



**XIV**

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# Airports, airlines and consumers: new trends in their cross legal relationships

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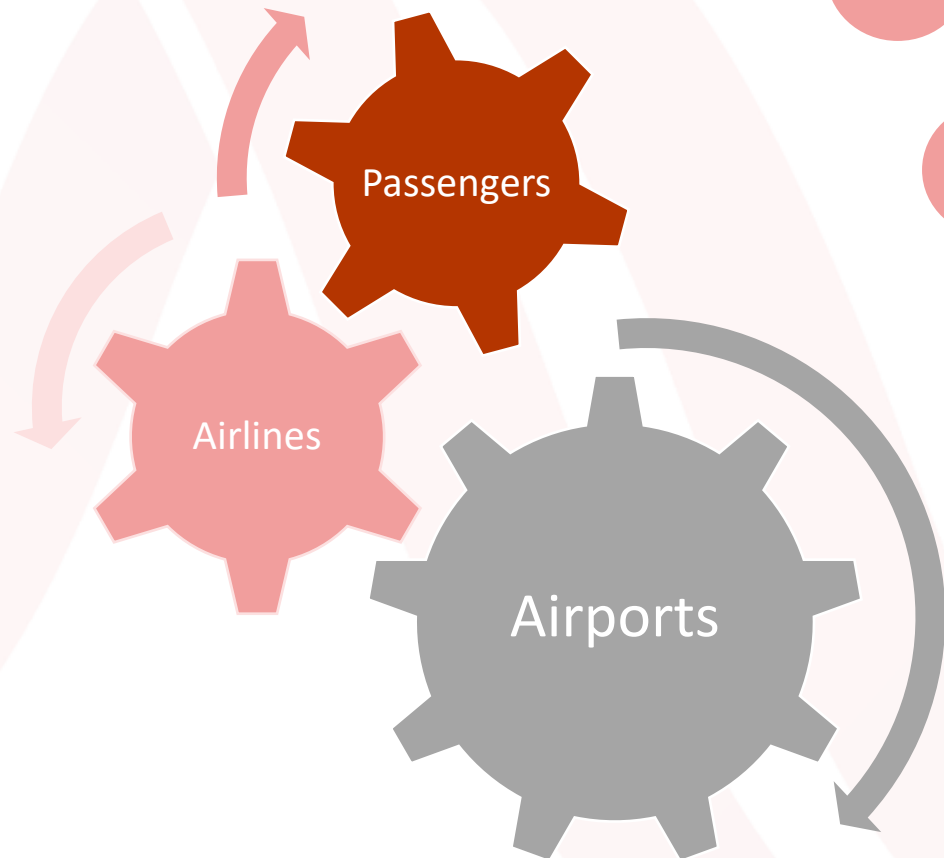
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# Airports, airlines and consumers: new trends in their cross legal relationships

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# 1 Proposed amendments to European passenger rights legislation



On 29 November 2023 the European Commission has published proposals to amend various European passenger rights legislation, including Regulation EU 261/2004, following evaluations and reports that identified perceived shortcomings in the implementation and enforcement of this regulation. The proposed changes aim to improve service quality standards, strengthen the role of national enforcement bodies.

The proposal of amendment (proposal 2023/0437(COD)) is in the process of being approved by the European Parliament.

The proposal includes several provisions (see next slide) about airports duties and obligations which were not contemplated by Regulation EU 261/2004.

# 1 Proposed amendments to European passenger rights legislation

## Art. 15a Services quality standards

Airlines must establish service quality standards that that incorporate information on flight delays or cancellations, complaint handling, cleanliness of transport and terminal facilities, adherence to industry standards on hand luggage, and customer satisfaction survey results.

Airport managing bodies must also establish service quality standards and provide access to their performance to national public authorities.

## Art. 16ba Risk-based approach to the monitoring of compliance with passenger rights

National enforcement bodies will develop a compliance monitoring programme to assess the compliance of Airlines, airport managing bodies, and intermediaries.

They will be entitled to receive information and relevant documents from Airlines and Airports without undue delay. Compliance monitoring activities will be based on the assessment of risks and carried out by means of audits, inspections, interviews, verifications and examination of documents as appropriate.

National enforcement bodies shall ensure the rectification of noncompliance by airlines, airport managing bodies and intermediaries as identified during their monitoring activities.

## Liability of airports for passenger disruptions during post Covid recovery at major European Airports in summer 2022

In summer 2022, as the aviation industry recovered from the COVID-19 pandemic, severe disruptions affected airports operations, since

- many of the major European airports were unprepared for the sudden growth in passenger numbers;
- the retaking/hiring of airport and ground handling employees in their job positions to resume work immediately after restrictions were lifted or relaxed;
- security checks were often understaffed, leading to lengthy queues that caused many travelers to miss their flights (in some countries, security personnel are state employed).

FitchRatings

FITCH WIRE

### UK Airports Are Most Exposed to Air Travel Disruptions in Europe

Wed 13 Jul, 2022 - 06:20 ET

euronews.

Chaos at Amsterdam's Schiphol airport due to staff shortages and number of passengers



German airports have an urgent need for skilled security staff

Press Release

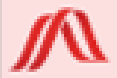
3 min. read

## Liability of airports for passenger disruptions during post Covid recovery at major European Airports in summer 2022

Although airlines are responsible for cancellations and delays under current regulations, many questions come to the force:



**Is there a right of recourse for airlines against airports?**



**Is the liability of airports in such cases unlimited?**



**Can such cases be qualified as exceptional circumstances?**

## Liability of airports for passenger disruptions during post Covid recovery at major European Airports in summer 2022



Amsterdam's Schiphol Airport, one of Europe's busiest hubs, has compensated passengers who missed flights due to huge queues in the chaotic summer of 2022. The Dutch airport suffered severe disruption due to staff shortages as the airline industry recovers from the Covid pandemic. To indemnify passengers who have missed their flights and have incurred additional costs owing to long queues at the security checkpoint, Schiphol has established a temporary scheme that allows passengers to seek compensation from the airport directly. The compensation scheme reimbursed costs incurred by people who missed flights between April 23 and August 11, 2022. The costs include re-booking or finding replacement flights, alternative transportation and accommodation costs near Schiphol.

In September 2023, Gatwick Airport suffered flight disruptions due to air traffic controllers affected by COVID-19, which forced the busy traffic hub to restrict flights, leaving 8,000 passengers out of position so far. During that period a daily limit of 800 flights taking off or landing has been imposed at Gatwick to maintain safety.



## Liability of airports for passenger disruptions during post Covid recovery at major European Airports in summer 2022

### Judgment of the European Court of Justice 2024/404 (Court case C-405/23)

In 2021, the arrival of a flight which had departed from Cologne Bonn (Germany) and was destined for the Greek island of Kos, was delayed by 3 hours and 49 minutes. There were several reasons for that delay, but it was **mainly due to a shortage of staff at Cologne-Bonn airport available for loading baggage onto the plane.**

The German Court before which the case was brought asks the Court of Justice whether the shortage of staff of the airport operator responsible for loading baggage onto planes may constitute an “exceptional circumstance”. The **Court responds in the affirmative: the fact of there being an insufficient number of staff of the airport operator responsible for loading baggage onto planes may constitute an “exceptional circumstance”.**

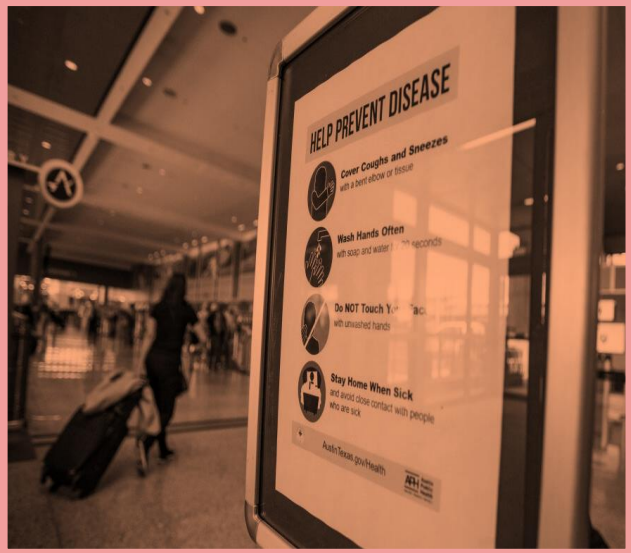
***The Court ruled that article 5(3) of Regulation EU 261/2004 must be interpreted “as meaning that the fact of there being an insufficient number of staff of the airport operator responsible for the operations of loading baggage onto planes may constitute an ‘extraordinary circumstance’ within the meaning of that provision. However, in order to be exempted from its obligation to pay compensation to passengers provided for in Article 7 of that regulation, the air carrier whose flight has experienced a long delay on account of such an extraordinary circumstance is required to show that that circumstance could not have been avoided even if all reasonable measures had been taken and that it adopted measures appropriate to the situation to avoid the consequences thereof.”***



## Liability for the safety of passengers during COVID-19 pandemic









**During the pandemic, the key role of airports in ensuring passenger and flight safety emerged.**

The ICAO created a special task force, the ICAO Council's Aviation Recovery Task Force (CART) providing practical guidance to industry stakeholders, including airports, to reboot the international air transport industry and recover from the impacts of COVID-19 on a coordinated global basis.



## Liability for the safety of passengers during COVID-19 pandemic

Obligations to adopt security measures also represent a liability

-  **Terminal Building Management:** Ensuring access control, cleanliness, and disinfection protocols are in place within terminal buildings, along with health measures, instructions, and first aid protocols.
-  **Cleaning and Disinfection:** Implementing rigorous cleaning and disinfection procedures as per WHO guidelines, with regular updates based on traffic and usage patterns.
-  **Terminal Access Control:** Regulating terminal access to essential personnel and passengers while avoiding crowding and queues.
-  **Check-in Areas:** Promoting online check-in and self-service options to minimize contact, along with implementing physical distancing measures and providing disinfection stations.
-  **Security Screening:** Implementing measures to maintain physical distancing during the screening process, using contactless technology where possible, and enhancing cleaning protocols for screening equipment.
-  **Terminal Airside Area:** Ensuring physical distancing measures in gate areas, promoting self-service options for retail and food services, and enhancing cleaning and hygiene measures.
-  **Disembarking and Arrivals:** Implementing automated border control and health screening measures to minimize interaction between passengers and officials, along with facilitating smooth baggage claim processes and enhancing disinfection measures in baggage claim areas.
-  **Landside Exit:** Implementing procedures to control access to terminal exits, providing handwashing stations or sanitizers, and enhancing cleaning protocols for public areas.

## Assistance to passengers with disabilities or reduced mobility

Regulation EU 1107/2006, on the rights of disabled persons and persons with reduced mobility when travelling by air, provides the assistance measures for which the airports are responsible, specifying that it is up to them to enable disabled persons and/or persons with reduced mobility to: board the aircraft, by means of lifts, wheelchairs or other specific assistance needed; proceed from the aircraft door to the seat.

# Assistance to passengers with disabilities or reduced mobility


The proposal of 29 November 2023 (see point 1) plans to amend also Regulation EU 1107/2006 by introducing additional provisions about airports duties and obligations

## *Art. 14a Risk-based approach to the monitoring of compliance with passenger rights*

**1. The national enforcement bodies (..) shall develop a compliance monitoring programme to monitor compliance of air carriers, airport managing bodies and tour operators with the obligations laid down in this Regulation on the basis of a risk assessment. The programme shall allow for the detection and correction of recurrent non-compliance in the implementation of passenger rights. The compliance monitoring programme shall include a representative sample of monitoring activities. (..) 5. National enforcement bodies shall ensure the swift rectification of non-compliance by air carriers, airport managing bodies and tour operators as identified during their monitoring activities. They shall require air carriers, airport managing bodies and tour operators to submit an action plan to remedy non-compliance, as appropriate.**

# Assistance to passengers with disabilities or reduced mobility

Court of Florence, Judgment No. 1625/2020



The passenger, who suffers from quadriplegia, sued the airline and the airport, claiming damages as a result of the lack of assistance that the boarding operations. The Judge qualified the relationship that exists between the airline, the airport and the passenger, holding that ***“although in the absence of a specific contractual link, they have come into contact as a result of the contract of carriage concluded between the passenger and the airline operating at the Airport, with the result that it is objectively illogical to define the subjects involved as strangers (...) We are therefore in the presence of a hypothesis in which the obligatory relationship finds its foundations in a specific relationship that exists between specific parties, which although not formally having a contractual source, is capable”***. According to the Court of Florence, the inconveniences complained by the passenger fall under the competence of the airport operator, which is responsible for managing the operations of boarding and accompanying the disabled to their seat.

# SLA and SGHA – limitation of liability



**AIRLINES**



**AIRPORTS**



**SERVICE PROVIDERS**  
(INCLUDING GROUND HANDLERS)

Service Level  
Agreements

+

SGHA (where  
handling services  
are provided by  
airport)

- Mostly awarded by public tender
- Relation between airport managers and service providers is governed by local law

SGHA (if handling is liberalised)

## 5

## SLA and SGHA – limitation of liability

A Service Level Agreement (SLA) is a negotiated agreement between two parties where the level of service is formally defined. Each specific area of the service scope should be subjected to the same degree of scrutiny.

As airports are only built to serve as aviation infrastructure enabling airlines to operate, **airlines are the primary users** of airports and a major source of revenue for airport authorities and operators, ancillary industries and services.

- Airport contract liability is governed by the SLA (e.g. birdstrike; strike airport staff)
- Terms and conditions governing the access to the airport area accepted by airlines (even on a *de facto* basis)



LIABILITY

## SLA and SGHA – limitation of liability

The IATA SGHA provides general terms and conditions for optional use of air carriers and handlers. The Aviation Ground Services Agreements Working Group (AGSA WG) publishes new versions of the SGHA every 5 years following detailed reviews. The 2023 version of the SGHA in force, as published in the IATA Airport Handling Manual (AHM), is the latest review.

### Article 8.1

Carrier shall not make any claim against the Handling Company and shall indemnify it (subject as hereinafter provided) against any legal liability for claims or suits, including costs and expenses incidental thereto, in respect of, *inter alia*:

[...] (d) damage to or loss of property owned or operated by, or on behalf of, the Carrier and **any consequential loss or damage**; arising from an act or omission of the Handling Company in the performance of this Agreement unless done with intent to cause damage, death, delay, injury or loss or recklessly and with the knowledge that damage, death, delay, injury or loss would probably result.

### Article 8.5

Notwithstanding Sub-Article 8.1(d), the Handling Company shall indemnify the Carrier against any **physical loss of or damage** to the Carrier's Aircraft caused by the Handling Company's negligent act or omission **PROVIDED ALWAYS THAT the Handling Company's liability shall be limited to any such loss of or damage to the Carrier's Aircraft in an amount not exceeding the level of deductible under the Carrier's Hull All Risk Policy which shall not, in any event, exceed USD 1,500,000 except that loss or damage in respect of any incident below USD 3,000 shall not be indemnified.**

For the avoidance of doubt, save as expressly stated, this Sub-Article 8.5 does not affect or prejudice the generality of the provisions of Sub-Article 8.1 including the principle that the **Carrier shall not make any claim against the Handling Company and shall indemnify it against any liability in respect of any and all consequential loss or damage howsoever arising.**



## 5 SLA and SGHA – limitation of liability

**With Decision 11588/2020 the Supreme Court issued an important ruling on the liability and indemnity for damages caused during the supply of airport ground-handling services to airlines.**

Supreme Court upheld the non-applicability of the limitation of liability provided in SGHA. This consideration was made in light of the factual circumstances ascertained through the evidentiary phase of the dispute, from which it resulted that:

- the handler had carried out serious and reckless actions during the aircraft towing, much beyond the limitation of liability established by Article 8.1 of the SGHA for slight faults on the account of the handling company; and
- as a direct result of such actions, the right wing of the aircraft had suffered substantial structural damages and therefore the carrier was entitled to claim compensation for such damages (including those considered consequential or indirect) since Article 8.5 of the SGHA should not have applied in the present case due to the handler's high degree of negligence.

The Supreme Court also recognised that the first two judges had correctly made a strict evaluation of the handler's negligence, considering that airport handlers are business entities subject to certification and licensing procedures with the Civil Aviation Authority, which makes them qualified operators subject to the highest degree of care in the supply of sector services.

In some jurisdictions, such as Italy, the extent of damages includes third-party claims (such as EU261 claims) arising from ground handler breach.



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# Thank you!

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