



**Decision on  
Passenger Representation in Regulatory Decision Making  
for Dublin Airport**

Commission Paper 15/2017

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Commission for Aviation Regulation

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**Table of Contents**

- 1. Executive Summary ..... 2
- 2. Background ..... 3
- 3. Assessment and Criteria..... 4
- 4. Selected High-Level Options ..... 6

## 1. Executive Summary

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- 1.1 This Decision sets out, at a high-level, the options that we have selected to improve passenger representation in our regulatory decision making for Dublin Airport. The selected options are draft guidelines and incentives for passenger engagement by Dublin Airport, airlines and other stakeholders, and an ad hoc advisory panel set up by the Commission. Alongside this Decision, the Commission has published consultation paper CP16/2017 that aims to develop the selected high-level options into specific guidelines, incentives and rules for the ad hoc advisory panel. We invite stakeholders to make submissions on our proposals in CP16/2017.
- 1.2 We remain of the view that there is insufficient evidence that the views of passengers have explicitly been taken into account in our regulatory decision making process.<sup>1</sup> Although our consultations are public and open to all stakeholders, the experience to date has been that ordinary passengers have not been well represented in written submissions. Also, while a number of respondents described how passenger engagement feeds into their regulatory submissions, our general experience is that submissions do not clearly demonstrate that they are based on high quality passenger research.
- 1.3 Based on the available information and evidence, our final assessment concludes that a mechanism should be implemented to clearly show how Dublin Airport, airlines, other stakeholders and the Commission engage with passengers when preparing regulatory submissions.
- 1.4 The final criteria, which we have used to assess the high-level options, state that any option should:
- be consistent with our existing legal framework;
  - provide substantial advantages over the current situation;
  - be cost effective and proportionate relative to any benefits;
  - be possible to implement in a transparent way; and
  - improve representation of passengers.
- 1.5 Based on these criteria, the Commission has arrived at this decision to implement guidelines and incentives in relation to the use of passenger engagement by Dublin Airport, airlines and other stakeholders, and rules governing an ad hoc advisory panel set up by the Commission.

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<sup>1</sup>[https://www.aviationreg.ie/\\_fileupload/2017/MASTERCOPY%20Consultation%20on%20Passenger%20Representation%20in%20Determinations%20at%20Dublin%20Airport.pdf](https://www.aviationreg.ie/_fileupload/2017/MASTERCOPY%20Consultation%20on%20Passenger%20Representation%20in%20Determinations%20at%20Dublin%20Airport.pdf)

## 2. Background

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- 2.1 In the second quarter of 2017, the Commission, with the assistance of Cambridge Economic Policy Associates (CEPA), examined how a range of other regulators have sought to improve consumer representation and developed some high-level proposals for our own regulatory framework. In September 2017, the Commission held a public consultation (CP9/2017) on the initial assessment and on the high-level proposals.<sup>2</sup> A study from CEPA that details the findings of the research on passenger representation was published alongside this consultation paper.<sup>3</sup>
- 2.2 The high-level proposals set out in September in CP9/2017 were:
- To publish guidelines setting out how we expect Dublin Airport to use passenger engagement to inform regulatory submissions;
  - To underpin these guidelines with some form of incentive;
  - To set up some form of consumer panel to help inform regulatory decisions.
- 2.3 In May 2017, we met with the Competition and Consumer Protection Commission, Disability Stakeholders Group, European Consumer Centre Ireland, Fáilte Ireland, IDA Ireland and the National Disability Authority. We also met with Dublin Airport, Aer Lingus, Etihad Airways and Ryanair. Airports Council International (ACI), which publishes the Service Quality Survey of passengers at Dublin Airport, also gave feedback at that time.
- 2.4 In October 2017, we received written submissions to our consultation paper CP9/2017 from Aer Lingus, Dublin Airport and Ryanair. We had due regard to these submissions in arriving at this decision. Published alongside this document is the response by CEPA to the submissions in relation to their study that was published alongside CP9/2017.
- 2.5 This work stream is informed by our Strategic Plan 2017-2020, in which we committed to examine how to better engage the passenger in the regulatory process.<sup>4</sup> It is also in line with the Department of Transport, Tourism, and Sport's (DTTas) National Policy Statement on Airport Charges Regulation which was published on 20 September 2017. This policy states that "the primary purpose of the regulation [of airport charges] shall be to protect and advance the best interests of current and future customers [passengers and cargo users] who use Dublin Airport".<sup>5</sup>

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<sup>2</sup>[https://www.aviationreg.ie/\\_fileupload/2017/MASTERCOPY%20Consultation%20on%20Passenger%20Representation%20in%20Determinations%20at%20Dublin%20Airport.pdf](https://www.aviationreg.ie/_fileupload/2017/MASTERCOPY%20Consultation%20on%20Passenger%20Representation%20in%20Determinations%20at%20Dublin%20Airport.pdf)

<sup>3</sup> [https://www.aviationreg.ie/\\_fileupload/2017/Final%20report%20CEPA.pdf](https://www.aviationreg.ie/_fileupload/2017/Final%20report%20CEPA.pdf)

<sup>4</sup> <https://www.aviationreg.ie/about-the-commission-for-aviation-regulation/strategic-plan-2017-2019.770.html>

<sup>5</sup> <http://www.dttas.ie/sites/default/files/publications/aviation/english/national-policy-statement-airport-charges-regulation/nps-airport-charges-regulations-amended-oct-6.pdf>

### 3. Assessment and Criteria

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#### Initial Assessment of Current Passenger Engagement

##### Accounting for Passenger Views

- 3.1 In CP9/2017, the Commission suggested that currently there is a lack of evidence that the views of passengers have explicitly been taken into account when we make decisions. We noted that our experience to date has been that ordinary passengers have not been well represented in our consultations, despite those being public and open to all stakeholders. Therefore, the paper said that there may be a lack of passenger engagement, but also a lack of clarity of how consultation submissions made to the Commission by Dublin Airport or the airlines are based on high quality passenger research.<sup>6</sup>

##### Submissions

- 3.2 In response to our initial review, Dublin Airport supported a more explicit focus being placed on existing and future passenger representation. The airport specified that it engages with passengers who may not be sufficiently represented, whose needs may otherwise go unnoticed, and with those who may not respond to key consultations by the Commission such as outward leisure passengers or passengers with reduced mobility (PRM). The airport also stated that the engagement is often carried out implicitly and is limited by technical and economic constraints.
- 3.3 In the same context, Aer Lingus stated that the interests of guests are at the forefront of its decision making, and undertakes significant levels of guest engagement which includes focus groups, surveys, internal procedures and yield management. Aer Lingus indicated that this information informs its corporate strategy and submissions.

##### Airlines Representing Passengers

- 3.4 In CP9/2017, the Commission expressed the view that airlines may be less effective at representing specific groups of passengers or reflecting interests of future passengers in relation to long-term capital infrastructure projects. Passenger interests are diverse and airlines might not convey the complexity of these interests in their submissions.

##### Submissions

- 3.5 According to Ryanair, airlines are the best proxy for passenger expectations. Aer Lingus stated that it's model is to be a value carrier, meaning that it provides the products, network schedule performance and pricing that appeals to the widest possible customer base. On the other hand, Dublin Airport agreed that there is scope for misalignment between the needs of all passengers and the interests of airlines. In this context, Dublin Airport understood the Commission's statutory responsibility to cater for all current and future consumers, as emphasised by the Department of Tourism, Transport and Sport in its National Policy Statement on Airport Charges Regulation.

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<sup>6</sup>[https://www.aviationreg.ie/\\_fileupload/2017/MASTERCOPY%20Consultation%20on%20Passenger%20Representation%20in%20Determinations%20at%20Dublin%20Airport.pdf](https://www.aviationreg.ie/_fileupload/2017/MASTERCOPY%20Consultation%20on%20Passenger%20Representation%20in%20Determinations%20at%20Dublin%20Airport.pdf)

### Final Assessment of Current Passenger Engagement

- 3.6 The Commission has not been convinced to change its conclusion that there must be more transparency about how Dublin Airport and the airlines use the results of passenger engagement to support their regulatory submissions. This assessment is based on the fact that Dublin Airport or the airlines have not clearly demonstrated to the Commission explicitly how regulatory submissions are based on high quality passenger research. Given this lack of evidence, the Commission cannot guarantee that the passengers who have not been well represented in our public consultations to date, have been represented by the regulatory submissions of Dublin Airport or the airlines.
- 3.7 The option of doing nothing does not provide the clarity needed around how regulatory proposals or submissions reflect the interests of passengers. Therefore, we need a mechanism to increase the level of passenger engagement by the Commission and the transparency of passenger engagement by Dublin Airport and airlines during the regulatory process. Below, we set out the final criteria used to select the mechanisms to be implemented from our three high-level proposals.

### Proposed Criteria

- 3.8 In CP9/2017, we stated that when assessing the various options, we intend to use five criteria: consistency with our existing legal framework, substantial advantages over the current situation, cost-effective and proportionate, transparent and that improves the representation of passengers.

### Submissions

- 3.9 In its submission, Dublin Airport agreed with the criteria proposed by the Commission. Aer Lingus also agreed with the criteria and proposed that there should be an additional criterion that would require it to be demonstrated that the measures taken will actually result in benefits to passengers and do not just improve the perceived quality of passenger representation.

### Final Criteria

- 3.10 The Commission did not receive evidence to support a change in the criteria proposed. These criteria, used by CEPA in its study published alongside CP9/2017, already include the suggestion from Aer Lingus. The study evaluated each option against the scope to deliver improved outcomes for passengers, or in other words, the strength of evidence that the high level proposals had potential to deliver improved outcomes for passengers.<sup>7</sup>
- 3.11 According to our final criteria, any option must: 1) be consistent with our existing legal framework; 2) provide substantial advantages over the current situation; 3) be cost effective and proportionate relative to any benefits; 4) be possible to implement in a transparent way; and 5) improve representation of passengers.

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<sup>7</sup> [https://www.aviationreg.ie/\\_fileupload/2017/Final%20report%20CEPA.pdf](https://www.aviationreg.ie/_fileupload/2017/Final%20report%20CEPA.pdf)

## 4. Selected High-Level Options

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### Publication of Guidance

4.1 The Commission stated in CP9/2017 that it is minded to develop guidance to Dublin Airport. This will give more clarity to the airport about how to use existing consumer engagement activities to inform its business plans, which should help it to develop better quality investment plans that are more closely aligned to the needs of consumers. It would also enable the Commission to define how it expects the views of different passenger groups to be incorporated within the price determination process. Improved understanding of the needs of different consumer groups will help the Commission make regulatory decisions that take account of their needs.

### Submissions

4.2 In its submission, Aer Lingus stated that if changes are implemented guidance should take into account the criteria set out above. In addition, any customer engagement should be objective and the engagement must consider a range of options rather than focusing only on proposals Dublin Airport may be putting forward.

4.3 Aer Lingus also suggested the guidance should ensure that appropriate weighting is given to the views of different passengers' groups so that the Commission continues to focus on issues which have the greatest importance for consumers. Other stakeholders should have the opportunity to challenge the passenger representation data put forward by Dublin Airport.

4.4 Dublin Airport welcomes guidance by the Commission that would clarify the following:

- How Dublin Airport is expected to consider the requirements of passengers more explicitly and transparently,
- How Dublin Airport should use the existing material to inform its business plans, and
- How this passenger engagement will impact on the regulatory regime.

4.5 According to Dublin Airport, the Commission should ensure that guidance:

- does not negatively impact on Dublin Airport's efficient and effective process of passenger engagement, and
- is not overly vague or has uncertainty regarding how it is to be implemented, but avoids being too prescriptive as the concerns and attitudes of passengers can change over time.

4.6 Ryanair stated that if the Commission provides guidance to Dublin Airport, the specific guidance should be subject to consultation with relevant stakeholders.

### Decision on Guidance

- 4.7 The Commission has decided to issue guidelines to Dublin Airport, airlines and other stakeholders, to improve the transparency of the extent to which regulatory submissions align with passengers' interests; to improve the way that the outputs of passenger engagement are communicated to the Commission; and to clarify how we will interpret those outputs.
- 4.8 We decided to implement guidelines because they meet the five criteria set out above. As per the fourth criterion, the implementation of guidelines will be transparent as any decision will follow public consultation with stakeholders. In relation to the remaining criteria, the implementation of guidelines does not require legislative change, and it will bring advantages compared to the current situation by improving passenger representation in a cost-efficient manner.
- 4.9 Guidelines will bring advantages by defining what high-quality engagement is and how we will interpret it. We will allow stakeholders use evidence from passenger engagement to either support their own regulatory submissions or challenge those of other stakeholders. Passenger engagement will provide additional valuable evidence when, for instance, there is no agreement or consensus among stakeholders. Guidelines will also provide for a collaborative process whereby stakeholder feedback may improve existing passenger engagement. By encouraging the use and improvement of existing engagement, guidelines are likely to effectively improve transparency and outcomes for passengers.
- 4.10 The Commission seeks the views of stakeholders on the draft guidelines set out in our consultation paper CP16/2017.

### Incentives to Underpin the Guidance

- 4.11 In CP9/2017, the Commission proposed to explore some form of incentive to underpin the guidance when Dublin Airport develops submissions to the Commission. As a guiding principle, the Commission aims to focus on incentive arrangements that do not reward Dublin Airport for doing things that it should already be doing. We stated we would consider if non-financial incentives are useful.

### Submissions

- 4.12 Aer Lingus does not agree with the introduction of incentive arrangements. It stated that to do so, would reward Dublin Airport for something that it should be doing in any event.
- 4.13 Dublin Airport was concerned that the use of incentives may risk becoming a burdensome process without sufficiently strong regulatory precedent. In its view, for any financial or non-financial incentives to be effective, the Commission needs to have a clear overarching vision and how it expects Dublin Airport to realise this. Dublin Airport welcomed any measures that would fast-track essential projects.
- 4.14 Ryanair stated that any form of financial incentive for Dublin Airport is an unnecessary and costly measure.



### Decision on Incentives

- 4.15 The Commission has decided to introduce an incentive to underpin the guidance. The incentive will further clarify the understanding and expectations of stakeholders about the impact that passenger engagement will have in terms of their regulatory submissions.
- 4.16 We propose to implement a non-financial incentive. The objective of the non-financial incentive is to improve the ultimate outcome to achieve regulatory proposals and decisions which better serve passengers' interests.
- 4.17 The proposed incentive is to increase the likelihood for the Commission to accept the justification of regulatory proposals that are based on high quality passenger engagement. In any case, the cost efficiency of proposals will be separately assessed by the Commission, as with any other proposal. The Commission will assess the quality of passenger engagement using a proposed set of criteria. The details on the proposed incentive and criteria are set out in our consultation paper CP16/2017.
- 4.18 We have decided against setting up financial incentives directly attached to passenger engagement because they may incentivise the process of engagement itself rather than the quality of outcomes. We note that the Commission may use the financial incentives in our current quality of service regime to incentivise Dublin Airport to meet the outcomes established through passenger engagement.

### Consumer Panel

- 4.19 In CP9/2017, the Commission proposed to establish an informal panel to seek the views of different types of passenger on an ad-hoc basis to inform our decision-making processes.

### Submissions

- 4.20 Aer Lingus stated that the Commission already receives the benefit of the customer engagement (including panels and focus groups) which airlines and Dublin Airport already undertake and which they include in representations to the Commission.
- 4.21 Dublin Airport suggested in its submission that the Commission:
- minimises the cost of this group,
  - ensures that this group has a clear and achievable mandate that minimises any disruption to an already lengthy regulatory process, and
  - establishes guidelines at the outset for this group and a prescriptive process for the likely regulatory treatment of potential diverging views from airline and passenger representatives.
- 4.22 Ryanair states that the establishment of ad hoc panels are unnecessary and costly measures.

### **Decision on Consumer Panel**

- 4.23 The Commission has decided to set up an ad hoc advisory panel of volunteer passengers and is consulting on the rules governing this panel in CP16/2017. The ad hoc advisory panel will be tasked with improving our understanding of passenger requirements in our decision making. The panel will also provide an additional assessment of regulatory submissions from the perspective of outcomes and priorities that benefit passengers.
- 4.24 Our choice of an ad hoc advisory panel of passengers or their representatives is aligned with the submissions that suggested minimising the cost of the panel. The proposed rules of the panel, set out in our consultation paper CP16/2017, aim to ensure that the panel has a clear and achievable mandate. We invite stakeholders to provide feedback on the proposed rules governing our panel, in accordance with CP16/2017.