



28.9.2012

## NOTICE TO MEMBERS

**Subject: Petition 1269/2011 by Jürgen Köhler (German) on loopholes in the provisions on baggage delays in Regulation (EC) No 889/2002 of the European Parliament and of the Council on air carrier liability in the event of accidents**

### 1. Summary of petition

The petitioner draws attention to the problems that occur in connection with payment of compensation for baggage delays when air carriers refuse to return original receipts. Many travellers have taken out a private insurance that provides compensation that is more comprehensive than that which the air carriers are obliged to provide the affected persons under Regulation (EC) No 889/2002 of the European Parliament and of the Council on air carrier liability in the event of accidents. In order to have the difference between the private insurance and that of the air carrier paid out, the insurance companies require original receipts from the insured for the purchases he/she has been obliged to make and which the insured has in the first instance been obliged to provide the air carrier's compensations office. The petitioner questions the legality of the air carrier's retention of original receipts and asks the European Parliament to investigate if this situation is in compliance with the spirit of the abovementioned regulation and with EU principles of consumer protection.

### 2. Admissibility

Declared admissible on 5 March 2012. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 28 September 2012

Whilst EC Regulation 889/2002 sets out the basis of an air carrier liability in situations of lost or delayed baggage it does not provide a standard procedure through which a claim has to be

validated. Procedures, including original receipt requirements, will therefore vary from carrier to carrier.

However, these procedures must be in line with EU consumer protection rules, including the Directives on Unfair Contract Terms<sup>1</sup> (UCT) and Unfair Commercial Practices<sup>2</sup> (UCP), and with applicable national law on Court proceedings and means of proof.

The UCP Directive, which prevents traders from using misleading and aggressive practices towards consumers, requires that companies operate according to the requirements of professional diligence and that they do not provide consumers with false, untruthful or incomplete information on a wide range of elements including the after-sale customer assistance and complaint handling policy. Moreover in the case of an invitation to purchase, the Directive requires traders to provide such information in a clear, intelligible and timely manner.

The UCT Directive provides that contract terms should be written in a plain and intelligible language and that a contract term causing a significant imbalance between the parties to the detriment of the consumer shall be regarded as unfair and as such shall not be binding.

As regards cross-border infringements, unfair commercial practices and unfair terms fall under the competences of the EU-wide enforcement network established by the Regulation EC No 2006/2004 on Consumer Protection Cooperation<sup>3</sup>. This Regulation establishes a network of enforcement authorities and empowers them to detect, investigate and stop such infringements.

## Conclusion

The Commission would suggest to the petitioner to notify the competent national authority if he considers that any air carrier's trading practice infringes the legislation on unfair commercial practices and/or unfair contract terms. A list of the national competent authorities on consumer issues can be found at the following website link: [[http://ec.europa.eu/consumers/empowerment/cons\\_networks\\_en.htm](http://ec.europa.eu/consumers/empowerment/cons_networks_en.htm)].

For cross-border breaches of the EU legislation on unfair commercial practices and unfair terms, national authorities may decide to cooperate within the Consumer Protection Cooperation Network established by Regulation (EC) 2006/2004.

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<sup>1</sup> OJ L 095, 21.4.1993, p. 29

<sup>2</sup> OJ L 149, 11.6.2005, p. 22

<sup>3</sup> OJ L 364 of 9.12.2004, p. 1