



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.8.2003  
COM(2003) 496 final

2001/0305 (COD)

**OPINION OF THE COMMISSION**

**pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,  
on the European Parliament's amendments  
to the Council's common position regarding the  
proposal for a**

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

**establishing common rules on compensation and assistance to passengers in the event of  
denied boarding and of cancellation or long delay of flights, and repealing  
Regulation (EEC) No 295/91**

**AMENDING THE PROPOSAL OF THE COMMISSION  
pursuant to Article 250 (2) of the EC Treaty**

**OPINION OF THE COMMISSION**

**pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,  
on the European Parliament's amendments  
to the Council's common position regarding the  
proposal for a**

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

**establishing common rules on compensation and assistance to passengers in the event of  
denied boarding and of cancellation or long delay of flights, and repealing  
Regulation (EEC) No 295/91**

**1. INTRODUCTION**

Article 251(2), third subparagraph, point (c) of the EC Treaty provides that the Commission is to deliver an opinion on the amendments adopted by the European Parliament at second reading. The Commission sets out its opinion below on the 15 amendments proposed by Parliament.

**2. BACKGROUND**

On 21<sup>st</sup>. December 2001 the Commission transmitted to the European Parliament and the Council its proposal for a regulation (COM(2001) 784 final - 2001/0305 (COD)).

At its plenary session of 17 - 18<sup>th</sup>. July 2002 the European Economic and Social Committee delivered a favourable opinion.

The Committee of the Regions did not give an opinion.

On 24<sup>th</sup>. October 2002 the European Parliament at first reading approved the proposal subject to amendments.

On 4<sup>th</sup>. December 2002 the Commission adopted an amended proposal incorporating a number of the European Parliament's amendments (COM(2002) 717 final).

On 18<sup>th</sup>. March 2003 the Council adopted a common position with qualified majority.

On 25<sup>th</sup>. March 2003 the Commission adopted an opinion concerning the common position (SEC(2003) 361 final).

On 3<sup>rd</sup>. July 2003 the European Parliament, at second reading, adopted a resolution amending the common position.

### **3. PURPOSE OF THE PROPOSAL**

In 1991 the Community adopted a regulation on compensation for passengers in the event of denial of boarding to scheduled flights when caused by overbooking. This gave passengers, if denied boarding at an airport in the Community, the right to financial compensation, to the choice between an alternative flight and a ticket refund and to care while awaiting a later flight (meals and hotel accommodation). This was an important step in the creation of rights for air passengers.

In 2001 the Commission adopted a proposal to reinforce the protection of passengers, among other things by introducing measures to reduce the frequency of denied boarding. In the event of denied boarding, the proposal would oblige carriers first to call for volunteers to give up their reservations in exchange for agreed benefits. Then, only if insufficient volunteers came forward, would airlines be allowed to deny boarding. In this case, they would have to compensate and assist passengers as under the present regulation. To give airlines a strong incentive to find volunteers and create a powerful deterrent to denying passengers boarding against their will, the proposal would set compensation at higher levels than under the present regulation.

In addition, the proposed regulation would extend the above rights:

- to cancellations of flights when the responsibility of the airline, one aim being to reduce the number of people affected by late cancellations;
- to non-scheduled flights; as these are frequently used for package tours, the regulation would lay obligations on tour operators as well as airlines;
- to return flights from third countries to the Community, when operated by Community carriers.

The proposal would also create basic rights for passengers facing long delays.

### **4. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT**

In its communication to the European Parliament on the Council's common position (SEC(2003) 361), the Commission stated that the common position did not alter the aims and approach of its proposal so that it could support it, although it would have preferred higher levels of compensation.

The Parliament at second reading adopted fifteen amendments, of which the Commission accepts eight wholly or in part, as they are in line with the objectives of its proposal.

#### **4.1. Amendments accepted by the Commission**

Amendment 8 essentially 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 11<sup>th</sup>. September 2001. Part of the proposal concerned: Article 3 paragraph 2 (a).

Amendment 11 would, first, align 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. Part of the proposal concerned: Article 6 paragraph 1.

It would, second, 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.

Amendment 12 would align 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. Part of the proposal concerned: Article 7 paragraph 2.

Amendment 13 (second element, with rewording) would add "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. Part of the proposal concerned: Article 8 paragraph 1 (c).

Amendment 14 would align 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. Part of the proposal concerned: Article 10 paragraph 2.

Amendment 16 would allow 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. Part of the proposal concerned: Article 13.

Amendment 19 would postpone for one year the Commission's report. This would allow it time to gather fuller information on the operation and results of the regulation. Part of the proposal concerned: Article 17 introductory sentence.

Amendment 20 would change 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. Part of the proposal concerned: Article 19.

#### **4.2. Amendments rejected by the Commission**

Amendment 2 would add 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. Part of the proposal concerned: new recital 13.

Amendment 4 would change 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. Part of the proposal concerned: new recital 15.

Amendment 5 would exclude 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. Part of the proposal concerned: Article 2 (d).

Amendment 6 would reduce 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. Part of the proposal concerned: Article 2 (h).

Amendment 7 would define 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. Part of the proposal concerned: Article 2 (ka) new.

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.

Amendment 13 (first element) would limit 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. Part of the proposal concerned: Article 8 paragraph 1 (c).

Amendment 15 would remove 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). Part of the proposal concerned: Article 12 paragraph 1.

Amendment 17 would allow 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. Part of the proposal concerned: Article 13 paragraph 1 (a) new.

## **5. CONCLUSION**

In accordance with Article 250(2) of the EC Treaty, the Commission amends its proposal accordingly.