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European Parliament
Committee on Petitions

Berlin, 14.03.2022

Petition Nr. 0771/2021

Dear Ladies and gentlemen deputies,
dear Chairwoman,
dear members of the Petitions Committee,
Ladies and gentlemen,

I thank you for the opportunity to present today on behalf of Mrs. Marija Linnhoff as well as on behalf of the Registered Federal Association of Independent Self-Employed Travel Agents our positions on petition Nr. 0771/2021.

I would like to start with a brief review of the last two years, as the effects of the pandemic in European air transport allow only one conclusion:

The European air passenger rights regulation has failed.

Failed because the very first recital reads as follows:

“Action by the Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.”

Over the past two (pandemic) years, the opposite has been the case. In Germany alone, the number of fines imposed by the Federal Aviation Authority rose from an average of zero to over 30 in 2020 and over 100 imposed fines in 2021. While details are not published, it is quite obvious that the vast majority of fines are likely related to non-refunded tickets. From zero to more than 100 in only two

years. This is alarming. Other member states have even encouraged airlines in their obvious violation of European law. Infringement proceedings have been initiated throughout Europe.

In times of crisis, all market participants should remember the fundamental principles of the European Union. The common free market is based on our shared European values and, in particular, on the rule of law. In turbulent times, it is more important than ever to hold on to our values, especially when it comes to the weakest participants in the free market, namely the consumers.

Let me explain you in a few words about my own experience. As an attorney, I conduct hundreds of proceedings every year, most of them in court. The procedural behaviour of airlines can be described in almost 100% of all cases as unfair. Using all litigation tricks, they repeatedly try to fend off justified claims. Against professionals, however, airlines win on average maybe 1-2% of cases while for many reasons a lot of consumers refrain from going to court at all in the first place as the airlines' unfair practices do not start at the courthouse.

That is why, unfortunately, despite the European Regulation, European air passenger rights are in a bad shape. It is hard to imagine how passengers find themselves without any legal protection. But in the event of an airline insolvency this is exactly the case.

In contrast to almost all other types of contracts, air passengers must provide full payment immediately upon booking the flight. The classic principle of "payment for performance" does not apply. But why is that? Certainly, the airlines' interests might be just and equitable as well. However, the airlines have long since ceased to deserve the trust of a 100 % payment obligation months and sometimes years in advance. It is, therefore, time to end the airlines' special status in passenger air transport now.

Three options can be considered for an appropriately high-level consumer protection.

1. payment after performance
2. deposit and final payment after or at least shortly before performance
3. payment with full insolvency protection

Option two and three can also be combined perfectly. Not that long ago the EU Parliament and the EU Commission proved with the Directive ((EU) 2015/2302 of 25 November 2015) on package travel and linked travel arrangements and the ensuing practice that a pan-European insolvency protection does work. At the moment, this causes an unfair situation in which only passengers traveling within a travel package are protected against insolvency. Passengers of the same airline are being treated differently. This is both arbitrary and unjustified. Hundreds of insolvencies in recent years have demonstrated that passengers urgently need European protection, protection against the loss of advance payment and, in fact, in line with the Package Travel Directive, protection against the costs of substitute transportation. The outstanding success of the package travel secured payment

certificate provides us with every right and confidence to be able to dispel any possible counter-arguments.

Other than a minor initial effort, there will be no significant disadvantages for the airline industry as a result. On the contrary, why are people not booking today? Because they a) don't know whether the flight will operate at all due to the pandemic or other insecurities and b) because they don't know if their money will be refunded in 7 days as stipulated in the passenger rights regulation or will be refunded at all.

By consequently pursuing and adopting this petition, trust in the performance of the airlines and, moreover, in the European Union will be reinforced. Therefore, we ask you to take all necessary measures to ensure that insolvency protection for passengers is implemented as quickly as possible.

Thank you for your attention.



Roosbeh Karimi

Lawyer

Data Protection Officer (TÜV). According to GDPR and German Federal Data Protection Act.