

The rights of passengers in the European Union – overview of legislative developments

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1 Introduction

In the White Paper “European transport policy for 2010: time to decide”¹ the European Commission envisaged the establishment of passengers’ rights in all modes of transport.

The first step was made in air transport where air passengers already enjoy a set of rights in the event of denied boarding, cancellations and long delays. This was followed by proposals for new measures that further strengthen the rights of persons with reduced mobility travelling by air and guarantee the right to information on the identity of the operating carrier.

In 2004 the Commission proposed extending its policy on rights of passenger to railway transport by adopting a proposal for a Regulation on international rail passengers’ rights and obligations.

In its communication on strengthening passenger rights within the European Union of 16 February 2005², the Commission presented a policy approach on how to extend passenger protection measures to modes of transport other than air. The communication stated that protection of users of other modes of transport has still to be introduced, and this can be effective only if done at Community level, given the size of the sector and the extent to which these other modes of transport are used by the European public.

The Commission identified the rights that should be strengthened by the Community action regardless of the means of transport used:

- Rights of persons with reduced mobility
- Automatic and immediate solutions when travel is interrupted
- Liability in the event of death or injury of passengers
- Treatment of complaints and means of redress
- Passenger information
- Other initiatives

Below there is a summary of applicable legislation and legislative developments concerning the rights of passengers in all modes of transport.

2 Air transport

The Community has already made significant progress with strengthening the rights of passengers travelling by air. Following the entry into force of Regulation 261/2004 on 17 February 2005³, air passengers are now protected in cases of denied boarding, cancellations and long delays. In addition, the Commission presented proposals for a Regulation concerning the rights of persons with reduced mobility travelling by air⁴ and for a Regulation on the information of air transport passengers on the identity of the operating carrier and on communication of safety information by Member States.⁵

¹ COM (2001) 370 final, 12 September 2001.

² COM (2005) 46 final.

³ 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. OJ L 46, 17.2.2004, pp. 1–8.

⁴ COM (2005) 47 final, 16 February 2005

⁵ COM (2005) 48 final, 16 February 2005

Regulation 261/2004 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 flights⁶ creates a Community-wide compensation scheme. Any passenger who is denied boarding has the right to receive compensation⁷ of €250 for all flights of 1500 kilometres or less, €400 for all intra-Community flights of more than 1500 kilometres and for all other flights between 1500 and 3500 kilometres and €600 for all flights outside the Community. In case of cancellations passengers are entitled to reimbursement of the cost of the ticket, a return flight to the original point of departure or rerouting as well as hotel accommodation, meals and refreshments and communication services. Compensation must be paid unless the passenger was given sufficiently long notice and offered re-routing and unless the cancellation was due to exceptional circumstances beyond the control of the air carrier.

In the event of delays, passengers must be offered assistance, which must include meals, refreshments and communications services and accommodation if needed if the flight is delayed by two hours or more, compared with the scheduled time of departure, in the case of flights of 1500 kilometres or less, by three hours or more for intra-Community flights of more than 1500 kilometres and all other flights between 1500 and 3500 kilometres, and by four hours for flights outside the Community of more than 3500 kilometres. If the delay is at least five hours, passengers have the right to reimbursement of the cost of the ticket plus the return flight to the original point of departure.

The Regulation also provides for the establishment of the enforcement bodies in Member States and sanctions for a failure to comply with its provisions.

The proposal for a regulation on the rights of persons with reduced mobility travelling by air provides for mandatory assistance to such passengers at airports, together with quality standards for assistance by airports and air carriers. Air carriers would not be allowed to refuse to accept a reservation for a flight on the grounds of reduced mobility. However, reservations could be refused, or air carriers could require persons with reduced mobility to be accompanied by another person, in order to meet applicable safety requirements or if the size of the aircraft or justified absence of cabin crew prevents the carriage of such persons. Persons with reduced mobility would have the right to assistance at the airport which must include, *inter alia*, assistance with check-in and registration, proceeding from check-in to the aircraft, boarding and disembarking, reaching connecting flights when in transit and ground handling of mobility equipment.

The managing body of the airport should set and publish quality standards for assistance and determine the necessary resources (staff, etc.). Notification of the need for assistance could be given at all points of sale of an air carrier or a tour operator, including by telephone and via the Internet.

On the 21st April 2005 the proposal was presented to the Council that adopted a general approach. In the European Parliament the proposal was attributed to the Committee on Transport and Tourism. Mr. Evans, MEP presented his report that was discussed on the 30th August 2005.

Proposal for a regulation on the information of air transport passengers on the identity of the operating carrier and on communication of safety information by Member States⁸. The proposal requires the contracting party to inform passengers of the operating air carrier upon reservation and to notify the passengers if the carrier is changed. Member States should also publish a list of all the operators which are banned from their airspace or are subjected to traffic right restrictions. The Commission would then publish a consolidated black list.

On the 21st April 2005 the proposal was presented to the Council. In the European Parliament, Ms. De Veyrac, MEP presented her report which was discussed at the Committee on Transport and Tourism on the 30th August 2005. The rapporteur proposes to arrive at a single Community black list into which Member States would feed data but which would be valid and enforced for the whole Union.

⁶ OJ L 46, 17.2.2004, p. 1.

⁷ When passengers are offered rerouting and the arrival time does not exceed the scheduled arrival time of the flight originally booked by two, three or four hours respectively, the air carrier may reduce the compensation by 50%.

⁸ COM (2005) 48 final, 16 February 2005.

The question of liability is governed by the following Community acts:

Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in case of accidents⁹, as amended by Regulation (EC) No 889/2002 of 13 May 2002¹⁰, established the Community rules for the air transport sector and transposed the Montreal Convention into EU law:

- No financial limits to liability for passenger injury or death.
- For damages up to 100 000 SDRs, air carriers cannot contest claims for compensation.
- An advance payment in case of death or injury of a passenger (at least 16 000 SDRs in case of death).
- Liability for passenger delays and resultant damage is limited to 4150 SDRs.
- Liability for baggage delay, destruction, loss or damage is limited to 1000 SDRs or higher in case of completion of a special declaration at check-in.

Regulation (EC) No 785/2004 of 21 April 2004 on insurance requirements for air carriers and aircraft operators¹¹ requires operators to be insured as regards their aviation-specific liability in respect of passengers, baggage, cargo and third parties:

- Operators are required to ensure that insurance cover exists for each and every flight regardless of the way the aircraft is operated.
- The insured risks must include acts of war, terrorism, hijacking, acts of sabotage, unlawful seizure of aircraft and civil commotion.
- The minimum insurance cover must be 250 000 SDRs (per passenger) and 1000 SDRs (baggage per passenger) respectively.
- Liability for third parties - the minimum insurance cover per accident depends on the category of aircraft and ranges from 0.75 million to 750 million SDRs.

The Commission commissioned a study concerning the functioning of the internal market of air transport (no. of call for tenders TREN/F1/10-2004). The study will examine the issue of bankruptcy of scheduled airlines and the consequences for the travelling air passengers. The results should be available in September 2005.

3 Rail transport

With regard to rail transport the European Commission adopted a proposal for a Regulation on international rail passengers' rights and obligations¹² as part of the third railway package. The proposal was subject to a debate within the Council on the 21st April 2005. Discussions in the Council are continuing under the UK Presidency. In the European Parliament, the Committee on Transport and Tourism adopted on the 19th April 2005 the report "Streckx" containing 121 amendments to the proposal. It is foreseen that the European Parliament will finally adopt the amendments during the autumn.

The proposal for a Regulation on international rail passengers' rights and obligations provides for a compensation scheme for delays. Passengers would be able to demand compensation from railway undertakings in form of a reduction in ticket prices on international services. If the delay led to a missed connection or if an international service is cancelled passengers should also be offered:

- reimbursement of the full cost of the ticket (for the part of the journey not made and for any further journey made no longer serving the original purpose);
- e-routing at the earliest opportunity;
- re-routing at a later date at the passenger's convenience.

⁹ OJ L 285, 17.10.1997, p.1.

¹⁰ OJ L 140, 30.5.2002, p. 2.

¹¹ OJ L 138, 30.4.2004, p. 1.

¹² COM (2004) 143 final, 3 March 2004.

In all the above cases, passengers should be offered free meals and refreshments, hotel accommodation (if a stay of one night or more is necessary), transport between the railway station and the place of accommodation, and transport between the railway station or train and the final destination of the service or the place of departure of an alternative means of transport.

Moreover the proposal stipulates that railway undertakings may not refuse to issue a ticket and reservation for an international service on the grounds of reduced mobility. Persons with reduced mobility on international journeys should be provided with assistance to help them board, change to connecting trains or disembark provided notification of such needs is given. If no notification is given, all reasonable efforts should be made to provide such assistance. Railway undertakings/tour operators should ensure that notification of such needs for assistance can be given at all points of sale. Assistance should also be provided on board trains and during boarding and disembarking from a train.

The proposal also covers the question of liability of railway undertaking. The text proposed a) the minimum insurance cover stipulated in Directive 95/18¹³ is set at €310 000 per passenger; b) no financial limits are set for liability for damages sustained in the event of death or bodily injury of a passenger; c) claims for damages up to €220 000 cannot be contested, limited or excluded by railway undertakings. Above that limit railway undertakings will not be liable if they prove that they were not negligent or at fault; d) advance payment in the event of death or injury (in case of death of a passenger at least €21 000); e) liability for total or partial loss or damage to hand luggage: €1800 in the event of death or injury of a passenger or €1300 if, at the time of destruction, loss or damage, the luggage was under the responsibility of the railway undertaking. However, Member States and the European Parliament expressed their preference for a liability regime that follows the existing international rules (COTIF/CIV).

4 Bus and coach transport

In the Communication on strengthening passenger rights within the European Union, the Commission pointed out three main areas of concern with regard to the international coach transport: the rights of persons with reduced mobility, liability issues and a compensation and assistance in the event of interrupted travel. The Commission has committed itself to examine the best way of improving and guaranteeing the rights of passengers in international coach services in the course of the year 2005/2006.

To this end, the Commission has launched a public consultation on the Commission Staff Working Paper “Rights of Passengers in International Bus and Coach Transport” containing a detailed questionnaire addressed to the Member States and other stakeholders. The consultation paper can be found on the website of the Directorate General for Energy and Transport: http://europa.eu.int/comm/transport/road/consultations/index_en.htm. The deadline for the submission of the contributions is the 14th October 2005. Taking into consideration the results of the public consultation, the Commission will come up, if appropriate, with a legislative proposal.

5 Maritime transport

The Commission published a call for tenders for a study on “The Protection of the rights of maritime passengers: assessment of the current situation and possible development of the Community legislation” (2005/S 63-060259). The contract will be signed soon after the accomplishment of the selection procedures. The results of the study are expected in September 2006. The aim of the study is to help the Commission to assess the need for submission of a legislative proposal in relation to the rights of maritime passengers, in particular to persons with reduced mobility, rights in the event of denied boarding, cancellations or delays and luggage handling. The study should also produce the overview of legislations applicable in the Member States and the main partners of the EU. Moreover, a consultation paper on the rights of maritime passengers in line with the Communication on

¹³ Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings. OJ L 143, 27.6.1995, p. 70

strengthening passenger rights within the European Union is currently being drafted by the services of the Commission.