Rights of passengers in bus and coach transport; cooperation between national authorities

2008/0237(COD) - 11/03/2010 - Council position

The Council, although it is in agreement with the Commission with regard to the purpose of the proposal, introduced a number of important amendments to the initial proposal. A large proportion of the amendments proposed by Parliament were incorporated in the Council's position in first reading, either totally, partially or in spirit.

The Council has sought to find a balanced solution that takes into account the rights of passengers as well as the need to ensure the economic viability of the operators of the bus and coach industry, which consists largely of small and medium-sized undertakings; this is why it incorporated the amendment that underlines the specific characteristics of the bus and coach transport sector.

Scope of application: the Council could not accept the scope as proposed by the Commission, nor Parliament's amendments related to it because it considered that urban, sub-urban and regional transport fall within the framework of subsidiarity. The Council thus proposes that the draft Regulation should apply to passengers travelling with national and international regular services, but with a possibility at national level to exempt urban, suburban and regional regular services. In addition, it introduces a provision ensuring that certain basic rights are applied to all bus and coach services without exception (i.e. non-discriminatory contract conditions and tariffs and right to transport for disabled persons and persons with reduced mobility (PRMs) as well as related derogations).

Member States are authorised to grant an exemption of maximum five years, which may be renewed twice, from the application of the provisions of this Regulation to domestic regular services. In addition, Member States can grant an exemption of maximum five years, renewable, to particular regular services a significant part of which, including at least one scheduled stop, is operated outside the EU.Furthermore, a specific provision establishes that Member States who can ensure that the level of protection of disabled persons and persons with reduced mobility under their national rules is at least the same as under this Regulation can preserve their national rules in full.

Changes to the infrastructure: the Council is ready to encourage and support any initiative regarding new equipment and infrastructure, which has to be acquired or built bearing in mind the needs of disabled persons and PRMs. However, this Regulation cannot include obligations in respect of technical requirements for the carriers to modify or replace vehicles or infrastructure and equipment at terminals. Therefore none of Parliament's amendments regarding changes in infrastructure could be accepted.

Compensation and assistance in the event of accidents: the Council could accept neither the Commission's proposed approach nor Parliament's amendments in regard to liability. It, therefore, adopted an approach building on the existing system, adding at the same time some basic elements of harmonisation. A minimum threshold per passenger and per item of luggage is proposed: 220.000 EUR per passenger in case of death or personal injury. In case of loss of or damage to luggage, 500 EUR with regard to urban, suburban and regional services and 1.200 EUR with regard to other regular services.

As regards wheelchairs, other mobility equipment or assistive devices, the Council text provides for them to be always compensated in full, instead of being treated like ordinary luggage, even when damages are caused during the provision of assistance (in the spirit of Parliament's amendment). In addition, the text has been adapted to provide for assistance to passengers with regard to their immediate practical needs following an accident.

Rights of disabled persons and persons with reduced mobility (PRM): the Council supports the Commission's objective to ensure that disabled persons and persons with reduced mobility have non-discriminatory access to bus and coaches. It integrated several Parliament amendments it its text totally, partially or in spirit.

- Concerning the exceptions to the right to transport, the Council has provided for a number of improvements, referring to the "design" of the vehicle instead of the "size". It thus accepted Parliament's amendment as regards the choice to be offered to a disabled person or a PRM when embarkation is denied.
- 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. In 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 and, where feasible, seated next to the disabled person or PRM. The Council's first reading text provides for non discriminatory access conditions as well as for making them publicly available in a suitable format for disabled persons and PRMs. Moreover, the Commission shall make available on the internet a list of bus and coach terminals designated by Member States where assistance for disabled persons and PRM is provided.
- 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 designated point at least 60 minutes before the published departure time. Thus the Council could not accept Parliament's amendment proposing a shorter period of 24 hours. Furthermore, if the person has specific needs of seating, the passenger should notify the carrier of such needs at the time of reservation, if the need is known at that time.
- Concerning the assistance on board, the Council has limited the scope of the Commission's initial proposal. The Council's text establishes that information has to be provided in accessible format as well as assistance for boarding and alighting during pauses in a journey, the latter, however, only if there are personnel other than the driver on board. This takes account of the fact that most vehicle are operated by the driver alone and therefore providing assistance during the journey will have an impact on the driver hours, thus on safety requirements.
- Help to disabled persons and PRMs has to be provided free-of-charge at staffed terminals designated by the Member States and the personnel providing direct assistance to these persons should have received adequate training allowing them to assist such persons. Personnel, including drivers, who deal directly with the travelling public should receive disability-awareness training.

Passenger rights in the event of cancellation or delay: while the Council fully supports the principle that carriers and terminal operators should take care of their passengers, it has modified the Commission proposal, taking into account the specific structure of the bus and coaches industry. A different treatment was agreed regarding passengers departing from terminals and passengers departing from bus stops.

In the event of a delay of over two hours or a cancellation of the journey, the passenger may choose either to continue the journey using the same mode of transport, or to call for a transfer or to ask for the reimbursement of his/her ticket (paid within 14 days after the event and, if necessary, a return trip free of charge). In the case of a delay of more than two hours on journeys lasting over three hours, for passengers departing from a terminal, the carrier will be under the obligation to give passengers a meal or refreshments, in the spirit of Parliament's amendment, but will not be under the obligation to provide accommodation, although the carrier must assist in finding accommodation. However, bus and coach passengers will not benefit from additional indemnities (paid in addition to the price of the ticket) as it is the case for maritime and rail passengers. Thus Parliament's amendments related to compensation and accommodation have not been retained.

Council did not take on board Parliament's amendments regarding compensation and assistance in the event of delays in arrival and related exemptions in case of "force majeure", thus relieving the carrier from

being held liable for damage if it is caused by circumstances not connected with the operation of their services and which they could not have foreseen. On the other hand, the amendment concerning information in formats accessible to disabled persons and persons with reduced mobility was taken on board by the Council

General rules on information, complaint handling and national enforcement bodies: the text provides that carriers and terminal managing bodies, within their respective areas of competence, provide adequate information to passengers throughout their travel, in accessible format where feasible. Furthermore, they shall inform passengers about their rights in an appropriate and comprehensible way (in the spirit of Parliament's amendment).

As regards complaints Council introduces more flexibility into the system in order to avoid any unforeseen consequences for the

Member States' legal systems or administrative structures. Thus, it did not take on board Parliament's amendment which introduced an obligation for bus and/or coach undertakings to issue annually a detailed report on complaints received. Following Parliament's suggestion, Council's text specifies more clearly that the national enforcement bodies should be independent of carriers, tour operators and terminal operators.

Date of application of the Regulation: the Regulation will apply two years after its publication, thus accepting Parliament's amendment in substance.

It should be noted that Council's first reading position does not incorporate certain other amendments dealing with:

- changes to the definitions of "transport contract", "ticket vendor", "tour operator", "cancellation";
- proposed new definition of "accessible formats";
- reference to "persons incapable of travelling without assistance because of their elderly or age";
- assistance adapted to the individual needs of disabled persons or persons with reduced mobility;
- need to ensure that the passenger receives a confirmation of the notification of his or her assistance needs;
- any compensation awarded under the Regulation, which may be deducted from any additional compensation granted;
- penalties applicable to infringements of the Regulation, which could include ordering the payment of compensation;
- the Annexes to the Regulation.