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*****I** **REPORT**

on the proposal for a European Parliament and Council regulation establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights
(COM(2001) 784 – C5-0700/2001 – 2001/0305(COD))

Committee on Regional Policy, Transport and Tourism

Rapporteur: Giorgio Lisi

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 21 December 2001 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 80(3) of the EC Treaty, the proposal for a European Parliament and Council regulation establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights (COM(2001) 784 – 2001/0305 (COD)).

At the sitting of 16 January 2002 the President of Parliament announced that he had referred this proposal to the Committee on Regional Policy, Transport and Tourism as the committee responsible and the Committee on Legal Affairs and the Internal Market and the Committee on the Environment, Public Health and Consumer Policy for their opinions (C5-0700/2001).

The Committee on Regional Policy, Transport and Tourism appointed Giorgio Lisi rapporteur at its meeting of 22 January 2002.

It considered the Commission proposal and draft report at its meetings of 19 June 2002 and 9-10 September 2002.

At the latter meeting it adopted the draft legislative resolution by 42 votes to 4.

The following were present for the vote: Luciano Caveri, chairman; Rijk van Dam and Helmuth Markov, vice-chairmen; Giorgio Lisi, rapporteur; Emmanouil Bakopoulos, Carlos Bautista Ojeda (for Nelly Maes), Rolf Berend, Philip Charles Bradbourn, Felipe Camisón Asensio, Nicholas Clegg (for Isidoro Sánchez García), Luigi Cocilovo, Christine de Veyrac, Nirj Deva (for Dana Rosemary Scallon), Jan Dhaene, Den Dover (for Renate Sommer), Garrelt Duin, Alain Esclopé, Giovanni Claudio Fava, Jacqueline Foster, Mathieu J.H. Grosch, Konstantinos Hatzidakis, Ewa Hedkvist Petersen, Juan de Dios Izquierdo Collado, Georg Jarzembowski, Elisabeth Jeggle (for Dieter-Lebrecht Koch), Karsten Knolle (for Carlos Ripoll i Martínez Bedoya), Sérgio Marques, Erik Meijer, Francesco Musotto, James Nicholson, Josu Ortuondo Larrea, Karla M.H. Peijs, Wilhelm Ernst Piecyk, Samuli Pohjamo, José Javier Pomés Ruiz, Alonso José Puerta, Reinhard Rack, Brian Simpson, Dirk Sterckx, Ulrich Stockmann, Margie Sudre, Roseline Vachetta (for Michel J.M. Dary), Joaquim Vairinhos, Ari Vatanen, Herman Vermeer and Mark Francis Watts.

The opinion of the Committee on the Environment, Public Health and Consumer Policy is attached; the Committee on Legal Affairs and the Internal Market decided on 19 February 2002 not to deliver an opinion.

The report was tabled on 12 September 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council regulation establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights (COM(2001) 784 – C5-0700/2001 – 2001/0305(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2001) 784¹),
 - having regard to Article 251(2) and Article 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0700/2001),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Regional Policy, Transport and Tourism and the opinion of the Committee on the Environment, Public Health and Consumer Policy (A5-0298/2002),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 7

(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

(7) The trouble and inconvenience to passengers caused by cancellation of flights should also be reduced, except when cancellation occurs *due to force majeure and is therefore* 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

¹ OJ C 103 E, 30.4.2002, p. 225.

under which they volunteer to surrender their reservations.

under which they volunteer to surrender their reservations.

Justification

It seems appropriate to use uniform terms in the directives concerned with compensation for trouble and inconvenience and even financial loss arising in connection with air travel. The term 'force majeure' from Article 4, paragraph 6, subparagraph b(ii) of Council Directive 90/314/EEC on package tourism is therefore used.

Amendment 2
Recital 10

(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.

(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 holidays and tours.

Justification

Package tourists are covered by Council Directive 90/314/EEC on package tourism, and this provides appropriate security for tourists. It is therefore not appropriate to include package tourists in this Regulation.

Amendment 3
Recital 11

(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.

(11) Package travel customers enjoy already a high level of protection through Directive 90/314/EEC of 13 June 1990 on package holiday and package tours, which holds tour operators responsible for the proper performance of the package, including air transport. As such, the provisions of this regulation shall not apply to package travel customers.

Justification

Non-scheduled airlines and tour operators never deliberately overbook. Occasional mistakes

occur or (for operational reasons, most often to reduce delay) smaller aircraft may be substituted. The welfare interests of such passengers are protected by the Package Travel Directive and the airlines' voluntary commitment on Air Passenger Rights. Non-scheduled airlines do not cancel flights because holidaying passengers cannot be 'abandoned'. Those on holiday must be returned.

Amendment 4
Recital 13

(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.

(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. ***Where a flight has been overbooked, the available places shall be allocated under a transparent procedure according to uniform criteria.***

Justification

The allocation of available places in the event of overbooking is not always done transparently and is therefore difficult for customers to understand. It is therefore necessary to decide according to uniform criteria which passengers should board the flight and which passengers should not.

Amendment 5
Recital 13 a (new)

(13a) Passengers travelling on all modes of transport should be treated equally and distortion of competition should be avoided among different modes of transport. Similar rules shall be enacted for rail, ferry, bus and coach transportation.

Justification

It is important that passengers travelling on all modes enjoy equal treatment and equal rights to compensation. For example, it would be irrational, unfair and a distortion of competition to compensate for denied boarding or a long delay in the case of a plane journey between two European cities whilst not offering compensation in similar circumstances for a high speed

train journey between the same two cities.

Amendment 6
Article 1, point (b)

(b) their flight is cancelled, except for reasons beyond the responsibility of an air carrier or that of its subcontracting agent;

(b) their flight is cancelled, except for reasons beyond the responsibility of an air carrier or that of its subcontracting agent
and except if this is due to force majeure;

Justification

This clarification should appear prominently at the beginning of the legislative text.

Amendment 7
Article 2, point (h)

(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.***

(h) ‘final destination’ means the destination on the ticket presented at the check-in counter or, in the case of ***successive flights, on the last flight coupon of the ticket.***
Connecting flights which can be carried out without difficulties although a delay has been caused by denied boarding are not taken into account.

Justification

The definition of ‘final destination’ in Regulation 295/91 has not led to any problems and it is unclear why the Commission wishes to modify it now. When the Commission proposed the same revision in 1998 it kept the definition unchanged.

Amendment 8
Article 2, point (h a) (new)

(ha) ‘force majeure’, i.e. unusual and unforeseeable circumstances beyond the control of the party by whom it is pleaded, the consequences of which could not have been avoided even if all due care had been exercised, for example political instability,

extreme meteorological conditions, inadequate security, unexpected flight safety shortcomings and long strikes of essential services.

Justification

It is necessary to clarify this concept for air transport owing to the specific requirements in this field.

Amendment 9
Article 2, point (h b) (new)

(hb) ‘denied boarding’ means a refusal to accommodate passengers on a flight although they have a valid ticket, in paper or electronic form, a confirmed reservation on that flight, and have presented themselves at the check-in desk within the required time limit and as stipulated other than in circumstances where boarding is denied for disruptive behaviour, health and safety reasons or inadequate travel documentation;

Justification

The regulation should contain a definition of ‘denied boarding’ which takes account, for instance, of the fact that the absence or non-validity of an identity document or other safety concerns are valid reasons for refusing to transport passengers and should not be considered cases of denied boarding.

Amendment 10
Article 2, point (h c) (new)

(hc) ‘volunteer’ means a person who has a valid ticket, in paper or electronic form, a confirmed reservation on that flight, who presented themselves at the check-in desk within the required time limit and as stipulated, and who responds positively to the carrier's call for passengers prepared

***to surrender their confirmed reservation
in exchange for compensation;***

Justification

It is preferable to keep to the definition of ‘volunteer’ given in the regulation currently in force.

Amendment 11
Article 2, point (h d) (new)

***(hd) ‘cancelled flights’ means flights
which are not made, but are listed in the
computerised reservation system during
the seven days preceding the expected
departure;***

Justification

The proposal for a regulation covers cancelled flights but does not propose any definition for them. A clear text requires such a definition.

Amendment 12
Article 2, point (h e) (new)

***(he) ‘a person with reduced mobility’
means any person whose mobility is
reduced due to any physical disability
(sensory or locomotory), an intellectual
impairment, age, or any other cause of
disability when using transport, and
whose situation needs special attention or
adaptation of services ordinarily made
available to all passengers;***

Justification

The proposal for a regulation includes this concept without defining it; the ECAC’s official definition, which is already included in the Airline Passenger Service Commitment, could be

used.

Amendment 13
Article 3, paragraph 1

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:

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 a tour operator 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:

Justification

The scope of the Regulation should be extended to cover all carriers which fly to the Community.

Amendment 14
Article 3, paragraph 1, point (a)

(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

(a) have a confirmed reservation on a flight and present themselves for check-in either as stipulated and at the time indicated in advance by the air carrier, the tour operator or an authorised travel agent, or if no time is indicated, not later than ***sixty*** minutes before the published departure time; or

Justification

While it is valid for all passengers to be advised in good time of the time at which they should present themselves for check-in, there is no reason why this information should be given in writing.

In addition, due to increased security measures now required post-September 11th, sixty minutes is more appropriate than thirty.

Amendment 15
Article 3, paragraph 2

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.

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 ***or to air passengers on package tours***. 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.

Justification

Package tourists are covered by Council Directive 90/314/EEC on package tourism, and this provides appropriate security for tourists. It is therefore not appropriate to include package tourists in this Regulation

Amendment 16
Article 3, paragraph 3

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.***

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 responsibilities and obligations set out in this Regulation also apply, however, to the operating air carrier, both in the case of code sharing and where it is logistically impossible for the tour operator to meet the obligations laid down.*** The tour operator, or in the case of code sharing, the marketing carrier shall ***have full rights of recourse against the operating carrier whenever denied boarding, cancellation or delay to the flight are the latter's responsibility.***

Justification

Under the Commission's proposal, those subject to the obligations set out in Article 3(3) are the air carrier which has sold the service and the tour operator which has sold the package. However, it may sometimes be the operating carrier which is in practice responsible for denied boarding, and not the bodies which have a contract with the passengers. Similarly, it is possible that the tour operator may not be able, logistically, to meet the obligations laid down by this article. In order to protect passengers effectively, it is therefore preferable to make it perfectly clear that all those involved must comply with the obligations, albeit to different degrees and for different reasons: the marketing carrier, the tour operator which sells the package and the operating carrier.

In addition, steps should be taken to ensure that the tour operator and the marketing carrier are legally protected vis-à-vis the operating carrier, as they should have recourse available to them against the body responsible for denied boarding. This guarantee should be specified in the text, since passengers will seek compensation solely from the operator or agent from which they have bought the service.

Amendment 17 Article 5, paragraph 1

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.***

1. When ***a body with responsibility as laid down in Article 3(3)*** 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.

Justification

This would clarify the wording and also take account the change made to Article 3(3).

Amendment 18 Article 5, paragraph 2

2. Volunteers shall be assisted in accordance with Article 8, such assistance

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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.

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 **responsible, as laid down in Article 3(3)**, 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.

Justification

Amendment 19 Article 5, paragraph 3

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.

3. If boarding is denied to passengers **the body with responsibility referred to in Article 3(3)** shall immediately compensate **volunteers and non volunteers** in accordance with Article 7 and assist them in accordance with Articles 8 and 9.

Justification

The reference to Directive 90/314/EC is essential since cancellation of the flight may necessitate cancellation of the whole package, or merely make it impossible for the contract to be fulfilled once that part relating to air transport has been cancelled. For practical reasons, it is also a good idea to allow the tour operator to defer payment of compensation and to combine it with repayment of the cost of the entire package.

Amendment 20 Article 5, paragraph 4

4. If an air carrier **or tour operator** places a passenger in a class higher than that for

4. If an air carrier places a passenger in a class higher than that for which the ticket

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.***

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.

Justification

Remove all reference to 'tour operators' and 'package travel'; see Amendment 24. In addition, the Commission has not identified any problem with the calculation of the amount to be refunded in the existing regulation. It has produced no evaluation of the impact of the proposed change. However, it is justifiable to place a burden on the air carrier to make the required reimbursement.

Amendment 21 Article 5, paragraph 4 a (new)

4a. Where a flight has been overbooked, the available places shall be allocated under a transparent procedure according to uniform criteria

Justification

The allocation of available places in the event of overbooking is not always done transparently and is therefore difficult for customers to understand. It is therefore necessary to decide according to uniform criteria which passengers should board the flight and which passengers should not.

Amendment 22 Article 6

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.

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

child, or to passengers travelling with small children.

Justification

A number of disabled persons rely on a certified service dog to assist them in their journey. The voluntary commitments on air passenger rights have recognised that certified service dogs may be allowed to travel with the disabled person in the cabin free of charge. It is important that reference to certified service dogs be made in Article 6

Amendment 23
Article 7, paragraph 1

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

- (a) Euros **750** for flights of less than **3,500** kilometres;
- (b) Euros **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.

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

- (a) Euros **200** for flights of less than **1,000** kilometres;
- (b) Euros **400** for flights of **1,000** kilometres or more, **but less than 3,500 kilometres.**
(ba) Euros 600 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.

Every three years the Commission may adjust the amount of compensation in line with any rise in the cost of living.

Justification

An excessively high level of compensation might give rise to an increase in ticket prices, and would thus be, paradoxically, disadvantageous to passengers.

It is also proposed that flights should be categorised as short, medium, or long, since this corresponds more exactly to the reality of European flights.

The Commission's purpose in proposing large increases in levels of compensation is to reduce deliberate overbooking. Where denied boarding arises for other reasons, such as aircraft substitution for technical reasons, or payload restrictions (i.e. the inability to use all the aircraft's seats) for reasons such as adverse weather, the large increases would serve no purpose. Note that legislation in USA provides for compensation only in the event of deliberate overbooking.

The Commission has failed to evaluate the impact of removing the limit to compensation in the existing regulation. As fares on Europe's regional airlines, many of which are SMEs, average EUR 150, and many are as low as EUR 50, removal of the limit has a major economic impact. The Commission is obliged to perform an economic impact assessment for SMEs before making such a proposal.

The proposed levels are three times the existing levels for medium and long haul flights. This allows for a 50% inflationary increase, and a doubling of compensation when involuntary denied boarding is caused by deliberate overbooking.

Amendment 24
Article 7, paragraph 2

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%.

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 **1,000 kilometres**, **by three hours for flights of between 1,000 and 3,500 kilometres**, **or by four hours for flights of over 3,500 kilometres**, an air carrier may reduce the compensation provided for in paragraph 1 by 50%. **For distances over 1000 km, if the arrival time of the alternative flight does not exceed the scheduled arrival time by more than one hour, there will be no right for compensation.**

Justification

This change is necessary to be in keeping with the time : distance ratio. In addition, remove all reference to 'tour operators' and 'package travel'.

Amendment 25
Article 8, paragraph 1, excluding last subparagraph

1. In the case of denied boarding passengers shall be offered the choice between:
(a) reimbursement of the full cost of the

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.

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 ***within the validity of the ticket***;

(b) re-routing, under comparable transport conditions ***and within the validity of the ticket***, to their final destination at the earliest opportunity; or

(c) re-routing, under comparable transport conditions ***and within the validity of the ticket***, to their final destination at a later date at the passenger's convenience ***and subject to scheduling***.

Amendment 26

Article 8, paragraph 1, last subparagraph

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.

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 ***and to the point of departure***.

Justification

Self-explanatory.

Amendment 27

Article 9, paragraph 1, point (b a) (new)

(ba) free transport or reimbursement of expenses for the journey from the airport to the hotel and back again.

Justification

Provision should be made for the reimbursement of expenses for this journey; in some cases they might prove to be considerable, particularly should accommodation in the vicinity of the airport not be available.

Amendment 28
Article 10, paragraph 1

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***.

1. In the case of cancellation of a flight, the following provisions apply except when ***the body responsible as laid down in Article 3, paragraph 3***, can prove that it was done solely because of ***force majeure and is therefore*** beyond its responsibility.

Justification

The inclusion of the words 'body responsible' which refers to Amendment 7 of the rapporteur means that all contingencies are covered and that any misunderstandings can be ruled out. For the justification of the concept 'force majeure', reference is made to the justification of my amendment 1.

Amendment 29
Article 10, paragraph 2

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:

2. When, ***less than 48 hours*** before the scheduled time of departure, ***the body with responsibility as laid down in Article 3(3)*** cancels or reasonably expects to cancel a flight, it shall make every effort to contact the passengers affected ***in order to explain to them any possible alternatives*** 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:

Justification

Referring to the 'body with responsibility', using the wording inserted by Amendment 7, includes all possibilities and eliminates any ambiguity.

The reference to information to be given to the passengers should also include the indication of possible alternatives which, obviously, do not prejudice the right of passengers to reach their destination at the time and under the conditions set out in their contract.

Amendment 30
Article 10, paragraph 3

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.

3. Those passengers, with whom ***the body with responsibility as laid down in Article 3(3)*** 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.

Justification

Adjustment necessitated by the changes made by Amendment 7.

Amendment 31
Article 11, paragraph 1, subparagraph 1

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.

1. When ***the body responsible as laid down in Article 3(3)*** reasonably expects a flight to be delayed beyond its scheduled time of departure for ***one hour*** in the case of flights of less than ***1000 kilometres, for two hours in the case of flights of between 1000 and 3 500 kilometres or for four hours in the case of flights of over 3 500 kilometres***, passengers shall be offered the assistance offered in the case of denied boarding as specified in Article 9, ***except***

in the case of force majeure.

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.*

In any event, that assistance shall be offered *within the time limits set out in this Article with respect to each distance bracket. This assistance shall be offered immediately to passengers with reduced mobility, as referred to in Article 2(ha), and those accompanying them.*

Justification

Owing to the definition of the concept of 'force majeure' in my amendment 3, it is not necessary here to list individual circumstances. Moreover, reference is made to the rapporteur's justification in respect of the amendment to Article 11, paragraph 1.

Amendment 32 Article 11, paragraph 2

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. *deleted*

Justification

The provisions for passengers with reduced mobility have been included in the text proposed in the preceding amendment.

Amendment 33 Article 11, paragraph 2 a (new)

2a. Assistance may not apply in situations involving political unrest or long strikes in essential services or other circumstances

beyond the air carrier's control. Moreover, assistance should only be provided where local conditions allow for such assistance to be delivered and under the condition that doing so would not further delay departure.

Justification

Self-explanatory.

Amendment 34
Article 12

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

This provision does not apply to volunteers as defined in Article 2 (hb) (new) who have accepted compensation under the conditions set out in Article 5(1) and (2) and the provisions of Articles 7, 8 and 9 thereof.

Justification

It does not seem reasonable to provide for possible further remedies for those who voluntarily accept compensation for the inconvenience they suffer due to denied boarding. Above all, this would diminish legal certainty for air companies. It is no accident that the regulation currently in force excludes volunteers from possible further remedies.

Amendment 35
Article 13

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

1. 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.

seek compensation from a third party in accordance with the law applicable.

1a. Member States shall ensure that any claim for compensation under the principle that the agency responsible should pay can be made and enforced against any third party, i.e. even state or other authorities with sovereign powers by the undertakings designated in paragraph 1.

Justification

It must be stated quite clearly that the airlines and tour operators concerned which are initially required to pay compensation may on a case-by-case basis have recourse to the bodies actually responsible, for example, air traffic control and ground transport services, which in many Member States have so far not been subject to such claims for compensation owing to the sovereign or state nature of their actions.

Amendment 36 Article 14, paragraph 2

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.

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. ***The contact details of the national competent authority as stipulated in Article 18 shall also be given to the passenger in written form.***

Justification

The passenger must also receive information on how to contact the national competent authority responsible for dealing with any complaints about the Regulation's provisions.

Amendment 37
Article 14 a (new)

Article 14a

Ranking of user-friendliness

From 1 January 2004 a monthly ranking concerning the quality of services offered by airlines as regards user-friendliness and customer satisfaction shall be published on the basis of the criteria of frequency of denied boarding, loss of luggage, delays, passengers' complaints and an assessment of the quality of the information and services.

Justification

A ranking of the quality of the services provided by airlines – as already exists, for example, in the USA, where such a ranking is published on a monthly basis by the US Department of Transportation – enables consumers to compare the different options and helps them reach a decision. A ranking of airlines would also provide an incentive for airlines to keep a constant eye on the quality of their service to consumers and, where appropriate, improve it.

Amendment 38
Article 18

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.

Without prejudice to Article 12, 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.

Justification

Self-explanatory.

Amendment 39
Article 19

The Commission shall report to the European Parliament and the Council **by 1st 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.

Pursuant to Article 17 the Commission shall report to the European Parliament and the Council **no later than 5 years after the entry into force of the Regulation** on the **overall** operation and 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.

Justification

Self-explanatory.

EXPLANATORY STATEMENT

Protecting air passengers

For some time now the Community has had an internal market in air transport services, which has opened up the liberalisation of services and governed the competition between air carriers, introducing fundamental changes into one sector of society in which the rules were previously extremely fragmented. This has made it easier to harmonise several procedures and one of its most important effects has been a significant fall in prices, quite apart from the protection of passengers' rights, which are safeguarded at the Community level by various provisions¹.

One of the inconveniences which still remains is the practice of overbooking, which cannot be eliminated completely, in particular because of the transfer to a later flight of passengers unable, for various reasons, to take the one on which they were booked. The main cause of overbooking is the practice called 'no-show', the tendency for passengers not to turn up for flights although they have confirmed reservations. Operators, therefore, forecast the probable level of no-shows on a flight. They then accept reservations which exceed the plane's capacity.

This system has something of the perverse about it and is partly self-perpetuating: many passengers, fearing the effects of overbooking, make double reservations, even on flights from the same company, thus multiplying the problems. The agencies are also responsible for this, since they are not unduly concerned about selling the same seat twice, in the expectation of some no-shows. According to the data available to the Commission, in 1999 an estimated 250,000 passengers suffered this treatment from the main Community carriers (scheduled services), or 1.1 per thousand.

While this is, of course, a modest percentage, the problem is not as marginal as one might think, particularly for certain periods of the year or on certain routes. And quite apart from any statistical importance, the issue is one of protecting rights and rationalising the system.

Developments in the market

Liberalisation of air transport has brought passengers many advantages. Competition has arrived on many routes, prices have fallen and demand has risen. In spite of this positive picture, however, consumers have valid reasons for dissatisfaction. Denied boarding and cancellation of flights, for commercial reasons, provoke strong resentment and although air carriers and tour operators are not always responsible for excessive delays, they should not be allowed to leave passengers in their care stranded at airports for hours, unable to change their reservations or cancel their flights if they no longer serve any purpose.

Aware of these problems, in May 2001 the associations of European airlines presented voluntary commitments to improve their quality of service. These measures are a real step forward and, when fully implemented, will raise the level of service that passengers receive. They make provision for various forms of assistance to passengers but, unlike the proposal for

¹ Regulation (EEC) No 295/91 (here under discussion) and Council Regulation (EC) 2027/97 on air carrier liability in the event of accidents, as well as Council Directive 90/314/EEC on package travel, package holidays and package tours.

a regulation, do not cover compensation. This proposal sets out to ensure maximum passenger protection under changed circumstances.

Regulation 295/91 and its shortcomings

Regulation (EEC) No 295/91 currently in force, offers – but solely to passengers who are denied boarding – the choice between an alternative flight at the earliest opportunity or reimbursement of the ticket, in addition to assistance to reduce the inconvenience of waiting for a later flight. In 1998, the Commission concluded that the regulation needed extension and clarification and proposed an amending regulation. Unfortunately, the Council failed to adopt this proposal because of disagreement about its application to Gibraltar airport.

In presenting its new proposal now, the Commission clearly believes that, even amended, Regulation (EEC) No. 295/91 would still not protect passengers adequately when confronted by denied boarding or cancellation. The regulation, in fact, obliges air carriers and tour organisers to compensate and assist passengers. This does not, however, result in better regulation of the market, since it does not eliminate excessive denial of boarding or cancellation of flights.

The new proposal

The Commission now proposes to use a different approach to tackle the problem of denied boarding, based in part on calls for volunteers to surrender their reservations and thus to reduce the number of excess passengers and, in part, on a dissuasive system obliging companies to compensate passengers for the prejudice suffered when denied boarding. The volunteer system has been used successfully in the United States for some time, where (in 2000) it reduced cases of denied boarding to only 18 000, i.e. scarcely 0.1 per thousand of the total number of passengers, as compared with an estimated 33 000 volunteers, who made it possible to reduce the phenomenon and the inconveniences connected with it considerably.

The Commission proposal sets out to fix amounts which, in addition to compensating passengers, would have a dissuasive effect on operators and prevent them from overbooking too frequently. The amount of compensation is fixed, in the Commission's calculations, regardless of the class of ticket, at approximately twice the level of the most popular business tariffs.

The most striking innovation, however, is that passengers now benefit from similar protection in two cases not covered by the old regulation. The first is flights cancelled for commercial reasons, which cause unacceptable trouble and delay, particularly when passengers have not been warned in advance; for these the Commission proposes to extend the provisions which apply to denied boarding, in compliance with a request already made by Parliament. These measures do not apply where an operator can prove that it was in no way responsible for the cancellation of the flight.

The second case concerns delays, for which, however, the operators are not always responsible; they are more commonly caused by air traffic management systems or limits on airport capacity. The Commission, as it has already indicated in the past, considers that in present circumstances operators cannot be obliged to compensate delayed passengers, but it

believes it is necessary to protect passengers facing serious delays.

Evaluation of the proposal

The rapporteur believes that the proposal for a regulation put before us is a valid one which chimes well with the general trend of the Union's policy in this area, that is to say meeting the twin requirements of liberalising the market while at the same time seeking to govern and rationalise it, and paying particular attention to safeguarding consumers' rights, especially when consumers are at an obvious disadvantage vis-à-vis service providers.

The protection of air passengers provided under the old regulation, 295/91, is now totally inadequate and it is vital to lay down up-to-date rules to cope with changed circumstances, such as paperless tickets, or cases which have not been dealt with until now, such as package tours or flights provided by Community companies flying from airports in third countries in respect of which there are no guarantees for passengers.

Support should be given to the approach of seeking to involve the sector's operators, by calling on them to lay down their own rules to protect citizens, but leaving the authorities with jurisdiction to intervene where guarantees do not appear to be sufficient (the Member States have to monitor the system directly in order to ensure that the rights laid down are respected).

The method chosen by the Commission to achieve its target is to be welcomed: calls for volunteers, the system already applied successfully in the USA, make it possible to minimise inconvenience, although it leaves the operators to bear the costs. The level of financial compensation fixed by the Commission seems, however, excessive for the airlines, which are already experiencing difficulties, and may well, paradoxically, increase prices, which would clearly be to the detriment of all passengers. Therefore, the rapporteur proposes a reduction in amount and a three-category division for compensation, which is more in line with the reality of European flights (see Amendment 21).

In addition, while it seems acceptable to equate the prejudice suffered by a passenger denied boarding and one who has not received any advance information about cancellation, delays should not be treated in the same way. Handling such delays according to the system set out in Article 9 would give rise to a state of paralysis both because of the chain reaction which it would set off and because of the difficulties involved in quickly identifying who was responsible for the delay (heavy air traffic, carriers etc.). On the other hand, aircraft safety, both from a technical point of view and from an external point of view (possible attacks or sabotage) is a priority which must not be neglected (see Amendment 19).

For these reasons, the rapporteur also proposes that a distinction be clearly drawn between the roles and responsibilities of marketing carriers, tour operators selling a package and operating carriers (Amendment 7). In particular, some changes to take into account the particular characteristics of tour operators are suggested (Amendment 10).

16 July 2002

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND CONSUMER POLICY

for the Committee on Regional Policy, Transport and Tourism

on the proposal for a European Parliament and Council regulation on establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights
(COM(2001) 784 – C5-0700/2001 – 2001/0305(COD))

Draftsman: Phillip Whitehead

PROCEDURE

The Committee on the Environment, Public Health and Consumer Policy appointed Phillip Whitehead draftsman at its meeting of 19 February 2002.

It considered the draft opinion at its meetings of 18 June 2002 and 10 July 2002.

At the latter meeting it adopted the following amendments unanimously.

The following were present for the vote: Caroline F. Jackson, chairman; Mauro Nobilia, Alexander de Roo and Anneli Hulthén, vice-chairmen; Phillip Whitehead, draftsman; and Per-Arne Arvidsson, María del Pilar Ayuso González, Hans Blokland, Dorette Corbey, Avril Doyle, Anne Ferreira, Francesco Fiori (for John Bowis, pursuant to Rule 153(2)), Karl-Heinz Florenz, Cristina García-Orcoyen Tormo, Robert Goodwill, Françoise Grossetête, Heidi Anneli Hautala (for Patricia McKenna), Marie Anne Isler Béguin, Christa Klaß, Eija-Riitta Anneli Korhola, Bernd Lange, Peter Liese, Torben Lund, Jules Maaten, Minerva Melpomeni Malliori, Jorge Moreira da Silva, Riitta Myller, Ria G.H.C. Oomen-Ruijten, Frédérique Ries, Didier Rod (for Hiltrud Breyer), Dagmar Roth-Behrendt, Guido Sacconi, Karin Scheele, Inger Schörling, Jonas Sjöstedt, Renate Sommer (for Giuseppe Nisticò), María Sornosa Martínez, Dirk Sterckx (for Chris Davies), Catherine Stihler, Antonios Trakatellis and Kathleen Van Brempt.

SHORT JUSTIFICATION

This proposal marks the next phase in the Commission's objective to develop and define the rights of air transport users as stated in the Commission's White Paper on Transport (COM (2001) 0370). It builds on the 1991 Regulation establishing common rules for a denied-boarding compensation system in scheduled air transport (No 295/91) to which the Commission proposed a further revision in 1998 (COM (1998) 580). It is from the latter that many of the current provisions, for instance the right to assistance (Article 8), originate. Moreover, it is welcomed that the Commission has reinserted a number of amendments adopted by the Parliament in its opinion on the 1998 revision (A4-0240/1998). These include the extension of the scope of the Regulation to cover Community carriers flying from non-Community airports back to Community airports, and the clarification that tickets issued under the Frequent Flyer Programme are not exempt from the Regulation. In 1998, the Regulation was stalled in the Council due to the dispute between the UK and Spain over its application to Gibraltar Airport. It is hoped that this opportunity to improve consumer protection rights is not thwarted again.

As well as improving the provisions for denied boarding compensation, the new Regulation has been extended to cover delayed and cancelled flights. This is consistent with the Parliament's call that air passengers should be compensated for unjust delays and cancelled flights, and should be made fully aware of their rights (EP Resolution A5-0249/2001). In particular, the proposal stipulates that in the case of denied boarding, airlines shall ask for volunteers to surrender their booking before preventing a passenger to board the aircraft against their will. Compensation levels are increased to 750€ and 1,500€ depending on the length of the journey. Passengers shall also be offered a choice between having the cost of their ticket reimbursed, or being re-routed to their final destination either as soon as possible or at their own convenience. The latter also applies to cancelled and delayed flights. Priority for boarding shall be given to disabled passengers or to those with special needs. All passengers shall be offered the means to contact their point of destination and be provided with meals, refreshments and hotel accommodation whilst waiting for an alternative or delayed flight. The air passenger must also be made aware of their rights in relation to denied boarding or cancelled or delayed flights, and shall have full recourse to further redress. There should be no difference in redress between scheduled and self-styled 'budget' airlines.

Whether travelling for business or pleasure being denied boarding of a flight or finding that the flight has been delayed or cancelled is distressing, frustrating and inconvenient for any air passenger. With this in mind, the airline industry has already begun to take positive action with the launch in May 2001 of the Airline Passenger Service Commitment. This is a welcome step as it already commits airlines to first seek volunteers before enforced denied boarding takes place. However, this is only a voluntary agreement within certain sectors of the industry. Clear and uniform legislation provided for by the Regulation is therefore important in ensuring that air passengers are protected across the board. For its part, the Commission must accept the role of economic impact assessments. The airlines' own calculations assert that there is a 400% increase in the levels of compensation offered. This needs to be evaluated as well as the benefits for those offered redress, and the salutary effect of its availability. Airlines, too, have an economic benefit from steady increases in the number of satisfied and confident passengers.

AMENDMENTS

The Committee on the Environment, Public Health and Consumer Policy calls on the Committee on Regional Policy, Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ¹	Amendments by Parliament
Amendment 1 Article 2 (h)	
(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.	(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. <i>Connecting flights which can be carried out without difficulties although a delay has been caused by denied boarding are not taken into account.</i>

Justification

Reinsertion of a provision included in the existing Regulation and in the Commission's proposed revision in 1998.

Amendment 2 Article 2 (h a) (new)

(ha) 'Except for reasons beyond the responsibility of an air carrier or that of its subcontracting agent' means unusual and unforeseeable circumstances beyond the control of the air carrier, such as political instability, severe weather conditions, inadequate security and unexpected safety failures, where the

¹ OJ C not yet published.

consequences of which could not have been avoided even if all due care had been exercised.

Justification

Derogations to the Regulation need to be clearly defined. Parallels here are drawn with the Directive on Package Travel, package holidays and package tours (90/314/EC) and the Commission's own wording in Paragraph 20 of this Regulation's explanatory memorandum.

Amendment 3
Article 2 (h b) (new)

(hb) 'Volunteer' means a person who has:
– ***a valid ticket in paper or electronic format;***
– ***a confirmed reservation, and***
– ***Presented himself for check-in within the required time limit (as stipulated in Article 3 (1) (a)) and who responds positively to the air carrier's call for passengers being prepared to surrender their confirmed reservation in exchange for compensation pursuant to this Regulation.***

Justification

The definition of 'Volunteer' is within the existing Regulation on denied boarding and provides a useful clarification to the text.

Amendment 4
Article 3 (1)

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:

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, ***recognised by the Community to be at least equivalent thereto***, when they:

Justification

Self-explanatory.

Amendment 5
Article 3 (2)

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.***

2. ***This Regulation does apply to passengers with tickets issued under a Frequent Flyer Programme or other commercial programme by an air carrier or tour operator.*** This Regulation does not apply to passengers travelling free of charge or at a reduced fare ***neither advertised nor available*** to the public.

Justification

This makes it clearer as to when the Regulation does and does not apply.

Amendment 6
Article 4

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.

An air carrier or tour operator shall, in accordance with this regulation, lay down the rules ***in plain and intelligible language*** which it will follow when passengers are denied boarding, including those on priorities for passenger embarkation. ***The air carriers shall notify these rules and any changes therein to the national competent authority which shall in turn notify the Commission and shall make them available to the public. Any such changes shall enter into force one month after their notification.*** They shall form part of the contract or conditions of carriage of the carrier or tour operator.

Justification

This amendment incorporates the spirit of the European Parliament's adopted position on the 1998 revised Denied Boarding Regulation (A4 0240/1998) which was in turn agreed by the Commission in their amended proposal (Official Journal C351, 18.11.1998)

Amendment 7
Article 5 (1)

1. When an air carrier or tour operator reasonably expects to deny

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.

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. ***Such conditions shall not be less than those set out in Articles 7, 8 & 9 of this Regulation.***

Justification

Self-explanatory.

Amendment 8
Article 5 (3)

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.

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

Justification

To clarify the text

Amendment 9
Article 6

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.

An air carrier or tour operator shall not deny boarding to a disabled passenger and any accompanying person *or certified service dog*, to a passenger whose mobility is otherwise reduced , to an unaccompanied child , *or to passengers travelling with small children.*

However, persons with reduced mobility (PRMs), disabled and other passengers with special needs shall be allowed to exercise the option to volunteer 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.

Justification

A number of disabled persons rely on a certified service dog to assist them in their journey. The voluntary commitments on air passenger rights have recognised that certified service dogs may be allowed to travel with the disabled person in the cabin free of charge. It is important that reference to certified service dogs be made in Article 6

Amendment 10
Article 7 (1)

1. In the case of denied boarding passengers shall receive compensation amounting to:
 - (a) Euros 750 for flights of less than 3,500 kilometres;
 - (b) Euros 1,500 for flights of 3,500 kilometres or more.

1. In the case of denied boarding passengers shall receive compensation* amounting to:
 - (a) Euros 750 *(or the equivalent in the currency of that Member State)* for flights of less than 3,500 kilometres;
 - (b) Euros 1,500 *(or the equivalent in the currency of that Member State)* for flights of 3,500 kilometres or

more.

*** Such calculations shall be subject to a specific impact assessment in consultation with relevant stakeholders.**

Justification

A specific impact assessment is needed before the amended compensation levels are set.. The airlines' own calculations assert that there is a 400% increase in the levels of compensation offered. As not all EU Member States are members of the Eurozone, air passengers entitled to compensation should be able to receive it in the national currency of the country in which they are situated.

Amendment 11 Article 7 (2)

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%.

2. When passengers accept re-routing to their final destination on an alternative flight pursuant to Article 8, the **actual** 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%.

Justification

The arrival time should be the actual time that the flight lands at the airport of destination, not its scheduled arrival time.

Amendment 12
Article 7 (4 a) (new)

Every three years, the Commission acting in accordance with the procedure laid down in Article 11 of Council Regulation (EEC) No 2408/92, may adjust the amounts referred to in paragraph 1 where that is made necessary by economic trends.

Justification

It is necessary to reintroduce an amendment adopted by the European Parliament in response to the 1998 proposed revision to the Denied Boarding Regulation to ensure that the amounts of compensation are kept in line with inflation (A4 0240/1998).

Amendment 13
Article 8 (1), last paragraph

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.

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 ***and to the point of departure.***

Justification

Self-explanatory.

Amendment 14
Article 9 (b)

(b) hotel accommodation in cases where a stay of one or more nights, or ***an additional*** stay, ***becomes*** necessary.

(b) hotel accommodation in cases where ***an additional*** stay of one or more nights ***is*** necessary. ***Travel to the hotel shall also be reimbursed.***

Justification

Self-explanatory.

Amendment 15
Article 10 (1)

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.

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, ***as defined in Article 2.***

Justification

See Amendment 1.

Amendment 16
Article 10 (2)

2. When, before the scheduled time of

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:

departure, an air carrier or tour operator cancels or 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:

Justification

The term 'reasonably' is too vague and open to too great an interpretation.

Amendment 17
Article 11 (1)

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.

1. When an air carrier or tour operator 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.

Justification

See Amendment 16.

Amendment 18
Article 11, paragraph 2

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.

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 **or certified service dog**, 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.

Justification

A number of disabled persons rely on a certified service dog to assist them in their journey. In cases of delay, particular assistance may need to be given to a disabled persons with a service dog, and this assistance must be recognised and made available.

Amendment 19
Article 12

This Regulation shall apply without prejudice to a passenger's subsequent application to the courts having jurisdiction, with a view to 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. ***However, it shall not apply to the volunteers as defined in Article 2 (j) who have accepted compensation under the rules referred to in Article 5.1 and the provisions of Articles 7, 8 and 9 thereof.***

Justification

The current 1991 Regulation on Denied boarding excludes volunteers from any subsequent recourse to the courts for further compensation. While a passenger denied boarding by an airline against his/her will, may want to take legal action, the same cannot apply to a passenger who steps down from a flight voluntarily and accepts a mutually agreed

compensation. Therefore, it is proposed that the Article 9.2 provision of the regulation presently in force is included in the proposed regulation.

Amendment 20
Article 14 (1)

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 passenger: “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”.

1. The legal entity responsible for check-in of passengers shall ensure that a clearly legible notice containing the following text ***in English and the language(s) of that country*** is displayed at the check-in area, ***in letters at least 1cm high***, in a manner clearly visible to passenger: “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”.

Justification

Reinstatement of an amendment adopted by the Parliament in its response to the 1998 revised Denied Board Regulation proposal (A4 0240/1998).

Amendment 21
Article 14 (2)

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

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.

Regulation. It shall also provide each passenger affected by a delay of at least two hours with an equivalent notice. ***The contact details of the national competent authority as stipulated in Article 18 shall also be given to the passenger in written form.***

Justification

The passenger must also receive information on how to contact the national competent authority responsible for dealing with any complaints about the Regulation's provisions.

Amendment 22 Article 15

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.

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.

If, nevertheless, such a derogation or restrictive clause is applied in respect of a passenger, and the latter has accepted compensation which is inferior to that provided for in this Regulation, the passenger shall still be entitled to take the necessary legal action in the competent courts in order to obtain additional compensation.

In cases where passengers receive no compensation and in the case described above, passengers shall be awarded compensation for all the costs they have incurred, including legal advisers' fees, if the competent authority deems that the compensation provided for pursuant to the derogation or restrictive clause in the contract of carriage or the contract in which they have accepted inferior compensation, manifestly does not constitute fair compensation.

Justification

Account should be taken of the possibility that transport companies or tour operators have nevertheless provided for passengers to be compensated on the basis of a flawed clause. In such cases, passengers must still be able to lodge an appeal with the competent legal authorities for additional compensation.

Amendment 23
Article 16

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 1st January 2004 at the latest** and shall notify it without delay of any subsequent amendment affecting them.

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 **no later than six months after the entry into force of this Regulation** and shall notify it without delay of any subsequent amendment affecting them.

Justification

Retabling of an amendment adopted by the Parliament in its response to the 1998 revised Denied Board Regulation proposal (A4 0240/1998).

Amendment 24
Article 17

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

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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.

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. ***The competent national authority shall compile an annual summary report of the cases relevant to this Regulation which occurred at airports on their territory, identifying the airlines involved. These reports shall be submitted to the European Commission which will then publish a compiled report covering all Member States.***

Justification

This amendment incorporates the spirit of the European Parliament's adopted position on the 1998 revised Denied Boarding Regulation (A4 0240/1998) which was in turn agreed by the Commission in their amended proposal (Official Journal C351, 18.11.1998) It also responds to Paragraph 17 of EP Resolution A5-0249/2001 on the protection of air passengers which calls for proposals on service quality indicators for the airline industry.

Amendment 25 Article 18

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.

Without prejudice to Article 12, 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 ***as quickly as possible*** and take any measures necessary to ensure that the rights of the passenger

are respected.

Justification

Self-explanatory.

Amendment 26
Article 19

The Commission shall report to the European Parliament and the Council **by 1st 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.

Pursuant to Article 17 the Commission shall report to the European Parliament and the Council ***no later than 5 years after the entry into force of the Regulation*** on the ***overall*** operation and 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.

Justification

Self-explanatory.