

Information Notice to Air Passengers

Information notice on relevant EU consumer protection, marketing and data protection law applicable to claim agencies' activities in relation to Regulation 261/2004 on air passenger rights

The purpose of this information notice is to provide passengers with some information on the EU legal background applying to the activities of claim agencies in the field of air passenger rights.

For the purposes of what follows, a claim agency is a business that offers management services of claims for compensation under Regulation 261/2004¹ (the "Regulation") to the public. Solicitors/lawyers acting as claim agencies are also covered by the present notice.

Passengers should always seek to contact the operating carrier before considering other means to seek redress for their rights. Passengers are reminded that under Article 16 of the Regulation, the national enforcement bodies are responsible as public authorities for enforcing overall compliance with the Regulation, and that "Alternative Dispute Resolution" procedures² (ADR) may also contribute to achieving a mutually satisfactory solution to disputes between passengers and operating air carriers at a private law level. Both types of procedures are embodied in current EU legislation and can be used by passengers to make sure that their rights are respected and that they receive the compensation they are entitled to.

As mentioned in Section 7.1 of the Commission Interpretative Guidelines on Regulation (EC) No 261/2004³, a passenger has the right to decide whether he/she wants to be represented by another person or entity, or not. However, a number of allegations of incorrect practices and misbehaviour by some claim agencies have been brought to the attention of the Commission.

¹ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1).

² Passengers resident in the EU can submit to an ADR their contractual disputes with an air carrier operating in the territory of the EU and participating in an ADR scheme. Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165, 18.6.2013, p. 63).

³ COMMISSION NOTICE: Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council (2016/C 214/04), 15.6.2016. (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0615%2801%29&from=EN>)

In the first instance, possible infringements of these rules are to be assessed by the competent national authorities on a case-by-case basis, taking all relevant circumstances into account. The Commission's duty is to ensure that Member States supervise the activities of the parties concerned, including claim agencies, in order to check if their activities are performed in accordance with applicable EU rules on consumer protection, marketing and data protection law⁴.

In order to protect passengers and help them to take an informed decision about pursuing their claims for compensation under the Regulation, the Commission would like to draw attention in the attached note to some of the key legal obligations of claim agencies to which passengers should pay special attention.

This notice is without prejudice to other obligations imposed upon claim agencies stemming from national law.

⁴ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version) (OJ L 376, 27.12.2006, p. 21), Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, (OJ L 281 , 23.11.1995, p. 31), Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37) and Regulation (EU) No 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 281, 23.11.1995, p. 31).

1 - Claim agencies must clearly display the price of their services, i.e. showing an initial price on their website which includes all applicable fees.

Under EU consumer and marketing law, traders can freely determine the prices they charge for their products as long as they adequately inform consumers about total costs and how these costs are calculated.

The price information should be prominently displayed, the duration of the contract and of the consumers' obligations must be provided in a clear and prominent manner and not be misleading; traders have to clearly specify the total (or final) price (inclusive of taxes). Breaches of these rules can be considered unfair under EU law, on the condition that the practices are likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

In the case of business-to-business advertising, such as claim agencies promoting their services to businesses (passengers flying for professional reasons) any advertising which, in any way, including in its presentation, is capable of deceiving the persons to whom it is addressed, distorting their economic behaviour or as a consequence, harming the interests of competitors is prohibited.

2 - Claim agencies must be able to produce a clear power of attorney.

As a general principle of law, every passenger has the right to decide whether he/she wants to be represented by another person or entity in court or in pre-trial civil litigation in line with applicable national legislation. If so requested, a signed power of attorney together with a copy of ID or passport (for verification of signature) should be provided by claim agencies.

3 - Claim agencies should not resort to persistent unsolicited telemarketing.

As regards persistent unsolicited telemarketing, one of the 31 black list practices under the Unfair Commercial Practices Directive may be relevant (namely practices considered unfair in **all circumstances**, without a case-by-case assessment under other provisions of the Directive). In particular, No. 26 of Annex I to the Directive prohibits "*making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstance and to the extent justified under national law to enforce a contractual obligation.*"

Furthermore, Article 13 of the ePrivacy Directive requires prior consent to use automatic calling machines, fax and email for the purposes of sending direct marketing. Voice-to-voice telephone calls for the purposes of direct marketing are not allowed either without the consent of the subscribers or users concerned or in respect of subscribers or users who do not wish to receive these communications. The choice between these options is to be determined by national legislation, taking into account that both options must be free of charge for the subscriber or user.

4 – Transmission of personal data.

Ticket vendors, tour operators, travel agents (including online travel agents) and any third party having access to passenger data without being a party to the contract of carriage should not transmit personal data to a claim agency unless permitted to do so by applicable law, or specifically permitted by the passenger to whom it relates.

Ticket vendors, tour operators, travel agents (including OTAs – online travel agents) and any third party processing personal data in the EU must comply with EU data protection rules. This means that personal data are ‘collected for specified, explicit and legitimate purposes’ and that the personal data shall not be ‘further processed in a way incompatible with those purposes’. Persons or organisations which collect and manage personal data must protect it from misuse and must respect the rights of individuals in relation to their personal data as guaranteed by EU law.