



The Consumer Voice in Europe

Mr. Tony Tyler  
 Chief Executive Officer  
 The International Air Transport  
 Association (IATA)  
 Executive Offices  
 PO Box 416

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5 February 2013

Re: Unfair terms in air transport contracts

Dear Mr Tyler,

We write to you on behalf of The European Consumer Organisation (BEUC) regarding terms within air transport contracts in the context of a series of national court judgments condemning European airlines for the unfairness of certain terms and conditions in passenger contracts.

The proliferation of unfair terms in air transport contracts is an issue of growing concern for consumer organisations throughout the EU. In recent years, several of our nationally based members (including Test-Achats/Test-Aankoop in Belgium; DECO in Portugal; OCU in Spain; UFC-Que Choisir in France, VZBV in Germany and VKI in Austria) have pursued legal actions against major European airlines (including Brussels Airlines, Iberia, Air France, TAP, Vueling, Ryanair and EasyJet).

As a result of these actions, many terms and conditions recurrently used by your member airlines (and others), have been declared unfair by national courts.

BEUC notes that a significant number of the terms scrutinised and deemed unfair by various courts are based on the IATA RP 1724. That the leading international representative body of the airline industry recommends the use of passenger contract terms which are legally unfair in many European countries is of significant concern to us.

Please find below a list of contractual terms recommended by IATA<sup>1</sup> which, in light of the recent case law, are the most problematic for European consumers. It should be noted that some of the judgments cited below have not yet become *res judicata*. We also refer to other problematic clauses which should not be allowed in air transport contracts.

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<sup>1</sup> IATA RP1724.

- **Code share agreements without the consent of the passenger**

In code share agreements an airline sells tickets for a flight which will be operated by another carrier. In recent judgments against Brussels Airlines and Iberia, the courts of Belgium and Spain ruled this clause to be **unfair** (unless the passenger gives his prior consent to the code share agreement) as the transfer to another operator could reduce the contracted guarantees the consumer has with an airline. Article 2.3 of the IATA RP1724 allows for such practice without requesting the consumer's consent.

- **Use of "no show" clause**

Article 3.3 of the IATA RP1724 imposes an obligation on the passenger to strictly respect the order of the flight itinerary so that if the passenger misses or does not take one leg of a return flight the company may automatically (and unilaterally), cancel the remaining leg and rescind the contract.

Several judgments in different EU Member States (including Austria, Germany and Spain) have declared the **unfairness** of this clause in cases against airlines such as Lufthansa, British Airways and Iberia. Most recently, in an action instigated by our Spanish member OCU, Iberia Airlines was also condemned for using this term.

- **Obligation to reconfirm bookings**

Under Article 5.5 of the IATA RP 1724, the air carrier is allowed to cancel a reservation and deny boarding to passengers who have not confirmed the flight in advance. Belgian courts considered this term **unfair** in a case taken against Brussels Airlines as it is disproportionate and causes an imbalance between the rights and obligations of the parties.

Moreover, national courts have also declared unfair other terms and conditions based on RP 1724 used by airlines who are not members of IATA. These terms are used by some IATA members. The clauses listed below have been declared unfair by several national EU courts.

- **No right to refund in case of force majeure**

This term dictates that the passenger does not have the right to refund of the price paid in situations of *force majeure* which prevent the passenger from taking the flight (e.g. illness, family bereavement). Article 3.1.4 of the IATA RP 1724 does not provide for refund, only for the passenger to fly with the same company at a later date. The Spanish and Belgian courts (in judgments against Easyjet and Vueling) have ruled this term to be **unfair** as it creates a significant imbalance between the rights and obligations of the parties.

- **Exclusion of carrier liability for non-compliance with timetabling**

The courts of Belgium and France declared this clause, which is based on Article 9.1 of the IATA RP 1724, **unfair** stating that timetables are not a part of the contract with the passenger.

- **Exclusion of liability in case of death or disease**

The exclusion of an airline's liability for the death or illness of the passenger was considered **unfair** by the Belgian courts as it contradicted the provisions of the Montreal Convention of 1999. This term is based on Article 15.1.2i of the IATA RP 1724 which states that the airline is "*not responsible for any illness, injury or disability, including death, attributable to your physical condition or for the aggravation of such condition.*"

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- **Prohibition to check-in certain items and exclusion of liability of the airline**

The courts of Spain ruled this prohibition to be **unfair**. The clause was declared unfair by the judge as there is no valid legal or safety reason to justify a prohibition on transporting such items. The ban on checking in certain items is stated in Article 8.3.4 of the IATA RP 1724 which prohibits passengers to check in items such as "*money, jewellery, precious metals, computers, personal electronic devices, negotiable papers, securities or other valuables, business documents, passports and other identification documents or samples*". The airline excludes itself from liability for damage or loss of any such items.

- **Non-automatic refund of (undue) taxes**

The courts of France considered this term **unfair**. The clause is derived from Article 4.2 of the RP 1724 which states that if (paid) taxes, fees or charges are reduced, the passenger is only entitled to claim a refund of those.

- **Price increase charged after the booking**

The courts of Spain and France have declared the **unfairness** of this clause when the increase is disproportionate and the passenger is not given the possibility to cancel the contract. This clause is based on Article 4.2 of the RP 1724.

- **The lack of transparency, accessibility and clarity of contract terms**

The lack of transparency, accessibility and clarity of contract terms is a problem with many airlines' conditions of carriage. The Belgian, French and Spanish courts have condemned the use of abundant cross-references, overlapping terms and conditions as well as the inaccessibility of terms and conditions offline. Some terms referring to price conditions (e.g. extra fees for excess baggage and supplementary charges), administrative fees to be paid by the passenger (e.g. cancellation fees for *force majeure*, fees for refund) and the liability of the company for third party services (packages), were considered **unfair** due to their lack of precision and clarity.

The lack of clarity in airline contract conditions prevents consumers/passengers from making informed decisions and cause consumer detriment in many respects.

We therefore suggest that this issue be addressed by IATA and oblige your membership companies to present clear, transparent conditions to their passengers.

- **Non-transferability of tickets**

Article 3.1.2 of the RP 1724 prohibits the transferability of tickets, even in circumstances of *force majeure*. Indeed, the contract terms of most airlines do not allow the passenger to transfer the ticket to another passenger.

BEUC considers this ban to be both unfair, as by contrast the airline can itself transfer the contract to another carrier (code share), and also discriminatory as package travellers do have the right to transfer the package in certain conditions. We therefore believe this term should be excluded from airlines' contracts with passengers.

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We look forward to hearing from you by return as to your assessment of the impact of this and other relevant case law on your own policy and recommendations and how you intend to ensure that in the near future European consumers will no longer suffer from unfair contract terms based on your recommendations.

Please be advised that given the strong public interest for European consumers in this issue, this letter will be published.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Goyens', with a long horizontal flourish extending to the right.

Monique Goyens  
Director General

C.c.: Association of European Airlines;  
Test-Achats/Test-Aankoop, Belgium;  
DECO, Portugal;  
OCU, Spain;  
UFC Que Choisir, France;  
VZVB, Germany;  
VKI, Austria.