

Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

2001/0305(COD) - 04/12/2002 - Modified legislative proposal

Of the forty amendments adopted by the European Parliament, the Commission accepted fourteen (some with redrafting or in principle) and eight partially. The following elements have been incorporated: - a new recital has been introduced which incorporates the concept of "force majeure", replacing that of "exceptional circumstances beyond the responsibility of an air carrier". This will help clarify the circumstances in which air carriers are not responsible for cancellations or long delays. For guidance, examples are given of cases of force majeure. Accordingly, recital 7 has been modified and the reference to "exceptional circumstances beyond the responsibility of an air carrier" has been deleted; - objective : a reference to "force majeure" replaces that to "exceptional circumstances beyond the responsibility of an air carrier", in order to help clarify the circumstances where carriers are not responsible for cancellations or long delays; - definitions : a definition of "force majeure" is introduced, in harmony with that of Council Directive 90/314/EEC on package travel, package holidays and package tours. Definitions are given of "denied boarding" and of "volunteer", in order to clarify the text. However the conditions under which passengers enjoy rights (possession of a valid ticket and confirmed reservation and presentation for check-in within a time limit) are kept in Article 3, as they apply to all provisions of the regulation.

"Cancellation" is defined, while the time limit on the coverage of cancellations is introduced. The standard definition of a "person with reduced mobility" of the European Civil Aviation Conference is introduced, to ensure consistency in meeting the special needs of these passengers; - scope : the time limit for presentation at the check-in desk, when an air carrier or tour operator does not stipulate a time, is changed from thirty to sixty minutes; - the term "person with reduced mobility" is used instead of "disabled passenger" with regard to boarding. Also the prohibition to deny boarding is extended to certified service dogs, as blind or poorly sighted passengers may only be able to travel if accompanied by them; - right to assistance : the condition "subject to availability" limits the right to rerouting at a later date at the passenger's convenience. This makes clear that air carriers and tour operators would not be obliged to organise flights specially for passengers affected by denied boarding or cancellation. In addition, the right to a free telephone call, telex, fax message and/or e-mail to the point of departure is introduced (in addition to one to the final destination). This will enable passengers to communicate with all those concerned by the disruption of their travel plans. Passengers are given the additional right to free transport, or reimbursement of expenses, for the journey from the airport to their place of accommodation and back. This will relieve them of sometimes heavy expenditure when affected by denied boarding, cancellation or long delay. The notion of "force majeure" is introduced to clarify the circumstances where carriers are not responsible for cancellations. The coverage of cancellations is limited to those made within seven days of departure, to avoid putting financial pressure on carriers or tour operators to maintain their programmes irrespective of demand. The time of seven days before the expected time of departure gives passengers time to change their travel arrangements. The "48 hours" proposed has been considered too short to give passengers the time needed to make new travel arrangements. The obligation is introduced to explain alternative means of travel to passengers affected by a cancellation, when contacted by a carrier or tour operator. The right of choice between a refund and an alternative flight is replaced by that to care while awaiting a later flight (meals, hotels, etc.). This will ensure good care of all passengers suffering long delays, including overnight accommodation when needed. The change will also prevent disruption and further delay that the provision of refunds or alternative flights might cause in certain circumstances; - the introduction of the concept of "force majeure", to clarify when carriers and tour operators are not responsible for care in the event of long delays. An additional sentence prevents passengers from claiming further compensation in court, when they have accepted to give up their reservations under conditions agreed with the air carrier or tour operator; - obligation to inform the

passengers of their rights : requires carriers and tour operators, when denying boarding or cancelling, to inform passengers of the body designated to receive complaints has been introduced in order to facilitate the lodging of complaints. This helps passengers to exercise their rights; - admissibility of derogations : the proposal provides protection in the event of air carriers or tour operators introducing restrictive clauses into contracts (despite the prohibition to do so) and of passengers accepting compensation on that basis has been incorporated; - compliant : clarify that air passengers maintain their rights to go to court to claim further compensation, if they lodge a complaint; - report : An obligation on the Commission to report no later than five years after the entry into force of the regulation replaces that to report by 1st January 2008. On the other hand, as regards the the amendments rejected by the Commission, these concern: - the exclusion of passengers on package tours so that the regulation would just apply to seat-only passengers; - the allocation of the available places, in the event of overbooking; - the rates of compensation namely 200-400-600 euros depending on three distance bands; - the organisation of care within one hour as it would be difficult to implement it and attempting to do so could cause further delays; - the creation of shared responsibility for meeting the obligations of the regulation, in the case of code-sharing between the carriers and when logically impossible for a tour operator to fulfil these obligations; - the elimination of compensation in the case of delays of less than one hour; - the adjustment of levels in line with inflation every three years is rejected because the Commission has to report 5 years after the entry into force of the regulation and may make appropriate proposals; - the references to the last flight coupon on a ticket in case of successive flights for the definition of final destination; - the elimination to stipulate the check-in time in writing; - the prohibition for air carriers and tour operators from denying boarding to passengers travelling with small children; - the limitation of the obligation to reimburse tickets or to re-route passengers within the period of validity of the ticket; - requiring rules similar to those of the proposed regulation to be established for other modes of transport can not be accepted; - the elimination of the definition of the price on which a refund should be based in the event of down-grading, so preventing legal certainty to the detriment of passengers; - to limit the obligation to provide care to passengers in situations where local conditions allow it. This condition would weaken the protection of passengers and is not sufficiently precise to provide legal certainty; - the liability of authorities for denied boarding, cancellation and delays; - linking its obligation to report on the operation and on the result of this Regulation to the designation of enforcement bodies.