

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

2001/0305(COD) - 11/08/2003 - Commission opinion on Parliament's position at 2nd reading

The European Parliament adopted 15 amendments at second reading, of which the Commission accepts 8 wholly or in part, as they are in line with the objectives of its proposal. Concerning the amendments accepted by the Commission, these concern: - changes the time limit for check-in, if an air carrier or tour operator does not stipulate one, from thirty to sixty minutes before the published departure time. The longer period is preferable because of the reinforcement of security procedures since 11th September 2001; - aligning the distance bands in the condition for assisting delayed passengers on those in Article 7, paragraph 1 (levels of compensation), so clarifying and simplifying the proposal. It would also limit the rights of passengers to assistance under Article 9 (meals and accommodation), removing the right to assistance under Article 8 (choice between reimbursement and re-routing). In fact assistance under Article 8 could cause disruption and further delay in certain circumstances, for instance when a delayed flight arrives while passengers are being refunded or transferred to alternative flights. It would also remove the exemption when an air carrier can prove that it was not responsible for the delay. This is justified, as it would ensure that passengers receive basic assistance in all circumstances; - aligning the distance bands in the condition for allowing the reduction of compensation in the case of shorter delays on those in Article 7, paragraph 1, (levels of compensation), so clarifying and simplifying the proposal; - adding "scheduling" to the end of Article 8, paragraph 1, point c. This would make clear that air carriers and tour operators were not obliged specially to organise unplanned flights in the event of denied boarding or of cancellation; - aligning the distance bands in the condition for reimbursement in the event of down grading from a higher to a lower class on those in Article 7, paragraph 1, (levels of compensation), so clarifying and simplifying the proposal; - allowing tour operators to make claims against operating carriers, as well as the reverse. This is reasonable, as either could be responsible for creating situations under which obligations towards passengers had to be met. However, this addition should be expressed in a similar way to the right already created by the common position for the sake of clarity and consistency; - postponing for one year the Commission's report. This would allow it time to gather fuller information on the operation and results of the regulation; - changing the regulation's date of entry into force from three to twelve months after its publication. This would give air carriers and tour operators time to introduce new contracts and otherwise prepare for the application of the proposal. On the other hand, the amendments rejected by the Commission refer to: - adding a recital to the effect that passengers travelling by all modes of transport should be treated equally. While the Commission intends to take initiatives to protect the rights of passengers using other modes of transport, the question is outside the scope of the present proposal; - changing a recital in such a way that the effects of many decisions concerning air traffic control would be considered as extraordinary circumstances under which air carriers were not responsible for the consequences of cancellations. This would go unjustifiably far in limiting the responsibility of carriers for the consequences of cancellations; - excluding a "retailer" of package travel from the definition of "tour operator" and hence from the scope of the proposal. The definition in the common position is identical to that in Directive 90/314/EEC on package travel, package holidays and package tours. It should be maintained so as not to introduce different definitions into Community law and so cause confusion; - reducing rights to financial compensation and to re-routing, by restricting the "final destination" to that reachable without difficulties through connecting flights (when connecting flights are used). The term "without difficulties" is not sufficiently clear and could cause legal uncertainty. If interpreted widely, it would limit the obligations on carriers and so restrict the rights of passengers to an unacceptable degree; - defining a "cancelled flight" as one not made but listed in a computer reservation system during seven days before the expected departure. However, this would greatly restrict the rights of passengers. First, some carriers do not use computer reservation systems while others make part of their

reservations directly with customers. In these cases, flights not made would never be classed as cancellations, because not listed in a computer reservation system. Second, if a carrier were to remove a flight from a computer reservation system, whether during these seven days or before that period, it would not be considered as cancelled. In both ways, the amendment would frustrate the purpose of the proposal and, in particular, would conflict with Article 5 paragraph 1 of the common position, which strikes a satisfactory balance between the interests of passengers and air carriers; - limiting the right to re-routing to the period of validity of a ticket. Such a restriction is not justified and could lead in practice to passengers having different rights to re-routing solely because of the validity of their tickets; - removing the clause to the effect that courts are allowed to deduct compensation granted under the regulation from the damages that they award. The clause should be kept, as it would permit courts to avoid awarding double damages against air carriers (the damages that they grant plus the compensation that carriers are obliged to give under the proposed regulation). - allowing air carriers to make claims against public agencies that would include air traffic management bodies and managing bodies of airports. This is outside the scope of this proposal.