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EUROPEAN COMMISSION

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council at first reading on the adoption of the Regulation of the
European Parliament and of the Council concerning the rights of passengers when
travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 on
cooperation between national authorities responsible for the enforcement of consumer
protection laws**

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1. BACKGROUND

Date of transmission of the proposal to the EP and the Council [5 December 2008](#)
(document COM(2008)816 final – 2008/0246/COD):

Date of the opinion of the European Economic and Social [16 July 2009](#)
Committee:

Date of the position of the European Parliament, first reading: [23 April 2009](#)

Date of adoption of the Council position at first reading : [11 March 2010](#)

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The proposal, adopted by the Commission on 4 December 2008, aims at establishing rights of passengers when travelling by sea and inland waterways in order to improve the attractiveness of and confidence in passenger transport by ship. By introducing new rules, it will enhance the protection of passengers in general, and the disabled and persons with reduced mobility, in particular. It will also set quality standards comparable to those already established in the air and rail sectors.

3. COMMENTS ON THE COUNCIL POSITION

The Commission considers its proposal to have been substantially modified by the Council in some of its parts.

Firstly, the Council position aims to exclude ships carrying up to 36 passengers, up to 3 crew members, or offering journeys up to 500 meters in length from the scope of the proposal. Moreover, an additional temporary exemption -two years after application- was introduced for ships of less than 300 gross tons for domestic transport, with the condition that national law provides adequate protection of passenger rights. Only cruises exceeding two overnight stays

on board would be covered. All these elements would represent a significant limitation of the scope of application.

Secondly, some of the conditions for assistance imposed by the Council position have the effect of somewhat reducing the rights of persons with reduced mobility (PRMs) and to impose some specific requirements on them. Moreover, the Council compromise, when referring to the obligation of providing accommodation at no charge to stranded passengers in case of cancellations and delayed departures, introduces a new distinction between weather conditions endangering the safe operation of the ship (which are liable to exclude the obligation of providing such assistance) and extraordinary circumstances (which, on the contrary, do not exclude the obligation to provide full assistance). Other forms of assistance (i.e. snacks, meals and refreshments) would remain unconditionally compulsory for carriers in all circumstances -even in case of the abovementioned weather conditions or extraordinary circumstances- unless the passenger is made aware of the situation when buying the ticket. At the same time the Council position includes a new maximum amount of €120 per passenger if accommodation is to be provided in case of delay or cancellation of a trip.

Finally, the Commission takes note of the decision of the Council for the Regulation to be applicable after three years from entry into force.

4. DETAILED COMMENTS OF THE COMMISSION ON THE AMENDMENTS ADOPTED BY THE EUROPEAN PARLIAMENT

4.1. Amendments of the European Parliament accepted by the Commission and included completely or partly in the Council position

- the introduction of a provision for the safety of PRMs when travelling in relation to Article 8 which concerns derogations and special conditions (amendment 29 second part);
- amendment 30 which refers to the conditions to impose accompanying persons of PRMs;
- amendments 4, 32, 33, 46, 52, 63, 64 aiming at streamlining the wording of the proposal and reinforcing information rights for passengers;
- amendment 36 deleting the obligation for carriers to have separate accounts for activities relating to assistance provided to PRMs;
- the introduction of a clarification regarding assistance to persons with reduced mobility (amendment 53 first part);
- the amendment 57 on the article regarding compensation.

4.2. Amendments of the European Parliament accepted by the Commission but not included in the Council position

- clarification of recitals (amendments 2, 5, 6);

- the introduction of a new recital which clarifies the relationship between this proposed Regulation and other international, Community or national law regarding PRMs (amendment 3);
- the suggestion that the Commission should propose rules for passenger rights at points of transfer of passengers between land and water-based transport (amendment 7);
- a new Recital suggesting a horizontal legislative approach on all modes of transport for the future (amendment 8);
- a linguistic clarification of the Article on the scope of application (amendment 9);
- the introduction of an exclusion from the scope of application of urban and suburban transport if the aims of the regulation are ensured and a comparable level of passenger rights is guaranteed (amendment 10);
- clarification of the definition of transport contract (amendment 14), the inclusion of 'retailer' in the definition of tour operator (amendment 16), and new definitions for 'accessible formats', 'passenger' and 'ticket price' (amendments 18, 19, 22);
- improved accessibility information and assistance to PRMs (amendments 31, 34 and 35);
- the clarification of the conditions on which assistance to PRMs is to be provided, and reinforcement of information rights (amendment 38 first and third parts, 39, and 41 first part);
- specification of the conditions on which assistance is provided for PRMs when travelling on cruises (amendment 42);
- clarification on the timing of transmission of information to a third party (amendment 45);
- compensation in respect of wheelchairs and mobility equipment (amendments 49 and 50);
- the reinforcement of the information obligations of the carrier in case of interrupted travel (amendment 51);
- the reimbursement of the ticket price if a delay or cancellation occurs (amendments 54 and 56);
- the compensation for cruise passengers (amendment 58);
- the introduction of the notion of force majeure (amendment 60);
- the deduction of compensation in cases when additional compensation is granted under any other applicable legislation (amendment 61);

- the designation and competences of the National Enforcement Bodies (amendments 62, 65, 66, 67 and 68);
- the content of the enforcement report (amendment 69);
- the types of penalties (amendment 70);
- the reinforcement of PRM rights (amendments 71 and 72).

4.3. Amendments of the European Parliament rejected by the Commission but included in the Council position

- the deletion of ro-ro passenger ship definition (amendment 17);
- the addition of new elements to be taken into account when refusing PRMs to travel (amendment 27);
- the limitation of the possibility for a PRM to use any other assistance animal but a dog (amendments 43, 73, 74 and 75);
- the limitation of the subcontracting parties that might transmit a PRM notification in case of the need of assistance (amendment 44);
- the limitation of the cost of the assistance to passengers (amendment 53 second part).

4.4. Amendments of the European Parliament rejected by the Commission and not included in the Council position

- amendments 1, 11, 25, 26, 28 and 29 first part affecting the PRMs right to travel;
- the modification of the definition of ticket vendor (amendment 15) and the introduction of new definitions on arrival, departure and force majeure (amendments 20, 21 and 23);
- new responsibilities for managing bodies of ports when providing assistance to PRMs (amendment 37);
- restriction of the conditions on which assistance is provided (amendment 38 second part, 41);
- limitation of the number of personnel to be trained for giving assistance to PRMs (amendment 48);
- the conditions of payment of reimbursement in case of delay or cancellation and the inclusion of a new derogation to the compensation (amendment 55, 59).

5. CONCLUSION

The Commission is deeply concerned about the very substantial modifications introduced by the Council as compared to the initial proposal of the Commission and to some amendments of the European Parliament, to the extent that they considerably reduce the scope of

application of the draft Regulation and hence the level of protection of EU passengers. The Commission takes note of the position adopted by the Council by unanimity and considers that the level of ambitions should be constructively raised again in the framework of further inter-institutional debate in view of the final adoption of the Regulation.