

II

(Preparatory Acts)

COMMISSION

Amended proposal for a Council Regulation (EC) amending Council Regulation (EEC) No 295/91 establishing common rules for a denied-boarding compensation system in scheduled air transport ⁽¹⁾

(98/C 351/06)

(Text with EEA relevance)

COM(1998) 580 final — 98/0022(SYN)

(Submitted by the Commission pursuant to Article 189a(2) of the EC Treaty on 19 October 1998)

⁽¹⁾ OJ C 120, 18.4.1998, p. 18.

ORIGINAL PROPOSAL

Whereas action by the Community in the field of air transport must aim at ensuring a high level of protection for users' interests;

Whereas Council Regulation (EEC) No 295/91 laid down certain minimum standards on this subject;

Whereas in the light of application of that Regulation, greater protection should be ensured for passengers' rights in this area;

Whereas passengers should be better informed of their rights in the event of being denied boarding;

Whereas certain provisions of Regulation (EEC) No 295/91 should be clarified;

Whereas to avoid any disagreement about the check-in time, that time should be set at 30 minutes before the announced departure time, unless the passenger is informed otherwise in writing in advance;

AMENDED PROPOSAL

Unchanged

ORIGINAL PROPOSAL

Whereas since, in commercial terms, the borderline between scheduled and non-scheduled air services is becoming blurred, limitation of the scope of Regulation (EEC) No 295/91 to scheduled flights only is no longer sustainable; whereas that Regulation should also be extended to passengers on non-scheduled flights;

Whereas to provide effective protection for passengers, it should be made clear that air carriers cannot be exempted, by means of contractual clauses, from their obligations pursuant to Regulation (EEC) No 295/91;

Whereas to provide rapid and effective protection for passengers, arrangements should be made for the carrier which denies boarding to assume the obligations provided for under this Regulation *vis-à-vis* the passenger, without prejudice to that carrier's right to seek compensation from a third party in accordance with the relevant national legislation;

Whereas to ensure that air carriers can not avoid the obligations incumbent upon them when boarding is being denied, account should also be taken of the development of new forms of ticketing;

Whereas to ensure that all passengers will be treated in accordance with the objectives of this Regulation, a confirmed reservation indicates the existence of a transport contract between the air carrier and the passenger; whereas confirmed reservations may not be made subject to additional conditions such as reconfirmation;

Whereas to ensure that passengers are adequately informed of their rights in the event of being denied boarding, provision should be made for a notice at check-in counters; whereas in this respect, it is particularly important that the Member State ensure compliance with these provisions at all airports on their territory;

Whereas it should be ensured that the air carrier uses the entire available capacity of his aeroplane before denying boarding, even if this means that the passenger will be transported in a class different from that for which his ticket was paid;

AMENDED PROPOSAL

Whereas it should be ensured that the air carrier uses the entire available capacity of its aeroplane subject to load restrictions before denying boarding, even if this means that the passenger will be transported in a class different from that for which his ticket was paid;

ORIGINAL PROPOSAL

Whereas adequate compensation to a passenger who has been denied boarding should consist in the reimbursement of the cost of any part of his ticket which applies to a part of his journey which the passenger will not undertake and of any part which no longer serves any purpose in relation to his travel plan as a result of his being denied boarding;

Whereas in the light of economic trends, it is already necessary to adjust the compensation thresholds;

Whereas to ensure compliance with the provisions on the subject, penalties which provide an adequate deterrent and are proportionate should be introduced; whereas an appropriate system for adaption thereof should, consequently, be set up;

Whereas Regulation (EEC) No 295/91 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

‘Article 1

1. This Regulation establishes common minimum rules applicable where passengers are denied access to an overbooked flight for which they have 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 carrier is established, the nationality of the passenger and the point of destination.

2. The obligation of air carriers *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.

AMENDED PROPOSAL

Unchanged

Whereas to ensure compliance with the provisions on the subject, penalties which provide an adequate deterrent and are proportionate should be introduced by the Member States;

Unchanged

‘Article 1

1. This Regulation establishes common minimum rules applicable where passengers are denied access to an overbooked flight for which they have a confirmed reservation and applies to:

- (a) all carriers 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,
- (b) Community carriers returning from airports in third countries to points of destination in the territory of a Member State to which the Treaty applies irrespective of the nationality of the passenger.

Unchanged

ORIGINAL PROPOSAL

Article 2

For the purpose of this Regulation:

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

- a confirmed reservation on that flight, and
- presented themselves for check-in as stipulated and 30 minutes before the announced departure time or, where more time is prescribed, by the time indicated to the passenger in advance in writing by the air carrier or by its authorised travel agent;

(b) “ticket” means a valid ticket or equivalent transport document, whether in a paper form or paperless, including electronic form, sold by the air carrier or its authorized travel agent;

(c) “confirmed reservation” means that, to the exclusion of any other condition, the passenger has a ticket which contains

(i) in the case of a ticket,

- a specification of the number, date and time of the flight, and

- the notation “OK” in the appropriate space, or

(ii) in the case of a paper or paperless transport document equivalent to a ticket, indicates that the reservation has been registered and confirmed;

(d) “overbooked flight” means any flight in return for payment 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, including cases where the aircraft intended for the flight has been replaced by another aircraft;

AMENDED PROPOSAL

Article 2

For the purpose of this Regulation:

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

- a confirmed reservation on that flight, and
- presented themselves for check-in as stipulated and at the time indicated in advance in writing by the air carrier or by its authorised travel agent, and if no time is indicated, not later than 30 minutes before the published departure time; the airline shall be responsible for identifying those passengers still in the queue at the time of closing the check-in for a flight, who shall be deemed to have presented themselves for check-in;

Unchanged

(d) “overbooked flight” means any flight in return for payment 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, including cases where the aircraft intended for the flight has been replaced by another aircraft, or the flight has been cancelled for commercial reasons;

ORIGINAL PROPOSAL

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(e) "volunteer" means a person who:

Unchanged

- has a confirmed reservation, and
- responds positively to the air carrier's call for passengers 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, the destination 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 use the full capacity available on the aircraft before denying boarding.

Article 3

1. The air carrier must use the full capacity available on the aircraft, subject only to passenger load restrictions for safety reasons, before denying boarding.

If the passenger is placed in a higher class than that for which a ticket has been purchased, the air carrier may request no supplementary payment.

If the passenger is placed in a higher class than that for which a ticket has been purchased, the air carrier may not request any supplementary payment.

If the passenger agrees to be placed in a class lower than that for which a ticket has been purchased, he shall be entitled in addition to the compensation in accordance with Article 4(2), (4) and (5), to reimbursement of the difference in price.

Unchanged

2. All air carriers must lay down the rules which they will follow when passengers are denied boarding in the event of an overbooked flight, including the rules laying down the priorities for passenger embarkation. These rules must include all the obligations arising from this Regulation. The air carriers shall notify these rules and any changes therein to the Member States concerned and to the Commission, which shall make them available to the Member States. Any such changes shall enter into force one month after their notification.

2. All air carriers must lay down, in plain and intelligible language, the rules which they will follow when passengers are denied boarding in the event of an overbooked flight, including the rules laying down the priorities for passenger embarkation. These rules must include all the obligations arising from this Regulation. The air carriers shall notify these rules and any changes therein to the Member States concerned and to the Commission, which shall make them available to the Member States as well as to the relevant European consumer organisations. Any such changes shall enter into force one month after their notification.

3. The rules referred to in paragraph 2 shall be made available to the public by the carriers.

3. The rules referred to in paragraph 2 shall be made available to the public by the carriers; this duty may be discharged via their authorised travel agencies.

ORIGINAL PROPOSAL

The legal entity responsible for passenger check-in must ensure that a notice containing the following text in letters at least two centimetres high is displayed at the check-in counters in a manner clearly visible for passengers:

“If you are denied boarding, ask this check-in counter for the text stating your rights, particularly with regard to compensation.”

4. The rules referred to in paragraph 2 must, where technically feasible, include the possibility of a call for volunteers prepared not to board.

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

6. The rules referred to in paragraph 2 shall form part of the air carrier's condition of carriage.

Article 4

1. In the event of boarding being denied, the air carrier denying boarding must offer the passenger the choice between:

- reimbursement without penalty of the cost of the ticket for all parts of the journey not made or which no longer serve any purpose in relation to its original travel plan, or
- re-routing under comparable air transport conditions, to his final destination at the earliest opportunity, or
- re-routing under comparable air transport conditions, at a later date at the passenger's convenience.

AMENDED PROPOSAL

Unchanged

5. In any event, the air carrier must take into consideration the interests of the passengers who must be given boarding priority for legitimate reasons, such as handicapped persons (and those accompanying them) and unaccompanied children.

6. The rules referred to in paragraph 2 shall form part of the air carrier's condition of carriage.

Member States shall make reference to these rules in the permits issued to third country air carriers using Community airports.

Article 4

1. In the event of boarding being denied, the air carrier denying boarding, or those acting on its behalf at the airport, must offer the passenger the choice between:

- reimbursement without penalty of the cost of the ticket for all parts of the journey not made or which no longer serve any purpose in relation to its original travel plan, or
- re-routing under comparable air transport conditions, to his final destination at the earliest opportunity, or
- re-routing under comparable air transport conditions, at a later date at the passenger's convenience.

ORIGINAL PROPOSAL

2. Irrespective of the passenger's choice mentioned in the case referred to in paragraph 1, the air carrier denying boarding shall, immediately after the boarding has been denied, pay minimum compensation without prejudice to paragraph 4 and 5, amounting to:

- ECU 185 for flights up to 3 500 km,
- ECU 370 for flights of more than 3 500 km,

having regard to the final destination specified in the ticket.

3. The Commission, acting in accordance with the procedure laid down in Article 9a, may adjust the amounts referred to in paragraph 2 where that is made necessary by economic trends.

4. Where the air carrier denying boarding 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 may be reduced by 50 %.

5. The amount of compensation need not exceed the price of the ticket in respect of the final destination.

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

7. The distances given in paragraphs 2 and 4 shall be measured by the great circle track method (great circle route).'

AMENDED PROPOSAL

2. Irrespective of the passenger's choice mentioned in the case referred to in paragraph 1, and without prejudice to paragraph 4 and 5, the air carrier denying boarding shall, immediately after the boarding has been denied, pay at least the following amounts as compensation:

- ECU 185 for flights up to 3 500 km,
- ECU 370 for flights of more than 3 500 km,

having regard to the final destination specified in the ticket.

3. Every three years the Commission, acting in accordance with the procedure laid down in the following subparagraph and assisted by the Committee established by Article 11 of Council Regulation (EEC) No 2408/92, may adjust the amounts referred to in paragraph 2 where that is made necessary by economic trends.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit, which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Unchanged

6. The compensation shall be paid in cash or, with the signed agreement of the passenger, by bank order, cheque, in travel vouchers and/or other services.

Unchanged

ORIGINAL PROPOSAL

‘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 denying boarding shall provide each passenger affected by denied boarding with a notice setting out the denied boarding compensation rules.’

‘Article 9a

The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.’

‘Article 9b

Member States shall determine the penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that it is implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify the Commission of those measures no later than 30 June 1998 and shall notify it of any amendments thereto without delay.’

AMENDED PROPOSAL

‘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. This exemption shall not apply to tickets issued under a Frequent Flyer Programme.’

‘Article 8

Air carriers denying boarding shall provide each passenger affected with a notice setting out the denied boarding compensation rules in line with the provisions of this Regulation. In the event of conflict between the provisions of this Regulation and any lawful requirement regarding denied boarding compensation of a third country on air carriers operating on its territory, air carriers shall, if possible, give passengers the benefit of those provisions that are the most favourable to the passenger.’

Delete

‘Article 9b

Member States shall determine the penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that it is implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify the Commission of those measures no later than 6 months after the entry into force of this amending Regulation and shall notify it of any amendments thereto without delay.’

ORIGINAL PROPOSAL

'Article 9c

Each year the Member States shall compile a summary report of the cases of denied boarding due to over-booking which occurred at airports on their territory. Those reports shall be submitted to the Commission by 31 March of the year following the year covered by the report.'

AMENDED PROPOSAL

'Article 9c

Each year the Member States shall compile a summary report of the cases of denied boarding due to over-booking which occurred at airports on their territory, identifying the airline companies involved. Those reports shall be submitted to the Commission by 31 March of the year following the year covered by the report. The Commission shall make this information available to the relevant European consumer organisations.'