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THE EUROPEAN UNION**

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**STATEMENT OF THE COUNCIL'S REASONS**

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Subject : Position at first reading adopted by the Council with a view to the adoption of a 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

- Statement of the Council's reasons
- Adopted by the Council on 11 March 2010

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**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 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<sup>1</sup>.

On 23 April 2009, the European Parliament voted its opinion at first reading<sup>2</sup>.

On 9 October 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.

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<sup>1</sup> Doc. 11990/08.

<sup>2</sup> A6-0209/2009.

## 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 when travelling by sea and inland waterway forms part of the general objective of the EU to strengthen passenger rights, in particular the rights of disabled persons and persons with reduced mobility. Legislation of similar nature has already been adopted for passengers travelling by air<sup>1</sup> or by rail<sup>2</sup>. The proposal contains, on the one hand, provisions on non-discriminatory access and assistance for disabled persons and persons with reduced mobility and, on the other hand, provisions on right to assistance, information and possibly compensation in the case of delays or cancellation for all categories of passengers.

Although the Council agrees 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 and ensuing costs on carriers and national administrations, without bringing an added value for passengers that would outweigh these inconveniences. Others were redrafted with a view to simplifying and clarifying the Regulation.

Resulting from this approach, the Council's first-reading position modifies, to a large 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.

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<sup>1</sup> 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.

<sup>2</sup> 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

#### Geographical scope

The Commission proposed that the Regulation should apply to passenger services and cruises between ports in the Member States or at ports in Member States.

The Council considers that the Commission proposal needs to be clarified in this respect, in order to avoid distortion of competition between intra-EU and extra-EU passenger services. The Council's first-reading position therefore fine-tunes the above provisions. It distinguishes between passenger services where the port of embarkation is situated in the territory of a Member State, on the one hand, and passenger services where the port of embarkation is situated outside the territory of a Member State, but the port of disembarkation is situated in the territory of a Member State, on the other. In the latter case, the Regulation will apply only if the service is operated by a Union carrier. However, the definition of Union carrier should be interpreted as broadly as possible in order to cover most passenger services between EU and non-EU ports. As for cruises, the Regulation will apply only to cruises where the port of embarkation is situated in the territory of a Member State.

Furthermore, the Council introduces a definition of "territory of a Member State".

#### Exemptions from the scope

The Commission original proposal covered in principle all passenger services, regardless of the number of passengers carried, the distance of the service, the purpose of the voyage, etc. The Commission had only foreseen a possibility for Member States to exempt services covered by public service contracts.

The Council considers it important to adapt these provisions to what is practically possible and necessary. It therefore introduces a certain number of exemptions where the provisions of the Regulation will not apply. The Council agrees to exclude from the scope passengers travelling with ships certified to carry up to 36 passengers, with ships with a crew of not more than three persons or with an overall passenger service of less than 500 meters one way. Furthermore, excursion and sightseeing trips (other than cruises) are also excluded.

In addition to this, the Member States may exempt, for a period of two years from the date of application of the Regulation, seagoing ships of less than 300 gross tons operated in domestic transport. If a Member State chooses to do so, it must however adequately ensure the rights of passengers under national law. Member States may also exempt passenger services covered by public service obligations, public service contracts or integrated services, provided that the rights of passengers are adequately guaranteed under national law.

The European Parliament followed in principle the Commission approach, but added a possibility for Member States to exempt urban and suburban services (amendment 10). The Council does not take this amendment into account, but the exemptions from the scope proposed by the Council will in practice mean that many services of that kind will be excluded.

ii) Rights of disabled persons and persons with reduced mobility

The Council wholeheartedly supports the Commission's objective to ensure that disabled persons and persons with reduced mobility have non-discriminatory access to maritime and inland waterway transport. The Council therefore follows the Commission proposal closely, except for certain simplifications and clarifications.

Concerning the exceptions to the right of transport, the Commission had proposed that a disabled person could be denied transport with reference to safety requirements or the structure of the passenger ship. To this, the Council has added health requirements, in order to take into account cases where the medical state of the passenger is such, that his or her safe transport cannot be guaranteed.

In this respect, the European Parliament had proposed a deletion of any references to safety requirements (amendments 1, 26 and 29) and the addition of a reference to transportation in a safe, dignified and operationally feasible manner (amendment 27). As for this latter amendment, the Council integrated it into its first-reading position, except for the word "dignified". The Council considers that nobody, except the disabled person or person with reduced mobility, can decide what a dignified manner of transportation is and that such a decision should not be taken by the carrier.

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. According to the Council's 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.

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 port or at a designated point at least 60 minutes before the embarkation or departure time. Furthermore, if the person has specific needs of accommodation or seating or for bringing medical equipment, 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.

Several of the European Parliament's amendments concerned information in formats accessible to disabled persons and persons with reduced mobility. These were taken on board by the Council. The same applies to the Parliament's amendments concerning changing from "assistance animal" to "assistance dog".

iii) Obligations of carriers and terminal operators in the event of interrupted travel

The Commission proposal provided for the right to information, assistance (including meals, refreshment and possibly hotel accommodation), re-routing and reimbursement as well as compensation of the ticket price for all passengers in case of delay and, in certain cases, cancellation of a passenger service or a cruise. However, compensation of the ticket price would not be paid when the delay or cancellation was caused by exceptional circumstances hindering the performance of the transport service.

The Council agrees with the principle that carriers and terminal operators should take care of their passengers, and it has extended this principle to include all cases of cancellations. Nevertheless, in certain cases it is not possible or reasonable to provide, for example, information on delays in an unmanned port. The Council's first-reading position therefore introduces the concept of port terminals, i.e. manned terminals in a port with certain facilities and staff (such as check in, ticket counters or lounges). Certain obligations of carriers and terminal operators only apply to passengers departing from such port terminals. This is the case of information and assistance and, to a certain extent, of re-routing and reimbursement.

Another consideration underlying the Council's first-reading position is that of maritime safety. In order to avoid that carriers, for economic reasons, set to sea or speed in weather conditions endangering the safe operation of the ship, an exemption has been introduced to the obligation of providing accommodation or compensation of the ticket price in such cases. Furthermore, the concepts of bad weather conditions and extraordinary circumstances are explained in a non-exhaustive manner in two recitals. Further exemptions to the right to assistance and compensation have been introduced when the passenger is informed of the cancellation or delay before buying the ticket or when the passenger causes the cancellation or delay. Finally, the carrier has been given the possibility to limit the cost for accommodation to 120 euro and to introduce a minimum threshold under which payments for compensation will not be paid (tickets costing 10 euro or less).

The European Parliament had suggested exemptions in case of force majeure (amendments 23 and 60) or if cancellation or delay is announced beforehand (amendment 59). The spirit of these amendments has been taken on board by the Council. Furthermore, the Parliament had proposed a limit for the cost of accommodation to twice the ticket price (amendment 53). The Council considers this to be too unfavourable for passengers and carriers in certain cases and finds the limitation to 120 euro more reasonable both for passengers and carriers.

iv) Complaint handling and national enforcement bodies

The Commission proposal contained detailed rules on how carriers should handle complaints, in particular far-reaching legal consequences of not replying to complaints, and on the designation and responsibilities of national enforcement bodies.

The Council, though agreeing in principle with the proposal, in particular that carriers should reply to complaints from their customers, introduces more flexibility into the system in order to avoid any unforeseen consequences for the Member States' legal systems or administrative structures.

The European Parliament suggested that each Member State should designate only one national enforcement body (amendments 5, 6, 66, 67 and 68) and that the Member States, not the carriers, should set up an independent complaint handling mechanism (amendment 65). However, for the reasons of flexibility explained above, the Council does not consider it appropriate to limit the Member States' margin of manoeuvre in such a way. In addition, the Parliament proposed that the national enforcement bodies should be independent of all commercial interests (amendment 66). The Council's first-reading position specifies that these bodies should be independent of carriers, tour operators and terminal operators.

v) Date of application of the Regulation

The Commission had proposed that the Regulation as a whole should apply from two years after publication, whereas certain provisions should apply already from one year after its publication.

The Council's first-reading position provides that the whole of the Regulation will apply from three years after its publication.

### **3. Other policy issues**

The Council decides to simplify the title of the Regulation.

The Council decides to clarify the provisions on sub-contracting of certain obligations stemming from the Regulation by adding a general article on other performing parties.

The Council decides to delete the requirement for carriers to keep separate accounts for the cost of providing assistance to disabled persons and persons with reduced mobility in order to avoid unnecessary administrative burdens for, in particular, smaller carriers. In the same spirit, the Council decides to limit the obligation to set quality standard for such assistance to larger terminal operators and carriers, and to restrict the requirements of disability-related training and instructions to those categories of staff who actually need it.

### **4. Other amendments adopted by the European Parliament**

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

- taking into account the needs of disabled persons and persons with reduced mobility in all cases when ports, terminals and passenger ships are designed or refurbished, without the qualification “when necessary” (amendment 2);
- the provisions governing the embarkation of disabled persons and persons with reduced mobility without prejudice to the general provisions applicable to embarkation of passengers (amendment 3);
- the invitation to the Commission to propose clear rules for passengers' rights at points of transfer between land and sea or inland waterway transport (amendment 7);
- a horizontal legislative approach covering all means of transportation in the event of a future legislative initiative relating to passenger rights (amendment 8);

- the inclusion of psychosocial disability in the definition of a disabled person or person with reduced mobility (amendment 11);
- changes to the definition of “transport contract” (amendment 14) and “ticket vendor” (amendment 15);
- the proposed definitions of “accessible formats” (amendment 18), “passenger” (amendment 19), “arrival” (amendment 20), “departure” (amendment 21), “ticket price” (amendment 22) and “force majeure” (amendment 23);
- the access rules for carriage of disabled persons and persons with reduced mobility, which should be established under the supervision of the national enforcement bodies and that these rules should include accompanying persons and the accessibility of fitted assistive equipment (amendment 31);
- the written confirmation to be given for the provision of assistance to disabled persons and persons with reduced mobility (amendment 34);
- assistance adapted to the individual needs of disabled persons or persons with reduced mobility (amendment 35);
- the responsibility of the managing body of a port to ensure that the port is accessible to disabled persons or persons with reduced mobility (amendment 37);
- the possibility of agreeing on a shorter notification period for assistance between the assistance provider and the passenger (amendment 38);
- the need to ensure that the passenger receives a confirmation of the notification of his or her assistance needs (amendment 39);

- the obligation of the carrier to provide replacement equipment suitable to the needs of the passenger concerned when mobility equipment is damaged during the journey (amendment 50);
- in case of delay, a passenger should only be offered reimbursement of the ticket price if he or she decides not to travel with the carrier (amendment 54);
- any compensation awarded under the Regulation, which may be deducted from any additional compensation granted (amendment 61);
- the penalties applicable to infringements of the Regulation, which could include ordering the payment of compensation (amendment 70);
- amendments 71, 72 and 75 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.

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