**Destination ADR:**

**Charting a New Course for Airline Passenger Disputes**

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Abstract

Airline passenger rights in the United States lag behind protections in the European Union (EU), leaving consumers vulnerable. Since the 1978 Airline Deregulation Act, limited federal oversight and reliance on airline contracts have weakened recourse for passengers facing issues like disruptions, mishandled baggage, and unfair practices. The complex regulatory landscape and high costs of litigation pose barriers to dispute resolution, exemplified by failed attempts at a Passenger Bill of Rights. In contrast, the EU has expanded protections through legislation and dedicated alternative dispute resolution (ADR) systems. This article analyzes the EU framework, using Spain as a case study, where recent regulations strengthened ADR by granting binding authority to resolutions. The analysis extends to include pertinent observations from the German legal landscape. Insights from the EU model highlight the potential for specialized aviation ADR bodies and mandatory airline participation to level the playing field for passengers. However, imposing similar reforms in the US may conflict with the hands-off approach rooted in deregulation policies. More modest yet impactful changes emphasizing incentives over mandates could promote voluntary airline adoption of binding arbitration procedures approved by the Department of Transportation. Targeted legislative adjustments maintaining deregulation principles while expanding accessible dispute resolution would align with the EU emphasis on passenger rights. Though substantial gaps remain, enhancing ADR access can gradually improve protections consistent with the US regulatory philosophy. This incremental approach represents an attainable progression toward more equitable aviation dispute resolution.

# Introduction

Since the 1978 Airline Deregulation Act, the airline industry has undergone massive changes which eliminated federal control over routes, fares, and market entry. While deregulation succeeded in promoting competition and reducing airfares, it also triggered a decline in airline service quality and passenger protections. Today's passengers face increasingly inhospitable conditions, including cramped seating, burdensome fees, and uncertain recourse for delays, cancellations, and other service disruptions. Against this backdrop, the contrast between European Union (EU) and United States policies on airline passenger rights has become more pronounced. The EU actively fortifies passenger protections through comprehensive legislation and specialized alternative dispute resolution (ADR) systems. The United States, conversely, provides only limited safeguards, leaving passengers in a vulnerable position with few cost-effective remedies.

This article compares the EU and US approaches to airline passenger rights, focusing on dispute resolution mechanisms. Part II examines the challenges passengers face under the current US framework, which centers on airline contracts and lacks robust oversight. Part III provides background on ADR and details the EU's framework, using Spain as a case study. Part IV identifies key characteristics of the EU model, including mandatory airline participation in ADR and the establishment of aviation-focused ADR bodies. It also explores controversies related to the scope of ADR in compelling airline compliance. Finally, Part V draws lessons from the EU experience and proposes reforms to strengthen US passenger rights through increased access to binding ADR procedures.

While the US adheres to a hands-off approach rooted in the free market policies of deregulation, targeted legislative changes providing incentives and safeguards for ADR could incrementally empower consumers. The EU offers a roadmap of how non-litigation dispute resolution can effectively supplement traditional enforcement mechanisms. By facilitating access to expert mediation and arbitration forums, the US can adapt key aspects of the EU model to its unique regulatory landscape. Though political hurdles exist, enhancing alternative resolution procedures remains a viable path forward for buttressing passenger protections.

# Challenges in U.S. Aviation Passenger Dispute Resolution Mechanisms

## Overview of Aviation Passenger Disputes

### Parties Involved in Aviation Passenger Disputes

Aviation passenger disputes, spanning ticket purchase, airport wait times, and in-flight transportation, involve legal conflicts between passengers and various entities, primarily airlines and airport authorities. [[1]](#footnote-1) These disputes may stem from personal or property damage resulting from an operator's tortious actions or contractual disagreements related to passenger transportation and baggage agreements. [[2]](#footnote-2)

Key participants in these disputes encompass carriers, airport management entities, airline sales agents, and operators of airline sales platforms. Carriers, defined as enterprises utilizing civil aircraft for passenger and baggage transport, frequently find themselves at the center of complaints. [[3]](#footnote-3) Grievances may include lost luggage, flight delays, cancellations, subpar service, or passenger refusal to board. [[4]](#footnote-4) The onus falls on airlines to address and resolve passenger claims, safeguarding their legal rights. Compensation, free accommodations, rebooking, refunds, or other remedies may be offered. [[5]](#footnote-5)

Airport management authorities serve as intermediaries, maintaining order and providing essential services.[[6]](#footnote-6) Disputes with airports may arise from inadequate services, boarding procedures, security matters, or passenger complaints.[[7]](#footnote-7) Moreover, airports bear the responsibility of ensuring passenger safety and responding to emergencies.[[8]](#footnote-8)

In aviation passenger disputes, airline sales agents and online platform operators play crucial roles.[[9]](#footnote-9) Passengers often book and modify flights through these intermediaries, avoiding direct airline contact.[[10]](#footnote-10) Consequently, they typically address initial complaints about overbooking, delays, or cancellations to the booking platform.[[11]](#footnote-11) This pattern underscores the complexity of such disputes and the variety of involved entities.[[12]](#footnote-12)

### Types and Characteristics of Aviation Passenger Disputes

The following five types of disputes are the most common: 1) disruptions to air travel experience; 2) mishandled baggage; 3) refunds and fares; 4) disability accommodations; and 5) consumer protection violations.[[13]](#footnote-13) Aviation passenger disputes encompass various categories, each triggering distinct legal rights and responsibilities as defined by airline consumer protection regulations. Analyzing consumer complaint data unveils prevalent areas of conflict between passengers and air carriers.

Disruptions to the air travel experience, constituting the primary source of disputes, contributed to 52.5% of December 2022 complaints and 31.7% overall in 2022. [[14]](#footnote-14) Passengers face missed connections, additional expenses, and inconvenience, often stemming from inconsistent airline policies. [[15]](#footnote-15) Mishandled baggage, accounting for 13.8% of December 2022 complaints and 15.5% overall in 2022, leads to disputes when airlines fail to compensate for lost, damaged, or delayed luggage, despite baggage liability rules. [[16]](#footnote-16)

Refund and fare-related disputes, involving unjust denials and improper fare practices, encompass contract law and specific regulations on refunds and price transparency. [[17]](#footnote-17) Passengers rightly expect adherence to advertised fares and service contracts. Despite forming a smaller percentage, disability accommodation disputes saw a 50% increase in 2022.[[18]](#footnote-18) These conflicts arise when airlines inadequately accommodate individuals with disabilities, violating anti-discrimination regulations. Consumer protection violations involve breaches of airline consumer protection regulations, such as overbooking/bumping and truth in advertising. Passengers seek accountability when transparent information and fair dealings are not met.

## U.S. Aviation Passenger Rights: Legal Framework and Oversight

### Multiple Levels of Airline Passenger Protection

The legal framework and oversight of U.S. aviation passenger rights involve multiple levels of protection, stemming from federal laws, regulations, and airline policies.[[19]](#footnote-19) Congress, authorized under the Commerce Clause, governs these rights, limiting state and local involvement in air carrier pricing and services.[[20]](#footnote-20) Congress shapes airline passenger rights, authorizing federal agencies to enforce them.[[21]](#footnote-21) Oversight falls under the House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation.[[22]](#footnote-22) Congressional scrutiny extends to issues such as tarmac delays, flight schedules, and airline mergers, exemplified by the 2013 American Airlines and US Airways merger.[[23]](#footnote-23)

The U.S. Department of Transportation (DOT) plays a crucial role in enforcing airline passenger rights, operating under 49 U.S.C. Section 41712.[[24]](#footnote-24) The DOT issues regulations, with the Office of the Secretary administering this authority independently of the Federal Aviation Administration (FAA).[[25]](#footnote-25) The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (OAEP) monitors airline compliance, investigating violations and imposing fines based on various factors. Large carriers may face penalties up to $27,500 per violation, while small entities face a maximum $1,100 penalty, with exceptions for discrimination and deceptive practices. [[26]](#footnote-26) The DOT's enforcement includes investigations initiated from various sources, such as complaint letters to airlines, potentially resulting in warning letters or enforcement hearings.[[27]](#footnote-27)

Airline passenger rights are outlined in airline contracts of carriage (CCs), the legal agreements between airlines and passengers.[[28]](#footnote-28) CCs are no longer federally regulated due to the 1978 Airline Deregulation Act. [[29]](#footnote-29) However, CCs conflicting with federal laws or regulations are unenforceable. [[30]](#footnote-30) Deregulation introduced price competition, replacing service competition. Airlines charge separate fees for previously included services, leading to

complaints. [[31]](#footnote-31) Airlines no longer maintain excess capacity, complicating responses to flight delays and cancellations, a common source of passenger complaints. [[32]](#footnote-32)

The airline-passenger relationship is governed by a mix of federal regulations and state law.[[33]](#footnote-33) The DOT has the power to regulate airline contracts and prevent unfair practices. State law also plays a role, especially in common contract claims against airlines.[[34]](#footnote-34) There's an ongoing legal debate about the extent of federal and state authority in airline contracts.[[35]](#footnote-35) The Supreme Court has set some limits, allowing states to enforce contract terms but not impose extra obligations.[[36]](#footnote-36) The DOT can investigate complaints but can't compensate passengers for contract breaches.[[37]](#footnote-37) Passengers must rely on state law for lawsuits, which can be costly compared to minor financial losses due to airline breaches, like not providing cash refunds or overbooking.[[38]](#footnote-38)

### Passenger Bill of Rights

The Passenger Bill of Rights (PBOR) refers to proposed legislation aimed at enhancing and protecting the rights of airline passengers.[[39]](#footnote-39) These rights include measures such as ensuring reasonable seat sizes, addressing extra charges for parents sitting with children, providing refunds and alternative transportation for delays, and safeguarding passengers from unfair practices in the airline industry.[[40]](#footnote-40)

Despite repeated attempts since 1989 to establish a PBOR, no bill has made it to a congressional vote. The lack of progress on PBOR legislation in Congress can be attributed to various factors. One significant factor is the successful lobbying efforts of the airline industry. Since 1998, airlines have collectively spent $1.7 billion on lobbying, ranking as the fourteenth-highest spending industry.[[41]](#footnote-41) In 1999, when opposing the PBOR legislation, airlines invested over $3 million in lobbying, arguing that it would lead to re-regulation of commercial air transportation.[[42]](#footnote-42) These efforts have played a role in impeding the advancement of PBOR bills.

Other factors, however, suggest that Congress may prioritize the interests of airline passengers. Professor Timothy Ravitch, an aviation litigation expert, speculates that members of Congress, frequent flyers themselves, have a personal stake in enhanced passenger protections.[[43]](#footnote-43) Representatives who have experienced poor airline service firsthand can empathize with passengers' stories and concerns, implying that lobbying alone cannot fully explain the lack of progress on PBOR bills.[[44]](#footnote-44) Timing and the complexities of the legislative process have also posed challenges. For instance, the 2001 PBOR bill coincided with the September 11 attacks, shifting Congress's focus to foreign policy and national security.[[45]](#footnote-45) Bills introduced between 2007 and 2010 overlapped with the Great Recession, further diverting attention and resources. The most recent PBOR bill, introduced by Senators Markey and Blumenthal, faces the arduous legislative process, with only a small percentage of bills becoming law.[[46]](#footnote-46)

Although standalone PBOR bills have struggled, the DOT has incorporated some PBOR concepts into its passenger protection regulations. Recent versions of PBOR included measures like prohibiting class action waivers and enabling private actions to enforce DOT regulations and statutory rights.[[47]](#footnote-47) Thus, while standalone PBOR bills face hurdles, the DOT has taken steps to enhance passenger rights through regulatory means.

## Issues with the United States Aviation Passenger Dispute Resolution Mechanism

In the U.S., airline passengers face substantial challenges in protecting their rights due to high legal costs and inadequate dispute resolution methods.[[48]](#footnote-48) The main issue is not just the lack of robust safeguards for ADR but also ineffective enforcement. The DOT has limited capacity to effectively redress breaches of airline contracts, primarily focusing on regulatory infractions through enforcement actions and civil sanctions.[[49]](#footnote-49) These measures, however, offer limited remedies for passenger grievances.[[50]](#footnote-50)

Moreover, the lack of specific passenger rights legislation and the complex interplay between federal regulations and state common law further complicate the situation. The Airline Deregulation Act (ADA) allows for common law contract claims against airlines but creates legal ambiguity, often leading to lengthy litigation and leaving passengers with few options for redress.[[51]](#footnote-51) The minor financial harm to individuals from airline contract breaches does not justify the high costs of legal action.[[52]](#footnote-52)

Assessing dispute resolution in U.S. aviation reveals weaknesses in enforcement mechanisms and a significant disadvantage for passengers due to expenses and lack of legislative oversight. There is a clear need for alternative mechanisms, such as those in Europe, to resolve disputes more effectively and equitably. Adopting ADR practices could address these deficiencies, benefiting passengers and the industry alike.

# ADR in Aviation Disputes: An Overview with a Focus on the EU System

## ADR: Definition and Evolution

ADR first gaining traction in the 1970s in the United States, provides an efficient way to resolve legal disputes outside courtrooms.[[53]](#footnote-53) It emerged due to the high costs, delays, and contentiousness of traditional litigation. ADR methods include negotiation, mediation, arbitration, and their combinations.[[54]](#footnote-54)

The post-World War II surge in U.S. civil disputes, particularly during the economic boom, necessitated ADR's evolution.[[55]](#footnote-55) The government, acknowledging its efficiency, integrated ADR into the legal framework with laws like the National Labor Relations Act of 1935 and the Alternative Dispute Resolution Act of 1998.[[56]](#footnote-56) These laws mandated ADR programs in federal district courts. ADR's global importance is also evident in the EU's adoption of international arbitration laws.

Today, ADR is integral in employment, family, and commercial law.[[57]](#footnote-57) Its modern form dates back to the 1960s and 70s, marked by significant developments like the first community mediation center in 1967, Chief Justice Warren Burger’s endorsement in 1976, and Professor Frank Sander’s “multi-door courthouse” concept.[[58]](#footnote-58) ADR addresses litigation's major flaws—high costs, slowness, complexity, adversarial nature, unpredictability, and limited remedies. It has evolved from an alternative to a primary method for resolving disputes, offering faster, simpler, and more collaborative resolution processes.[[59]](#footnote-59)

## Framework of the European Union Aviation Passenger Dispute ADR System

### EU Regulation on the Protection of Passenger Rights: Regulation No. 261/2004

The EU Air Passenger Rights System, a comprehensive framework conferring enforceable rights within national courts, has evolved in response to the dynamic growth of the EU aviation market since its liberalization in 1992.[[60]](#footnote-60) This period witnessed a surge in new airlines, business models, routes, and passengers, accompanied by a proportional increase in disputes.[[61]](#footnote-61) To initially address these issues, the EU enacted Regulation 295/91 in 1991, establishing a compensation system for denied boarding. [[62]](#footnote-62) However, challenges persisted, prompting the introduction of Regulation 261/2004. [[63]](#footnote-63) This regulation, a testament to the EU's commitment to consumer protection, granted air passengers rights to assistance and compensation.[[64]](#footnote-64) Unlike its predecessor, Regulation 261/2004 expanded its coverage beyond denied boarding incidents to encompass flight cancellations and delays.[[65]](#footnote-65) Serving as a legal foundation for passenger protection, it applies to departures from EU Treaty member state airports and even extends to flights from third countries to EU member state airports.[[66]](#footnote-66) Despite its noble intentions, Regulation 261/2004 faced challenges from the outset, marked by non-compliance, uncooperative airlines, under-resourced enforcement agencies, and intricate court proceedings.[[67]](#footnote-67)

Since its inception in 2004, EU 261 has significantly augmented the rights of passengers on European airlines and within EU countries.[[68]](#footnote-68) Heralded as providing "the highest standard of consumer protection in the world," this regulation has created a robust statutory framework offering various protections, such as assistance in case of disruptions, compensation, and rebooking for canceled flights.[[69]](#footnote-69) Moreover, EU 261 establishes a private right of action, allowing plaintiffs to bring claims in the national courts of any EU member state. However, critiques from scholars and consumer rights advocates have underscored the regulation's "weak, decentralized enforcement regime."[[70]](#footnote-70) Its reliance on national regulatory bodies often proves ineffective in sanctioning airlines for violations, thereby diminishing its overall efficacy. [[71]](#footnote-71)

### EU's First Consumer ADR Directive: Directive No. 2013/11/EU

On November 29, 2011, the European Commission proposed the Consumer ADR Directive as part of the European 2020 strategy.[[72]](#footnote-72) This directive replaced previous non-binding recommendations on consumer dispute ADR mechanisms in the EU and aimed to promote high-quality consumer ADR mechanisms.[[73]](#footnote-73) It established an accreditation process and required regular monitoring by member states.[[74]](#footnote-74) Key objectives included saving consumers approximately 22.5 billion euros annually and addressing concerns about independence and fairness in dispute resolution.[[75]](#footnote-75)

Member states are granted flexibility in creating their own accreditation and supervision procedures under this directive.[[76]](#footnote-76) This flexibility has led to significant differences across the EU in how ADR schemes are implemented.[[77]](#footnote-77) Competent authorities in each member state ensure that ADR entities meet legal requirements and safeguard consumer rights.[[78]](#footnote-78)

Crucially, the Directive applies to both binding and non-binding ADR processes.[[79]](#footnote-79) This broad scope ensures comprehensive coverage of various types of dispute resolution mechanisms, from consensual methods to more formal arbitration processes.[[80]](#footnote-80) Additionally, member states have the discretion to determine the extent of the authority vested in these ADR schemes.[[81]](#footnote-81) They can decide whether the ADR schemes established on their territories have the power to impose a decision, thereby distinguishing between consensual ADR schemes and arbitration schemes that can enforce decisions.[[82]](#footnote-82) This distinction is crucial as it directly impacts the nature and outcome of the dispute resolution process.

The directive imposes fundamental requirements on ADR entities, such as privacy, fairness, independence, professionalism, accessibility, and transparency.[[83]](#footnote-83) ADR procedures should be free or carry only nominal charges for consumers, and results should be provided within 90 calendar days.[[84]](#footnote-84)

In summary, Directive 2013/11/EU provides a comprehensive framework for consumer dispute resolution in the EU. It allows for adaptation to national circumstances, including decisions on empowering ADR schemes with the ability to enforce decisions, significantly affecting the consumer dispute resolution landscape across the EU.

### Current ADR Avenues for Resolving Aviation Passenger Disputes

Passengers whose rights are violated have several recourse options under the "Commission Notice Interpretative Guidelines on Regulation (EC) No 261/2004." [[85]](#footnote-85) Initially, they should file a complaint with the airline. If dissatisfied or ignored, they can complain to the national economic department, sue in civil court, seek an ADR organization, or engage a claims management company.

The ADR process in aviation disputes offers a speedy, cost-effective conflict resolution between airlines and passengers. Central to this is the European Online Dispute Resolution (ODR) framework, established in 2016.[[86]](#footnote-86) It primarily offers an online platform, as required by EU Regulation No. 524/2013, to facilitate the resolution of online trade disputes. However, the ODR framework does not make decisions; it merely connects parties with suitable mechanisms for resolving their disputes.[[87]](#footnote-87) This platform significantly improves the process of connecting with ADR entities, marking a notable change in how the EU approaches dispute resolution.[[88]](#footnote-88) Online traders must link to the EU's ODR website on their platforms and provide a direct email for consumers, simplifying and economizing contractual dispute resolution without courts.[[89]](#footnote-89)

In the aviation sector, the ODR platform streamlines starting online ADR processes. [[90]](#footnote-90) As a consumer lodges a complaint, the platform not only facilitates but also plays a crucial role by suggesting a suitable dispute resolution body from over 350 registered entities.[[91]](#footnote-91) When a consumer files a complaint on the ODR platform, the online trader receives a notification and must respond within 10 days, initiating an efficient timeline. Both parties have 30 days to select a dispute resolution body, with the platform offering recommendations but allowing flexibility in their final choice.[[92]](#footnote-92) Upon selection, the chosen body reviews the complaint, confirms its jurisdiction within three weeks, and then follows its standard procedures to propose a solution within 90 days.[[93]](#footnote-93) The final decision's legal binding status varies according to the rules of the respective dispute resolution body.[[94]](#footnote-94)

The ODR platform's architecture allows for the ADR process to proceed without solely relying on it, even after selecting an appropriate entity. It permits traditional methods, compliant with various national laws and regulations. Its main role is to facilitate the selection and connection for ADR processes, whether binding, non-binding, or involving mediation.[[95]](#footnote-95) This complies with the EU's First Consumer ADR Directive, Directive No. 2013/11/EU.[[96]](#footnote-96) Additionally, the Regulation indicates that physical presence is optional unless the dispute resolution body's rules require it, and the parties agree.[[97]](#footnote-97) This feature underscores the platform's capacity to support diverse dispute resolution methods, ensuring a systematic and user-friendly ODR framework throughout the EU.

## Spain's ADR System for Aviation Passenger Disputes

###  Overview of Spain's New Regulations TMA/201/2022

Law No. 7/2017, enacted on November 2, 2017, incorporated Directive 2013/11/EU into Spanish law. [[98]](#footnote-98) This directive established the ADR system for consumer disputes and made it applicable to disputes covered by the EU Air Passenger Rights Protection Regulation. [[99]](#footnote-99) To be recognized as a suitable ADR entity for aviation passenger disputes, the State Aviation Safety Agency of Spain (AESA) must comply with the requirements of this law. [[100]](#footnote-100) The ADR process is mandatory and binding for airlines, as stated in a ministerial decree. [[101]](#footnote-101)

Law No. 3/2020, issued on September 18, 2020, addresses issues related to the COVID-19 pandemic in the field of justice. [[102]](#footnote-102) It includes passenger disputes within the scope of the EU-recognized ADR system. [[103]](#footnote-103) Decisions made by AESA as an ADR entity are considered enforceable judgments, and passengers can seek enforcement through a competent commercial court. [[104]](#footnote-104) This regulation allows passengers to file complaints with AESA, ensures airline compliance with ADR decisions, and upholds the principles of independence, fairness, transparency, and efficiency in resolving aviation passenger disputes through ADR. [[105]](#footnote-105)

On March 17, 2022, Order TMA/201/2022 was published in the Official State Gazette of Spain (BOE).[[106]](#footnote-106) This order establishes the rights to compensation and assistance for air transport users in cases of denied boarding, flight cancellations, or prolonged delays, as well as ADR procedures related to the rights of persons with disabilities or reduced mobility.[[107]](#footnote-107)

Order TMA/201/2022 regulates ADR procedures for the protection of air passenger rights under Regulation (EC) No. 261/2004, which covers compensation and assistance in cases of denied boarding, flight cancellations, or long delays; Regulation (EC) No. 1107/2006, which outlines the rights of persons with disabilities and reduced mobility when traveling by air; and Regulation (EU) No. 524/2013, which governs online dispute resolution.[[108]](#footnote-108) It establishes these procedures as the most effective means to protect the rights of air transport passengers, ensuring compliance with the regulations while considering principles such as proportionality, legal certainty, efficiency, and transparency. Hearings involving consumer associations, airline organizations, and airport management personnel should be conducted to ensure effective participation and application of these provisions.

###  Aviation Passenger Dispute ADR System Under the Spain’s New Regulations

Spain's Spanish State Aviation Safety Agency (AESA) has implemented an efficient Alternative Dispute Resolution (ADR) for passenger claims under EC Regulation 261/2004, streamlining resolution compared to traditional legal methods.[[109]](#footnote-109) This ADR covers issues like cancellations, significant delays, denied boarding, and the rights of disabled persons under EC Regulation 1107/2006.[[110]](#footnote-110) However, it excludes claims like personal injury or baggage damage under the 1999 Montreal Convention, and those outside EU 261/2004's purview, such as mental anguish and loss of profits.[[111]](#footnote-111)

To start ADR, passengers should lodge a complaint with the airline, then proceed to file with AESA if unsatisfied, giving the airline a month to respond. [[112]](#footnote-112) In case of a rejection, passengers can choose ADR via AESA within a year. [[113]](#footnote-113) AESA targets resolving claims in 90 days, with a possible extension for complex cases. [[114]](#footnote-114) Airlines must adhere to AESA's rulings within 30 days, regardless of any court appeals, and face fines between €4,500 and €70,000 for non-compliance.[[115]](#footnote-115)

The ADR system presents a distinct method for resolving airline-passenger disputes. Passengers voluntarily engage in ADR or pursue court action, while airlines must participate if a claim is made through AESA.[[116]](#footnote-116) However, airlines can still appeal AESA's decisions in court but must comply with any AESA-ordered compensation during the appeal process. [[117]](#footnote-117)

Passengers initiate ADR by filing a complaint with the airline, followed by contacting AESA within a year if dissatisfied. Airlines have a month to respond to complaints. [[118]](#footnote-118) The process, executed entirely online via AESA's platform, promotes accessibility and efficiency. [[119]](#footnote-119) After collecting necessary information and verifying all documents, AESA conducts an arbitration process and makes a decision on the claim. [[120]](#footnote-120) This structured yet flexible system ensures that passenger rights are protected while also obliging airlines to engage in a fair and efficient dispute resolution process.

In summary, Spain's aviation passenger ADR system represents a significant advancement in facilitating streamlined dispute resolution and timely compensation during air travel disruptions. By vesting binding authority in AESA, the system not only enhances access to justice for passengers but also ensures rigorous adherence to EU passenger rights regulations by the aviation industry.

## Germany 's ADR System for Aviation Passenger Disputes

In resolving aviation passenger disputes, Germany uses a distinct Alternative Dispute Resolution (ADR) system tailored for airline-passenger conflicts. The Federal Aviation Office in Germany strictly enforces regulations without adjudicating individual passenger claims. Germany has developed a comprehensive ADR framework, including both public and private ADR entities.[[121]](#footnote-121) At the forefront of Germany's private ADR initiatives is the Schlichtungsstelle für den öffentlichen Personenverkeher (“söp”), the first ADR body certified by the government to address airline-passenger disputes.[[122]](#footnote-122)

To facilitate this process, the German government mandates the involvement of airlines and passengers in dispute resolution procedures for claims under €5,000.[[123]](#footnote-123) Significantly, airlines have the autonomy to select their preferred ADR body, with many opting to join the söp. Membership entails a fee for carriers, while consumers can access the service free of charge.[[124]](#footnote-124) The SÖP intervenes only if an airline fails to respond to a direct complaint or provides an unsatisfactory answer. [[125]](#footnote-125) When a passenger submits an online claim to the SÖP, the organization meticulously assesses the merits of the case before deciding whether to accept it.[[126]](#footnote-126) If a passenger's claim is denied, they can still sue.[[127]](#footnote-127) In cases where both parties choose a third-party neutral, this person acts as a non-binding arbitrator, tasked with gathering data and assessing each side's position.[[128]](#footnote-128) The arbitrator's non-binding decision serves as a suggested resolution.[[129]](#footnote-129) Crucially, this decision isn't legally enforceable, allowing either party to dismiss it.[[130]](#footnote-130) Should this occur, the claimant may still take legal action. [[131]](#footnote-131) Therefore, non-binding arbitration offers a pathway to an amicable settlement, while preserving the option of legal recourse if no agreement is reached.[[132]](#footnote-132)

## Evaluating the German and Spain Model

In analyzing the German and Spanish models for resolving aviation disputes, a key observation is that both countries prioritize arbitration over mediation within their ADR frameworks. This alignment underscores a fundamental commitment to structured passenger rights resolution. However, a notable divergence emerges in the binding nature of their ADR outcomes. Spain's approach is characterized by binding ADR, ensuring that the decisions of its designated institutions are final and enforceable.[[133]](#footnote-133) In contrast, Germany employs a non-binding ADR system, where the decisions serve more as recommendations rather than conclusive judgments.[[134]](#footnote-134)

Germany's system requires passengers to approach the airline before an arbitration body intervenes. This body can suggest solutions but cannot decide cases. [[135]](#footnote-135) Such private mediation, common in some U.S. industries, poses fewer constitutional issues. However, adapting this system to the U.S. could be problematic. [[136]](#footnote-136) In the U.S., the arbitration body's non-binding recommendations have limited impact, as court rulings are more influential. [[137]](#footnote-137) In contrast, Germany's "loser pays" court system encourages consumers to pursue legal action if airlines dismiss a third-party neutral's advice. [[138]](#footnote-138) This differs from the U.S., where consumers bear all legal costs regardless of the outcome, making legal action financially risky. [[139]](#footnote-139)

Turning to Spain, the basic passenger rights system aligns with the German model, yet two critical distinctions emerge. Firstly, the Spanish State Aviation Safety Agency (AESA) is not merely an enforcement agency but has attained accreditation as an ADR entity in air transport. This accreditation grants the AESA authority in resolving ADR procedures for claims based on EU regulations. Secondly, unlike the German system, ADR decisions in Spain possess a binding effect on airlines. While consumers retain the option to reject ADR rulings and resort to court proceedings, airlines are obligated to accept the third-party neutral's decision.

In essence, the Spanish model introduces a more assertive stance by making ADR decisions binding on airlines. This stands in contrast to the German approach, where recommendations lack binding force. The comparison of these two European systems offers valuable insights into the varying strategies employed within the EU for aviation dispute resolution.

# ADR Proposals for US Aviation Passenger Rights

The EU's aviation dispute resolution models provide valuable insights that can guide efforts to improve passenger rights protections in the United States. While establishing a comprehensive Passenger Bill of Rights (PBOR) faces challenges, targeted reforms focused on ADR may offer a more feasible path forward.

##  Specialized ADR Bodies for Aviation Passenger Disputes

The EU has developed effective ADR bodies for aviation passenger disputes, exemplified by Spain's model led by the AESA. Spain's shift from general consumer arbitration to specialized aviation ADR agencies, as required by EU Directive 2013/11/EU, mirrors a similar transition in Germany. These dedicated agencies offer more expertise and efficiency in managing aviation-related conflicts.

Spain's TMA/201/2022 regulation marks a significant advancement, enabling passenger participation in the ADR process and providing an option to contest AESA's decisions in court. This regulation addresses the power imbalance between passengers and airlines, ensuring airline compliance with compensation directives during appeals.

The United States could benefit from Germany's approach, which mandates airline participation in ADR and allows consumers to move to court litigation at any stage. EU's strict certification standards for ADR organizations ensure fairness and adherence to international norms. Adopting a similar certification process in the U.S., focusing on privacy, fairness, professionalism, and accessibility, could enhance aviation passenger dispute resolution.

In summary, the EU's specialized ADR bodies, especially in aviation disputes, offer a valuable model for the U.S. to develop a more efficient and passenger-focused ADR system.

## Promoting private ADR systems through legislative and regulatory changes

Inspired by successful European models, the United States Congress has the option to pass legislation authorizing the Department of Transportation (DOT) to certify private ADR bodies for aviation disputes. Germany and Spain's approach in granting binding authority to certified ADR bodies can serve as a guiding principle.

The EU prioritizes the protection of passenger rights and is committed to strengthening these rights through legislative efforts. One way it aims to achieve this is by promoting the use of ADR systems, including Online Dispute Resolution (ODR) platforms, to provide passengers with a more convenient and accessible means of resolving disputes.

To enhance the effectiveness of ADR systems, it is essential to consider the nature of ADR institutions. Within the EU, ongoing debate surrounds whether ADR institutions should prioritize mediation over arbitration. Some argue that ADR resolutions should simply reflect the mutual agreement of the parties involved, without carrying legal binding force. However, it is crucial to acknowledge that without legal binding, gaining the attention and trust of airlines can be challenging in the long run.

In Spain, recent regulations have effectively addressed this issue by granting enforceability to ADR institution resolutions. This approach bridges the gap between ADR proceedings and judicial processes, as the resolutions undergo judicial review, confirmation, and enforcement by the courts. By utilizing the judicial system, Spain ensures the effectiveness and legality of ADR resolutions, providing additional reassurance to all parties involved.

The United States, in considering the establishment of a private ADR system for aviation disputes, should draw lessons from the European experience, particularly Spain's approach. Advocates of ADR in the U.S. should argue for the legal binding of ADR resolutions. This ensures that the resolutions carry the necessary weight to compel airlines to comply, fostering a sense of accountability and trust in the ADR process.

While the issue of mandatory airline participation in the ADR system is still under discussion in the EU, countries like Germany and Spain are taking steps to address this matter, primarily to protect the interests of passengers who may be at a disadvantage.[[140]](#footnote-140) The main objective is to facilitate dispute resolution, as relying solely on private remedies may not always ensure fair treatment of passenger grievances. National involvement can help level the playing field, enabling passengers to effectively resolve disputes through ADR mechanisms.

Specialized ADR bodies with aviation expertise can offer passengers a meaningful alternative to court proceedings. To address the shortcomings of deregulation, the DOT could consider relaxing current rules that prohibit arbitration clauses, aligning with market-based solutions under the Airline Deregulation Act.

In contrast, the United States has not placed the same level of legislative focus on airline passenger rights. Currently, there is no dedicated section for passenger rights within civil aviation regulations, and the resolution of airline passenger disputes typically falls under general consumer dispute resolution mechanisms. However, airline passenger disputes have unique characteristics that require specific measures to empower passengers, reduce the cost of pursuing their rights, and establish a convenient, cost-effective, and efficient dispute resolution mechanism. Only through such initiatives can passenger engagement be encouraged and the protection of passenger rights be enhanced.

The deregulation of airline contracts of carriage (COCs) has weakened passenger protections. However, ADR systems can provide a balanced approach to addressing these shortcomings without imposing excessive regulations. By allowing carriers to require binding ADR and avoiding class actions, the United States can promote market-based solutions consistent with the principles of deregulation.

## Developing ODR systems

The European Union's (EU) endorsement of online dispute resolution (ODR) has spurred a U.S. Department of Transportation (DOT) initiative to develop an ODR platform for aviation disputes with tech companies. This platform will offer a cost-effective and accessible solution for consumers worldwide.

ODR proves valuable for aviation disputes. It serves as a low-cost legal alternative for complex cases, although direct communication is preferable for simpler complaints. It's vital for establishing initial contact between consumers and traders. In today's social media-driven world, where reputation is critical, ODR enables traders to quickly resolve complaints, thus protecting their reputation.[[141]](#footnote-141) Understanding ODR's mechanism is key. It starts with a consumer's online complaint, leading to voluntary trader participation. ODR acts as a structured environment for dialogue and negotiation, despite its non-binding outcomes. The platform thrives by fostering conversation and targeting mutually beneficial outcomes. It promotes the exchange of information and evidence, resulting in well-informed decisions.

In summary, focusing on alternative dispute resolution (ADR) reforms can bolster passenger rights while aligning with market-driven deregulation. Providing access to quality ADR offers effective consumer solutions without the need for strict regulations.

# Conclusion

This article has analyzed the aviation passenger rights landscape, contrasting the proactive EU approach with the relatively limited protections in the US. While comprehensive reform in the US faces hurdles, targeted changes to facilitate ADR offer a promising path forward. Establishing specialized ADR bodies and granting them binding authority, as seen in the EU, would meaningfully empower consumers. However, given the US's adherence to airline deregulation, a balanced approach involving incentives and measured legislative changes to promote ADR may prove more feasible. Though substantial gaps remain, modest steps to enhance access to expert ADR forums can gradually strengthen passenger rights in a manner consistent with the US regulatory philosophy.

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