

COUNCIL REGULATION (EEC) No 295/91

of 4 February 1991

establishing common rules for a denied-boarding compensation system in
scheduled air transport

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas liberalization measures adopted by the Council in July 1990 represent a further step towards a fully developed common air transport policy;

Whereas common action in the field of the protection of the interests of air transport users is required, in order to ensure a well-balanced development in the light of the radically changing environment in which air carriers have to operate;

Whereas current practice in the field of denied-boarding compensation differs substantially between air carriers;

Whereas certain common minimum standards in the field of denied-boarding compensation should ensure that the quality of air carriers' services is maintained in a context of increased competition;

Whereas an air carrier should be obliged to establish rules for boarding in the event of an overbooked flight;

Whereas in the event of boarding being denied the rights of passengers should be defined;

Whereas air carriers should be obliged to pay compensation and to provide additional services to passengers who are denied boarding;

Whereas passengers should be clearly informed about applicable rules,

HAS ADOPTED THIS REGULATION :

Article 1

This Regulation establishes common minimum rules applicable where passengers are denied access to an over-

(1) OJ No C 129, 24. 5. 1990, p. 15.

(2) OJ No C 19, 28. 1. 1991.

(3) OJ No C 31, 6. 2. 1991.

booked scheduled flight for which they have a valid ticket and a confirmed reservation departing from an airport located in the territory of a Member State to which the Treaty applies, irrespective of the State where the air carrier is established, the nationality of the passenger and the point of destination.

Article 2

For the purposes of this Regulation :

(a) 'denied boarding' means a refusal to accommodate passengers on a flight although they have :

- a valid ticket,
- a confirmed reservation on that flight, and
- presented themselves for check-in within the required time limit and as stipulated ;

(b) 'confirmed reservation' means that a ticket sold by the air carrier or its authorized travel agent contains :

- a specification of the number, date and time of the flight, and
- the notation 'OK', or any other entry, in the appropriate space on the ticket signifying the registration by the air carrier as well as the express confirmation by the air carrier of the reservation ;

(c) 'scheduled flight' means a flight possessing all of the following characteristics :

- it is performed by aircraft for the transport of passengers or passengers and cargo and/or mail for remuneration, in such a manner that, for each flight, seats are available for purchase by members of the public, either directly from the carrier or from its authorized agents,
- it is operated to serve traffic between two or more points, either :
 - (i) according to a published timetable ; or
 - (ii) with flights so regular or frequent that they constitute a recognizably systematic series ;

(d) 'overbooked flight' means a flight where the number of passengers holding a confirmed reservation and presenting themselves for check-in within the required time limit and as stipulated exceeds the number of available seats on that flight ;

(e) 'volunteer' means a person who has:

- a valid ticket,
- a confirmed reservation, and
- presented himself for check-in within the required time limit and as stipulated and who responds positively to the air carrier's call for passengers being prepared to surrender their confirmed reservation in exchange for compensation;

(f) 'final destination' means the destination on the flight coupon presented at the check-in counter or, in the case of successive flights, on the last flight coupon of the ticket. Connecting flights which can be carried out without difficulties although a delay has been caused by denied boarding are not taken into account.

Article 3

1. The air carrier must lay down the rules which it will follow for boarding in the event of an overbooked flight. It shall notify these rules and any changes therein to the Member State concerned and to the Commission, which shall make them available to the other Member States. Any such changes shall enter into force one month after their notification.

2. The rules referred to in paragraph 1 shall be made available to the public at the carrier's agencies and check-in counters.

3. The rules referred to in paragraph 1 should include the possibility of a call for volunteers prepared not to board.

4. In any event the air carrier should take into consideration the interests of passengers who must be given boarding priority for legitimate reasons, such as handicapped persons and unaccompanied children.

Article 4

1. In the event of boarding being denied, a passenger shall have the choice between:

- reimbursement without penalty of the cost of the ticket for the part of the journey not made, or
- re-routing to his final destination at the earliest opportunity, or
- re-routing at a later date at the passenger's convenience.

2. Irrespective of the passenger's choice mentioned in the case referred to in paragraph 1, the air carrier shall, immediately after boarding has been denied, pay minimum compensation, without prejudice to paragraphs 3 and 4, amounting to:

- ECU 150 for flights of up to 3 500 km,
- ECU 300 for flights of more than 3 500 km,

having regard to the final destination specified in the ticket.

3. Where the air carrier offers re-routing to the final destination on an alternative flight, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked by two hours for flights of up to 3 500 km, and by four hours for flights of more than 3 500 km, the compensation provided for in paragraph 2 above may be reduced by 50 %.

4. The amounts of compensation need not exceed the price of the ticket in respect of the final destination.

5. The compensation shall be paid in cash or, in agreement with the passenger, in travel vouchers and/or other services.

6. If, on an overbooked flight, a passenger agrees to be placed in a class lower than that for which a ticket has been purchased, he shall be entitled to reimbursement of the difference in price.

7. The distances given in paragraphs 2 and 3 shall be measured by the great circle track method (great circle route).

Article 5

1. In the event of boarding being denied on a flight sold as part of a package tour, the air carrier shall be obliged to compensate the tour operator who has concluded a contract with the passenger and who is liable to him for the proper performance of the contract for the said package tour under Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (1).

2. Without prejudice to the rights and obligations arising under Directive 90/314/EEC, the tour operator shall be obliged to pass on to the passenger the sums collected under paragraph 1.

Article 6

1. Apart from the minimum compensation amounts set out in Article 4, the air carrier shall offer free of charge to passengers who are denied boarding:

- (a) the expenses for a telephone call and/or telex/fax message to the point of destination;
- (b) meals and refreshments in a reasonable relation to the waiting time;
- (c) hotel accommodation in cases where an additional stay of one or more nights is necessary.

2. When a town, city or region is served by several airports and an air carrier offers a passenger, who has been denied boarding, a flight to an airport other than the destination airport that the passenger had booked, the

(1) OJ No L 158, 23. 6. 1990, p. 59.

cost of travelling between the alternative airports or to an alternative close-by destination, agreed with the passenger, shall be borne by the air carrier.

Article 7

The air carrier shall not be obliged to pay denied-boarding compensation in cases where the passenger is travelling free of charge or at reduced fares not available directly or indirectly to the public.

Article 8

Air carriers shall provide each passenger affected by denied boarding with a form setting out the denied-boarding compensation rules.

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

Done at Brussels, 4 February 1991.

Article 9

1. This Regulation shall apply without prejudice to subsequent application to the courts having jurisdiction with a view to further compensation.

2. Paragraph 1 shall not apply to the volunteers as defined in Article 2 (e) who have accepted compensation under the rules referred to in Article 3.

Article 10

This Regulation shall enter into force two months after the date of its publication in the *Official Journal of the European Communities*.

For the Council

The President

J. F. POOS