

Opinion of the Economic and Social Committee on the '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'

(COM(2001) 784 final — 2001/0305 (COD))

(2002/C 241/05)

On 30 January 2002 the Council decided to consult the Economic and Social Committee, under Article 80 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 June 2002. The rapporteur was Mr Green.

At its 392nd Plenary Session of 17 and 18 July 2002 (meeting of 17 July) the Economic and Social Committee adopted the following opinion by 121 votes to two, with one abstention.

1. Background

1.1. In 1991, the Community recognised the need for common rules on compensation and assistance to passengers denied boarding, and adopted Regulation (EEC) No 295/91 ⁽¹⁾.

1.2. In 1998, the Commission concluded that the rules needed extension and clarification and proposed a Council Regulation amending Regulation (EEC) No 295/91 — COM(1998) 41 final — 98/0022(SYN) ⁽²⁾.

1.3. As amended following the Parliament's opinion ⁽³⁾, the proposal would have considerably widened the scope of the regulation. Among other things, it would have included non-scheduled flights, flights from non-Community to Community airports, cancellations other than for safety or security reasons, paperless forms of ticket and better information of passengers on their rights.

1.4. The EESC opinion on the proposal concluded: 'The Committee agrees that, subject to the results of a full assess-

ment of the costs and benefits involved, there continues to be a need for a regulation governing the payment of denied boarding compensation in the case of overbooking. The present regulation has been effective, but is in need of revision to deal with problems which have arisen since it was first adopted' ⁽⁴⁾.

1.5. However, the Council failed to adopt the proposal because of disagreement about its application to Gibraltar airport.

1.6. In 2000, the Commission, in its Communication on the protection of air passengers in the European Union ⁽⁵⁾, announced its intention to withdraw its 1998 proposal and to replace it by a stronger one.

1.7. In May 2001, the Association of European Airlines ⁽⁶⁾, and others, presented voluntary commitments to improve their quality of service etc. and recommended that their members adopt them, as the majority are expected to do. These are a real step forward, but do not cover compensation

⁽¹⁾ 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, p. 5.

⁽²⁾ 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.

⁽³⁾ 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.

⁽⁴⁾ Opinion of the Economic and Social Committee TRA/357 on the Commission's 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).

⁽⁵⁾ 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.

⁽⁶⁾ AEA (Association of European Airlines), ERA (European Regions Airlines Association) and IACA (International Air Carriers Association).

and assistance to passengers who are denied boarding or whose flights are cancelled. The Commission therefore feels that legislation is required to protect such passengers.

1.8. Against this backdrop, the Commission has now submitted this 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⁽¹⁾ which is the subject of this opinion. Under Article 20 of the proposal, the existing Regulation (EEC) No 295/91 would be repealed.

2. The Commission proposal

2.1. Under the existing Regulation (EEC) No 295/91, a passenger denied boarding has three rights:

- financial compensation (between EUR 75 and EUR 300),
- choice between an alternative flight and reimbursement of the ticket, and
- care while waiting: refreshments, meals, hotels.

2.2. In contrast to the current position, the Commission is now proposing that, in connection with denied boarding, an operator would be obliged to ask passengers to volunteer to give up their places in exchange for compensation to be negotiated on the spot. Such compensation would reflect the value that each passenger attached to the inconvenience involved.

2.3. Only if an insufficient number of volunteers came forward, would operators be allowed to deny boarding. Passengers denied boarding would have the same rights as hitherto, although the financial compensation would be raised to between EUR 375 and EUR 1 500 depending on whether the distance involved is more or less than 3 500 km.

2.4. Moreover, a passenger denied boarding would be able to choose between (i) reimbursement of the cost of the ticket and, if need be, free transport home, or (ii) re-routing at the earliest opportunity. Passengers denied boarding would also be given assistance in the form of meals and, if necessary, hotel accommodation.

2.5. No provision is made in the existing regulation for flight cancellations for which the operator is responsible. The new proposal obliges operators to contact the passengers and

call for volunteers to surrender their reservations, unless operators can prove that the situation has arisen solely as the result of exceptional circumstances outside their responsibility.

2.6. Any passenger who does not voluntarily surrender his or her reservation would, in future, enjoy the rights set out under points 2.2, 2.3 and 2.4. above.

2.7. Long delays are not covered under the existing regulation either. The proposal rectifies that situation, giving passengers the right to choose between an alternative flight or ticket reimbursement. In addition, special-need passengers, people with reduced mobility, any accompanying person, and unaccompanied children will be entitled to the services specified in Article 9 of the proposal and to any other assistance reasonably required to meet the special needs of such passengers while waiting.

2.8. Long delays are understood to mean two hours for flights of less than 3 500 kilometres and four hours for longer flights.

2.9. Lastly, a proposal is on the table to extend the regulation to non-scheduled flights as well. The existing regulation covers scheduled flights only. This does not affect passengers' rights under the directive on package travel⁽²⁾.

2.10. The proposal is to apply to paying passengers, including those travelling on frequent flyer points, 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 the parties concerned benefit from comparable compensation and assistance in that third country.

2.11. A table summarising both the existing and the proposed new regulation is appended to this opinion.

2.12. Each Member State is to designate the body responsible for the enforcement of this regulation.

⁽¹⁾ COM (2001) 784 final — 2001/0305 (COD).

⁽²⁾ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, OJ L 158, 23.6.1990, p. 59.

3. General comments

3.1. The Committee is pleased that the Commission has now taken the initiative and issued a completely new, revised regulation. It is also happy that the Commission has taken on board some of the improvements that the Committee had proposed in its opinion on the original regulation. Some of the improvements suggested by the Committee in its opinion on the Commission's proposal to amend the original regulation have now also been included, even although the proposal for an amendment was not adopted at the time.

3.2. The Committee regrets the Commission's failure to publish detailed European statistics on the extent of denied boarding. The US Department of Transport draws up monthly statistics on delays, denied boarding etc ⁽¹⁾.

3.3. The Committee hopes that, given the level of compensation involved, instances of denied boarding will — for commercial reasons — remain limited, since operators cannot make a profit if, because of overbooking, they consistently deny passengers boarding. The Committee also looks forward to the promised regular Commission reports on the issue.

3.4. It should be pointed out — and is evident from the legal basis — that the main purpose of the proposal is to protect consumers ⁽²⁾.

4. Specific comments

4.1. Article 7(1)

4.1.1. The Commission proposes relating compensation to fares, setting it at twice the level of most business class fares. However, the new regulation is also to apply to smaller regional flights (on aircraft with a maximum of sixty seats and no business class), and to package travel, holidays and tours. Per-passenger fares on non-scheduled flights are appreciably lower than scheduled business class fares. Similarly, fares may be lower on smaller regional flights on aircraft with a maximum of sixty seats and no business class. If denied

boarding is subject to the same compensation rates in all cases, then — relative to the fare involved — regional and non-scheduled flight operators will have to pay a much higher 'penalty' than scheduled flight operators. That is unwarranted.

4.1.2. Recommendation

Consideration should be given to the appropriateness of the compensation rates proposed in Article 7(1). Where necessary, a distinction can be made in compensation rates between scheduled flights, smaller regional flights and non-scheduled flights.

4.2. Article 7(2)

4.2.1. In its opinion TRA/357 of 1 July 1998 on the Commission's proposal amending the original regulation, the Committee backed the provision whereby compensation payments may be reduced by 50 % in cases where a passenger denied boarding on the flight of his or her choice because of overbooking is re-routed and arrives at his or her intended destination within two hours of the scheduled arrival time for flights of up to 3 500 km or within four hours for longer flights. At that time, the Committee felt that these figures should be reduced to one hour instead of two, and to two hours instead of four.

4.2.2. Recommendation

Where an airline that denies a passenger boarding on his or her original flight, is able to offer travel on another flight which, for flights of up to 3 500 km, arrives not more than one hour later, and not more than two hours later for longer flights, compensation payments should be reduced by 50 %.

4.3. Article 19

4.3.1. The Commission is to report to the European Parliament and the Council by 1 January 2008 at the latest. In the meantime, the Commission should draw up a report every five years on implementation of the regulation, based partly on its own assessments, partly on enquiries in the Member States.

4.3.2. Recommendation

The Commission should submit a report every five years on implementation of the regulation based on reports drawn up by the Member States.

4.4. Other comments

4.4.1. The Committee would like to see the regulation, and the compensation payments in particular, subject to regular revision, for instance, in conjunction with the annual meetings

⁽¹⁾ For homepage, see www.dot.gov/airconsumer.

⁽²⁾ The proposal also covers package travel, i.e. services defined in Article 2(1) of Council Directive 90/314/EEC, but does not affect passengers' rights under that directive.

with representatives of air transport user organisations provided for in Article 8 of Regulation (EEC) 2409/92 ⁽¹⁾. Such revision should take account of the expenses incurred by the parties implementing the regulation, the benefits for consumers and also the overall development of passenger flights and trends in denied boarding.

4.4.2. Recommendation

Prior to any revision of the regulation, the Commission, in consultation with all the parties involved, including representa-

⁽¹⁾ Council Regulation (EEC) 2409/92 of 23 July 1992 on fares and rates for air services, OJ L 240, 24.8.1992, p. 15.

tives of European and regional air carrier organisations and air transport user organisations, should carry out an assessment of the costs and benefits resulting from the regulation.

5. Conclusion

5.1. Subject to the incorporation of the above recommendations, the Committee agrees on the continued need for a regulation on the payment of compensation for denied boarding because of overbooking. The Committee welcomes the proposed adjustment of the rates and the proposed extension to include cancellations and long delays for both scheduled and non-scheduled flights.

SUMMARY OF PROPOSALS

SCHEDULED FLIGHTS		
	Existing regulation	Proposed new regulation
Denied boarding	<p>A passenger has these three rights:</p> <ul style="list-style-type: none"> — financial compensation (between EUR 75 and EUR 300), and — choice between alternative flight and reimbursement of ticket, and — care while waiting: refreshments, meals, hotels. 	<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 three rights:</p> <ul style="list-style-type: none"> — higher financial compensation (between EUR 375 and EUR 1 500), and — choice between alternative flight and reimbursement of ticket, and — care while waiting: refreshments, meals, hotels
Cancellation (if responsibility of the operator)	Not covered	<p>3) Obligation on operators to contact passengers and seek volunteers to surrender reservations.</p> <p>4) A passenger who does not volunteer has three rights:</p> <ul style="list-style-type: none"> — financial compensation as denied boarding (between EUR 375 and EUR 1 500), and — choice between alternative flight and reimbursement of ticket, and — care while waiting: refreshments, meals, hotels
Long delay	Not covered	<p>5) A passenger has the right to choose between alternative flight and reimbursement of ticket.</p> <p>6) Special-need passengers and people with reduced mobility will be entitled to minimum care while waiting: refreshments, meals, hotels.</p>

NON-SCHEDULED FLIGHTS		
	Existing regulation	Proposed new regulation
Denied boarding	Not covered	As above
Cancellation	Not covered	As above
Long delay	Not covered	As above

Brussels, 17 July 2002.

The President
of the Economic and Social Committee
Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the safety of third countries aircraft using Community airports'

(COM(2002) 8 final — 2002/0014 (COD))

(2002/C 241/06)

On 31 January 2002 the Council decided to consult the Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 June 2002. The rapporteur was Mr Santillán.

At its 392nd Plenary Session of 17 and 18 July 2002 (meeting of 17 July 2002), the Economic and Social Committee unanimously adopted the following opinion.

1. Introduction

1.1. In the wake of the Puerto Plata air crash ⁽¹⁾, the Council called on the Commission to draw up proposals aimed at improving the safety of European air travellers. In response to this call the Commission convened a high-level group of aviation safety experts and with its help drew up a Community Aviation Safety Improvement Strategy ⁽²⁾ and undertook two initiatives. The first of these was a Regulation establishing

common rules in the field of civil aviation and creating a European Aviation Safety Agency (EASA), which was adopted on 27 September 2000 ⁽³⁾.

1.2. The second initiative aimed to ensure that third countries actually apply aviation safety standards. To this end, in 1997 the Commission proposed a Directive establishing a safety assessment of third countries aircraft using Community airports ⁽⁴⁾. This proposal, on which the Economic and Social Committee issued an opinion ⁽⁵⁾, lapsed on expiry of the time limits laid down by Article 252 of the EC Treaty.

⁽¹⁾ Dominican Republic. In 1996 a Turkish aircraft chartered by a German tourist operator crashed, killing 176 passengers.

⁽²⁾ SEC(96) 2083 final.

⁽³⁾ COM(2000) 595 final.

⁽⁴⁾ COM(97) 55 final.

⁽⁵⁾ TRA/333, rapporteur Mr Mobbs.