

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

(2002/C 103 E/17)

(Text with EEA relevance)

COM(2001) 784 final — 2001/0305(COD)

(Submitted by the Commission on 21 December 2001)

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure referred to in Article 251 of the Treaty,

Whereas:

- (1) Action by the Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers; moreover full account should be taken of the requirements of consumer protection.
- (2) Denied boarding and cancellation or long delay of flights cause serious trouble and inconvenience to passengers.
- (3) The Community should set common minimum standards of protection both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market.
- (4) While Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport ⁽¹⁾ created basic protection for passengers, the number of passengers denied boarding against their will remains unacceptably high. This can best be reduced by both requiring air carriers to call for volunteers to surrender their reservations, in exchange for benefits, and deterring carriers from denying passengers boarding against their will through a requirement to pay compensation at a dissuasive level.

- (5) Passengers denied boarding against their will should be able either to cancel their journeys, with reimbursement of their tickets, or to continue them under satisfactory conditions, and should be adequately cared for while awaiting a later flight.
- (6) Volunteers should also be able to cancel their journeys or continue them under satisfactory conditions, since they face difficulties of travel similar to those experienced by passengers denied boarding.
- (7) The trouble and inconvenience to passengers caused by cancellation of flights should also be reduced, except when cancellation occurs in exceptional circumstances beyond the responsibility of an air carrier or that of its subcontracting agent. This can best be achieved by requiring air carriers, before the scheduled time of departure, to contact the passengers affected and agree with them the conditions under which they volunteer to surrender their reservations.
- (8) Passengers whose flights are cancelled and who do not volunteer to surrender their reservations should be able either to obtain reimbursement of their tickets or to continue their journeys under satisfactory conditions, and should be adequately cared for while awaiting a later flight.
- (9) Similarly, passengers whose flights are delayed for a specified time should be able to cancel their journeys or to continue them under satisfactory conditions.
- (10) Since the distinction between scheduled and non-scheduled air services is weakening, protection should apply to passengers not only on scheduled but also on non-scheduled flights, including those contained in package travel, holidays and tours.
- (11) Since tour operators are generally responsible for commercial decisions concerning package travel, holidays and tours, they should be responsible for compensation and assistance to passengers taking flights contained in package travel, holidays and tours, in the event of denied boarding and cancellation or long delay.
- (12) Since paperless tickets are becoming common, this Regulation should cover all forms of tickets to ensure comprehensive protection of passengers.

⁽¹⁾ OJ L 36, 8.2.1991, p. 5.

- (13) Passengers should be fully informed of their rights in the event of denied boarding and of cancellation or long delay of flights, so that they can effectively exercise their rights.
- (14) The Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.
- (15) Regulation (EEC) No 295/91 should accordingly be repealed,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes minimum rights for air passengers when:

- (a) denied boarding;
- (b) their flight is cancelled, except for reasons beyond the responsibility of an air carrier or that of its subcontracting agent;
- (c) their flight is delayed for a specified time.

Article 2

Definitions

For the purposes of this Regulation:

- (a) 'air carrier' means an air transport undertaking with a valid operating licence;
- (b) 'Community carrier' means an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No 2407/92⁽¹⁾;
- (c) 'tour operator' means, with the exception of an air carrier, an organiser or retailer in the sense of Article 2 points 2 and 3 of Council Directive 90/314/EEC⁽²⁾;

- (d) 'package' means those services defined in Article 2 point 1 of Directive 90/314/EEC;
- (e) 'ticket' means a valid document giving entitlement to transport, or an equivalent in paperless form, including electronic form, issued or authorised by the air carrier or its authorised agent;
- (f) 'confirmed reservation' means that the passenger has a ticket, or other proof, which indicates that the reservation has been registered and confirmed by the air carrier or tour operator;
- (g) 'code-sharing' means a situation in which a passenger has a contract and confirmed reservation with one air carrier, the marketing carrier, but is transported by another, the operating carrier;
- (h) 'final destination' means the destination on the ticket presented at the check-in counter or, in the case of directly connecting flights, the destination of the last flight.

Article 3

Scope

1. This Regulation applies to passengers 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 they benefit from compensation and assistance in that third country, when they:

- (a) have a confirmed reservation on a flight and present themselves for check-in, either as stipulated and at the time indicated in advance and in writing by the air carrier, the tour operator or an authorised travel agent, or if no time is indicated, not later than thirty minutes before the published departure time; or
- (b) have been transferred by an air carrier or tour operator from the flight for which they held a confirmed reservation to another flight, irrespective of the reason.

2. This Regulation does not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. However, passengers having tickets issued under a Frequent Flyer Programme or other commercial programme by an air carrier or tour operator are covered by this Regulation.

⁽¹⁾ OJ L 240, 24.8.1992, p. 8.

⁽²⁾ OJ L 158, 23.6.1990, p. 59.

3. This Regulation applies to any air carrier or tour operator with which a passenger referred to in paragraph 1 and in the second subparagraph of paragraph 2 has a contract. The tour operator, or in the case of code sharing, the marketing carrier shall make with the operating carrier any arrangements necessary to ensure the implementation of the provisions of this Regulation.

4. The provisions of this Regulation shall not affect the rights of passengers under Directive 90/314/EEC.

Article 4

Rules laid down by the air carrier or tour operator

An air carrier or tour operator shall, in accordance with this regulation, lay down the rules which it will follow when passengers are denied boarding, including those on priorities for passenger embarkation, and shall make them available to the public. They shall form part of the contract or conditions of carriage of the carrier or tour operator.

Article 5

Obligations towards passengers in case of denied boarding

1. When an air carrier or tour operator reasonably expects to deny boarding on a flight, it shall first identify any passenger still awaiting check-in for the flight concerned at the time check-in closes and then call for volunteers to surrender their confirmed reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the air carrier or tour operator.

2. Volunteers shall be assisted in accordance with Article 8, such assistance being additional to the benefits mentioned in the paragraph 1. If an insufficient number of volunteers comes forward to allow the remaining passengers with confirmed reservations to be accommodated on the flight, the air carrier or tour operator may then deny boarding to passengers against their will, in accordance with the rules laid down by the air carrier or tour operator referred to in Article 4.

3. If boarding is denied to passengers, the air carrier or tour operator shall immediately compensate them in accordance with Article 7 and assist them in accordance with Articles 8 and 9.

4. If an air carrier or tour operator places a passenger in a class higher than that for which the ticket was purchased, it may not request any supplement or payment. If an air carrier or tour operator places a passenger in a class lower than that for which the ticket was purchased, it shall reimburse the difference in price between the passenger's ticket and the cheapest published fare available for the class in which he or she is placed for that part of the journey.

Article 6

Boarding of disabled and other passengers with special needs

An air carrier or tour operator shall not deny boarding to a disabled passenger and any accompanying person, to a passenger whose mobility is otherwise reduced or to an unaccompanied child.

Article 7

Right to compensation

1. In the case of denied boarding passengers shall receive compensation amounting to:

- (a) EUR 750 for flights of less than 3 500 kilometres;
- (b) EUR 1 500 for flights of 3 500 kilometres or more.

In determining the relevant distance, the basis shall be the last destination at which the denial of boarding will delay the passenger's arrival after the scheduled time.

2. When passengers accept re-routing to their final destination on an alternative flight pursuant to Article 8, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked by two hours for flights of less than 3 500 kilometres, and by four hours for flights of 3 500 kilometres or more, an air carrier or tour operator may reduce the compensation provided for in paragraph 1 by 50 %.

3. The compensation referred to in paragraph 1 shall be paid in cash or, with the signed agreement of the passenger, by bank orders, bank cheques, in travel vouchers and/or other services.

4. The distances given in paragraphs 1 and 2 shall be measured by the great circle track method (great circle route).

Article 8

Right to assistance

1. In the case of denied boarding passengers shall be offered the choice between:

- (a) reimbursement of the full cost of the ticket, under the conditions by which it was paid, for the part or parts of the journey not made and for the part or parts already made, if no longer serving any purpose in relation to the passenger's original travel plan, with a return flight to the first point of departure at the earliest opportunity;
- (b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or

(c) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience.

The passengers shall also be offered free of charge a telephone call and/or telex or fax message and/or e-mail to the point of final destination.

2. When, in the case where a town, city or region is served by several airports, an air carrier or tour operator offers a passenger a flight to an alternative airport to that for which the booking was made, the carrier or tour operator shall bear the cost of travelling from that alternative airport either to that for which the booking was made or to another close-by destination, agreed with the passenger.

Article 9

Right to care while awaiting a later flight

In the case of denied boarding passengers shall be offered free of charge:

- (a) meals and refreshments in a reasonable relation to the waiting time;
- (b) hotel accommodation in cases where a stay of one or more nights, or an additional stay, becomes necessary.

Article 10

Cancellation

1. In the case of cancellation of a flight, the following provisions apply except when the air carrier or tour operator can prove that it was done solely because of exceptional circumstances beyond its responsibility or that of its subcontracting agent.

2. When, before the scheduled time of departure, an air carrier or tour operator cancels or reasonably expects to cancel a flight, it shall make every effort to contact the passengers affected and to agree with them the conditions under which they accept to surrender their confirmed reservations. At the very least the passengers shall be offered a choice between:

- (a) either reimbursement of the full cost of the ticket, under the conditions by which it was paid, for the part or parts of their journey not made and for the part or parts already made, if no longer serving any purpose in relation to the passenger's original travel plan, with a return flight to the first point of departure at the earliest opportunity; or

(b) rerouting, under comparable conditions of transport, to their final destination at the earliest opportunity; or

(c) rerouting, under, comparable transport conditions, to their final destination at a later date, at their convenience.

3. Those passengers, with whom an air carrier or tour operator does not reach an agreement in accordance with paragraph 2 and which present themselves for check-in in accordance with Article 3, paragraph 1, shall be offered the compensation and assistance offered in the case of denied boarding, as specified in Articles 7, 8 and 9.

Article 11

Delay

1. When an air carrier or tour operator reasonably expects a flight to be delayed beyond its scheduled time of departure for two hours or more in the case of flights of less than 3 500 kilometres or for four hours or more in the case of flights of 3 500 kilometres or more, passengers shall be offered the assistance offered in the case of denied boarding as specified in Article 8.

In any event, that assistance shall be offered no later than two hours after the scheduled time of departure of the flight in the case of flights of less than 3 500 kilometres and no later than four hours after the scheduled time of departure of the flight in the case of flights of 3 500 kilometres or more.

2. When an air carrier or tour operator reasonably expects a flight to be delayed for two hours or more beyond its scheduled time of departure, it shall immediately offer the assistance offered in the case of denied boarding as specified in Article 9 to a disabled passenger and any accompanying person, to a passenger whose mobility is otherwise reduced or to an unaccompanied child, as well as any other assistance reasonably required to meet the special needs of such passengers.

Article 12

Further compensation

This Regulation shall apply without prejudice to a passenger's subsequent application to the courts having jurisdiction, with a view to further compensation.

Article 13

Compensation from a third party

In cases where an air carrier or tour operator pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from a third party in accordance with the law applicable.

*Article 14***Obligation to inform passengers of their rights**

1. The legal entity responsible for check-in of passengers shall ensure that a clearly legible notice containing the following text is displayed at the check-in area in a manner clearly visible to passengers: 'If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regard to compensation and assistance'.

2. An air carrier or tour operator denying boarding or cancelling a flight shall provide each passenger affected with a written notice setting out the rules for compensation and assistance in line with the provisions of this Regulation. It shall also provide each passenger affected by a delay of at least two hours with an equivalent notice.

*Article 15***Exclusion of waiver**

Obligations vis-à-vis passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the contract of carriage.

*Article 16***Penalties**

Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 1 January 2004 at the latest and shall notify it without delay of any subsequent amendment affecting them.

*Article 17***Enforcement**

Each Member State shall designate the body responsible for the enforcement of this Regulation and shall make this public. The body shall be responsible for enforcement of the Regulation as regards airports situated on the territory of the Member State and flights from a third country to an airport situated on that territory. It shall be responsible, among other things, for the

investigation of complaints concerning the respect of this Regulation and for taking the measures necessary to ensure that the rights of passengers are respected.

*Article 18***Complaints**

A passenger may complain to any body designated by a Member State about a possible infringement of this Regulation at any airport situated on the territory of a Member State [to which the Treaty applies?] or concerning any flight from a third country to an airport situated on that territory. If not responsible, the body shall communicate the complaint to the body responsible for enforcement in the case in question. The body responsible shall investigate the complaint and take any measures necessary to ensure that the rights of the passenger are respected.

*Article 19***Report**

The Commission shall report to the European Parliament and the Council by 1 January 2008 at the latest on the operation and the results of this Regulation, in particular the incidence of denied boarding and of cancellation of flights.

The report shall be accompanied where necessary by legislative proposals.

*Article 20***Repeal**

Regulation (EEC) No 295/91 is repealed.

*Article 21***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 Communities*.

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