither of these are relevant to the content of the response.

  In line with our feedback in response to Measure 4, airlines should not be required to provide the information listed at paragraph 1 (d).

- **Measure 7**: IATA does not support the concept of compensation being payable as a result of late responses to claims or complaints. There may be legitimate and/or justifiable reasons for such a delay, for example an episode of mass disruption such as an extreme weather event or the onset of COVID-19 which would result in claim and complaint volumes that are out of proportion with those experienced during normal operations. In no case should compensation be linked to the price paid for the ticket as this bears no relation to the harm caused to the customer through the delay in complaint processing. Similarly, in no circumstances should any amounts exceed the maximum compensation available under Regulation 261.

  Introducing such penalties could also interfere with the proper handling complaints if airlines are incentivized to rush to prepare a response to customers rather than taking sufficient time to thoroughly investigate each case and respond to complaints accurately. If this were to occur, it could even lead to an increase in appeals and secondary procedures which be to nobody's benefit.

  Lastly, IATA is not aware of any jurisdiction that imposes such a requirement.

- **Measure 8**: With regard to paragraph 2 and consistent with our concern about consistency with the proposals put forward by the European Commission with regard to information retention and data privacy in the context of complaint handling, we note the conflict between the proposed requirement under Measure 8 to keep information for a minimum of 24 months and the European Commission proposal for an amendment to Regulation 261 / 2004[2] that carrier must delete information such as Personal Name Record (PNR) after 72 hours.

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0753

Consultazione sulle misure concernenti il contenuto minimo degli specifici diritti che gli utenti dei servizi di trasporto aereo possono esigere nei confronti dei gestori dei servizi e delle relative infrastrutture con riguardo al trattamento dei reclami

Commenti ITA Airways

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Misura	Citazione del testo oggetto di osservazione/proposta	Inserimento del testo eventualmente modificato o integrato	Breve nota illustrativa dell'osservazione/delle motivazioni sottese alla proposta di modifica o integrazione
Delibera n. 34/2024			In termini generali, questa disposizione regolatoria ci sembra vada a sovrapporsi – almeno in parte – all'attività già attualmente svolta da Enac, con annessi poteri sanzionatori, ai sensi del D.Lgs. n. 69/2006 (per quanto concerne l'applicazione del Regolamento (CE) n. 261/2004) e del D.Lgs. n. 24/2009 (per quanto riguarda la violazione delle disposizioni contenute nel Regolamento (CE) n. 1107/2006). Pertanto, a nostro avviso si pone innanzitutto un tema di competenza amministrativa che rischia di creare un conflitto tra due distinte autorità.
Delibera n. 34/2024			Inoltre, le sanzioni previste dallo schema di Delibera ART per la mancata o non corretta gestione dei reclami relativi alle casistiche ricadenti nell'ambito di applicazione dei suddetti regolamenti andrebbero a sommarsi al sistema sanzionatorio già di competenza Enac. Infatti, all'attenzione di Enac sono sottoposte situazioni afferenti disservizi operativi che il passeggero ritiene non siano stati correttamente gestiti dal vettore in sede di reclamo. Quindi, la non efficiente gestione del reclamo è già oggi oggetto di possibile sanzione qualora via sia stata da parte del vettore una condotta in violazione della normativa a tutela dei passeggeri (Reg. 261/2004 e Reg. 1107/2006). La Delibera in consultazione prevede un impianto sanzionatorio per l'errata gestione reclamo in quanto tale, senza tener conto dell'eventuale fondatezza dello stesso. Ne consegue che, se il reclamo è effettivamente fondato, la sanzione ART si sommerebbe a quella di competenza Enac, con possibili profili di violazione del principio del ne bis in idem. Al contrario, qualora il reclamo sia infondato, il sistema sanzionatorio prospettato dall'ART graverebbe eccessivamente il vettore, che avrebbe comunque l'obbligo (non soltanto l'onere) di gestire un reclamo, anche se manifestamente infondato.
Delibera n. 34/2024			L'art. 3 impone al vettore di rendere disponibili più canali per l'inoltro dei reclami, tra cui almeno: i) il sito web, con accesso da apposito link, ii) via e-mail; iii) a mezzo posta raccomandata. E' inoltre richiesta la disponibilità di un modulo per il reclamo (in modalità anche stampabile) e che sia fornito un riscontro al massimo entro 30 giorni dal ricevimento del reclamo. Le diverse modalità di inoltro potrebbero rendere poco efficiente la gestione dei reclami, che potrebbe pervenire al vettore attraverso differenti canali, con possibili (per non dire probabili) duplicazioni di richieste. Peraltro, anche la tempistica di riscontro (30 giorni) appare del tutto insufficiente. Si ritiene che un termine ragionevole possa essere fissato in 45/60 giorni, e che il medesimo termine sia introdotto all'art. 6, comma 1, dell'Allegato A alla Delibera ART n. 21/2023, in sostituzione dell'attuale termine di 30 giorni.

Roma, 12 aprile 2024