



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.12.2001  
COM(2001) 784 final

2001/0305 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing common rules on compensation and assistance to air passengers in the event  
of denied boarding and of cancellation or long delay of flights**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### Introduction

1. Liberalisation of air transport has brought many advantages to passengers. Competition has arrived on many routes, prices have fallen in real terms and demand is growing rapidly. This unfortunately is only part of the picture. Despite these advances, air travel does not come up to customers' expectations and too often they have valid reasons for dissatisfaction. Denied boarding and cancellation of flights, for commercial reasons, provoke strong resentment, not only because they cause serious delay and upset travel plans but also because they represent a failure by the transporter to respect its undertaking to carry passengers with reasonable dispatch (even if protected by its contract). Long delays are another problem. Although air carriers and tour operators are frequently not responsible for delays, they should not be allowed to leave passengers in their care stranded at airports for hours, unable to change their reservations or cancel their flights if they no longer serve any purpose.
2. In May 2001 the associations of European airlines presented voluntary commitments to improve their quality of service and recommended that their members adopt them, as the majority are expected to do. These are a real step forward and, when fully implemented, will raise the level of service that passengers receive. They provide for assistance to passengers delayed at airports and on-board aircraft, among other things, but do not cover compensation and assistance to those who are denied boarding or whose flights are cancelled. Legislation is required better to protect such passengers and, in its communication on the protection of air passengers in the European Union<sup>1</sup>, the Commission announced its intention to withdraw its proposal of 1998 to amend Regulation (EEC) No. 295/91 on compensation for denied boarding<sup>2</sup>, which also covered cancellations, and to replace it by a stronger one. It also announced that it would propose legislation to enable delayed passengers to cancel their journeys or continue them under satisfactory conditions. These are the aims of the present proposal.

### Current situation

3. Ten years ago, the Community recognised the need for common rules on compensation and assistance to passengers denied boarding, when it adopted Regulation (EEC) No. 295/91. This gave passengers the right to financial compensation, to the choice between an alternative flight at the earliest opportunity re-routing or reimbursement of the ticket (important if a journey loses its purpose because of delay) and to assistance to reduce the inconvenience of waiting for a later flight. In 1998, the Commission concluded that it needed extension and clarification and proposed an amending regulation<sup>3</sup>. Unfortunately, the Council failed to adopt this proposal because of disagreement about its application to Gibraltar airport.

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<sup>1</sup> Communication from the Commission to the European Parliament and the Council. Protection of air passengers in the European Union. COM(2000) 365 final, 21.6.2000.

<sup>2</sup> Council Regulation (EEC) No. 295/91 of 4 February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport. OJ L 36, 8.2.1991, page 5.

<sup>3</sup> Proposal for a Council Regulation (EC) amending Regulation (EEC) No. 295/91 establishing common rules for a denied-boarding compensation system in scheduled air transport. COM(1998) 41 final, 30.1.1998.

4. As amended following the Parliament's opinion<sup>4</sup>, the proposal would have considerably widened the scope of the regulation. In particular, it would have extended it to non-scheduled flights, to flights from non-Community to Community airports, to cancellations other than for safety or security reasons and to paperless forms of ticket; it would also have provided for better information of passengers on their rights.
5. The Commission believes that, even amended, Regulation (EEC) No. 295/91 would still not protect passengers adequately when confronted by denied boarding or cancellation. The original and the amending regulation oblige air carriers and tour organisers (henceforth both are referred to as operators) to compensate and assist passengers. They do not, however, dissuade them from excessive denial of boarding or cancellation, nor give incentives to balance the commercial advantages against the cost to passengers. Consequently, too many passengers would have continued to suffer from these practices.
6. Another drawback of these regulations is that they set flat rates of compensation. They ignore, therefore, that individual passengers attach different values to inconvenience and loss of time. Some would willingly surrender their seats, if compensated modestly but to their satisfaction. Others, like business travellers, value their time higher and so would insist on respect of their reservations, despite generous offers of compensation. Finally, they do not create rights for passengers suffering long delays, so that they can cancel their tickets or take alternative flights. While the causes are different, passengers suffer trouble and waste of time when delayed, as they do when denied boarding or left stranded because of a cancellation. As a consequence, the Commission believes it necessary to make another proposal that will better protect passengers (summarised at the end of this explanatory memorandum), based on the following analysis.

#### Reasons for denying boarding

7. While levels of denied boarding are too high, the practice is impossible to eliminate. In fact it has two causes. The first is the transfer to a later flight of passengers unable to take that on which they were booked because of operational problems, such as late arrival or cancellation of connecting flights or replacement of out-of-order aircraft by smaller ones. The passengers transferred create unexpected demand for seats, sometimes to the extent that passengers on the later flight are denied boarding. Half the time passengers are denied boarding it is for operational reasons.
8. The second cause is the practice called "no-show", the tendency for passengers not to turn up for flights although they have confirmed reservations. Involuntary no-shows are the consequence of the operational problems mentioned: passengers are simply not in a position to take the flight that they booked. Deliberate no-shows result from some current methods of marketing, which separate the reservation of places from the sale of tickets. This allows passengers with flexible, refundable tickets (sold at high prices) to employ them for a different flight or to obtain reimbursement if unused. It also permits some selling agents to make speculative bookings of seats for

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<sup>4</sup> Amended proposal for a Council Regulation (EC) amending Regulation (EEC) No. 295/91 establishing common rules for a denied boarding compensation system in scheduled air transport. COM(1998) 580 final, 19.10.1998.

future sales to customers, without payment. Agents may then fail to cancel unused reservations or do so too late.

9. Operators, therefore, forecast the probable level of no-shows on a flight. They then accept reservations up to the plane's capacity plus the estimated number of no-shows, that is they overbook. However, unexpected events may upset their calculations of probability or they may aim for very high and profitable load factors, so reducing their margin for error. They then have to deny boarding. According to the data available to the Commission, in 1999 an estimated 250,000 passengers suffered this treatment from the main Community carriers (scheduled services), or 1.1 per thousand.
10. If operators could not overbook, they would leave empty seats that could be sold to other passengers. Their revenue and profits would then fall, to which they would respond by raising prices. This would be to no one's advantage. While operators need operational flexibility to deal with unexpected events, they face no deterrent to aiming at excessively high load factors and are not given sufficient incentive carefully to balance the margin of overbooking against that of no-shows.

#### Call for volunteers

11. The Commission now proposes a different approach towards denied boarding, based on calls for volunteers to surrender their reservations and on compensation at a dissuasive level for passengers denied boarding against their will. A volunteer system would be a great advance, introducing much needed flexibility. When expecting to deny boarding, operators would be obliged first to call for volunteers to give up their places in exchange for certain benefits (whether in the form of money or other advantages). The operator and the potential volunteers would then negotiate and agree on the conditions of the exchange; these would reflect the value that each passenger attached to the loss of time and inconvenience involved.
12. A volunteer would not be forced to surrender his or her seat on the aircraft but would only do so by agreement. Consequently passengers accepting the exchange would not be denied boarding but act of their own will. In the United States, a volunteer system is compulsory and gives good results. In 2000 the number of passengers denied boarding against their will amounted to an estimated 18,000 passengers, 0.1 per thousand; the number of volunteers reached an estimated 330,000, nearly twenty times greater than those denied boarding (larger carriers only).
13. If, and only if, an insufficient number of volunteers came forward, would operators be allowed to deny boarding. They would have then to compensate passengers at a fixed rate, high enough both to offset the delay and trouble caused and to dissuade operators from overbooking to such an extent that they routinely deny boarding. To achieve that, compensation should be at a such that operators do not earn but lose revenue from this practice.

## Compensation rates

14. In its proposal the Commission has tried to set rates that compensate passengers and deter operators from excessive overbooking, but has had to rely on general data on fares and on the very limited information that airlines were willing to give on revenue earned from overbooking. Last year the weighted average of business class fares was about 310 Euros for intra-European flights, most falling in the range of 150 to 600 Euros. The cost of transporting passengers overbooked but not denied boarding is assumed marginal, as operators would incur almost all costs, fixed and variable, in carrying the other inter-passengers; it is hence justified to relate compensation to fares. To deter operators from denying boarding to all passengers, whatever class they travel, the Commission proposes setting the fixed rate of compensation at twice the level of most business class fares, that is 750 Euros for flights of less than 3,500 kilometres. Allowing for the difference in fares between intra-European and inter-continental flights, it proposes 1,500 Euros for flights of 3,500 kilometres or more.
15. Such levels should not prevent airlines from overbooking in order simply to fill seats that otherwise would remain empty, which would depress revenues and raise prices. The Commission's proposal is based on a call for volunteers; only if too few passengers come forward, would an operator deny boarding and pay the fixed rate of compensation. In the United States the ratio of volunteers to passengers actually prevented from flying is nearly twenty to one, and that with a low fixed level of compensation. It follows that operators would pay the fixed rate infrequently, so long as they did not overbook exaggeratedly and were effective in finding volunteers.
16. It could be argued, nevertheless, that potential volunteers would routinely demand the new fixed rate so that volunteer systems would not work. However, if they hold out for the fixed rate, they run the risk that other passengers will accept a lesser offer in an adequate number to eliminate the overbooking. In that case, they would receive no compensation but travel in the ordinary way. Finally, the basic aim of the Commission's proposal must not be overlooked. It is to induce operators to be sufficiently cautious in their reservations policy as to render denied boarding exceptional not systematic. It is not to approve the practice in general, while offering passengers palliatives.

## Other rights

17. If actually denied boarding, passengers should be entitled to continue their journeys as rapidly as possible (re-routing), under conditions comparable to those of their original flight. Alternatively, if they decide that their travel is no longer worthwhile, they should be able to cancel their journeys and obtain reimbursement of their tickets. The Commission believes that such rights must be well covered by law and so proposes reinforcement of the relevant article of the 1991 regulation: passengers would, in particular, gain the right to return flight in addition to reimbursement of their tickets (when they choose this instead of an alternative flight at the earliest opportunity). Volunteers would be given the same rights, as they would be confronted by similar difficulties of travel. The Commission also proposes maintaining the rights of passengers denied boarding to care while awaiting a later flight, in the form of meals, refreshments and hotel accommodation, as appropriate.

18. These rights should be accompanied by an obligation on passengers to behave correctly and avoid disruptive behaviour when flying. This means that operators should be allowed to refuse carriage to passengers, whose conduct may threaten the safety or comfort of other passengers and of crew. It is important to establish this right and to define the conditions under which operators can refuse carriage to passengers with valid tickets and confirmed reservations, in their interest and in that of passengers as a whole. It would be more effective to do this at Community level so that passengers would face the same obligation to behave correctly - and know it - and operators would come under the same rules throughout the single market. When preparing proposals for legislation on minimum requirements for airlines' contracts, the Commission will carefully consider how best to establish these rights and obligations.

#### Fresh proposal

19. The Commission has decided to withdraw its 1998 proposal, in order to present this new approach. Its new proposal, however, maintains almost all the innovations made in its 1998 text and in the amendments proposed by the European Parliament. Among these are the extension of the regulation's scope to non-scheduled flights, including those in package tours, and to paperless forms of ticket and the information requirements. The main difference is in the application of the regulation to flights operated by Community air carriers from third countries to airports in Member States. The 1998 proposal would have included all such flights. Consequently operators would have been subject to two sets of rules, those of the Community and of the third country. This would have put them in an impossible situation, and been considered by some countries as extraterritorial application of Community law in an unacceptable way. Consequently, the Commission proposes that the regulation would cover flights from third countries to airports in Member States only when passengers do not benefit from compensation and assistance in the third country.

#### Cancellation of flights

20. Cancellation by an operator also represents a refusal to supply the service for which it has contracted, except in exceptional circumstances beyond its responsibility, such as political instability, severe weather conditions, inadequate security and unexpected safety failures. For the passenger, cancellation in ordinary circumstances, for commercial reasons, causes unacceptable trouble and delay, particularly when not warned in advance.
21. The Commission, therefore, proposes to keep an important feature of its 1998 proposal, as amended following the Parliament's opinion: the extension of the provisions on compensation, on reimbursement or re-routing and on assistance at the airport to passengers whose flights have been cancelled. An exception would naturally be made for cancellations that an operator can prove were made for reasons outside its responsibility. Would this allow a carrier to use safety or security as a pretext for cancelling flights, when it really does so on commercial grounds? In fact, under its air operator's certificate it is required to keep records of such incidents, which are subject to inspection by the authorities. This allows effective control and should minimise abuse.

22. Part of the inconvenience and trouble of cancellation close to the date of departure is that passengers are often not warned in advance and so are unable to change their travel plans. The amended proposal from 1998 does not tackle this problem. The Commission now proposes to do so, by requiring operators to make every effort to contact passengers before the scheduled time of departure - and to give them an incentive to succeed. This would be the possibility of seeking volunteers to give up their reservations in exchange for benefits, as with denied boarding. The advantage for passengers would not just be the benefits negotiated but also the advance warning and the freedom to make new arrangements if they wish. Of course, some passengers would prove impossible to find, while others would refuse the carrier's offer of benefits in exchange for surrendering their bookings. Such passengers, if they turned up for check-in, would have the same rights to compensation, to reimbursement of their tickets or rerouting and to care while awaiting a later flight, as those denied boarding. This proposal would introduce a degree of flexibility, beneficial to both operators and passengers, while protecting the latter's essential interests.

### Long delays

23. Although passengers suffer similar inconvenience and frustration from delays as from denied boarding or cancellation, there is a difference in that an operator is responsible for denied boarding and cancellation (unless for reasons beyond its responsibility) but not always for delays. Other common causes are air traffic management systems and limits to airport capacity. As stated in its communication on the protection of air passengers, the Commission considers that in present circumstances operators should not be obliged to compensate delayed passengers.
24. Nevertheless, it is quite unacceptable for operators to leave passengers stranded for many hours, when they have undertaken to transport them with reasonable dispatch. Passengers should be given the choice between an alternative flight as soon as possible or reimbursement of their tickets, if they consider that their journey has become pointless (as with denied boarding or cancellation). The Commission proposes, therefore, to extend these provisions to passengers facing serious delays. The length of delay that would trigger this assistance would be linked to the distance of the flight, as a delay of a given time generally causes more trouble and resentment if the flight is short than if long.
25. Assistance for passengers delayed at airports or on-board aircraft is another matter. The Commission believes that operators should be allowed to decide on the services given to delayed passengers (e.g. offer of refreshments, meals or hotel accommodation), so long as these passengers do not suffer discomfort or excessive inconvenience. It is encouraging that many, but not all carriers, intend to include assistance to delayed passengers in their voluntary commitments. The Commission will follow closely the implementation of these codes but, only if the results are unsatisfactory, will it consider the case for legislation. However passengers with reduced mobility, unaccompanied children or other people with special needs are less able to look after themselves, so the regulation should oblige transporters to care for them.

## Enforcement

26. Complaints show that passengers are not always compensated under the present legislation as they should be, so measures to ensure full respect of an innovative regulation from the beginning are important. For that reason, the Commission includes an article requiring Member States to set penalties that are effective, proportionate and dissuasive and to designate bodies responsible for the enforcement of the regulation. These bodies would also investigate complaints from passengers and ensure that their rights were respected when infringements were found. The arrangements proposed would allow a passenger to complain about a possible infringement, wherever it happened, to the body in the Member State where he or she resides. If necessary, the body would pass on the complaint to that competent, which would then act. This arrangement will overcome the language and other difficulties that deter passengers from complaining in countries other than their own.

## Follow-up

27. The regulation should greatly benefit passengers, among other things, by reducing the frequency of denied boarding and cancellations. The Commission will carefully follow the working of the legislation and its benefits for passengers, including the reduction in the frequency of denied boarding and cancellations. No later than five years after the regulation comes into force, the Commission will issue a report and propose further measures if the benefits are not convincing.

## Subsidiarity and proportionality

28. The Community has created an internal market in air transport services in which carriers compete under uniform rules. These rules do not only govern market access and safety but also advance the protection of passengers' rights; indeed this objective is of ever growing importance. Without harmonisation, operators would have to work under different regimes, raising their costs and frustrating competition. Passengers would be subject to multiple rules and find it difficult to know and insist on their rights. Moreover, several regimes might apply to flights between Member States, creating legal uncertainty to the detriment of passengers and operators alike. For these reasons, national rules, even assuming that they gave passengers a high level of protection, would not achieve essential Community objectives and would even frustrate their achievement.
29. The Community has long recognised the need for harmonised rules on the protection of air passengers and has adopted legislation on compensation for denied boarding<sup>5</sup> and on the liability of air carriers in the event of accidents<sup>6</sup>. Under ex-Article 100A, it has adopted legislation on package travel, intended both to give consumers a high level of protection and to create common rules<sup>7</sup>. The proposed regulation would therefore be the latest in a series, concerning areas where the Community exercises exclusive competence. The Community has no other means of action than legislation to create rights for air passengers.

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<sup>5</sup> Council Regulation (EEC) No. 295/91, see above.

<sup>6</sup> Council Regulation (EC) No. 2027/97 of 9 October 1997 on air carrier liability in the event of accidents. OJ L 285, 17.10.1997, p. 1.

<sup>7</sup> Council Directive 90/314/EEC of 13 June on package travel, package holidays and package tours. OJ L 158, 23.6.1990, p. 59.

30. Both operators and passengers benefit from precise and complete rules. Air transport is both an international and homogeneous service, so that divergences between regimes can create serious difficulties. Moreover, decisions on passengers' rights in the event of denied boarding or cancellation have often to be taken quickly, adding to the value of precise rules at Community level. Consequently, a regulation is a better tool than a directive, as has already been found with other measures to protect the rights of air passengers. Its provisions are proportionate to the objective and appropriate to the situations in which it is pursued.

## SUMMARY OF PROPOSALS

<b>SCHEDULED FLIGHTS</b>		
	<b>Existing regulation</b>	<b>Proposed new regulation</b>
<b>Denied boarding</b>	<p>A passenger has these three rights:</p> <ul style="list-style-type: none"> <li>• financial compensation (between 75 and 300 Euros), and</li> <li>• choice between alternative flight and reimbursement of ticket, and</li> <li>• care while waiting: refreshments, meals, hotels.</li> </ul>	<p>1) Obligation on operators to call for volunteers to surrender reservations in exchange for agreed benefits (and also to give choice between alternative flight and reimbursement of ticket).</p> <p>2) If nevertheless denied boarding, a passenger has these three rights:</p> <ul style="list-style-type: none"> <li>• higher financial compensation (between 375 and 1,500 Euros), and</li> <li>• choice between alternative flight and reimbursement of ticket, and</li> <li>• care while waiting: refreshments, meals, hotels</li> </ul>
<b>Cancellation</b> <b>(if responsibility of the operator)</b>	Not covered	<p>1) Obligation on operators to contact passengers and seek volunteers to surrender reservations.</p> <p>2) A passenger that does not volunteer has these three rights:</p> <ul style="list-style-type: none"> <li>• financial compensation as denied boarding (between 375 and 1,500 Euros), and</li> <li>• choice between alternative flight and reimbursement of ticket, and</li> <li>• care while waiting : refreshments, meals, hotels</li> </ul>
<b>Long delay</b>	Not covered	<p>1) A passenger has the right to choose between alternative flight and reimbursement of ticket.</p> <p>2) Special need passengers and people with reduced mobility will be entitled to minimum care while waiting: refreshments, meals, hotels.</p>
<b>NON-SCHEDULED FLIGHTS</b>		
	<b>Existing regulation</b>	<b>Proposed new regulation</b>
<b>Denied boarding</b>	Not covered	As above
<b>Cancellation</b>	Not covered	As above
<b>Long delay</b>	Not covered	As above

## COMMENTS ARTICLE BY ARTICLE

Article 1 states the basic purpose of the regulation.

Article 2 gives definitions of the terms used in the regulation.

Article 3 defines the conditions under which the regulation does and does not apply to passengers. It also clarifies its application to both air carriers and tour operators and deals with code sharing.

Article 4 requires an air carrier or tour operator to lay down and make known the rules it follows when denying boarding.

Article 5 sets out what an air carrier or tour operator must do when expecting to deny boarding, and in what order, establishing the obligation first to call for volunteers to surrender their reservations and then to deny boarding only if insufficient volunteers come forward. It establishes the right of a passenger denied boarding to compensation according to Article 7 and to assistance according to Articles 8 and 9, and that of a volunteer to assistance according to Article 8.

Article 6 protects disabled people and other passengers with special needs against denied boarding.

Article 7 lays down the level of dissuasive compensation to be paid a passenger denied boarding, which would vary by the distance of the flight.

Article 8 specifies that passengers denied boarding should have the choice between an alternative flight at the earliest opportunity and reimbursement of their ticket if their journey has lost its purpose.

Article 9 sets out the assistance that passengers denied boarding should receive to reduce the inconvenience of waiting for a later flight.

Article 10 requires an air carrier or tour operator, when cancelling a flight except for reasons beyond its responsibility, to make every effort to inform the passengers affected and seek volunteers to surrender their reservations. It also establishes the right of passengers which do not volunteer to compensation according to Article 7 and to assistance according to Articles 8 and 9.

Article 11 establishes the right of passengers who suffer long delays to the assistance specified in Article 8. Passengers with special needs would also be entitled to the assistance laid down in Article 9.

Article 12 clarifies that the regulation does not affect passengers' rights to further compensation.

Article 13 clarifies that the regulation does not limit the right of a carrier or tour operator to claim redress from a third party, if it has to meet obligations under the regulation.

Article 14 creates obligations to inform passengers of their rights both at check-in and when experiencing denied boarding, cancellation or a long delay.

Article 15 prevents the rights created by the regulation from being limited or waived through contracts.

Article 16 requires Member States to determine effective penalties for infringement of the regulation.

Article 17 requires Member States to designate bodies responsible for enforcement of the regulation.

Article 18 deals with the right of passengers to complain to a body designated by a Member State and the treatment of complaints across borders.

Article 19 requires the Commission to report on the effects of the regulation and to propose further measures, if needed.

Article 20 repeals Regulation (EEC) No. 295/91.

Article 21 sets the date of entry into force of the regulation.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80 (2) thereof,

Having regard to the proposal from the Commission<sup>8</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>9</sup>,

Having regard to the opinion of the Committee of the Regions<sup>10</sup>,

Acting in accordance with the procedure referred to in Article 251 of the Treaty<sup>11</sup>,

Whereas:

- (1) Action by the Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers; moreover full account should be taken of the requirements of consumer protection.
- (2) Denied boarding and cancellation or long delay of flights cause serious trouble and inconvenience to passengers.
- (3) The Community should set common minimum standards of protection both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market.
- (4) While Council Regulation (EEC) N° 295/91 of 4 February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport<sup>12</sup> created basic protection for passengers, the number of passengers denied boarding against their will remains unacceptably high. This can best be reduced by both requiring air carriers to call for volunteers to surrender their reservations, in exchange for benefits, and deterring carriers from denying passengers boarding against their will through a requirement to pay compensation at a dissuasive level.

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<sup>8</sup> OJ C ..., ..., p. ...

<sup>9</sup> OJ C ..., ..., p. ...

<sup>10</sup> OJ C ..., ..., p. ...

<sup>11</sup> OJ C ..., ..., p. ...

<sup>12</sup> OJ L 36, 8.2.1991, p. 5.

- (5) Passengers denied boarding against their will should be able either to cancel their journeys, with reimbursement of their tickets, or to continue them under satisfactory conditions, and should be adequately cared for while awaiting a later flight.
- (6) Volunteers should also be able to cancel their journeys or continue them under satisfactory conditions, since they face difficulties of travel similar to those experienced by passengers denied boarding.
- (7) The trouble and inconvenience to passengers caused by cancellation of flights should also be reduced, except when cancellation occurs in exceptional circumstances beyond the responsibility of an air carrier or that of its subcontracting agent. This can best be achieved by requiring air carriers, before the scheduled time of departure, to contact the passengers affected and agree with them the conditions under which they volunteer to surrender their reservations.
- (8) Passengers whose flights are cancelled and who do not volunteer to surrender their reservations should be able either to obtain reimbursement of their tickets or to continue their journeys under satisfactory conditions, and should be adequately cared for while awaiting a later flight.
- (9) Similarly, passengers whose flights are delayed for a specified time should be able to cancel their journeys or to continue them under satisfactory conditions.
- (10) Since the distinction between scheduled and non-scheduled air services is weakening, protection should apply to passengers not only on scheduled but also on non-scheduled flights, including those contained in package travel, holidays and tours.
- (11) Since tour operators are generally responsible for commercial decisions concerning package travel, holidays and tours, they should be responsible for compensation and assistance to passengers taking flights contained in package travel, holidays and tours, in the event of denied boarding and cancellation or long delay.
- (12) Since paperless tickets are becoming common, this Regulation should cover all forms of tickets to ensure comprehensive protection of passengers.
- (13) Passengers should be fully informed of their rights in the event of denied boarding and of cancellation or long delay of flights, so that they can effectively exercise their rights.
- (14) The Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.
- (15) Regulation (EEC) N° 295/91 should accordingly be repealed,

HAVE ADOPTED THIS REGULATION:

*Article 1*  
*Subject matter*

This Regulation establishes minimum rights for air passengers when:

- (a) denied boarding;
- (b) their flight is cancelled, except for reasons beyond the responsibility of an air carrier or that of its subcontracting agent;
- (c) their flight is delayed for a specified time.

*Article 2*  
*Definitions*

For the purposes of this Regulation:

- (a) "air carrier" means an air transport undertaking with a valid operating licence;
- (b) "Community carrier" means an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No. 2407/92<sup>13</sup>;
- (c) "tour operator" means, with the exception of an air carrier, an organiser or retailer in the sense of Article 2 points 2 and 3 of Council Directive 90/314/EEC<sup>14</sup>;
- (d) "package" means those services defined in Article 2 point 1 of Directive 90/314/EEC;
- (e) "ticket" means a valid document giving entitlement to transport, or an equivalent in paperless form, including electronic form, issued or authorised by the air carrier or its authorised agent;
- (f) "confirmed reservation" means that the passenger has a ticket, or other proof, which indicates that the reservation has been registered and confirmed by the air carrier or tour operator;
- (g) "code-sharing" means a situation in which a passenger has a contract and confirmed reservation with one air carrier, the marketing carrier, but is transported by another, the operating carrier;
- (h) "final destination" means the destination on the ticket presented at the check-in counter or, in the case of directly connecting flights, the destination of the last flight.

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<sup>13</sup> OJ L 240, 24.8.1992, p. 8.

<sup>14</sup> OJ L 158, 23.6.1990, p. 59.

*Article 3*  
*Scope*

1. This Regulation applies to passengers departing from an airport located in the territory of a Member State to which the Treaty applies, and to passengers having a contract with a Community carrier or with a tour operator for a package offered for sale in the territory of the Community departing from an airport located in a third country to one situated in the territory of a Member State to which the Treaty applies, unless they benefit from compensation and assistance in that third country, when they:
  - (a) have a confirmed reservation on a flight and present themselves for check-in, either as stipulated and at the time indicated in advance and in writing by the air carrier, the tour operator or an authorised travel agent, or if no time is indicated, not later than thirty minutes before the published departure time; or
  - (b) have been transferred by an air carrier or tour operator from the flight for which they held a confirmed reservation to another flight, irrespective of the reason.
2. This Regulation does not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. However, passengers having tickets issued under a Frequent Flyer Programme or other commercial programme by an air carrier or tour operator are covered by this Regulation.
3. This Regulation applies to any air carrier or tour operator with which a passenger referred to in paragraph 1 and in the second subparagraph of paragraph 2 has a contract. The tour operator, or in the case of code sharing, the marketing carrier shall make with the operating carrier any arrangements necessary to ensure the implementation of the provisions of this Regulation.
4. The provisions of this Regulation shall not affect the rights of passengers under Directive 90/314/EEC.

*Article 4*  
*Rules laid down by the air carrier or tour operator*

An air carrier or tour operator shall, in accordance with this regulation, lay down the rules which it will follow when passengers are denied boarding, including those on priorities for passenger embarkation, and shall make them available to the public. They shall form part of the contract or conditions of carriage of the carrier or tour operator.

*Article 5*  
*Obligations towards passengers in case of denied boarding*

1. When an air carrier or tour operator reasonably expects to deny boarding on a flight, it shall first identify any passenger still awaiting check-in for the flight concerned at the time check-in closes and then call for volunteers to surrender their confirmed reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the air carrier or tour operator.

2. Volunteers shall be assisted in accordance with Article 8, such assistance being additional to the benefits mentioned in the paragraph 1. If an insufficient number of volunteers comes forward to allow the remaining passengers with confirmed reservations to be accommodated on the flight, the air carrier or tour operator may then deny boarding to passengers against their will, in accordance with the rules laid down by the air carrier or tour operator referred to in Article 4.
3. If boarding is denied to passengers, the air carrier or tour operator shall immediately compensate them in accordance with Article 7 and assist them in accordance with Articles 8 and 9.
4. If an air carrier or tour operator places a passenger in a class higher than that for which the ticket was purchased, it may not request any supplement or payment. If an air carrier or tour operator places a passenger in a class lower than that for which the ticket was purchased, it shall reimburse the difference in price between the passenger's ticket and the cheapest published fare available for the class in which he or she is placed for that part of the journey.

#### *Article 6*

#### *Boarding of disabled and other passengers with special needs*

An air carrier or tour operator shall not deny boarding to a disabled passenger and any accompanying person, to a passenger whose mobility is otherwise reduced or to an unaccompanied child.

#### *Article 7*

#### *Right to compensation*

1. In the case of denied boarding passengers shall receive compensation amounting to:
  - (a) Euros 750 for flights of less than 3,500 kilometres;
  - (b) Euros 1,500 for flights of 3,500 kilometres or more.

In determining the relevant distance, the basis shall be the last destination at which the denial of boarding will delay the passenger's arrival after the scheduled time.

2. When passengers accept re-routing to their final destination on an alternative flight pursuant to Article 8, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked by two hours for flights of less than 3,500 kilometres, and by four hours for flights of 3,500 kilometres or more, an air carrier or tour operator may reduce the compensation provided for in paragraph 1 by 50%.
3. The compensation referred to in paragraph 1 shall be paid in cash or, with the signed agreement of the passenger, by bank orders, bank cheques, in travel vouchers and/or other services.
4. The distances given in paragraphs 1 and 2 shall be measured by the great circle track method (great circle route).

*Article 8*  
*Right to assistance*

1. In the case of denied boarding passengers shall be offered the choice between:
  - (a) reimbursement of the full cost of the ticket, under the conditions by which it was paid, for the part or parts of the journey not made and for the part or parts already made, if no longer serving any purpose in relation to the passenger's original travel plan, with a return flight to the first point of departure at the earliest opportunity;
  - (b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or
  - (c) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience.

The passengers shall also be offered free of charge a telephone call and/or telex or fax message and/or e-mail to the point of final destination.

2. When, in the case where a town, city or region is served by several airports, an air carrier or tour operator offers a passenger a flight to an alternative airport to that for which the booking was made, the carrier or tour operator shall bear the cost of travelling from that alternative airport either to that for which the booking was made or to another close-by destination, agreed with the passenger.

*Article 9*  
*Right to care while awaiting a later flight*

1. In the case of denied boarding passengers shall be offered free of charge:
  - (a) meals and refreshments in a reasonable relation to the waiting time;
  - (b) hotel accommodation in cases where a stay of one or more nights, or an additional stay, becomes necessary.

*Article 10*  
*Cancellation*

1. In the case of cancellation of a flight, the following provisions apply except when the air carrier or tour operator can prove that it was done solely because of exceptional circumstances beyond its responsibility or that of its subcontracting agent.
2. When, before the scheduled time of departure, an air carrier or tour operator cancels or reasonably expects to cancel a flight, it shall make every effort to contact the passengers affected and to agree with them the conditions under which they accept to surrender their confirmed reservations. At the very least the passengers shall be offered a choice between:
  - (a) either reimbursement of the full cost of the ticket, under the conditions by which it was paid, for the part or parts of their journey not made and for the

part or parts already made, if no longer serving any purpose in relation to the passenger's original travel plan, with a return flight to the first point of departure at the earliest opportunity; or

- (b) rerouting, under comparable conditions of transport, to their final destination at the earliest opportunity; or
  - (c) rerouting, under, comparable transport conditions, to their final destination at a later date, at their convenience.
3. Those passengers, with whom an air carrier or tour operator does not reach an agreement in accordance with paragraph 2 and which present themselves for check-in in accordance with Article 3, paragraph 1, shall be offered the compensation and assistance offered in the case of denied boarding, as specified in Articles 7, 8 and 9.

#### *Article 11 Delay*

1. When an air carrier or tour operator reasonably expects a flight to be delayed beyond its scheduled time of departure for two hours or more in the case of flights of less than 3,500 kilometres or for four hours or more in the case of flights of 3,500 kilometres or more, passengers shall be offered the assistance offered in the case of denied boarding as specified in Article 8.

In any event, that assistance shall be offered no later than two hours after the scheduled time of departure of the flight in the case of flights of less than 3,500 kilometres and no later than four hours after the scheduled time of departure of the flight in the case of flights of 3,500 kilometres or more.

2. When an air carrier or tour operator reasonably expects a flight to be delayed for two hours or more beyond its scheduled time of departure, it shall immediately offer the assistance offered in the case of denied boarding as specified in Article 9 to a disabled passenger and any accompanying person, to a passenger whose mobility is otherwise reduced or to an unaccompanied child, as well as any other assistance reasonably required to meet the special needs of such passengers.

#### *Article 12 Further compensation*

This Regulation shall apply without prejudice to a passenger's subsequent application to the courts having jurisdiction, with a view to further compensation.

#### *Article 13 Compensation from a third party*

In cases where an air carrier or tour operator pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from a third party in accordance with the law applicable.

*Article 14*  
*Obligation to inform passengers of their rights*

1. The legal entity responsible for check-in of passengers shall ensure that a clearly legible notice containing the following text is displayed at the check-in area in a manner clearly visible to passenger: “If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regard to compensation and assistance”.
2. An air carrier or tour operator denying boarding or cancelling a flight shall provide each passenger affected with a written notice setting out the rules for compensation and assistance in line with the provisions of this Regulation. It shall also provide each passenger affected by a delay of at least two hours with an equivalent notice.

*Article 15*  
*Exclusion of waiver*

Obligations vis-à-vis passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the contract of carriage.

*Article 16*  
*Penalties*

Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 1<sup>st</sup> January 2004 at the latest and shall notify it without delay of any subsequent amendment affecting them.

*Article 17*  
*Enforcement*

Each Member State shall designate the body responsible for the enforcement of this Regulation and shall make this public. The body shall be responsible for enforcement of the Regulation as regards airports situated on the territory of the Member State and flights from a third country to an airport situated on that territory. It shall be responsible, among other things, for the investigation of complaints concerning the respect of this Regulation and for taking the measures necessary to ensure that the rights of passengers are respected.

*Article 18*  
*Complaints*

A passenger may complain to any body designated by a Member State about a possible infringement of this Regulation at any airport situated on the territory of a Member State [to which the Treaty applies?] or concerning any flight from a third country to an airport situated on that territory. If not responsible, the body shall communicate the complaint to the body responsible for enforcement in the case in question. The body responsible shall investigate the

complaint and take any measures necessary to ensure that the rights of the passenger are respected.

*Article 19*  
*Report*

The Commission shall report to the European Parliament and the Council by 1<sup>st</sup> January 2008 at the latest on the operation and the results of this Regulation, in particular the incidence of denied boarding and of cancellation of flights.

The report shall be accompanied where necessary by legislative proposals.

*Article 20*  
*Repeal*

Regulation (EEC) No. 295/91 is repealed.

*Article 21*  
*Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## **IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES**

### **Title of proposal**

Proposal for a regulation of the European Parliament and the Council establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights

### **Document reference number**

### **The proposal**

The regulation would give passengers the right to financial compensation, an alternative flight or reimbursement of the ticket, and assistance at the airport in the event of denied boarding or cancellation of the flight. It would give passengers suffering long delays the right to an alternative flight or reimbursement. It would apply to all carriers departing from Community airports and to Community carriers flying from a non-Community to a Community airport (in some circumstances). It would replace Council Regulation No. 295/91 of 4 February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport.

### **The impact on business**

Community carriers and tour operators and non-Community carriers departing from airports in the Community would have to comply with the proposed regulation and so have to change their conditions of carriage.

The air transport sector is characterised by a number of large companies which carry the majority of passengers. There is no particular geographic concentration of the sector.

The cost of compensating and assisting passengers denied boarding, additional to that of meeting the requirements of the present regulation should not be excessive, although hard to forecast precisely. There are few grounds for expecting that passengers would systematically obtain compensation higher than at the present rates as a condition for volunteering. However the levels of compensation to be paid passengers that do not volunteer and are denied boarding would be higher than those set by the present regulation. Also, the scope of the proposed regulation is wider than the present one: it extends compensation to cancellation of flights for reasons outside the control of the air carrier or tour operator.

Nevertheless as roughly one passenger in a thousand is denied boarding, the effects on revenue and profits should not be serious. Also the impact on the competitiveness of Community companies should be slight, as all carriers leaving from Community airports would be covered, whether Community or third country.

There should be no significant effects on employment, investment or the creation of new businesses.

It should be noted that in the United States carriers are subject to legislation on compensation for denied boarding, based on a volunteer system that has proved effective.