

Enforcing passenger rights

Guidance based on European experience

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Basic principles in enforcement

- 1) Legal certainty - Transparency
- 2) Objectivity - Right to be heard
- 3) Deterrence
- 4) Proportionality
- 5) Provide grounds for the decision

+ Practical aspects

Why respect enforcement principles

- 1) Enhancement of trust – Reliability
 - a. Citizens (passengers, airlines etc.) trust the State
 - b. Other States trust the State
 - c. Investors trust the State
- 2) Efficiency
 - a. Enforcement produces better results, when people know what could be the results of their actions.
 - b. Continuity and consistency in enforcement actions, irrespective of the persons involved.

1. Legal certainty - Transparency

Regulatory transparency (I)

Passenger protection rules lay down:

1. The identity of the competent enforcement authority
2. What are its exact investigation powers (e.g. demand documents and information, on-site searches etc.)
3. Timeframe for an investigation (time limits for submitting a complaint, deadlines for each procedural stage)

Regulatory transparency (I)

4. What sanctions could be imposed
 - a. For violations of legal provisions on passenger rights
 - b. For failure to cooperate during the investigation
 - c. For failure to comply with the enforcement decision
5. Legal remedies against sanctions and deadlines for exercising them

Procedural transparency (I)

Stages of the investigation

- I. Preliminary investigation (could there be a violation?)
- II. Main investigation – determination of the exact facts and rules violated
- III. Sanctions

Procedural transparency (II)

Information in writing to complainants

- Acknowledgement of receipt of complaint,
- Information on investigation procedure,
- Contact details of the person responsible for the investigation,
- Information on the end of the investigation and its outcome

Procedural transparency (III)

Information in writing to the persons under investigation

- Information on the investigation against them (facts under investigation, provisions applicable, contact details of the person responsible for the investigation)
- Information on their rights at every stage of the investigation and the deadline to exercise them (e.g. right to provide explanations, eventual meeting in person etc.)

Objectivity – Right to be heard

- 1) Establishment of facts
 - a. Allegations have to be proven, facts have to be confirmed
 - b. Exact, reasonable deadlines for people to produce evidence
 - c. Collection of all possible evidence from anyone involved
- 2) Opportunity of investigated persons to express their views and produce appropriate documentation at all stages of the investigation

Deterrence (I)

- 1) Deterrence of future violations
 - a. Sanctions should be strict enough for the particular violator
 - b. Any appeal against the decision should not lead automatically to suspension of sanctions
- 2) Publication of violations and sanctions.
- 3) Coordination with other supervisory authorities in case that certain behaviour entails possible violations of more than one pieces of legislation.

Deterrence (II)

- 4) Aggravating factors to be taken into account, e.g.
 - a. Repetition of the violation under very similar circumstances
 - b. Refusal/ reluctance to cooperate with the enforcement authority
 - c. Number of passengers affected and extent of the inconvenience caused
 - d. Intention to deceive/mislead passengers or recklessness

Proportionality

- 1) Sanctions should not be too strict - account to be taken to the nature and gravity of the violation, as well as the violator's financial condition.
- 2) Coordination with other supervisory authorities in case that certain behaviour entails possible violations of more than one pieces of legislation.
- 3) Alleviating factors should be considered, e.g.
 - a. Voluntary adoption of remedial measures
 - b. Violation (in part) due to circumstances difficult to control

Proper justification

Enforcement Decision contains

- 1) Concrete facts proven
- 2) Exact rules applicable and abstract requirements for violations
- 3) Why and how these concrete facts fulfill the abstract requirements of the rules applicable
- 4) Response to the allegations of the investigated persons and the complainants

Proper justification (cont'd)

- 6) The exact sanctions imposed.
- 7) Aggravating and alleviating factors taken into account.

Practical aspects

- Try to set targets that are SMART – Specific, Measurable, Achievable, Realistic, Timebound.
- Prioritize your work according to the resources available and your targets.
- Have at least two lawyers in your team (to exchange views between them in difficult issues) and use them not only for legal support but also for training of the staff.
- Ensure visibility of your work through press releases and public awareness campaigns.

Thank you for your attention!

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