



ABSOLUTELY Nuts

It is ironic when governments, often on the lookout for risky airline behavior, invent new rules that pressure airlines into making unsafe decisions. The European Union (EU) has done this, and seems very satisfied with its actions.

There always has been and always will be a potential tug of war between aviation safety and money. For the most part, it stays that way, just a potential conflict, especially in the world's developed aviation markets where that threat is clearly recognized.

In the developing world, we see every year the catastrophic results of failing to spend money on aviation safety basics, but most of the time, the financial pressures are more subtle. However, the EU now has moved far from subtlety to a rule of law that says if an airline cancels a flight, even due to a mechanical problem, it will owe the flight's passengers tens of thousands of euros, regardless of whether the operation of the flight would have been unsafe.

It isn't a new thing for governments to set up situations that might increase risk. For example, noise abatement procedures can call for tailwind landings, increasing the risk of a runway excursion, and evening curfews might push crews to rush to beat the clock, possibly creating an unstabilized approach.

But the EU, in a misguided effort to protect consumers from airline abuses, has opened a new front in the battle between government rules and safe operations.

A recent court case based on the EU's Air Passenger Compensation Regulation, which took effect in early 2005, set a new precedent. A family trying to make a connection in Rome had their first leg canceled because of an engine problem discovered the night before. In the end, it took 10 days to repair the engine and return the aircraft to service, but the Commercial Court of Vienna, later affirmed by the European Court of Justice, ruled that the airline was not protected by the rule's exemption for "extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken."

Even though the rule states that one of the "extraordinary circumstances" is "unexpected flight safety shortcomings," the Vienna court said the airline owed the passengers €250. Compensation for denied boarding can go as high as €600 per passenger, depending on the flight length.

The engine problem in question was so bad that no one would have considered flying with that engine, so safety was not at issue, at least in this case. But now, as predicted when the regulation was

adopted, airlines face the threat of having to pay a hefty penalty to hundreds of passengers if a flight is canceled, adding yet another financial pressure to the go/no-go decision.

Not our problem, the court ruled: "The resolution of a technical problem caused by failure to maintain an aircraft must [therefore] be regarded as inherent in the normal exercise of an air carrier's activity. Consequently, technical problems which come to light during maintenance of aircraft or on account of failure to carry out such maintenance do not constitute, in themselves, 'extraordinary circumstances.'"

The European Commission "welcomed" the ruling, with European Commission Vice-President Antonio Tajani adding, "The effective respect of passenger rights is one of our major priorities." Too bad the safety of flight is not so highly regarded.

A friend had the right words to describe the EU's position: "That's absolutely nuts."

A handwritten signature in black ink that reads "J.A. Donoghue".

J.A. Donoghue
Editor-in-Chief
AeroSafety World