Rights of passengers when travelling by sea and inland waterway; coordination between national authorities

2008/0246(COD) - 11/03/2010 - Council position

Although the Council agrees with the Commission as regards the objective of the proposal, the Council's approach involved major adaptations of the original proposal. With respect to the amendments proposed by the European Parliament, the Council observes that a considerable number of amendments have – in spirit, partially or fully – already been included in its first-reading position.

Scope of application

- Geographical scope: the Council's first-reading position clarifies the Commission's proposal: it distinguishes between passenger services where the port of embarkation is situated in the territory of a Member State, on the one hand, and passenger services where the port of embarkation is situated outside the territory of a Member State, but the port of disembarkation is situated in the territory of a Member State, on the other. In the latter case, the Regulation will apply only if the service is operated by a Union carrier.

However, the definition of Union carrier should be interpreted as broadly as possible in order to cover most passenger services between EU and non-EU ports. As for cruises, the Regulation will apply only to cruises where the port of embarkation is situated in the territory of a Member State.

- Exemptions from the scope: the Council agrees to exclude from the scope passengers travelling with ships certified to carry up to 36 passengers, with ships with a crew of not more than three persons or with an overall passenger service of less than 500 meters one way. Furthermore, excursion and sightseeing trips (other than cruises) are also excluded.

In addition to this, the Member States may exempt, for a period of two years from the date of application of the Regulation, seagoing ships of less than 300 gross tons operated in domestic transport. If a Member State chooses to do so, it must however adequately ensure the rights of passengers under national law. Member States may also exempt passenger services covered by public service obligations, public service contracts or integrated services, provided that the rights of passengers are adequately guaranteed under national law.

The European Parliament followed in principle the Commission approach, but added a possibility for Member States to exempt urban and suburban services. The Council does not take this amendment into account, but the exemptions from the scope proposed by the Council will in practice mean that many services of that kind will be excluded.

- Rights of disabled persons and persons with reduced mobility: the Council therefore follows the Commission proposal closely, except for certain simplifications and clarifications.

- Concerning the exceptions to the right of transport, the Commission had proposed that a disabled person could be denied transport with reference to safety requirements or the
- structure of the passenger ship. To this, the Council has added health requirements, in order to take into account cases where the medical state of the passenger is such, that his

- or her safe transport cannot be guaranteed. In this respect, the European Parliament had proposed a deletion of any references to safety requirements and the addition of a reference to transportation in a safe, dignified and operationally feasible manner. As for this latter amendment, the Council integrated it into its first-reading position, except for the word "dignified". The Council considers that nobody, except the disabled person or person with reduced mobility, can decide what a dignified manner of transportation is and that such a decision should not be taken by the carrier.
- According to the initial proposal, the carrier could require a disabled person or person with reduced mobility to be accompanied by another person who is capable of providing assistance. According to the Council's first-reading position, if the carrier makes such a request with respect to a passenger service, the accompanying person shall be carried free of charge.
- As for the assistance to disabled persons and persons with reduced mobility, such assistance will be provided on the condition that the person concerned notifies the carrier or the terminal operator at the latest two working days in advance (the Commission had proposed 48 hours) and is present in the port or at a designated point at least 60 minutes before the embarkation or departure time. Furthermore, if the person has specific needs of accommodation or seating or for bringing medical equipment, the passenger should notify the carrier of such needs at the time of reservation, if the need is known at that time.

Several of the European Parliament's amendments concerned information in formats accessible to disabled persons and persons with reduced mobility. These were taken on board by the Council. The same applies to the Parliament's amendments concerning changing from "assistance animal" to "assistance dog".

- Obligations of carriers and terminal operators in the event of interrupted travel: the Council agrees with the principle that carriers and terminal operators should take care of their passengers, and it has extended this principle to include all cases of cancellations.

- The Council's first-reading position therefore introduces the concept of port terminals, i.e. manned terminals in a port with certain facilities and staff (such as check in, ticket counters or lounges). Certain obligations of carriers and terminal operators only apply to passengers departing from such port terminals. This is the case of information and assistance and, to a certain extent, of re-routing and reimbursement.
- Another consideration underlying the Council's first-reading position is that of maritime safety. In order to avoid that carriers, for economic reasons, set to sea or speed in weather conditions endangering the safe operation of the ship, an exemption has been introduced to the obligation of providing accommodation or compensation of the ticket price in such cases. Furthermore, the concepts of bad weather conditions and extraordinary circumstances are explained in a non-exhaustive manner in two recitals.
- Further exemptions to the right to assistance and compensation have been introduced when the passenger is informed of the cancellation or delay before buying the ticket or when the passenger causes the cancellation or delay. Finally, the carrier has been given the possibility to limit the cost for accommodation to 120 euro and to introduce a minimum threshold under which payments for compensation will not be paid (tickets costing 10 euro or less).

The European Parliament had suggested exemptions in case of force majeure or if cancellation or delay is announced beforehand. The spirit of these amendments has been taken on board by the Council. Furthermore, the Parliament had proposed a limit for the cost of accommodation to twice the ticket price.

- Complaint handling and national enforcement bodies: the Council, though agreeing in principle with the proposal, in particular that carriers should reply to complaints from their customers, introduces more flexibility into the system in order to avoid any unforeseen consequences for the Member States' legal systems or administrative structures.

The European Parliament suggested that each Member State should designate only one national enforcement body and that the Member States, not the carriers, should set up an independent complaint handling mechanism. However, for the reasons of flexibility explained above, the Council does not consider it appropriate to limit the Member States' margin of manoeuvre in such a way. In addition, the Parliament proposed that the national enforcement bodies should be independent of all commercial interests. The Council's first-reading position specifies that these bodies should be independent of carriers, tour operators and terminal operators.

- ***Date of application of the Regulation:*** the Council's first-reading position provides that the whole of the Regulation will apply from three years after its publication.

It should be noted that **further amendments not included** in the Council's first-reading position concern:

- taking into account the needs of disabled persons and persons with reduced mobility in all cases when ports, terminals and passenger ships are designed or refurbished, without the qualification "when necessary";
- the provisions governing the embarkation of disabled persons and persons with reduced mobility without prejudice to the general provisions applicable to embarkation of passengers;
- the invitation to the Commission to propose clear rules for passengers' rights at points of transfer between land and sea or inland waterway transport;
- a horizontal legislative approach covering all means of transportation in the event of a future legislative initiative relating to passenger rights;
- the inclusion of psychosocial disability in the definition of a disabled person or person with reduced mobility;
- changes to the definition of "transport contract" and "ticket vendor";
- the proposed definitions of "accessible formats", "passenger", "arrival", "departure", "ticket price" and "force majeure";
- the access rules for carriage of disabled persons and persons with reduced mobility, which should be established under the supervision of the national enforcement bodies and that these rules should include accompanying persons and the accessibility of fitted assistive equipment;
- the written confirmation to be given for the provision of assistance to disabled persons and persons with reduced mobility;
- assistance adapted to the individual needs of disabled persons or persons with reduced mobility;
- the responsibility of the managing body of a port to ensure that the port is accessible to disabled persons or persons with reduced mobility;
- the possibility of agreeing on a shorter notification period for assistance between the assistance provider and the passenger;
- the need to ensure that the passenger receives a confirmation of the notification of his or her assistance needs;
- the obligation of the carrier to provide replacement equipment suitable to the needs of the passenger concerned when mobility equipment is damaged during the journey;
- in case of delay, a passenger should only be offered reimbursement of the ticket price if he or she decides not to travel with the carrier;

- any compensation awarded under the Regulation, which may be deducted from any additional compensation granted;

- the penalties applicable to infringements of the Regulation, which could include ordering the payment of compensation.