

EUROPEAN PARLIAMENT

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2009

Committee on Legal Affairs

2008/0246(COD)

10.3.2009

OPINION

of the Committee on Legal Affairs

for the Committee on Transport and Tourism

on the proposal for 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 on cooperation between national authorities responsible for the enforcement of consumer protection laws
(COM(2008)0816 – C6-0476/2008 – 2008/0246(COD))

Rapporteur: Georgios Papastamkos

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SHORT JUSTIFICATION

The purpose of this proposal for a regulation is to regulate issues concerning the rights of domestic and international maritime passengers, including those who are disabled or persons with reduced mobility.

Your rapporteur takes the view that it would be systematically preferable if separate proposals were tabled on the rights of passengers, on the one hand, and on persons with reduced mobility on the other. The reason for this is that the individual arrangements have a different purpose and have different addressees. In the case of air transport, the Community legislator has elected to regulate issues concerning all passengers without exception, without differentiating specific categories.

Your rapporteur takes the view that in the definition of ‘carrier’ the reference to a ‘carrier’ and ‘performing carrier’ creates confusion as regards the person undertaking the obligation to perform a maritime transport service. This creates legal uncertainty for the contracting passenger, especially as regards the person to be addressed should the transport contract not be executed properly. The provisions on the responsibility to inform passengers in the event of a departure being delayed should therefore be supplemented so that passenger information is provided not only by the carrier or the port manager, but also by the operator or the authorised issuer of tickets, as is the practice in a number of Member States. Furthermore, the term ‘delay’ should be clarified and the cases of delays without fault further specified.

Furthermore, ‘delay’ is very narrowly defined (60 minutes). In the case of groups of islands, such as exist in the Aegean, where ships may stop at five or six different islands, one hour is too short. Equivalent arrangements governing air transport refer to a delay of ‘over two hours’. The Commission’s proposal probably reflects normal ship routes services in northern Europe (ferry lines, etc.). However, it totally fails to reflect conditions under which maritime transport services are performed in the Mediterranean.

As regards compensation, the best option which would be in line with the subsidiarity principle, would be to provide that Member States set the time limits. Compensation should be calculated on the basis of net fare i.e. the fare without VAT and deductions by third parties, and not ‘the ticket price’, as provided for in the proposal. This is because in the event of a refund, for instance, owing to a delay or the cancellation of a service etc., problems might emerge, for example regarding the refund of VAT already paid by the shipping company.

The reference to ‘exceptional circumstances’ is inadequate and unclear and the term needs to be clarified. The proposal probably means circumstances such as poor weather conditions or malfunctioning of the vessel, etc. However, there are other circumstances in which performance of the transport service would be difficult or impossible owing to a rescue attempt where a service has been altered to cover another island etc. Efforts must be made to establish whether the scope of the specific provision also covers these circumstances.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation – amending act Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) In the event of a future legislative initiative relating to passenger rights, a horizontal legislative approach covering all means of transportation would be more reasonable, given the need to use combined transportation.

Amendment 2

Proposal for a regulation – amending act Article 2 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States may exempt services covered by public service contracts if such contracts ensure a comparable level of passenger rights to that required by this Regulation.

2. Member States may exempt services covered by public service contracts if such contracts ensure a comparable level of passenger rights to that required by this Regulation, ***as well as services provided by ships of low tonnage or ships which carry a small number of passengers and operate on short-distance routes.***

Justification

Member States must be able to exempt passenger or cruise ships of low tonnage or ships which carry a small number of passengers and operate on short-distance routes owing to the special nature of the transportation which they provide, usually operating as sea "taxis".

Amendment 3

Proposal for a regulation – amending act
Article 3 – point f

Text proposed by the Commission

(f) "performing carrier" means a person other than the carrier and the tour operator, who actually performs the whole or a part of the carriage;

Amendment

(f) "performing carrier" means a person other than the carrier and the tour operator, ***whether this be the ship's owner, charterer or operator***, who actually performs the whole or a part of the carriage;

Amendment 4

Proposal for a regulation – amending act
Article 8 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. Carriers shall ensure that, on board their passenger ships and high-speed passenger craft, passengers' attention is drawn to general information concerning the services and assistance provided for disabled persons or persons with reduced mobility on board said ships or craft.

Amendment 5

Proposal for a regulation – amending act
Article 15 – point c

Text proposed by the Commission

(c) ensure that, upon recruitment, all new employees attend disability-related training and that personnel receive refresher training courses when appropriate.

Amendment

(c) ensure that, upon recruitment, all new employees ***who are to provide direct assistance to disabled persons and persons with reduced mobility*** attend disability-related training and that personnel receive refresher training courses when appropriate.

Amendment 6

Proposal for a regulation – amending act Article 16 – paragraph 2

Text proposed by the Commission

Amendment

2. There shall be no limit to the amount of compensation payable pursuant to this Article. **deleted**

Amendment 7

Proposal for a regulation – amending act Article 17 – paragraph 1

Text proposed by the Commission

Amendment

1. In the event of delay, the carrier or, where appropriate, the managing body of the port shall inform passengers of estimated departure and arrival times as soon as this information is available, but not later than 30 minutes after a scheduled departure or one hour before a scheduled arrival respectively.

1. In the event of delay, the carrier or, where appropriate, the managing body of the port **or the tour operator or the ticket vendor authorised by the carrier** shall inform passengers of estimated departure and arrival times as soon as this information is available, but not later than 30 minutes after a scheduled departure or one hour before a scheduled arrival respectively.

Justification

The ambiguity of the definitions of "carrier" and "performing carrier" create legal uncertainty about the person who is to bear the responsibility for maritime transportation. The provisions of the article have to be complemented so as provide for passengers to be informed, not only by the carrier or the managing body of the port, but also by the tour operator or the ticket vendor, as is the case in various Member States.

Amendment 8

Proposal for a regulation – amending act Article 17 – paragraph 2

Text proposed by the Commission

Amendment

2. If passengers miss a connection due to a delay, the performing carrier shall make reasonable efforts to inform the passengers

2. If passengers miss a **maritime** connection due to a delay, **the carrier or** the performing carrier **or the managing**

concerned of alternative connections.

body of the port or the tour operator or the ticket vendor shall make reasonable efforts to inform the passengers concerned of alternative connections.

Justification

The notion and the definition of "carrier" and the "performing carrier" create legal uncertainty about the person who is to bear the responsibility for maritime transportation. The provisions of the article have to be complemented so as provide for passengers to be informed, not only by the carrier or the managing body of the port, but also by the tour operator or the ticket vendor, as is the case in various Member States.

Amendment 9

Proposal for a regulation – amending act Article 18 – paragraph 1

Text proposed by the Commission

1. Where a carrier **reasonably** expects a passenger maritime service to be delayed for more than **60** minutes beyond its scheduled time of departure, passengers shall be offered free of charge meals and refreshments in reasonable relation to the waiting time, if they are available on board or at the port, or can reasonably be supplied.

Amendment

1. Where, **owing to its own fault**, a carrier expects a passenger maritime service to be delayed for more than **120** minutes beyond its scheduled time of departure, passengers shall be offered free of charge meals and refreshments in reasonable relation to the waiting time, if they are available on board or at the port, or can reasonably be supplied.

Justification

The time limits for delays are extremely short. For example, in case of an archipelago, such as the Aegean, where ships may provide services covering 5-6 islands in a single route, the one-hour time limit is disproportionally short. The corresponding provisions for air transport refer to a delay "of more than 2 hours". The Commission's proposal may well reflect the usual routes in northern Europe, but certainly not the conditions of maritime transportation in the Mediterranean.

Amendment 10

Proposal for a regulation – amending act Article 18 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Furthermore, passengers shall be

offered the possibility of making free telephone calls or sending free telexes, faxes or e-mails to deal with urgent matters.

Amendment 11

Proposal for a regulation – amending act

Article 19 – paragraph 1 – introductory part

Text proposed by the Commission

1. Where a carrier **reasonably** expects a passenger maritime service to be delayed beyond its scheduled time of departure by more than **120** minutes, the passenger shall immediately:

Amendment

1. Where, **owing to its own fault**, a carrier expects a passenger maritime service to be delayed beyond its scheduled time of departure by more than **180** minutes, the passenger shall immediately:

Justification

The time limits for delays are extremely short. For example, in case of an archipelago, such as the Aegean, where ships may provide services covering 5-6 islands in a single route, the one-hour time limit is disproportionally short. The corresponding provisions for air transport refer to a delay "of more than 2 hours". The Commission's proposal may well reflect the usual routes in northern Europe, but certainly not the conditions of maritime transportation in the Mediterranean.

Amendment 12

Proposal for a regulation – amending act

Article 20 – paragraph 1 – point a

Text proposed by the Commission

(a) 25 % of the ticket price for a delay of **60** to **119** minutes;

Amendment

(a) 25 % of the **net** ticket price for a delay of **120** to **179** minutes;

Justification

As far as the time limits for delays are concerned, see the justification to amendments 5 and 6. The most proper solution and the one most consistent with the principle of subsidiarity would be for the time limits to be set by the Member States. Furthermore, the compensation must be calculated on the basis of the net price of the trip, excluding TVA etc, and not on the basis of the "ticket price".

Amendment 13

Proposal for a regulation – amending act

Article 20 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) 50 % of the ticket price for a delay of **120** minutes or more;

(b) 50 % of the ticket price for a delay of **180** minutes or more;

Justification

As far as the time limits for delays are concerned, see the justification to amendments 5 and 6.

Amendment 14

Proposal for a regulation – amending act

Article 20 – paragraph 4

Text proposed by the Commission

Amendment

4. This Article shall not apply where the delay or cancellation is caused by exceptional circumstances hindering the performance of the transport service, which could not have been avoided even if all reasonable measures had been taken.

4. This Article shall not apply where the delay or cancellation is caused **not by the carrier's own fault but** by exceptional circumstances hindering the performance of the transport service, which could not have been avoided even if all reasonable measures had been taken.

Justification

This provision of Article 20(4) is incomplete and vague. The notion of "exceptional circumstances" is clarified by the addition of the reference to absence of liability on the part of the carrier.

Amendment 15

Proposal for a regulation – amending act

Article 27 – paragraph 1

Text proposed by the Commission

Amendment

1. On 1 June each year the enforcement bodies designated pursuant to Article 26 shall publish a report on their activity in the previous year, containing inter alia:

deleted

(a) a description of actions taken in order to implement the provisions of this

Regulation,

(b) a reference to the procedure applicable to the settlement of individual complaints,

(c) a summary of rules on accessibility for disabled persons and persons with reduced mobility applicable in that Member State;

(d) aggregated data on complaints;

(e) details of sanctions applied;

(f) other issues of importance for the better enforcement of this Regulation.

Justification

The provision of Article 27(1) significantly increases the administrative burden without producing any added value.

PROCEDURE

Title	Rights of passengers when travelling by sea and inland waterway
References	COM(2008)0816 – C6-0476/2008 – 2008/0246(COD)
Committee responsible	TRAN
Opinion by Date announced in plenary	JURI 18.12.2008
Rapporteur Date appointed	Georgios Papastamkos 19.1.2009
Discussed in committee	12.2.2009
Date adopted	9.3.2009
Result of final vote	+: 16 –: 0 0: 0
Members present for the final vote	Monica Frassoni, Giuseppe Gargani, Neena Gill, Klaus-Heiner Lehne, Manuel Medina Ortega, Eva-Riitta Siitonen, Francesco Enrico Speroni, Diana Wallis, Tadeusz Zwiefka
Substitute(s) present for the final vote	Vicente Miguel Garcés Ramón, Jean-Paul Gauzès, Kurt Lechner, Georgios Papastamkos, Gabriele Stauner, Ieke van den Burg
Substitute(s) under Rule 178(2) present for the final vote	Bill Newton Dunn