Collective Enforcement of Air Passenger Rights: A Consumer Law Perspective on the Mass Claims Enforcement Gap

Amy Adams*

Abstract: The paper examines the enforcement gap in EU aviation passenger protection law, where individual dispute resolution mechanisms prove inadequate when mass disruption scenarios affect thousands of passengers. While Regulation 261/2004 establishes comprehensive substantive rights for passengers affected by flight disruptions, the framework offers insufficient guidance on collective enforcement routes for large-scale events.

The analysis places air passenger protection within broader consumer law enforcement, examining the tension between individual rights structures and collective harm. EU law establishes parallel enforcement pathways (aviation-specific ADR and general consumer collective redress) divergently transposed across Member States, whose interaction in mass-disruption scenarios remains underdeveloped and unclear in application. Aviation ADR bodies were not designed to process high-volume claims, while general collective redress mechanisms face procedural obstacles specific to aviation, including cross-border jurisdictional complexity, interaction with the Montreal Convention liability regime, and the need for coordination and sanctioning powers among NEBs.

Drawing on case studies of mass-disruption events, namely the COVID-19 pandemic, the paper contributes to the literature on air passenger rights enforcement during a period of significant legislative reform, applying consumer law perspectives to aviation regulatory challenges, and assessing to what extent prospective coordination mechanisms, including case bundling provisions and enhanced participation, can remedy the shortcomings.

Keywords: Passenger rights, collective redress, aviation law, enforcement, consumer protection

* Observatory of Class Actions and other forms of Collective Redress; Called to the Bar of England and Wales
amyjessica98@outlook.com; amyadams@azarbaud.com

I. Introduction

The current paper aims to establish that the enforcement gap in EU aviation passenger protection results most clearly from institutional choices. These appear in the divergences between package travel and flight-only insolvency protection, discretion of National Enforcement Bodies (NEBs) retained over individual complaints, and evidence that the collective redress regime was not adapted to aviation's procedural obstacles. The 2026 revision of Regulation 261/2004[2] (EC261 Revision), while including focused reforms, does not go a long way in overcoming these, and we are left with potential coordination mechanisms that are not optimal for passenger *redress* in the aviation sector.

By way of background, between March 2020 and April 2021, the European Commission approved 38 State aid decisions for Union air carriers,[3] none of which made aid conditional on passenger reimbursement, despite guidance from the Commission that it could be.[4] By contrast, 13 of 16 comparable package-travel aid measures over the same period expressly addressed reimbursement or insolvency protection.[5]

This is a first demonstration of asymmetry, which is built on in the following analysis. The enforcement gap in mass-disruption aviation scenarios may be viewed as intentional in some respects, not only as an effect of the wider legal framework. For example, package organisers are subject to a mandatory insolvency protection obligation under the Package Travel Directive.[6] Member States are required to ensure that organisers maintain insolvency protection and may implement that obligation by making such protection a condition of market entry. An organiser unable to demonstrate the required cover cannot lawfully market packages. This already makes it possible to condition market access on insolvency cover, enforceable at the

[2] 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, [2004] OJ L46/1.

[3] European Court of Auditors, Special Report 15/2021, "Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts" (29 June 2021) (ECA Special Report 15/2021). See paras 55, 58 and Annex III.

[4] EC Recommendation (EU) 2020/648 of 13 May 2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic (OJ L 151, 14.5.2020, 10), recital 22 and point 15; ECA Special Report 15/2021 at para 59.

[5] ECA Special Report 15/2021 at paras 60–61.

[6] Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, [2015] OJ L326/1, art 17.

point of entry. Conversely, Regulation 261/2004 does not offer a comparable mechanism. Air carriers' market access is governed separately by Regulation 1008/2008,[7] whose financial-fitness requirement protects against the carrier's own insolvency, but not against passengers being left without a refund.

There is asymmetry since there is a guarantee behind the organiser and none behind the carrier. The Commission places protection against carrier insolvency in the revision of Regulation 1008/2008 through measures on carriers' financial fitness and resilience.[8] The revision has been anticipated since 2018, without any equivalent protection. In any case, such financial-fitness rules are preventive, aiming to keep carriers solvent, not to protect passengers following a collapse, e.g., through guaranteed refunds.

Notably, 261's enforcement provisions do not require a national body to secure individual redress. In *Ruijssenaars* and *Jansen* the Court held that Article 16 obliges the national enforcement bodies (NEBs) to ensure general compliance but not to act on individual complaints;[9] in *LOT* it added that Member States may empower their NEBs to order compensation, but need not.[10] Whether the EU's flagship passenger right, including compensation, is individually enforced by any public authority is a national choice. The 2023 enforcement reform proposal, which "does not establish any new passenger rights as such",[11] leaves the individual claimant with a right only to be directed elsewhere. The national body must "inform the complainant about his or her right to approach alternative dispute resolution bodies".[12] Its monitoring machinery, in turn, is built to detect "recurrent non-compliance",[13] a

[7] Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, 3).

[8] European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards enforcement of passenger rights in the Union, COM(2023) 753 final, 29 November 2023, 2023/0437 (COD), Explanatory Memorandum, "Consistency with other Union policies".

[9] *Ruijssenaars and Jansen*, C-145/15 and C-146/15, EU:C:2016:187.

[10] *LOT v Budapest Főváros Kormányhivatala*, C-597/20, EU:C:2022:735 at paras 26–27, 35–37.

[11] COM(2023) 753 final, Explanatory Memorandum.

[12] *Ibid*, art 1 (proposed art 16bc).

[13] *Ibid* art 1 (proposed art 16ba).

systemic standard, rather than to vindicate individual complainants. The substantive EC261 Revision, agreed separately, leaves this position unaddressed.

As a result of the above, the regime has become oriented towards the single disrupted passenger, and shows evidence of deficiencies in situations of mass disruption, such as national derogations suspending rights, reimbursement backlogs over several months, indefinite redirection of claimants through intermediaries and channelling of unregulated claims markets, which occurs in up to half of all claims, according to the estimates of airlines themselves.[14]

Section II sets out the individual-based framework as it stands; Section III tests its results through the lens of the pandemic. Section IV examines key limits of transplanting collective redress into aviation, including in the insolvency context, where existing mechanisms, whether individual or collective, do not clearly offer a remedy. In light of this lacuna, Section V assesses emerging coordination mechanisms, with the conclusion following.

II. Individual enforcement and limitations at scale

Article 16 of Regulation 261/2004 requires each Member State to designate an enforcement body and, where appropriate, to take necessary measures to ensure passengers' rights are respected.

Regulation 261/2004 has prompted over 70 preliminary references to the CJEU, which represents more than any other piece of EU secondary legislation.[15] Kelemen's description of "Eurolegalism" provides a rationale for this: individual rights created by EU re-regulation, enforced through litigation rather than a strong central regulator, combined with fragmented national enforcement. Applied to this Regulation, the litigation rate may be linked to this structure and the CJEU's activism in *Sturgeon*, which then drew further references from national courts resistant to an apparent emerging compensation culture.[16]

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[14] European Court of Auditors, Special Report 30/2018, "EU passenger rights are comprehensive but passengers still need to fight for them" (Special Report 30/2018) at paras 56, 60–61.

[15] Benjamyn I Scott, "Passenger Air Taxi Services: An Assessment of the Current European Union Rules on Consumer Protection for Passengers" (2024) 110:1 J Intelligent & Robotic Systems, art 37.

[16] Sara Drake, "Delays, cancellations and compensation: why are air passengers still finding it difficult to enforce their EU rights under Regulation 261/2004?" (2020) 27:2 Maastricht J Eu & Comp L, citing R Daniel Kelemen and Sacha Garben.

In the Regulation's first decade, it was contested whether an individual could appear before the court at all. In *McDonagh*, the Council intervened to argue that Article 16 confined enforcement to the NEBs, leaving passengers no standing to bring a civil claim.[17] The Court rejected this, confirming that passengers may invoke Articles 5(1)(b) and 9 directly before a national court rather than being confined to the administrative NEB pathway.

In *Ruijssenaars,* the Court considered the individual complaint mechanism in Article 16(2) to serve as a contribution to the Regulation's general application, rather than an obligation to secure any individual passenger's compensation.[18] Further, *LOT* established that a Member State may empower its NEB to order compensation on an individual complaint but is not required to, as the choice rests with national procedural autonomy.[19] Individual public enforcement of the flagship passenger right is optional, and the Court has reaffirmed this conclusion. This understanding of Article 16 in *Ruijssenaars* and *LOT* is now explicit in the legislative text. The enforcement regulation formally splits the national enforcement body's function into two articles: Article 16a ("Enforcement tasks"), covering systemic monitoring, audits and compliance, and Article 16b ("Passengers' complaints to designated bodies"), covering individual complaints.[20] Article 16b(4) preserves the discretion confirmed in *LOT*, as the designated body must provide a substantiated reply only where it has the power to issue enforceable decisions. If it lacks the power, it may issue a non-binding opinion or recommendation and direct the passenger to ADR.[21]

The resulting settlement demonstrated significant divergence in NEB practice. A 2018 audit found that several NEBs regard their role as solely based on general enforcement, while others *resolve* individual claims. Accordingly, a complaint may be considered by the body approached first but then refused by another.[22] The Commission's 2016 Roadmap on Interpretative Guidelines acknowledged that, without a common approach to case law, NEBs do not always know how to apply CJEU rulings outside their original factual context, which produces such

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[17] *McDonagh v Ryanair Ltd*, C-12/11, EU:C:2013:43 at paras 18–24.

[18] *Ruijssenaars and Jansen*, C-145/15 and C-146/15, EU:C:2016:187.

[19] *LOT*, C-597/20, EU:C:2022:735 at paras 26–27, 35–37.

[20] Council of the European Union, "Outcome of Proceedings", doc 11981/1/26 REV 1, TRANS 506, CODEC 1464, 2023/0437 (COD), 17 July 2026, Annex, art 1(4)–(6) (arts 16a, 16b).

[21] *Ibid*, Annex, art 16b(4).

[22] ECA Special Report 30/2018. See e.g. para 60.

divergence.[23] Additionally, the timelines and sanctions for complaint-handling differ, with a two-month deadline in Poland and a four-month deadline in Germany. Sanctions range from EUR 50 in the former and up to EUR 250,000 in Ireland.[24] As of 2012, only Finland had designated three separate air NEBs (one for complaints and sanctions, one for ADR, one for collective consumer interests) versus a single civil aviation authority in 18 of 23 other states.[25]

Even when sanctions exist in theory, enforcement does not necessarily follow. A 2014 Commission report found NEBs to sanction non-compliance in only 1–2% of cases, with ceilings in Lithuania and Romania as low as EUR 1,000 per incident, not per passenger.[26]

The Court acknowledged the significance of this on a larger scale. In *LOT*, it held that NEB enforcement serves to provide "simplicity, speed and effectiveness" and helps to prevent backlogs in the courts, considering the extremely high number of compensation claims.[27] The Court was of the view that the individual judicial pathway is unsuitable on a mass scale.

Fox and Martín-Domingo have proposed reorienting *LOT*'s reasoning toward binding NEB adjudication on a tribunal model, with specialist national decision-makers replacing generalist judges, on the ground that a high-volume NEB develops the expertise and consistency found lacking by the Court.[28] They find that court redress should be an exceptional measure, rather than accepted practice.

The EU response has focused on institutions. Regulation (EU) 2024/2019 moved first-instance jurisdiction over passenger compensation references from the Court of Justice to the General Court, in order to relieve the Court's growing docket and enable it to focus on the most complex and sensitive matters.[29] In March 2026, the General Court's first ruling under this jurisdiction

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[23] Cited in Truxal, "Air Carrier Liability and Air Passenger Rights: A Game of Tug of War?" 4:1 J Int'l & Comp L 103 at 113–14 (2017)

[24] ECA Special Report 30/2018 at paras 51–52.

[25] Salvatore D'Acunto, "Union européenne et droit des passagers : bilan et perspectives" (2012) 1 Revue du Droit de l'Union Européenne 31 at 77–78.

[26] Drake, *supra* note 16.

[27] *LOT*, C-597/20, EU:C:2022:735, para 40.

[28] Sarah Jane Fox & Luis Martín-Domingo, "EU Air Passengers' Rights Past, Present, And Future: In an Uncertain World (Regulation (EC) 261/2004: Evaluation and Case Study)" (2020) 85 J Air L & Com 271 at 303–4.

[29] Regulation (EU, Euratom) 2024/2019 of the European Parliament and of the Council of 11 April 2024 amending Protocol No 3 on the Statute of the Court of Justice of the European Union [2024] OJ 2024/2019, 12.8.2024.

held that a carrier's own decision to hold a flight for an incoming connection does not put the resulting delay beyond its control, and permitting them "to rely on weighing up the interests of various groups of passengers affected by a rotation in order to circumvent its obligation to compensate one of those groups would be tantamount to adding an exemption clause to the obligation to compensate".[30]

The 2023 Proposal for a Regulation maintains the status quo in the sense that it does not address (and is not designed to) clear a backlog. Instead, it monitors the system. The reform introduces a common reimbursement form, a risk-based compliance monitoring programme, information-sharing duties, and an obligation to point complainants towards ADR. The coordination occurs through the Commission rather than between NEBs, and there is no joint enforcement action. The European Consumer Centres Network (ECC-Net) has argued for direct cooperation among NEBs, ADR bodies, national consumer associations, ECC-Net itself, and the CPC Network, to build a true cross-border procedure,[31] but no such cooperation duty, joint enforcement action or binding cross-border procedure was retained in the adopted text. However, a narrower cooperation duty was included: national enforcement bodies must exchange information on their work and decision-making principles and practices for cross-border coordination, with the Commission providing support.[32] This framework is aimed more towards identifying recurring non-compliance over time, and risk assessments (due annually and biennially), than towards resolving thousands of claims arising from a single, sudden event. Consequently, the proposal is not built in a way as to create new rights and does not present itself as doing so.

Where public enforcement is not mandatory, and reform focuses on monitoring rather than redress, the lacuna in the law can be filled based on two main approaches. Firstly, ADR, which is designed for individual disputes, and accordingly poorly suited to mass events. Special Report 30/2018 demonstrated that the system for compensation already imposes a significant administrative burden, as millions of claims must be individually submitted and handled.[33] additionally, carrier and NEB procedures lack transparency and passengers on the same journey may be treated differently.

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[30] *NI and HZ v European Air Charter AG* (General Court), 4 March 2026, Case T-656/24, ECLI:EU:T:2026:167 at 34.

[31] ECC-Net, "Towards a More Effective Air Passenger Rights Regulation" Position Paper (2025) at 13.

[32] Doc 11981/26 REV 1, enforcement regulation, *supra* note 20, art 16c(2).

[33] ECA Special Report 30/2018 at VIII.

The Commission's guidance helped to close this gap. Despite issuing explanatory notes and interpretive guidelines, including a consolidated summary of CJEU judgments in July 2015, the 2018 audit records NEBs and carriers reporting that aspects central to the Regulation, such as assistance, re-routing under comparable conditions, and compensation, are still interpreted inconsistently.[34] Burke and Molitorisová argue that the CJEU's predictability and controllability criteria for extraordinary circumstances work against each other, since risk-mitigation data that shows an airline's command of a hazard also makes that hazard seem foreseeable, undermining the exemption.[35] This may be compared to the finding that over half of eligible claims are incorrectly rejected on extraordinary-circumstances grounds, since the Regulation supplies no definition passengers can check disruptions against.[36] This is addressed in two ways by the final EC261 Revision. First, "extraordinary circumstances" is defined as events which by their nature or origin are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond the actual control of the air carrier (Article 2(r)), alongside a non-exhaustive annexed list (Article 6c(1)). Second, the burden of proof is placed fully on the carrier to establish the causal link and that all reasonable measures were taken to avoid the disruption (Article 6c(2)).

Where a carrier invokes an event not on the annexed list, it must specify the event and give reasons why it should count as extraordinary (Article 7(9)). The enforcement regulation includes a duty imposed on the NEB rather than the passenger directly that, on request, the carrier must substantiate its claim by providing all necessary evidence (Article 16a(6)). It can still be argued that the individual claimant has no independent means of testing the claim, since the evidentiary duty is owed to the regulator, not the claimant.[37]

[34] ECA Special Report 30/2018 at para 22; for the guidance, see online: <https://transport.ec.europa.eu/index_en>; < https://ec.europa.eu/transport/themes/passengers/air/european_case_law_en>.

[35] Ciarán Burke & Alexandra Molitorisová, "Some Birds Fly High: The Disappearance of Force Majeure Doctrine in European Aviation Tort Law" (2017), online: <https://ssrn.com/abstract=2916183>.

[36] ECA Special Report 30/2018 at 19–20.

[37] Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air, PE-CONS 39/1/26 REV 1, 2013/0072 (COD), 1 July 2026, art 1(2)(d) (Art 2(r)) and art 1(8) (art 6c); Doc 11981/1/26 REV 1, TRANS 506, CODEC 1464, 2023/0437 (COD), 17 July 2026, Annex, art 1(5) (art 16a(6)).

The standard is often contested (see *e.g.*, *AirHelp Germany v Austrian Airlines*[38]) even during ordinary periods, and applying it to a mass crisis event can produce widespread inconsistency that is not clearly acknowledged.

A second means of closing the gap is the commercial claims market. Special Report 30/2018 showed that claim agencies and ADR bodies have addressed gaps left by NEB's. Certain airlines reported that up to half of all claims pass through agencies, with some levying fees up to 50% of the compensation granted, and at times pursuing carriers without the knowledge of the passenger.[39]

More recently, the EU's response has neither fully regulated nor suppressed the market. Recital 38 of Directive (EU) 2025/2647 acknowledges that consumers are sometimes assisted during ADR by claims-management businesses but requires only that the assistance be transparent regarding rules, costs and fees, rather than focusing more on the cause of the practice.[40] However, the formal recognition of this occurrence in the market is beneficial.

The Court has addressed issues that the legislature declined to regulate. Over several cases, it removed procedural obstacles to assignment by bundling. For example, by determining territorial jurisdiction at the place of departure or arrival,[41] rejecting the use of jurisdiction clauses (by carriers) against a claims agency as assignee,[42] and, in 2025 (*Deutsche Lufthansa v AirHelp*[43]), making clear that assignment to a collection agency does not affect this special jurisdiction. This means that a commercial assignee may bring a claim in the forum of the place of performance (departure or arrival) without being a consumer themselves; the agency assumes the procedural role of the party.

In the context of the German position, in *ASG 2*, the Grand Chamber noted that the *Bundesgerichtshof* (Federal Court of Justice) permits the collective assignment model

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[38] *AirHelp Germany GmbH v Austrian Airlines AG*, C-399/24, ECLI:EU:C:2025:791.

[39] ECA Special Report 30/2018 at paras 56, 60–61.

[40] Directive (EU) 2025/2647 of the European Parliament and of the Council of 16 December 2025 amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes and amending Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828 following the discontinuation of the European Online Dispute Resolution Platform, OJ L, 2025/2647, 30.12.2025, recital 38.

[41] *Peter Rehder v Air Baltic Corporation*, C-204/08, EU:C:2009:439.

[42] *Ryanair DAC v DelayFix*, C-519/19, EU:C:2020:933.

[43] *Deutsche Lufthansa v AirHelp Germany GmbH*, C-551/24, ECLI:EU:C:2025:771.

specifically for air passenger claims.[44] This creates an asymmetry whereby the CJEU recognises and opens the way for the assignment model, but at the same time the legislature has not substantively regulated it.

III. The case of Covid-19

In 2020, an anonymous passenger ("Nicolas"), before the Court of Auditors, booked a flight using an online travel agency, which was then cancelled in the first wave of the pandemic. He was redirected between a number of people for over a year, namely the airline, which stated the refund must be requested by the agency, and the agency, which stated that the airline had cancelled and must pay. In March 2021, the agency communicated an offer from the airline of a partial refund, half the price of the two cancelled flights. However, a year later, he had received nothing.[45] The auditor chose this case specifically to illustrate the experience of passengers who booked through intermediaries. It was clear from the findings that airlines disabled automatic refund mechanisms (serving agencies) from the outset. Some airlines placed blame on agencies for withholding passenger data, while some agencies withheld refunds until airline funds were received. Furthermore, intermediaries do not fall under a single legal framework and seek recovery under various national laws. This results in a lack of coordination between airlines and agencies.[46]

The 2023 proposal is an aspect of the reform that deals with Nicolas' issue directly. In particular, Article 8a amends the sequencing for payment. The carrier must pay the intermediary within seven days, while the intermediary then pays the passenger within the following seven. If 14 days pass without the funds reaching the passenger, the carrier will contact them for payment details and pay the amount within seven days of receiving those details.[47] This mechanism was maintained, in the same form, in the final compromise text of

[44] *ASG 2 Ausgleichsgesellschaft für die Sägeindustrie Nordrhein-Westfalen GmbH v Land Nordrhein-Westfalen*, C-253/23, EU:C:2025:40 (Grand Chamber), 28 January 2025 (*ASG 2*) at para 26.

[45] ECA Special Report 15/2021, Box 6.

[46] *Ibid*, Box 6, paras 35–6.

[47] COM(2023) 753 final, *supra* note 8, art 1(2) (art 8a(5)).

the enforcement regulation.[48] This amendment, which came three years before the CJEU's solution (see *infra*) (within a proposal not designed to create new passenger rights), appears to treat the deficiencies in the structure effectively because it helps to regulate the payment procedure, rather than entitlement to payment.

The CJEU went on to deal with the same issue, partly, in January 2026, holding that reimbursement for cancellation includes the intermediary's commission, irrespective of the carrier's knowledge of the amount. The Court reasoned that any other conclusion would compel the passenger to bring another action against the intermediary, causing delay and disproportionate cost.[49]

A second failure that could be observed was the *active suspension of rights.* The transport minister of the Netherlands instructed the Dutch NEB not to enforce Regulation 261/2004 between 1 March and 14 May 2020, applying only vouchers. Verheyen and Hornig note this derogation to show a national authority openly endorsing a practice that directly contradicted the reimbursement right.[50] By a decree of 19 March 2020, Belgium suspended tour operators' refund obligations under the Package Travel Directive, while Italy and Greece derogated from the air passenger rights Regulation itself. ECA Special Report 15/2021 confirms that this is inconsistent with EU law and, indeed, the Commission initiated infringement proceedings on 2 July 2020.

Infringement action concerning this Regulation did not first arise with the pandemic. Within three years of its entry into force, the Commission had taken measures against Luxembourg, Sweden and Austria for failing to designate an NEB or enact sanctions at all.[51] While the course of action was previously used, its scope and impact gained momentum in 2020.

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[48] Council of the EU, Doc 11981/26 REV 1, enforcement regulation, Annex, art 1(2) (inserting art 8a into Regulation (EC) No 261/2004).

[49] *Verein für Konsumenteninformation v KLM*, C-45/24, EU:C:2026:2 at para 38.

[50] Wouter Verheyen & Julia Hornig, "The Right to Safe Transport + Air Passenger Rights After COVID-19" (2021) 4 European Review of Private Law 659 at 677.

[51] *Commission v Luxembourg*, C-264/06 EU:C:2007:240; *Commission v Sweden*, C-333/06 EU:C:2007: 351; *Commission v Austria*, C-235/06 (removed from the register by Order) EU:C:2006:725; Drake, *supra* note 16.

Eleven Member States faced procedures over pandemic measures contravening the Package Travel Directive, with four still open at the time of the audit.[52] This was an example of intentional suspension of EU rights by the legislature at a time when passengers had the most dependence on them. In the clearest instances, the Commission went further by treating the conduct as unlawful outright.

The example of Portugal demonstrates this "erosion" while rights formally remained intact. Carriers representing 87% of Portuguese air traffic cancelled 5.5 million tickets in 2020. Out of these, 60% (3.3 million) were reimbursed in cash within the year; 28% (1.6 million) became vouchers with no assurance of consent; 5%, over 300,000 tickets, were unresolved at the end of the year; 7% involved passengers who abandoned claims or rerouted. Delays grew exponentially after March 2020, peaked at 31 to 59 days between June and September, and returned toward normal by December. By February 2021, carriers reported reimbursement within 2 to 22 days.[53] Although the system did not fully fail, its effectiveness was noticeably weakened. The months of delay, with a third of the cohort directed towards vouchers (not clearly done with consent), and hundreds of thousands of unresolved claims, would not be detected under a general review of compliance, since each individual entitlement remained available in principle.

There is not a single, consolidated figure to show the scale of the aggregate claims. Twenty-four NEBs reported approximately 80,000 reimbursement complaints. BEUC reported 122,000 across Germany, Spain and Portugal alone, while the European Passenger Federation recorded 72,500 across four Member States. The European Consumer Centres Network handled 32,000 cases under the Regulation and 12,000 under the Package Travel Directive, and the Europe Direct Contact Centre recorded 6,700 incidents, 70% on cancellations.[54] These figures overlap, as the same complaints may be counted by more than one body, and they cannot be reconciled. Indeed, the auditor concedes that the data "might not give the full picture".[55] This finding is significant as it reveals that under Regulation 261/2004, unlike the other transport modes, NEBs have no reporting duty to the Commission. When the system was under the greatest

[52] ECA Special Report 15/2021 at para 65.

[53] *Ibid*, Box 5.

[54] *Ibid* at para 42.

[55] ECA Special Report 15/2021 at para 43.

pressure, no reliable account of the reliance existed. The 2018 Special Report had already found this omission under ordinary conditions.[56]

The Commission's main coordinating response, Recommendation (EU) 2020/648, was non-binding and did not achieve harmonisation. It aimed to make vouchers attractive and secure, recommending a 12-month minimum validity with automatic reimbursement if unredeemed, usability for new bookings, transferability, and insolvency protection. Validity ranged from 12 to 24 months across Member States, and was open-ended in two. Three Member States used State aid to protect vouchers against insolvency, and only for package travel. The main airlines in four states refused reversion to cash once a voucher was accepted, while five states barred transfers of vouchers between passengers.[57]

Useful as a test case, the Recommendation tests the capacity of soft law to coordinate Member States, when precisely drafted and fully supported. Again, the Court ruled only after the event, finding that reimbursement is paid in cash unless the passenger gives signed agreement to a voucher, and that agreement requires their express, definitive and unequivocal acceptance, not only conduct such as opening a loyalty account. For example, a voucher issued to a passenger who did not consent cannot discharge the carrier's obligation.[58] This is now codified rather than based only in case law. Article 8a(2) of the EC261 Revision provides that the passenger shall not be obliged to accept a voucher instead of payment, and that acceptance is valid only if the passenger has given explicit consent on a "durable medium".[59]

The approach of the Temporary State aid Framework should also be assessed against this backdrop. Paragraph 9, as modified in the Second Amendment, stated that Member States could support travel and tourism operators to ensure reimbursement claims were satisfied, with a view to protecting passenger rights and equal treatment.[60] The auditor reviewed every airline-

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[56] *Ibid*; *cf* ECA Special Report 30/2018.

[57] Commission Recommendation (EU) 2020/648 of 13 May 2020 (OJ L 151, 14.5.2020, 10); ECA Special Report 15/2021 at paras 38–39.

[58] *Cobult UG v TAP Air Portugal SA*, C-76/23, EU:C:2024:253 at paras 20–21, 26–29, 34, 37.

[59] PE-CONS 39/1/26 REV 1, art 1(11) (art 8a(2)), defined at Art 1(2)(d)(ae) as "any instrument which enables the passenger to store information in a way accessible for future reference, for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored".

[60] Communication from the Commission on Temporary Framework for State aid measures to support the economy in the current Covid-19 outbreak [2020] OJ C 91 I/01 at Point 9, as amended on 8 May 2020 in OJ C 164, 13.5.2020, 3 at para 18: "Member States can decide support to operators in the travel and tourism industry to ensure that reimbursement claims caused

specific State aid decision from March 2020 to April 2021, finding 38 decisions granted by 18 Member States, EUR 25.7 billion, and EUR 31.8 billion with multi-sectoral measures, over 90% of aid examined.[61] Passenger reimbursement was not a condition or objective of the aid in any of these cases.[62] Of the 16 measures supporting package travel organisers (one-tenth the scale of the airline aid), 13 expressly addressed reimbursement, voucher-insolvency protection, or repatriation. The auditor attributes this to the pre-existing insolvency obligation in the Package Travel Directive. No comparable obligation applies to airlines.[63]

The abovementioned failures involve different institutions, and for different reasons (for example, carriers withholding refunds, suspension of rights by ministries, enforcement bodies lacking data, failure of soft law to bind). However, State aid did not fail in the same way. The Commission had already given Member States the option to make aid conditional on reimbursement, requiring no new competence, no amendment and no reporting system. Thirteen Member States understood this sufficiently and applied it to package travel. Every Member State that granted airline aid chose not to.[64]

Organisers were regulated, while airlines were not, which may be due to the pre-existing insolvency obligation in the Package Travel Directive, rather than legal uncertainty or haste.

From another viewpoint, the risk of insolvency of airlines and tour operators is not comparable. The collapse of a carrier can strand passengers mid-journey, threaten the connectivity of routes and, in several Member States, there are strategic and employment implications for a flag carrier that are not borne by a package organiser. In this way, governments have treated airline aid as intended to keep the carrier flying, not as ensuring consumer protection. Solvency itself is considered a protective measure, and continued connectivity was the relevant public interest. Passengers were only protected indirectly.

A rationale properly based on connectivity should differentiate according to the level of risk. For example, there should have been more reluctance to attach reimbursement conditions in

by the COVID-19 outbreak are satisfied with a view to ensuring the protection of passenger and consumer rights, and equal treatment of passengers and travellers"; ECA Special Report 15/2021 at para 52.

[61] ECA Special Report 15/2021 at paras 55, 58 and Annex III (38 measures; the granting Member States in Annex III number 18).

[62] *Ibid*.

[63] *Ibid* at paras 59–61.

[64] See ECA Special Report 15/2021.

the case of national flag carriers, and those whose collapse would strand the most passengers or threaten the least redundant routes, than in the case of smaller or more easily substituted airlines, but there is no pattern reflecting this. None of the 38 decisions made aid conditional on reimbursement, irrespective of the size of the carrier, route exposure, or flag status. This goes against the "connectivity" rationale. Moreover, Point 9 considered the reimbursement condition and continuity of service compatible, not as competing.

The asymmetry is also seen in airline insolvency, which is itself a mass-harm scenario. An external study for the Commission found 87 airline insolvencies in the decade to 2019, affecting 5.6 million passengers, of whom approximately a third, or 1.8 million, were left without recourse.[65]

IV. The limits of transplanting collective redress into aviation

The obstacles to collective enforcement are often seen in procedure, standing, transposition divergence, or jurisdiction. Obstacles emerge from the structure of the collective right. The Court characterises Article 7 compensation as standardised, immediate redress for a harm, loss of time, suffered almost identically by each passenger on the flight. This may be proposed as a template because it dispenses with individualised proof of subjective damage.[66] The harm is standardised, but each passenger must still bring the claim alone. By contrast, EU rail and maritime compensation is proportional to the price rather than flat rate, so claims cannot be grouped as easily.[67]

In a 2026 maritime judgment, *MH v Costa Crociere*, the Court harmonised the substantive liability content across the package-travel and Athens Convention regimes, but did not address limitation and aggregation. While the Court actively harmonised substantive law, it did not consider enforcement as part of this task.[68]

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[65] ECA Special Report 15/2021 at para 47; Study on the current level of protection of air passenger rights in the EU (January 2020).

[66] See Verheyen & Hornig, *supra* note 50.

[67] For a comparison between consumer protection regimes in air travel versus other modes of transport, see Steven Truxal, "Air Carrier Liability and Air Passenger Rights: A Game of Tug of War?" (2017) 4:1 J Int'l & Comp L 103.

[68] *MH v Costa Crociere*, C-629/24, EU:C:2026:451; the Athens regime is incorporated via Regulation (EC) No 392/2009.

Regulation 261/2004 already has a collective nature by standardising the harm, determining the quantum, and removing the individualised assessment that can often make mass claims unmanageable. However, the process was not made collective. Each identical passenger must assert the same entitlement individually, against the same carrier, arising from the same event.

Regarding the reason for this missing procedure in the collective redress framework, a first obstacle is the encompassing liability framework. Air passenger claims do not often arise simply as Regulation 261 claims. Loss beyond the fixed sums, missed connections, accommodation, and consequential expense falls under the Montreal Convention, where, under Article 29, every action for damages falls under the Convention's conditions and limits, however it is founded, and Articles 17 to 22 require individualised proof.[69] Verheyen and Hornig argue that without a functioning international contact-tracing system, establishing a causal link between travel conditions and an on-board infection would be an almost insurmountable evidentiary barrier during COVID-19.[70] The Court distinguishes the two regimes. Flat-rate redress operates at an earlier stage and is compatible with individualised Convention damages.[71] However, from a critical perspective, Correia and Rouissi note that both the material scope of the Conventions and the reach of Article 29's exclusivity principle remain disputed, since a wide reading of exclusivity could preclude EU law from applying to the matter in the first place.[72] This leads to fragmentation. A single passenger combining both heads may result in different fora,[73] and for a group, the flat-rate (Regulation 261) claim groups together easily, while the Montreal Convention claim incorporates the individualised proof, and fragmentation of jurisdiction through Article 33.

Limitation further highlights the fragmentation. The Regulation sets no period, and the Court has held the time limit for Article 7 claims to be governed by national law,[74] leading to a range

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[69] Convention for the Unification of Certain Rules for International Carriage by Air, 28 May 1999, 2242 UNTS 309 (entered into force 4 November 2003) (Montreal Convention), arts 17–22, 29.

[70] Verheyen & Hornig, *supra* note 50 at 668.

[71] *International Air Transport Association and European Low Fares Airline Association v Department for Transport*, Case C-344/04, EU:C:2006:10 at paras 43–47.

[72] Vincent Correia & Noura Rouissi, "Global, Regional and National Air Passenger Rights" (2015) 40:2 Air & Space L 123, 130.

[73] *Adriano Guaitoli v easyJet Airline Co. Ltd*, Case C-213/18, EU:C:2019:927 at paras 33–37, 44.

[74] *Cuadrench Moré*, C-139/11 EU:C:2012:741, noted in *LOT* at para 36.

of approximately one to five years across the EU. A single event thus creates a group whose identical claims expire at different times in different fora. Limitation alongside standing and funding therefore may all contribute to explaining why fragmentation occurs in aviation claim groups.

Garben argues the Court's extension of compensation to delay in *Sturgeon* was judicial activism, which is disputed by Lenaerts and Gutiérrez-Fons.[75] Leclerc shows that the institutions justified collective redress on narrow grounds. Collective redress needed specifically because of a gap in mass, cross-border disputes, to preserve consumers' effective access to a court.[76]

Directive (EU) 2020/1828 seems to help fill the missing element.[77] Regulation 261/2004 is included in Annex I, qualified entities are granted standing under Article 4, Article 6 foresees cross-border actions, and Article 9 provides redress. But the Directive leaves the key choices, namely opt-in versus opt-out, to national transposition, allowing divergence in mass, cross-border events. Prior to 2018, responding to the Commission's 2008 Green Paper on collective consumer redress, the Parliament's rapporteur affirmed that any EU mechanism must not import the US class action, warning against contingency fees, punitive damages and opt-out procedures.[78] The following years of Commission proposals avoided these, but they did not mention Regulation 261/2004.

Courts, rather than legislatures, have dealt with this. Jurisdiction lies at the place of departure or arrival and cannot be displaced by a jurisdiction clause against an assignee.[79] The *ASG 2* case is central. Regarding the cartel-damages facts, the Grand Chamber held that Article 101

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[75] Sacha Garben, "Sky-high Controversy and High-flying Claims ? The Sturgeon Case Law in Light of Judicial Activism, Euroscepticism and Eurolegalism" (2013) 15 CML Rev 2013 at 15; Koen Lenaerts et Jose A Gutiérrez-Fons, "The Constitutional Allocation of Powers and General Principles of EU law" (2010) 47:6 CML Rev 1629 at 1637; Fabien Le Bot, "La protection des passagers aériens dans l'Union européenne: Réflexions sur l'interprétation du droit dérivé par la Cour de justice" (2013) 4 RTDEur 753.

[76] Mélanie Leclerc, *Les class actions, du droit américain au droit européen: Propos illustrés au regard du droit de la concurrence* (Brussels: Larcier 2012) at

[77] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, OJ L 409, 4.12.2020, 1.

[78] Leclerc, *supra* note 76 at paras 834, 857, citing Rapporteur Lehtinen, 2007/2189(INI).

[79] *Rehder*, C-204/08, EU:C:2009:439; *DelayFix*, C-519/19, EU:C:2020:933; *Deutsche Lufthansa v AirHelp*, C-551/24, EU:C:2025:771.

TFEU, with Directive 2014/104 and Article 47 of the Charter, precludes national law preventing injured persons from assigning claims to a licensed legal-services provider for collective assertion, but only on the condition, firstly, that national law offers no other effective means of grouping the claims, and secondly, that an individual action is, in all the circumstances, "impossible or excessively difficult".[80] The complexity and cost of damages litigation do not inherently meet this threshold.[81] Additionally, even where group collective action is the only effective route, national rules on provider quality, proportionate remuneration and conflict of interest remain applicable.[82] While not in the aviation context, the judgment recalls that the German Federal Court of Justice allows group collection for air passenger claims,[83] and its framework (procedural autonomy subject to effectiveness and Article 47) is not specific to competition, being drawn from the general case law.[84] Therefore, the same framework can be viewed as governing Article 7.

There are some limitations with this. The aspects which the Court relied on in *LOT* to justify administrative enforcement (e.g., fixed sums, no individual assessment, amounts identifiable by all without difficulty) [85] are considerations that make individual 261 claims financially and streamlined, often not being "excessively difficult" to bring individually under the second condition in *ASG*; they are unlikely to meet this threshold. Flat rates may weaken the incentive to await a collective mechanism rather than promptly pursue an individual claim or use an assignee, and remove the effectiveness that could compel national systems to accommodate collective procedures.

Case law on effectiveness focuses on the complexity, evidential burden, and cost of the claim.[86] Mass disruption from a single event, on the other hand, may flood and overwhelm carriers handling the claims, the capacity of the NEB and the courts. Each claim individually is

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[80] *ASG 2*. See paras 82–84.

[81] *Ibid* at para 86.

[82] *Ibid* at para 87.

[83] *Ibid* at para 26.

[84] *Ibid* at paras 71–75, 89.

[85] *LOT*, C-597/20, EU:C:2022:735 at paras 30-33.

[86] *ASG 2* at paras 85–86.

straightforward while group enforcement becomes lengthy, uncertain and, in many cases, not practically worthwhile. In mass disruption scenarios, *ASG 2*'s second condition may be met in aviation when the enforcement framework fails, since effectiveness is a fundamental requirement under the assignment model.

In a case between Austria's designated consumer entity and KLM in early 2026 (*cf Flightright v Etihad Airways*, C-642/23), it was held that Article 8(1)(a) reimbursement includes the intermediary's commission. This was not a representative action but used an assignee of the passengers' claims.[87] VKI (also designated as a qualified entity under Directive 2020/1828) adopted a procedural role similar to that of a claims agency. The EC261 Revision does not address the issue that where a booking runs through an intermediary, the airline may still not know the passenger's contact details or what exactly was paid; there is still the knowledge "gap" illustrated in the *VKI v KLM* claim, where the carrier's knowledge was irrelevant to liability.

An opposing argument, seen in French commentary, suggests that the collective procedure does not fit the Regulation's automatic, flat-rate structure.[88] Where quantum is fixed, and liability depends on key verifiable facts, there are little cost savings to justify collective procedure and a prompt individual claim (or a commission-charging assignee) may be preferable. But in mass disruption, passengers on one flight receive different outcomes from one carrier under one provision. In addition to procedural barriers, a behavioural and economic barrier is evident, and a collective mechanism may only be effective if it provides participation without a contingency fee, consistent outcomes across the group, and preclusive effect against the carrier, which assignment is not best suited to. Section V below examines whether certain mechanisms achieve these aims.

The area of insolvency demonstrates an alternative structure. Once the carrier ceases trading, there is no defendant/respondent in assignment, collective action, or an individual claim to act against. Insolvency protection for flight-only passengers was considered and left out of the

[87] *Verein für Konsumenteninformation v KLM*, C-45/24, EU:C:2026:2 at paras 11, 33–38.

[88] *E.g.*, Simon Parier, "Activités touristiques - Données personnelles - L'action de groupe et le RGPD en matière de transport aérien" (2019) 215 Juris tourisme 44 at 45.

2023 proposal in favour of the pending Air Services Regulation revision.[89] ECC-Net and BEUC record that, when put forward in 2023, the reason given by the Commission was a data gap. Only the airlines hold the relevant figures, and the Commission did not compel disclosure. However, there is an existing model in the German vzbv's proposed levy-funded scheme, based on the Reisesicherungsfonds (Travel Security Fund) rebuilt after Thomas Cook's collapse, estimated to add only a few euros per ticket.[90] Parliament has called for a comparable scheme since 2014, repeating the call in 2020 and 2021 with express reference to the pandemic. The lengthy period of requests was followed by years of deferral.[91]

V. Prospective coordination mechanisms

The coordination mechanism that most directly responds to the gap in protection is case bundling. Directive (EU) 2025/2647 permits ADR entities to bundle related cases, dependent on the consumer being informed and on the handling personnel having sufficient knowledge, and, notably, Recital 22 points toward the key scenario which triggered it: mass flight cancellations during the pandemic, for which ADR proved important, and for which bundling is to make outcomes consistent for consumers subjected to the same practices and more cost-efficient.[92] Two points should be noted. Recital 22 leaves the choice for opt-in/opt-out, and consequences of objection to bundling, to national transposition, meaning the mechanism will diverge at these crucial points. And transposition is not due until 2028, so the practical effect is not yet known.

The second mechanism is mandatory ADR participation. The power to compel participation in specific sectors came before the Directive. A more novel feature arises from Recital 16, which directs Member States to focus participation measures on sectors with low trader participation

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[89] COM(2023) 753 final, Explanatory Memorandum: passenger protection in the event of insolvency or major crisis is stated to be addressed instead in the ongoing revision of Regulation (EC) No 1008/2008, through measures on carriers" financial fitness and resilience.

[90] ECC-Net, *supra* note 31 at 18–19; BEUC, cited *ibid*; vzbv (Verbraucherzentrale Bundesverband), "Sicher Reisen mit starken Fluggastrechten" (7 July 2023) at 10–11.

[91] ECA Special Report 15/2021, para 71; Sustainable and Smart Mobility Strategy, COM(2020) 789 final at points 91–92.

[92] Directive (EU) 2025/2647, recital 22.

and repeated complaints, naming transport and tourism, and air passenger rights specifically, as the priority.[93]

This is a strong unilateral method for helping to address the gap in aviation participation pending further reform at EU level. However, it does not extend to redress. It obliges the carrier to engage but does not ensure a consistent outcome. Additionally, it may suffer from ambiguity. Parties may raise the extraordinary-circumstances argument as explored in Section II. The impact of the mechanism will mostly be seen at the national level, since Member States are free to make ADR mandatory expressly rather than simply directing complainants to it.[94]

An example is France, whose decree n° 2025-772 of 5 August 2025 makes prior consumer mediation compulsory for 261/2004 claims from February 2026, but binds only the passenger. The airline may decline to participate or stay silent, while the requirement is enforced against the consumer by an inadmissibility the judge must raise of his own motion.[95] Pellier questions whether this is compatible with Article 10(1) of Directive 2013/11/EU, which precludes ADR agreements prior to the dispute that deprive the consumer of court access. The Conseil d'État declined to suspend the decree in October 2025 without resolving the question on the merits. The decree also, in a "particularly harsh" manner, confines joint court filings to family members, preventing informal grouping of claims between co-passengers. Therefore, unrelated passengers on the same flight are unable to share litigation costs, which was once possible and in fact common.[96] Nonetheless, recourse could be made to the French *action de groupe*, a representative action mechanism transposing Directive 1828/2020, that was significantly expanded in scope compared to the previous position.[97]

It can be argued that this type of national mandatory participation does not close the gap between the compulsory nature imposed on the claimant and discretion for the carrier. Adding

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[93] Directive (EU) 2025/2647, recital 16; *see* art 4a; art 1(3) inserting art 4a into Directive 2013/11/EU.

[94] Alexia Kaztaridou, "EU modernises consumer dispute resolution: An overview of the new ADR Directive" (2025) Conflict of Laws.net, online: <https://conflictoflaws.net/2025/eu-modernises-consumer-dispute-resolution-an-overview-of-the-new-adr-directive/>.

[95] Jean-Denis Pellier, "Regard sur le contentieux de l'indemnisation des passagers aériens à la lumière du décret n° 2025-772 du 5 août 2025" (2025) 4 Revue des contrats 54.

[96] *Ibid*; Jérémy Jourdan-Marques, "Décret du 5 août 2025 : justice surbookée, refus d'embarquement des passagers" (2025) D actu;

[97] Law No 2025-391 of 30 April 2025 on various provisions for adapting to European Union law, JORF n° 0109 of 10 May 2025, Art 16.

to this, under Directive 2025/2647, traders have 20 working days to confirm ADR participation, which can be extended to 30 for "exceptional circumstances". In such circumstances, claimants may be most in need of the ADR procedure, and the flexibility is not necessarily beneficial.

Parliament and Council reached political agreement on the EC261 Revision on 15 June 2026, Parliament confirmed the text on 7 July 2026, and the Council gave final approval on 13 July 2026.[98] Once it takes effect, the text (substantive revision) will not bind carriers until 12 months and 20 days later. The separate enforcement regulation reached a provisional political agreement on 25 June 2026, with a final compromise text approved on 15 July 2026. It will apply from the date the revised Regulation enters into force.[99] During the legislative process, it is notable that airline-generated pre-filled forms and automatic reimbursement were dropped in favour of a duty on airlines simply to inform passengers how to claim (although reimbursement of the ticket price is automatic once a passenger elects it, and does not require a dedicated request (Recital 36; Article 8(1)(a))). Article 7 compensation is *not*, since the passenger must submit a request, within nine months, before any payment obligation arises (Article 7(9)).[100]

An asymmetry arises between the approach towards reimbursement and compensation. The latter is central to the EU representative actions framework (encompassing redress measures (i.e., compensation), alongside injunctive measures as the two core remedies) but is not prioritised as an instrument for passenger protection here. In fact, the Council noted in June 2025 "that the payment of compensation comes third by order of priority" after assistance and rerouting, according to passengers. At the same time, the thresholds for delays to give rise to a right to compensation were to be increased "to take account of the financial and competitiveness impact on the sector" in a preventive manner.[101] It was made clear that compensation was not, therefore, the focus of the EC261 Revision. Without being redress-focused, it fails to truly bolster institutional enforcement in cases of mass harm.

[98]Council of the EU, press release, "Council gives final clearance for stronger air passenger rights", 13 July 2026.

[99] Council of the EU, "Council and Parliament agree on more effective enforcement of passenger rights" (press release, 25 June 2026); Council of the EU, Doc 11981/26 REV 1, enforcement regulation. Formal Parliament and Council adoption is pending at the time of writing,

[100] PE-CONS 39/1/26 REV 1, recital 36 and art 1(9)–(10) (arts 7(9), 8(1)(a)).

[101] Council of the EU, doc 9795/25, 5 June 2025, recital 2.

On the other hand, the intention to give a more precise definition of "extraordinary circumstances", considering *Wallentin-Hermann* (C-549/07) interpreting the original version of Regulation 261/2004, is a positive step for mass redress.[102] Combined with a three-yearly review by the Commission of the annexed lists of extraordinary circumstances (though increased to every 5 years in the final text), there is increased potential to capture emerging mass harm scenarios that would not traditionally have fallen under the term.[103]

Article 15a also reaffirms that the new framework is not solely aimed at prevention or preparation. It requires intermediaries as well as carriers to set up their own complaint-handling mechanism, publish contact details, and respond within 30 days.[104] These aspects help to remedy the failure to coordinate seen in the Nicolas case example (see Section III) and might prompt greater cooperation when dealing with the extra complexities of mass, cross-border events. In those cases, the various stakeholders involved or impacted have an interest in ensuring symmetrical justice and streamlined efforts. A parallel can be drawn with the Representative Actions Directive 2020/1828, where it is stated: "Cooperation and the exchange of information between qualified entities from different Member States have proven to be useful in addressing in particular cross-border infringements. There is a need to continue capacity-building and cooperation measures and to extend them (…)".[105]

The matter of thresholds is also important when considered on a mass scale. A 2013 proposal would have replaced the uniform three-hour compensation trigger with graduated thresholds of 5, 9 and 12 according to flight distance. This would have removed compensation entitlement from approximately 85% of delayed passengers who are currently compensated.[106] Shortcomings were acknowledged and partially legislated for in the 2013 proposal, which was a response to the 2010 Eyjafjallajökull disruption. This "accounted for 40% of all cancellations in 2010", and it was estimated that 67% of European airspace was closed.[107] Standard

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102 *Ibid*. See recitals 3 ff; *Friederike Wallentin-Hermann v Alitalia - Linee Aeree Italiane SpA*, C-549/07, ECLI:EU:C:2008:771.

103 *Ibid*.

104 PE-CONS 39/1/26 REV 1 (2013/0072 (COD)), 1 July 2026, art 1(21) (art 15a); *cf* Council of the EU, doc 11981/26 REV 1, Annex, art 1(6) (art 16b(3)).

105 Directive (EU) 2020/1828, *supra* note 77, recital 77.

106 ECC-Net, *supra* note 31 at 15; Opinion of the European Economic and Social Committee on the "Common rules on compensation and assistance to air passengers (rolling programme)" COM(2013) 130 final (2013/C 327/20),

107 European Commission, Impact Assessment Accompanying Proposal for a Regulation amending Regulation (EC) No 261/2004, SWD (2013) 62 final (13 March 2013), Annex 9 at 104, Annex 15 at 155.

parameters and assumptions were inappropriate to calculate care and assistance costs and the impact of the disaster,[108] demonstrating a need for specialised mechanisms. Because there is a tension between competition, performance, passenger wishes and effective redress in air passenger mass harm, principles of collective justice must be balanced accordingly.[109] But, as shown above, there is evidence that the legislature and courts recognise the need for an expanded scope in areas including extraordinary circumstances and cross-border cooperation.

VI. Conclusion

This paper has aimed to place air passenger protection within a broader consumer law question: what is the outcome when an individual air passenger rights framework is faced with mass disruption? It shows there is a pattern of various results, rather than a single "gap" in protection. Regulation 261/2004 leaves individual enforcement to national discretion, which the pandemic revealed. Notably, eighteen Member States chose not to make airline State aid dependent on passenger reimbursement, despite the Commission's encouragement in this regard, and a comparable existing obligation for package organisers under the Package Travel Directive. Collective redress does not apply smoothly to the sector. The flat-rate, standardised harm in Regulation 261/2004 makes it suited to collective situations, but in practice, the procedure is lacking, and the collective redress framework created for other harms was not adapted to aviation's particular obstacles. There is also fragmentation concerning the Montreal Convention, divergent limitation periods, and the opt-in/opt-out choice left to national transposition. The courts, in *ASG 2* and case law on assignment have addressed some of the open issues. In the case of insolvency, once a carrier stops trading, there is no counterparty left to act against, whether it is an individual or collective mechanism.

Case bundling, mandatory ADR participation, and airport contingency planning are seen in the 2026 reform and current possibilities, although they are limited and missing a focus on *redress*.

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[108] *Ibid* at 155; In *McDonagh*, *supra* note 17, the Court held that, although the ash-cloud closure qualified as extraordinary circumstances, it did not relieve the carrier of its duty of care and assistance. See also Fox and Martín-Domingo, *supra* note 28 and David Alexander, "Volcanic ash in the atmosphere and risks for civil aviation: A study in European crisis management" (2013) 4 IJDRS 9.

[109] See e.g. IATA (Thomas Reynaert), "The Good, the Bad, and the Ugly of European Air Passenger Rights Reform" (19 June 2026) online: <https://www.iata.org/en/pressroom/opinions/the-good-the-bad-and-the-ugly-of-european-air-passenger-rights-reform/>.

In a key revision, automatic measures that could have addressed mass claims directly were used for reimbursement but not compensation.

This is not yet settled. The five-year review of EC261's revision leaves open the extraordinary-circumstances list and the compensation thresholds, and proposals for an insolvency model have been put forward (vzbv). While courts have addressed the effects of the legislative choices in this sector, mass harm protection in aviation requires an overhaul of the framework from a redress-focused approach.