

III

(Preparatory acts)

COUNCIL

POSITION (EU) No 4/2010 OF THE COUNCIL AT FIRST READING**with a view to the adoption of a Regulation of the European Parliament and of the Council concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004****Adopted by the Council on 11 March 2010***(Text with EEA relevance)*

(2010/C 122 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

- (2) Since the bus or coach passenger is the weaker party to the transport contract, all passengers should be granted a minimum level of protection.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

- (3) Union measures to improve passengers' rights in the bus and coach transport sector should take account of the specific characteristics of this sector, which consists largely of small -and medium-sized undertakings.

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

- (4) Taking into account the specific characteristics of special regular services and own-account transport operations, these types of transport should be left outside the scope of this Regulation. Special regular services should include dedicated services for the carriage of disabled persons and persons with reduced mobility, carriage of workers between home and work, carriage to and from the educational institution for school pupils and students.

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Action by the Union in the field of bus and coach transport should aim, among other things, at ensuring a high level of protection for passengers, that is comparable with other modes of transport, wherever they travel. Moreover, full account should be taken of the requirements of consumer protection in general.

- (5) Taking into account the specific characteristics of urban, suburban and regional regular services, Member States should be granted the right to exempt these types of transport from the application of a significant part of this Regulation. In order to identify urban, suburban and regional regular services, Member States should take into account criteria such as distance, frequency of services, number of scheduled stops, type of buses or coaches employed, ticketing schemes, fluctuations in passenger numbers between services in peak and off-peak periods, bus codes and timetables.

⁽¹⁾ Opinion of 16 July of 2009 (OJ C 317, 23.12.2009, p. 99).

⁽²⁾ Position of the European Parliament of 23 April 2009 (not yet published in the Official Journal) and position of the Council of 11 March 2010. Position of the European Parliament of ... (not yet published in the Official Journal).

- (6) Passengers and, as a minimum, persons whom the passenger had, or would have had, a legal duty to maintain should enjoy adequate protection in the event of accidents arising out of the use of the bus or coach, taking into account Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability ⁽¹⁾.
- (7) In choosing the national law applicable to compensation for death or personal injury as well as for loss of or damage to luggage due to accidents arising out of the use of the bus or coach, Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) ⁽²⁾ and Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) ⁽³⁾ should be taken into account.
- (8) Passengers should, in addition to compensation in accordance with applicable national law in the event of death or personal injury or loss of or damage to luggage due to accidents arising out of the use of the bus or coach, be entitled to assistance with regard to their immediate practical needs following an accident. Such assistance could include first aid, accommodation, food, clothes and transport.
- (9) Bus and coach passenger services should benefit citizens in general. Consequently, disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities for using bus and coach services that are comparable to those of other citizens. Disabled persons and persons with reduced mobility have the same rights as all other citizens with regard to free movement, freedom of choice and non-discrimination.
- (10) In the light of Article 9 of the United Nations Convention on the Rights of Persons with Disabilities and in order to give disabled persons and persons with reduced mobility opportunities for bus and coach travel comparable to those of other citizens, rules for non-discrimination and assistance during their journey should be established. Those persons should therefore be accepted for carriage and not refused transport on the grounds of their disability or reduced mobility, except for reasons which are justified on the grounds of safety or of the design of vehicles or infrastructure. Within the framework of relevant legislation for the protection of workers, disabled persons and persons with reduced mobility should enjoy the right to assistance at terminals and on board vehicles. In the interest of social inclusion, the persons concerned should receive the assistance free of charge. Carriers should establish access conditions, preferably using the European Standardisation system.
- (11) In deciding on the design of new terminals, and as part of major refurbishments, terminal managing bodies should, where possible, take into account the needs of disabled persons and persons with reduced mobility. In any case, terminal managing bodies should designate points where such persons can notify their arrival and need for assistance.
- (12) In order to respond to the needs of disabled persons and persons with reduced mobility, staff should be adequately trained. With a view to facilitating the mutual recognition of national qualifications of drivers, disability awareness training could be provided as a part of the initial qualification or periodic training as referred to in Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers ⁽⁴⁾. In order to ensure coherence between the introduction of the training requirements and the time-limits set out in that Directive, a possibility for exemption during a limited period of time should be allowed.
- (13) Where possible, organisations representative of disabled persons or persons with reduced mobility should be consulted or involved in the organisation of the disability-related training.
- (14) Rights of bus and coach passengers should include the receipt of information regarding the service before and during the journey. All essential information provided to bus and coach passengers should also be provided in alternative formats accessible to disabled persons and persons with reduced mobility.
- (15) This Regulation should not restrict the rights of carriers to seek compensation from any person, including third parties, in accordance with the applicable national law.
- (16) Inconvenience experienced by passengers due to cancellation or long delay of their journey should be reduced. To this end, passengers departing from terminals should be adequately looked after and informed. Passengers should also be able to cancel their journey and have their tickets reimbursed or to continue their journey or to obtain re-routing under satisfactory conditions.

⁽¹⁾ OJ L 263, 7.10.2009, p. 11.

⁽²⁾ OJ L 199, 31.7.2007, p. 40.

⁽³⁾ OJ L 177, 4.7.2008, p. 6.

⁽⁴⁾ OJ L 226, 10.9.2003, p. 4.

- (17) Through their professional associations, carriers should cooperate in order to adopt arrangements at national or European level with the involvement of stakeholders, professional associations and associations of customers, passengers and disabled persons, aiming to improve care for passengers, especially in the event of cancellations and long delays.
- (18) This Regulation should not affect the rights of passengers established by Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ⁽¹⁾. This Regulation should not apply in cases where a package tour is cancelled for reasons other than cancellation of the bus or coach transport service.
- (19) Passengers should be fully informed of their rights under this Regulation, so that they can effectively exercise those rights.
- (20) Passengers should be able to exercise their rights by means of appropriate complaint procedures implemented by carriers or, as the case may be, by submission of complaints to the body or bodies designated to that end by the relevant Member State.
- (21) Member States should ensure compliance with this Regulation and designate a competent body or bodies to carry out supervision and enforcement tasks. This does not affect the rights of passengers to seek legal redress from courts under national law.
- (22) Taking into account the procedures established by Member States for the submission of complaints, a complaint concerning assistance should preferably be addressed to the body or bodies designated for the enforcement of this Regulation in the Member State where the boarding point or alighting point is situated.
- (23) Member States should lay down penalties applicable to infringements of this Regulation and ensure that those penalties are applied. Those penalties should be effective, proportionate and dissuasive.
- (24) Since the objectives of this Regulation, namely to ensure an equivalent level of protection of and assistance to passengers in bus and coach transport throughout the Member States, cannot sufficiently be achieved by the Member States and can therefore by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (25) This Regulation should be without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽²⁾.
- (26) The enforcement of this Regulation should be based on Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection law (the Regulation on consumer protection cooperation) ⁽³⁾. That Regulation should therefore be amended accordingly.
- (27) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, as referred to in Article 6 of the Treaty on European Union, bearing in mind also Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ⁽⁴⁾ and Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services ⁽⁵⁾,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes rules for bus and coach transport as regards the following:

- (a) non-discrimination between passengers with regard to transport conditions offered by carriers;
- (b) rights of passengers in the event of accidents arising out of the use of the bus or coach resulting in death or personal injury or loss of or damage to luggage;
- (c) non-discrimination and mandatory assistance for disabled persons and persons with reduced mobility;
- (d) rights of passengers in cases of cancellation or delay;
- (e) minimum information to be provided to passengers;

⁽²⁾ OJ L 281, 23.11.1995, p. 31.

⁽³⁾ OJ L 364, 9.12.2004, p. 1.

⁽⁴⁾ OJ L 180, 19.7.2000, p. 22.

⁽⁵⁾ OJ L 373, 21.12.2004, p. 37.

⁽¹⁾ OJ L 158, 23.6.1990, p. 59.

(f) handling of complaints;

(g) general rules on enforcement.

Article 2

Scope

1. This Regulation shall apply to passengers travelling with regular services:

(a) where the boarding point of the passenger is situated in the territory of a Member State; or

(b) where the boarding point of the passenger is situated outside the territory of a Member State and the alighting point of the passenger is situated in the territory of a Member State.

2. In addition, with the exception of Chapters III to VI, this Regulation shall apply to passengers travelling with occasional services where the initial boarding point or the final alighting point of the passenger is situated in the territory of a Member State.

3. This Regulation shall not apply to special regular services and own-account transport operations.

4. With the exception of Articles 4(2), 9 and 10(1), Member States may exempt urban, suburban and regional regular services, including cross-border services of that type, from the application of this Regulation.

5. With the exception of Articles 4(2), 9 and 10(1), Member States may, on a transparent and non-discriminatory basis, exempt domestic regular services from the application of this Regulation. Such exemptions may be granted for a period no longer than five years, which may be renewed twice.

6. For a maximum period of five years, Member States may, on a transparent and non-discriminatory basis, exempt from the application of this Regulation particular regular services because a significant part of the regular service, including at least one scheduled stop, is operated outside the Union. Such exemptions may be renewed.

7. Member States shall inform the Commission of exemptions of different types of services granted pursuant to paragraphs 4, 5 and 6. The Commission shall take appropriate action if such an exemption is deemed not to be in accordance with the provisions of this Article. By ... (*), the Commission shall submit to the European Parliament and the Council a report on exemptions granted pursuant to paragraphs 4, 5 and 6.

8. Nothing in this Regulation shall be understood as constituting technical requirements imposing obligations on carriers

(*) Five years after the date of application of this Regulation.

or terminal managing bodies to modify or replace buses or coaches or infrastructure or equipment at bus stops and terminals.

Article 3

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(a) 'regular services' means services which provide for the carriage of passengers by bus or coach at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points;

(b) 'special regular services' means regular services, by whomsoever organised, which provide for the carriage by bus or coach of specified categories of passengers to the exclusion of other passengers;

(c) 'own-account transport operations' means operations carried out by bus or coach for non-commercial and non-profit-making purposes by a natural or legal person, whereby:

— the transport activity is only an ancillary activity for that natural or legal person, and

— the vehicles used are the property of that natural or legal person or have been obtained by that person on deferred terms or have been the subject of a long-term leasing contract and are driven by a member of the staff of the natural or legal person or by the natural person himself or by personnel employed by, or put at the disposal of, the undertaking under a contractual obligation;

(d) 'occasional services' means services which do not fall within the definition of regular services and the main characteristic of which is the carriage by bus or coach of groups of passengers constituted on the initiative of the customer or the carrier himself;

(e) 'transport contract' means a contract of carriage between a carrier and a passenger for the provision of one or more regular or occasional services;

(f) 'ticket' means a valid document or other evidence of a transport contract;

(g) 'carrier' means a natural or legal person, other than a tour operator or ticket vendor, offering transport by regular or occasional services to the general public;

(h) 'performing carrier' means a natural or legal person other than the carrier, who actually performs the carriage wholly or partially;

- (i) 'ticket vendor' means any intermediary concluding transport contracts on behalf of a carrier;
- (j) 'travel agent' means any intermediary acting on behalf of a passenger for the conclusion of transport contracts;
- (k) 'tour operator' means an organiser or retailer, other than the carrier, within the meaning of Article 2(2) and (3) of Directive 90/314/EEC;
- (l) 'disabled person' or 'person with reduced mobility' means any person whose mobility when using transport is reduced as a result of any physical disability (sensory or locomotory, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his particular needs of the services made available to all passengers;
- (m) 'access conditions' means relevant standards, guidelines and information on the accessibility of buses and/or of designated terminals including their facilities for disabled persons or persons with reduced mobility;
- (n) 'reservation' means a booking of a seat on board a bus or coach for a regular service at a specific departure time;
- (o) 'terminal' means a staffed terminal where according to the specified route a regular service is scheduled to stop for passengers to board or alight, equipped with facilities such as a check-in counter, waiting room or ticket office;
- (p) 'bus stop' means any point other than a terminal where according to the specified route a regular service is scheduled to stop for passengers to board or alight;
- (q) 'terminal managing body' means an organisational entity in a Member State responsible for the management of a designated terminal;
- (r) 'cancellation' means the non-operation of a regular service which was previously scheduled;
- (s) 'delay' means a difference between the time the regular service was scheduled to depart in accordance with the published timetable and the time of its actual departure.

Article 4

Tickets and non-discriminatory contract conditions

1. Carriers shall provide a ticket to the passenger, unless other documents give entitlement to transport. A ticket may be issued in an electronic format.
2. Without prejudice to social tariffs, the contract conditions and tariffs applied by carriers shall be offered to the general public without any direct or indirect discrimination based on

the nationality of the final customer or on the place of establishment of the carriers, or ticket vendors within the Union.

Article 5

Other performing parties

1. If the performance of the obligations under this Regulation has been entrusted to a performing carrier, ticket vendor or any other person, the carrier, travel agent, tour operator or terminal managing body, who has entrusted such obligations, shall nevertheless be liable for the acts and omissions of that performing party.

2. In addition, the party to whom the performance of an obligation has been entrusted by the carrier, travel agent, tour operator or terminal managing body shall be subject to the provisions of this Regulation with regard to the obligation entrusted.

Article 6

Exclusion of waiver

1. Obligations to passengers pursuant to this Regulation shall not be limited or waived, in particular by a derogation or restrictive clause in the transport contract.

2. Carriers may offer contract conditions that are more favourable for the passenger than the conditions laid down in this Regulation.

CHAPTER II

COMPENSATION AND ASSISTANCE IN THE EVENT OF ACCIDENTS

Article 7

Death or personal injury to passengers and loss of or damage to luggage

1. Passengers shall, in accordance with applicable national law, be entitled to compensation for death or personal injury as well as to loss of or damage to luggage due to accidents arising out of the use of the bus or coach. In case of death of a passenger, this right shall as a minimum apply to persons whom the passenger had, or would have had, a legal duty to maintain.

2. The amount of compensation shall be calculated in accordance with applicable national law. Any maximum limit provided by national law to the compensation for death and personal injury or loss of or damage to luggage shall on each distinct occasion not be less than:

- (a) EUR 220 000 per passenger;

(b) with regard to urban, suburban and regional regular or occasional services EUR 500 per item of luggage and with regard to all other regular or occasional services EUR 1 200 per item of luggage. In the event of damage to wheelchairs, other mobility equipment or assistive devices the amount of compensation shall always be equal to the cost of replacement or repair of the equipment lost or damaged.

Article 8

Immediate practical needs of passengers

In the event of an accident arising out of the use of the bus or coach, the carrier shall provide reasonable assistance with regard to the passengers' immediate practical needs following the accident. Any assistance shall not constitute recognition of liability.

CHAPTER III

RIGHTS OF DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY

Article 9

Right to transport

1. Carriers, travel agents and tour operators shall not refuse to accept a reservation from, to issue or otherwise provide a ticket to or to take on board a person on the grounds of disability or of reduced mobility.

2. Reservations and tickets shall be offered to disabled persons and persons with reduced mobility at no additional cost.

Article 10

Exceptions and special conditions

1. Notwithstanding Article 9(1), carriers, travel agents and tour operators may refuse to accept a reservation from, to issue or otherwise provide a ticket to or to take on board a person on the grounds of disability or of reduced mobility:

- (a) in order to meet applicable safety requirements established by international, Union or national law, or in order to meet health and safety requirements established by the competent authorities;
- (b) where the design of the vehicle or the infrastructure, including bus stops and terminals, makes it physically impossible to take on board, alight or carry the disabled person or person with reduced mobility in a safe and operationally feasible manner.

2. In the event of a refusal to accept a reservation or to issue or otherwise provide a ticket on the grounds referred to in paragraph 1, carriers, travel agents and tour operators shall make reasonable efforts to inform the person concerned about an acceptable alternative service operated by the carrier.

3. If a disabled person or a person with reduced mobility, who holds a reservation or has a ticket and has complied with the requirements of Article 14(1)(a), is nonetheless refused permission to board on the grounds of his disability or reduced mobility, that person and any accompanying person pursuant to paragraph 4 of this Article shall be offered the choice between:

- (a) the right to reimbursement, and where relevant a return service free of charge to the first point of departure, as set out in the transport contract, at the earliest opportunity; and
- (b) except where not feasible, continuation of the journey or re-routing by reasonable alternative transport services to the place of destination set out in the transport contract.

The right to reimbursement of the money paid for the ticket shall not be affected by the failure to notify in accordance with Article 14(1) (a).

4. Under the same conditions set out in paragraph 1(a), a carrier, travel agent or tour operator may require that a disabled person or person with reduced mobility be accompanied by another person who is capable of providing the assistance required by the disabled person or person with reduced mobility, if this is strictly necessary. Such an accompanying person shall be transported free of charge and, where feasible, seated next to the disabled person or person with reduced mobility.

5. When carriers, travel agents or tour operators have recourse to paragraph 1, they shall immediately inform the disabled person or person with reduced mobility of the reasons therefor, and, upon request, inform the person in question in writing within five working days of the request.

Article 11

Accessibility and information

1. In cooperation with organisations representative of disabled persons or persons with reduced mobility, carriers and terminal managing bodies shall, where appropriate through their organisations, establish, or have in place, non-discriminatory access conditions for the transport of disabled persons and persons with reduced mobility.

2. The access conditions provided for in paragraph 1 shall be made publicly available by carriers and terminal managing bodies physically or on the Internet in the same languages as those in which information is generally made available to all passengers.

3. Tour operators shall make available the access conditions provided for in paragraph 1 which apply to journeys included in package travel, package holidays and package tours which they organise, sell or offer for sale.

4. The information on access conditions referred to in paragraphs 2 and 3 shall be physically distributed at the request of the passenger.

5. Carriers, travel agents and tour operators shall ensure that all relevant general information concerning the journey and the conditions of carriage is available in appropriate and accessible formats for disabled persons and persons with reduced mobility including, where applicable, online booking and information. The information shall be physically distributed at the request of the passenger.

Article 12

Designation of terminals

Member States shall designate bus and coach terminals where assistance for disabled persons and persons with reduced mobility shall be provided. Member States shall inform the Commission thereof. The Commission shall make available a list of the designated bus and coach terminals on the Internet.

Article 13

Right to assistance at designated terminals and on board buses and coaches

1. Subject to the access conditions provided for in Article 11(1), carriers and terminal managing bodies shall, within their respective areas of competence, at terminals designated by Member States, provide assistance free of charge to disabled persons and persons with reduced mobility as specified in part (a) of Annex I.

2. Subject to the access conditions provided for in Article 11(1), carriers shall, on board buses and coaches, provide assistance free of charge to disabled persons and persons with reduced mobility as specified in part (b) of Annex I.

Article 14

Conditions under which assistance is provided

1. Carriers and terminal managing bodies shall cooperate in order to provide assistance to disabled persons and persons with reduced mobility on condition that:

- (a) the person's need for such assistance is notified to carriers, terminal managing bodies, travel agents or tour operators at the latest two working days before the assistance is needed; and
- (b) the persons concerned present themselves at the designated point:
 - (i) at the time stipulated in advance by the carrier which shall be no more than 60 minutes before the published departure time; or
 - (ii) if no time is stipulated, no later than 30 minutes before the published departure time.

2. In addition to paragraph 1, disabled persons or persons with reduced mobility shall notify the carrier, travel agent or tour operator at the time of reservation or advance purchase of the ticket of their specific seating needs, provided that the need is known at that time.

3. Carriers, terminal managing bodies, travel agents and tour operators shall take all measures necessary to facilitate the receipt of notifications of the need for assistance made by disabled persons or persons with reduced mobility. This obligation shall apply at all designated terminals and their points of sale including sale by telephone and via the Internet.

4. If no notification is made in accordance with paragraphs 1(a) and 2, carriers, terminal managing bodies, travel agents and tour operators shall make every reasonable effort to ensure that the assistance is provided in such a way that the disabled person or person with reduced mobility is able to board the departing service, to change to the corresponding service or to alight from the arriving service for which he has purchased a ticket.

5. The terminal managing body shall designate a point inside or outside the terminal at which disabled persons or persons with reduced mobility can announce their arrival and request assistance. The point shall be clearly signposted and shall offer basic information about the terminal and assistance provided, in accessible formats.

Article 15

Transmission of information to a third party

If travel agents or tour operators receive a notification referred to in Article 14(1)(a) they shall, within their normal office hours, transfer the information to the carrier or terminal managing body as soon as possible.

Article 16

Training

1. Carriers and, where appropriate, terminal managing bodies shall establish disability-related training procedures, including instructions, and ensure that:

- (a) their personnel, other than drivers, including those employed by any other performing party, providing direct assistance to disabled persons and persons with reduced mobility are trained or instructed as described in Annex II, part a) and b);and
- (b) their personnel, including drivers, who deal directly with the travelling public or with issues related to the travelling public, are trained or instructed as described in Annex II, part a).

2. A Member State may for a maximum period of two years from ... (*) grant an exemption from the application of paragraph(1)(b) with regard to training of drivers.

(*) Date of application of this Regulation.

*Article 17***Compensation in respect of wheelchairs and other mobility equipment**

1. Carriers and terminal managing bodies shall be liable where they have caused loss of or damage to wheelchairs, other mobility equipment or assistive devices, resulting from the provision of assistance. The loss or damage shall be compensated by the carrier or terminal managing body liable for that loss or damage.
2. The compensation referred to in paragraph 1 shall be equal to the cost of replacement or repair of the equipment or devices lost or damaged.
3. Where necessary, every effort shall be undertaken to rapidly provide temporary replacement equipment or devices. The wheelchairs, other mobility equipment or assistive devices shall, where possible, have technical and functional features similar to those lost or damaged.

*Article 18***Exemptions**

1. Without prejudice to Article 2(4), Member States may exempt domestic regular services from the application of all or some of the provisions of this Chapter, provided that they ensure that the level of protection of disabled persons and persons with reduced mobility under their national rules is at least the same as under this Regulation.
2. Member States shall inform the Commission of exemptions granted pursuant to paragraph 1. The Commission shall take appropriate action if such an exemption is deemed not to be in accordance with the provisions of this Article. By ... (*), the Commission shall submit to the European Parliament and the Council a report on exemptions granted pursuant to paragraph 1.

CHAPTER IV

PASSENGER RIGHTS IN THE EVENT OF CANCELLATION OR DELAY*Article 19***Continuation, re-routing and reimbursement**

1. Where a carrier reasonably expects a regular service to be cancelled or delayed in departure from a terminal for more than 120 minutes, the passenger shall immediately be offered the choice between:
 - (a) continuation or re-routing to the final destination, under comparable conditions, as set out in the transport contract, at the earliest opportunity;
 - (b) reimbursement of the ticket price, and, where relevant, a return service by bus or coach free of charge to the first point of departure, as set out in the transport contract, at the earliest opportunity.

2. Where a regular service is cancelled or delayed in departure from a bus stop for more than 120 minutes, passengers shall have the right to such continuation or re-routing or reimbursement of the ticket price from the carrier.

3. The payment of reimbursement provided for in paragraphs 1(b) and 2 shall be made within 14 days after the offer has been made or request has been received. The payment shall cover the full cost of the ticket at the price at which it was purchased, for the part or parts of the journey not made, and for the part or parts already made if the journey no longer serves any purpose in relation to the passenger's original travel plan. In case of travel passes or season tickets the payment shall be equal to its proportional part of the full cost of the pass or ticket. The reimbursement shall be paid in money, unless the passenger accepts another form of reimbursement.

*Article 20***Information**

1. In the event of cancellation or delay in departure of a regular service, passengers departing from terminals shall be informed by the carrier or, where appropriate, the terminal managing body, of the situation as soon as possible and in any event no later than 30 minutes after the scheduled departure time, and of the estimated departure time as soon as this information is available.
2. If passengers miss, according to the timetable, a connecting service due to a cancellation or delay, the carrier or, where appropriate, the terminal managing body, shall make reasonable efforts to inform the passengers concerned of alternative connections.
3. The carrier or, where appropriate, the terminal managing body, shall ensure that disabled persons and persons with reduced mobility receive the information required under paragraphs 1 and 2 in accessible formats.

*Article 21***Assistance in case of cancelled or delayed departures**

For a journey of a scheduled duration of more than three hours the carrier shall, in case of cancellation or delay in departure from a terminal of more than two hours, offer the passenger free of charge:

- (a) snacks, meals or refreshments in reasonable relation to the waiting time or delay, provided they are available on the bus or in the terminal, or can reasonably be supplied;
- (b) assistance to find a hotel room or other accommodation as well as assistance to arrange transport between the terminal and the place of accommodation in cases where a stay of one or more nights becomes necessary.

(*) Five years after the date of application of this Regulation.

In applying this Article the carrier shall pay particular attention to the needs of disabled persons and persons with reduced mobility and any accompanying persons.

Article 22

Further claims

Nothing in this Chapter shall preclude passengers from seeking damages in accordance with national law before national courts in respect of loss resulting from cancellation or delay of regular services.

CHAPTER V

GENERAL RULES ON INFORMATION AND COMPLAINTS

Article 23

Right to travel information

Carriers and terminal managing bodies shall, within their respective areas of competence, provide passengers with adequate information throughout their travel. Where feasible this information shall be provided in accessible formats upon request.

Article 24

Information on passenger rights

1. Carriers and terminal managing bodies shall, within their respective areas of competence, ensure that passengers are provided with appropriate and comprehensible information regarding their rights under this Regulation at the latest on departure. The information shall be provided at terminals and where applicable, on the Internet. At the request of a disabled person or person with reduced mobility the information shall be provided in an accessible format. This information shall include contact details of the enforcement body or bodies designated by the Member State pursuant to Article 27(1).

2. In order to comply with the information requirement referred to in paragraph 1, carriers and terminal managing bodies may use a summary of the provisions of this Regulation prepared by the Commission in all the official languages of the institutions of the European Union and made available to them.

Article 25

Complaints

Carriers shall set up or have in place a complaint handling mechanism for the rights and obligations set out in Articles 4, 8 and 9 to 24.

Article 26

Submission of complaints

If a passenger covered by this Regulation wants to make a complaint to the carrier with regard to Articles 4, 8 and 9 to 24, he shall submit it within three months from the date on which the regular service was performed or when a regular service should have been performed. Within one month of

receiving the complaint, the carrier shall give notice to the passenger that his complaint has been substantiated, rejected or is still being considered. The time taken to provide the final reply shall not be longer than three months from the receipt of the complaint.

CHAPTER VI

ENFORCEMENT AND NATIONAL ENFORCEMENT BODIES

Article 27

National enforcement bodies

1. Each Member State shall designate a new or existing body or bodies responsible for the enforcement of this Regulation as regards regular services from points situated on its territory and regular services from a third country to such points. Each body shall take the measures necessary to ensure compliance with this Regulation.

Each body shall, in its organisation, funding decisions, legal structure and decision-making, be independent of carriers, tour operators and terminal managing bodies.

2. Member States shall inform the Commission of the body or bodies designated in accordance with this Article.

3. Any passenger may submit a complaint, in accordance with national law, to the appropriate body designated under paragraph 1, or to any other appropriate body designated by a Member State, about an alleged infringement of this Regulation.

A Member State may decide:

- (a) that the passenger as a first step shall submit a complaint with regard to Articles 4, 8 and 9 to 24 to the carrier; and/or
- (b) that the national enforcement body or any other appropriate body designated by the Member State shall act as an appeal body for complaints not resolved under Article 26.

Article 28

Report on enforcement

By 1 June ... (*) and every two years thereafter, the enforcement bodies designated pursuant to Article 27(1) shall publish a report on their activity in the previous two calendar years, containing in particular a description of actions taken in order to implement this Regulation and statistics on complaints and sanctions applied.

Article 29

Cooperation between enforcement bodies

National enforcement bodies as referred to in Article 27(1) shall, whenever appropriate, exchange information on their work and decision-making principles and practices. The Commission shall support them in this task.

(*) Two years after the date of the application of this Regulation.

*Article 30***Penalties**

Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all the measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those rules and measures to the Commission by ... (*) and shall notify it without delay of any subsequent amendment affecting them.

CHAPTER VII

FINAL PROVISIONS*Article 31***Report**

The Commission shall report to the European Parliament and the Council by ... (**), on the operation and effects of this Regulation. The report shall be accompanied, where necessary, by legislative proposals implementing in further detail the provisions of this Regulation, or amending it.

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

Done at ...

For the European Parliament

The President

...

For the Council

The President

...

*Article 32***Amendment to Regulation (EC) No 2006/2004**

In the Annex to Regulation (EC) No 2006/2004 the following point is added:

'18. Regulation (EU) No .../2010 of the European Parliament and of the Council of ... on the rights of passengers in bus and coach transport (*).

(*) OJ ...'

*Article 33***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 Union*.

It shall apply from ... (**).

*Article 34***Publication**

This Regulation shall be published in the *Official Journal of the European Union*.

(*) Date of the application of this Regulation.

(**) Three years after the date of application of this Regulation.

(***) Two years after the date of publication.

ANNEX I

Assistance provided to disabled persons and persons with reduced mobility**(a) Assistance at designated terminals**

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

- communicate their arrival at the terminal and their request for assistance at designated points;
- move from the designated point to the check-in counter, waiting room and embarkation area;
- board the vehicle, with the provision of lifts, wheelchairs or other assistance needed, as appropriate;
- load their luggage;
- retrieve their luggage;
- alight from the vehicle;
- carry a recognised assistance dog on board a bus or coach;
- proceed to the seat.

(b) Assistance on board

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

- be provided with essential information on a journey in accessible formats subject to request made by the passenger;
- board/alight during pauses in a journey, if there are personnel other than the driver on board.

ANNEX II

Disability-related training**(a) Disability-awareness training**

Training of staff that deal directly with the travelling public includes:

- awareness of and appropriate responses to passengers with physical, sensory (hearing and visual), hidden or learning disabilities, including how to distinguish between the different abilities of persons whose mobility, orientation, or communication may be reduced;
- barriers faced by disabled persons and persons with reduced mobility, including attitudinal, environmental/physical and organisational barriers;
- recognised assistance dogs, including the role and the needs of an assistance dog;
- dealing with unexpected occurrences;
- interpersonal skills and methods of communication with deaf people and people with hearing impairments, people with visual impairments, people with speech impairments, and people with a learning disability;
- how to handle wheelchairs and other mobility aids carefully so as to avoid damage (if any, for all staff who are responsible for luggage handling).

(b) Disability-assistance training

Training of staff directly assisting disabled persons and persons with reduced mobility includes:

- how to help wheelchair users make transfers into and out of a wheelchair;
 - skills for providing assistance to disabled persons and persons with reduced mobility travelling with a recognised assistance dog, including the role and the needs of those dogs;
 - techniques for escorting visually impaired passengers and for the handling and carriage of recognised assistance dogs;
 - an understanding of the types of equipment which can assist disabled persons and persons with reduced mobility and a knowledge of how to handle such an equipment;
 - the use of boarding and alighting assistance equipment used and knowledge of the appropriate boarding and alighting assistance procedures that safeguard the safety and dignity of disabled persons and persons with reduced mobility;
 - understanding of the need for reliable and professional assistance. Also awareness of the potential of certain disabled passengers to experience feelings of vulnerability during travel because of their dependence on the assistance provided;
 - a knowledge of first aid.
-

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 4 December 2008, the Commission presented the proposal for a Regulation of the European Parliament and the Council concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws ⁽¹⁾.

On 23 April 2009, the European Parliament voted its opinion at first reading ⁽²⁾.

On 17 December 2009, the Council reached a political agreement on the draft Regulation. Following legal/linguistic revision, the Council adopted its position at first reading on 11 March 2010, in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union.

In carrying out its work, the Council took account of the opinion of the European Economic and Social Committee. The Committee of Regions declined to give an opinion.

II. ANALYSIS OF THE POSITION AT FIRST READING

1. General

The proposal for a Regulation of the European Parliament and the Council concerning the rights of passengers in bus and coach transport forms part of the general objective of the European Union to ensure equal treatment of passengers, irrespective of the mode of transport they have chosen to travel with. Legislation of similar nature has already been adopted for passengers travelling by air ⁽³⁾ or by rail ⁽⁴⁾. It contains provisions on liability in the event of death or injury of passengers and loss of or damage to their luggage, automatic solutions when travel is interrupted, treatment of complaints and means of redress, passenger information and other initiatives. Furthermore, it lays down rules on information and assistance to disabled persons and persons with reduced mobility (PRMs).

Although the Council agreed with the Commission as regards the objective of the proposal, the Council's approach involved major adaptations of the original proposal. A number of the proposed provisions were not acceptable because they imposed too heavy administrative burdens ensuing costs on carriers and national administrations, without bringing an added value for passengers that would outweigh these inconveniences. Others were redrafted taking into account the different legislations in place in Member States, in order to avoid conflict between this draft Regulation proposal and existing national and European legislation. Finally, other provisions were redrafted with a view to simplifying and clarifying the Regulation.

Resulting from this approach, the Council first reading position modifies, to a certain extent, the original Commission proposal by redrafting it and deleting several provisions of the text. This implies that all amendments introduced in the European Parliament's first reading opinion related to these deleted provisions were not accepted by the Council.

The Council aims at a balanced solution that takes into account the rights of passengers as well as the need to ensure the economic viability of the operators of the bus and coach industry, which consists largely of small and medium-sized undertakings, and therefore integrated EP amendment 3 into its first reading position.

⁽¹⁾ Doc. 16933/08.

⁽²⁾ A6-0250/2009.

⁽³⁾ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 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, OJ L 46, 17.2.2004, p. 1, and Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ L 204, 26.7.2006, p. 1.

⁽⁴⁾ Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, OJ L 315, 3.12.2007, p. 14.

2. Key policy issues

(i) *Scope of application*

In the Commission's initial proposal, the Regulation was to be applied in general to the carriage of passengers by bus and/or coach undertakings by means of regular services. Member States were only allowed to exempt urban, suburban and regional transport covered by public service contracts, if such contracts ensured a comparable level of passenger rights to that required in the Regulation. In addition, the European Parliament introduced one amendment allowing Member States to exclude under the above-mentioned condition from the scope the urban and suburban transport but not the regional transport.

The Council could not accept the scope as proposed by the Commission, nor the EP amendments related to it (amendments 1, 2 and 81), because it considered that urban, sub-urban and regional transport fall within the framework of subsidiarity.

Including regional transport into the scope, as proposed by the European Parliament, might pose problems both for passengers and for the industry. In big urban areas companies are usually operating a whole transport network including bus services, subway services, commuter trains and tram services. Frequently, all these services are of urban, suburban and regional character. Restricting the exemption only to urban and suburban services would mean that parts of these networks would be subject to rules which are designed for long distance. The companies operating these networks would then, within the same network, have to handle several systems of compensation, some of them not being really suitable for this type of transport. It would also confuse passengers travelling within these networks because they would face difficulties in knowing what rules are effectively applicable.

Furthermore, since there is a possibility for an exemption of regional railway services in the existing rail passenger rights regulation, not having a corresponding provision in the bus passenger rights regulation might distort competition between the two sectors. And bus and rail services often serve as an alternative to each other.

Therefore Council could not accept the EP amendments related to the scope. The Council thus proposes that the draft Regulation should apply to passengers travelling with national and international regular services, but with a possibility at national level to exempt urban, suburban and regional regular services. In addition, the Council introduces a provision ensuring that certain basic rights are applied to all bus and coach services without exception (i.e. non-discriminatory contract conditions and tariffs and right to transport for disabled persons and persons with reduced mobility as well as related derogations).

Member States are authorised to grant an exemption of maximum five years, which may be renewed twice, from the application of the provisions of this Regulation to domestic regular services. In addition, Member States can grant an exemption of maximum five years, renewable, to particular regular services a significant part of which, including at least one scheduled stop, is operated outside the EU.

Furthermore, in connection with the scope, a specific provision establishes that Member States who can ensure that the level of protection of disabled persons and persons with reduced mobility under their national rules is at least the same as under this Regulation can preserve their national rules in full.

(ii) *Changes to the infrastructure*

As regards the infrastructure, the Council is ready to encourage and support any initiative regarding new equipment and infrastructure, which has to be acquired or built bearing in mind the needs of disabled persons and PRMs, as clearly stated in a recital. However, this Regulation is set in the framework of the legislation on consumer protection and therefore it cannot include obligations in respect of technical requirements for the carriers to modify or replace vehicles or infrastructure and equipment at terminals. Therefore all EP amendments regarding changes in infrastructure could not be accepted (amendments 6-10).

(iii) *Compensation and assistance in the event of accidents*

The Commission proposal sets out the rules on bus and/or coach undertakings' liability for passengers and their luggage. Passengers would benefit from harmonised rules on liability of bus and/or coach undertakings. For any damage up to the amount of EUR 220 000, a bus and/or coach undertaking should have strict liability, i.e. not having the possibility to exclude its liability by proving that the accident was not caused by its fault. For damages above EUR 220 000 the liability would be based on fault, but unlimited. Passengers suffering an accident would be entitled to advance payments in order to address economic difficulties that they or their families might face as a consequence of death or injury.

However, the existing liability regimes in force in the Member States are very different as regards the basis for liability (strict unlimited liability, strict liability with force majeure exemptions and fault-based liability), and they cannot be reconciled. Furthermore, legislation in the different Member States is partly built on Directive 2009/103/EC, relating to insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability ('Motor Insurance Directive'), and partly on national legislation going beyond EU law. These texts already regulate liability for bus passengers and it is essential to avoid conflicts between the present text and the above mentioned 'Motor Insurance Directive'.

Therefore, the Council adopted an approach building on the existing system, adding at the same time some basic elements of harmonisation. A minimum threshold per passenger and per item of luggage is proposed: 220 000 EUR per passenger in case of death or personal injury. In case of loss of or damage to luggage, 500 EUR with regard to urban, suburban and regional services and 1 200 EUR with regard to other regular services. This would align the compensation for luggage with the corresponding provisions in the 'railway Regulation', while taking into account the specificities of urban, suburban and regional transport. As regards wheelchairs, other mobility equipment or assistive devices, the Council text provides for them to be always compensated in full, instead of being treated like ordinary luggage, even when damages are caused during the provision of assistance (in the spirit of EP amendment 46).

In addition, the text has been adapted to provide for assistance to passengers with regard to their immediate practical needs following an accident. Such a provision is not contained in the 'Motor Insurance Directive' and represents a real benefit for bus passengers, while not increasing significantly the administrative burden for bus and/or coach companies.

In the light of the above, the Council could not accept the Commission's proposed approach nor the EP amendments related to liability (amendments 18-24).

(iv) *Rights of disabled persons and persons with reduced mobility (PRM)*

The Council wholeheartedly supports the Commission's objective to ensure that disabled persons and persons with reduced mobility have non-discriminatory access to bus and coaches. The Council therefore follows the Commission proposal closely, although modifying some provisions in order to make them feasible and introducing certain simplifications and clarifications. Regarding this Chapter, the Council integrated several EP amendments in its text, either totally, or partially or in spirit.

Concerning the exceptions to the right to transport, the Commission had proposed that a disabled persons could be denied transport with reference to safety requirements or the size of the vehicle. The Council has provided for a number of improvements, referring to the 'design' of the vehicle instead of the 'size', thus integrating in substance or in spirit EP amendments 26 and 27. Moreover, the Council has also accepted amendment 73 as regards the choice to be offered to a disabled person or a PRM when embarkation is denied.

According to the initial proposal, the carrier could require a disabled person or person with reduced mobility to be accompanied by another person who is capable of providing assistance. In the Council first reading position, if the carrier makes such a request with respect to a passenger service, the accompanying person shall be carried free of charge and, where feasible, seated next to the disabled person or PRM. This provision integrates in substance EP amendment 29.

The Council first reading text provides for non discriminatory access conditions as well as for making them publicly available in a suitable format for disabled persons and PRMs, thus accepting, partially or completely, EP amendments 31 and 32. Moreover, the Commission shall make available on the internet a list of bus and coach terminals designated by Member States where assistance for disabled persons and PRM is provided, as in EP amendment 36.

As for the assistance to disabled persons and persons with reduced mobility, such assistance will be provided on the condition that the person concerned notifies the carrier or the terminal operator at the latest two working days in advance (the Commission had proposed 48 hours) and is present in the designated point at least 60 minutes before the published departure time. Thus the Council could not accept amendment 39 proposing a shorter period of 24 hours. Furthermore, if the person has specific needs of seating, the passenger should notify the carrier of such needs at the time of reservation, if the need is known at that time. This additional requirement, introduced by the Council, will allow for the carrier to cater for those specific needs and to give the best possible service to the person concerned.

Concerning the assistance on board, the Council has limited the scope of the Commission's initial proposal. The Council's text establishes that information has to be provided in accessible format as well as assistance for boarding and alighting during pauses in a journey, the latter, however, only if there are personnel other than the driver on board. This takes account of the fact that most vehicle are operated by the driver alone and therefore providing assistance during the journey will have an impact on the driver hours, thus on safety requirements.

Help to disabled persons and PRMs has to be provided free-of-charge at staffed terminals designated by the Member States and the personnel providing direct assistance to these persons should have received adequate training allowing them to assist such persons. Personnel, including drivers, who deal directly with the travelling public should receive disability-awareness training.

(v) *Passenger Rights in the event of cancellation or delay*

The Commission proposal provided for obligations of bus and/or coach undertakings in the event of interrupted journeys, due to cancellation of a service or delays. The undertakings should pay compensation amounting to 100 % of the ticket price, if they failed to provide alternative services or the required information.

While the Council fully supports the principle that carriers and terminal operators should take care of their passengers, it has modified the Commission proposal, taking into account the specific structure of the bus and coaches industry. A different treatment was agreed regarding passengers departing from terminals and passengers departing from bus stops, as it is neither possible nor reasonable to provide, for example, the same level of information on delays at a bus stop compared to a staffed terminal.

In the event of a delay of over two hours or a cancellation of the journey, the passenger may choose either to continue the journey using the same mode of transport, or to call for a transfer or to ask for the reimbursement of his/her ticket (paid within 14 days after the event and, if necessary, a return trip free of charge). In the case of a delay of more than two hours on journeys lasting over three hours, for passengers departing from a terminal, the carrier will be under the obligation to give passengers a meal or refreshments, in the spirit of EP amendment 53, but will not be under the obligation to provide accommodation, although the carrier must assist in finding accommodation. However, bus and coach passengers will not benefit from additional indemnities (paid in addition to the price of the ticket) as it is the case for maritime and rail passengers. Thus EP amendments related to compensation and accommodation have not been retained (amendments 49, 50, 51, 52, 54 and 55).

The European Parliament introduced some amendments regarding compensation and assistance in the event of delays in arrival and related exemptions in case of “force majeure” (amendments 56 and 57), thus relieving the carrier from being held liable for damage if it is caused by circumstances not connected with the operation of their services and which they could not have foreseen. The Council did not take on board such amendments as its text does not foresee any provisions on compensation in the event of delays in arrival.

Such compensations would be an additional liability for bus and coach undertakings and would create an excessive burden; moreover, drivers would be put under pressure to respect the timetable at any cost, thus putting road safety at risk.

Amendment 58 concerning information in formats accessible to disabled persons and persons with reduced mobility was taken on board by the Council.

(vi) *General rules on information, complaint handling and national enforcement bodies*

According to the Council position at first reading, carriers and terminal managing bodies, within their respective areas of competence, provide adequate information to passengers throughout their travel, in accessible format where feasible. Furthermore, they shall inform passengers about their rights in an appropriate and comprehensible way, in the spirit of EP amendment 62.

As regards complaints, the Commission proposal contained rules on how carriers should handle them, in particular the far-reaching legal consequences of not replying to complaints.

The Council, though agreeing in principle with the Commission proposal, introduces more flexibility into the system in order to avoid any unforeseen consequences for the Member States' legal systems or administrative structures. In this context and in order to avoid additional bureaucracy, the Council did not take on board EP amendment 64, which introduced an obligation for bus and/or coach undertakings to issue annually a detailed report on complaints received.

In addition, the Parliament proposed that the national enforcement bodies should be independent (amendment 65). The Council first reading position specifies more clearly that these bodies should be independent of carriers, tour operators and terminal operators.

(vii) *Date of application of the Regulation*

The Commission had proposed that the Regulation will enter into force 20 days after publication in the Official Journal of the EU and will apply a year after that date.

The Council first reading position provides that the Regulation will apply two years after its publication, thus accepting EP amendment 69 in substance.

3. Other amendments adopted by the European Parliament

Further amendments not included in the Council first reading position concern:

- changes to the definitions of ‘transport contract’ (amendment 13), ‘ticket vendor’ (amendment 14), ‘tour operator’ (amendment 15), ‘cancellation’ (amendment 16);
- proposed new definition of ‘accessible formats’ (amendment 17);
- reference to ‘persons incapable of travelling without assistance because of their elderly or age’ (amendment 34);
- assistance adapted to the individual needs of disabled persons or persons with reduced mobility (amendment 35);

- need to ensure that the passenger receives a confirmation of the notification of his or her assistance needs (amendment 40);
- any compensation awarded under the Regulation, which may be deducted from any additional compensation granted (amendment 59);
- penalties applicable to infringements of the Regulation, which could include ordering the payment of compensation (amendment 68);
- amendments 70, 71 and 72 concerning the Annexes to the Regulation.

III. CONCLUSION

In establishing its position at first reading, the Council has taken full account of the proposal of the Commission and the European Parliament's opinion at first reading. With respect to the amendments proposed by the European Parliament, the Council observes that a considerable number of amendments have – in spirit, partially or fully – already been included in its first reading position.
