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*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a European Parliament and Council regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (15855/1/2002 – C5-0136/2003 – 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.

CONTENTS

	Page
PROCEDURAL PAGE	4
DRAFT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT	18

PROCEDURAL PAGE

At the sitting of 24 October 2002 Parliament adopted its position at first reading on the proposal for a European Parliament and Council regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (COM(2001) 784 – 2001/0305 (COD)).

At the sitting of 27 March 2003 the President of Parliament announced that the common position had been received and referred to the Committee on Regional Policy, Transport and Tourism (15855/1/2002 – C5-0136/2003).

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

It considered the common position and draft recommendation for second reading at its meetings of 24 April, 21 May and 11-12 June 2003.

At the last meeting it adopted the draft legislative resolution by 40 votes to 4, with 5 abstentions.

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 Camilo Nogueira Román), Rolf Berend, Philip Charles Bradbourn, Luigi Cocilovo, Gerard Collins, Jean-Maurice Dehousse (for Danielle Darras), Jan Dhaene, Den Dover, Alain Esclopé, Giovanni Claudio Fava, Markus Ferber (for Reinhard Rack), Jacqueline Foster, Jean-Claude Fruteau (for Garrelt Duin), Mathieu J.H. Grosch, Konstantinos Hatzidakis, Ewa Hedkvist Petersen, Juan de Dios Izquierdo Collado, Georg Jarzembowski, Elisabeth Jeggle (for Dana Rosemary Scallon), Dieter-Lebrecht Koch, Nelly Maes, Sérgio Marques, Emmanouil Mastorakis, Erik Meijer, Rosa Miguélez Ramos, Enrique Monsonís Domingo, Francesco Musotto, James Nicholson, Wilhelm Ernst Piecyk, Giovanni Pittella, Samuli Pohjamo, José Javier Pomés Ruiz, Carlos Ripoll y Martínez de Bedoya, Agnes Schierhuber (for Felipe Camisón Asensio), Ingo Schmitt, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Margie Sudre, Hannes Swoboda (for John Hume), Joaquim Vairinhos, Herman Vermeer, Mark Francis Watts and Brigitte Wenzel-Perillo (for Christine de Veillac).

The recommendation for second reading was tabled on 13 June 2003.

DRAFT LEGISLATIVE RESOLUTION

on the Council common position for adopting a European Parliament and Council regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (15855/1/2002 – C5-0136/2003 – 2001/0305(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (15855/1/2002 – C5-0136/2003),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2001) 784²),
 - having regard to the Commission's amended proposal (COM(2002) 717³),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Regional Policy, Transport and Tourism (A5-0221/2003),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and Commission.

¹ P5_TA-PROV(2002)0514.

² OJ C 103 E, 30.4.2002, p. 225.

³ OJ C 71 E, 25.3.2003, p. 188.

Amendment 1
Recital 5

(5) Since the distinction between scheduled and non-scheduled air services is weakening, such protection should apply to passengers not only on scheduled but also on non-scheduled flights, ***including those forming part of package tours.***

(5) Since the distinction between scheduled and non-scheduled air services is weakening, such protection should apply to passengers not only on scheduled but also on non-scheduled flights, ***unless they are travelling as part of a package tour.***

Justification

For reasons of legal coherence, this Regulation should not be extended to cover package tours. The rights of package tourists are comprehensively protected in balanced fashion by the package travel Directive 90/314/EC. This protection should also be definitive as the directive provides grounds for claiming damages in every conceivable circumstance. Parallel liability under the new Regulation would only complicate the matter unnecessarily and make the situation less transparent.

Amendment 2
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.

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 3
Recital 14

(14) As under the Montreal Convention, obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary

(14) As under the Montreal Convention, obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary

circumstances ***which could not have been avoided even if all reasonable measures had been taken***. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.

circumstances ***outside the carrier's control***. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes ***or industrial action*** that affect the operation of an operating air carrier.

Justification

'Outside the carrier's control' better expresses the intention than the deleted phrase. Also, 'industrial action' needs to be inserted next to 'strikes' in order to cover other types of industrial action such as short work stoppages, etc.

Amendment 4 Recital 15

(15) ***Delays due to air traffic management decisions should not normally be classified as extraordinary circumstances***. However, extraordinary circumstances should be deemed to exist where the impact of an air traffic ***management*** decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable efforts had been made by the air carrier concerned to avoid the delays or cancellations.

(15) Extraordinary circumstances should be deemed to exist where the impact of an air traffic ***control*** decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable efforts had been made by the air carrier concerned to avoid the delays or cancellations.

Justification

Airlines operate in the knowledge that peak time flights are likely to be subject to air traffic control delays. They develop schedules to allow for these delays inherent in Europe's congested air space. Delays over and above the allowance made in airlines' schedules are unusual and extraordinary circumstances.

Amendment 5 Article 2, point (d)

(d) 'tour operator' means, with the exception of an air carrier, an organiser *or retailer* within the meaning of Article 2, **points 2 and 3**, of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours;

(d) 'tour operator' means, with the exception of an air carrier, an organiser within the meaning of Article 2, **point 2**, of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours;

Justification

Since the definition in this regulation is closely linked with issues of liability and options for redress, the definition of 'tour operator' should be restricted to the package organiser; in point of fact, the retailer is only a possible intermediary without any responsibility regarding the content of the package proposed to the customer.

Amendment 6 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 directly connecting flights, the destination of the last flight; ***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 Regulation presently in force has a definition of 'final destination' which has been in use without any problem for the past decade. It is proposed to maintain this same definition in the new Regulation. This has been adopted by Parliament in its first reading (Amendment 7).

Amendment 7 Article 2, point (ka) (new)

(ka) "cancelled flight" means a flight which is not made, but is listed in the computerised reservation system during the seven days preceding the expected departure;

Justification

The Council's common position covers cancelled flights but does not propose any definition for them. A clear text requires such a definition.

Amendment 8

Article 3, paragraph 2, point (a)

(a) have a reservation on **the** flight **concerned and, except in the case of cancellation referred to in Article 5**, present themselves for check-in,

(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

- as stipulated and at the time indicated in advance **and in writing (including by electronic means)** 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

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 9

Article 3, paragraph 3

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

3. This Regulation shall 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, it shall apply to passengers having tickets issued under a Frequent Flyer Programme or other commercial programme by an air carrier or tour operator.

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 10 Article 5

1. In case of cancellation of a flight, the passengers concerned shall:

(a) be offered assistance by the operating air carrier in accordance with **Article 8**; and
(b) be offered assistance by the operating air carrier in accordance with **Article 9**, **except where the carrier can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken; and**
(c) **have the right to compensation by the operating air carrier in accordance with Article 7, unless**

(i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or

(ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the

1. In case of cancellation of a flight, **with or without prior notice, in the presence or less of extraordinary circumstances**, the passengers concerned shall:

(a) be offered assistance by the operating air carrier in accordance with **Article 9**; and
(b) be offered assistance by the operating air carrier in accordance with **Article 8**.

Moreover, the passengers shall be offered assistance by the operating air carrier in accordance with Article 7, unless they are informed of the cancellation and the assistance foreseen in Article 8 of this Regulation, at least five days before the scheduled time of departure. Such assistance shall be offered except where the operating air carrier can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

2. In order to avoid arbitrary cancellation for technical reasons, the person responsible for taking the decision to cancel the flight must be identified, so that any subsequent checks needed may be carried out.

*scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival;
or*

(iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

2. When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport.

3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

4. The burden of proof concerning the questions whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier.

Justification

This clarification (paragraph 2) is intended to prevent cancellations for financial reasons from subsequently being described in announcements to passengers as cancellations for technical reasons. The clarification should be understood as an additional point concerning the list of extraordinary circumstances which absolve the air carrier of liability.

Amendment 11 Article 6, paragraph 1

1. When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure

1. When an operating air carrier 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 by the operating air carrier the assistance specified in Article 8, as well as, unless it can prove that the delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, the assistance specified in Article 9.

- (a)* for two hours in the case of flights of *1,500 kilometres or less*, or
- (b)* for *three* hours or more in the case of *all intra-Community flights of more than 1,500 kilometres and of all other flights between 1,500 and 3,500 kilometres*; or
- (c)* for *four hours or more in the case of all flights not falling under (a) or (b)*,

passengers shall be offered by the operating air carrier the assistance specified in Article 8, as well as, unless it can prove that the delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, the assistance specified in Article 9.

Justification

The amendment replaces amendment 4 of the rapporteur which contained a technical mistake.

Amendment 12 Article 7, paragraph 2

2. When passengers are offered 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, in respect of flights of *less than 3500 kilometres*, or
 - by four hours, in respect of flights of 3500 kilometres or *more*,

the operating air carrier may reduce the compensation provided for in paragraph 1 by 50%.

2. When passengers are offered 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
- (a)* by two hours, in respect of *all* flights of *1,500 kilometres or less*; or
 - (b)* by *three hours*, in respect of *all intra-Community flights of more than 1,500 kilometres and for all other flights between 1,500 and 3,500 kilometres*; or
 - (c)* by four hours, in respect of *all flights not falling under (a) or (b)*,

The operating air carrier may reduce the compensation provided for in paragraph 1 by 50%.

Justification

The amendment aims to complete the harmonisation of distance criteria in the report.

Amendment 13
Article 8, paragraph 1, point (c)

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

(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**.

Or. en

Justification

Whilst passengers should be offered the chance of returning to their point of origin when their journey is disrupted, airlines should not be forced to pay for new tickets for passengers when the disruption is due to factors outside their responsibility or control.

Amendment 14
Article 10, paragraph 2

2. If an operating air carrier places a passenger in a class lower than that for which the ticket was purchased, it shall within seven days, by the means provided for in Article 7(3), reimburse **50%** of the price of the ticket for all ***intra-Community flights, except flights to and from the French overseas departments, and other flights shorter than 3500 km, and 75% in the case of all other flights, including flights to and from the French overseas departments.***

2. If an operating air carrier places a passenger in a class lower than that for which the ticket was purchased, it shall within seven days, by the means provided for in Article 7(3), reimburse

***(a) 30% of the price of the ticket for all flights of 1,500 kilometres or less, or
(b) 50% of the price of the ticket for all intra-Community flights of more than 1,500 kilometres and for all other flights between 1,500 and 3,500 kilometres, or
(c) 75% of the price of the ticket for all flights not falling under (a) or (b) and for flights to and from the French overseas departments,***

Justification

The amendment replaces amendment 5 of the rapporteur which contained a technical mistake.

Amendment 15
Article 12, paragraph 1

1. This Regulation shall apply without prejudice to a passenger's rights to further compensation. ***The compensation granted under this Regulation may be deducted from such compensation.***

1. This Regulation shall apply without prejudice to a passenger's rights to further compensation.

Justification

This second sentence should definitely be deleted as the deduction of compensation from any possible further compensation means that the passenger concerned would have to forfeit the compensation gained under this Regulation.

This procedure entails a fundamental change of system and is prejudicial to persons who, denied boarding because of overbooking, can also demonstrate that they have suffered greater damage than those who can only claim flat-rate compensation. However, there must be no unequal treatment of any kind.

Amendment 16
Article 13

In cases where an operating air carrier 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 any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract.

In cases where an operating air carrier 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 any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract. ***Similarly, tour operators or third parties who, under this***

Regulation, have incurred expenses or suffered losses because of actions by the operating air carrier may seek reimbursement or compensation for such expenses.

Justification

This article is designed to establish a right of redress, but in view of the possible situations set out by this regulation, a reciprocal right should be guaranteed where, for example, tour operators step in on the spot to make up for the deficiencies of the operating carrier.

Amendment 17
Article 13, paragraph 1 a (new)

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 18
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 19

Article 17, introductory sentence

The Commission shall report to the European Parliament and the Council by 1 January **2006** on the operation and the results of this Regulation, in particular regarding:

The Commission shall report to the European Parliament and the Council by 1 January **2007** on the operation and the results of this Regulation, in particular regarding:

Amendment 20

Article 19

This Regulation shall enter into force on (**three** months after its publication in the Official Journal of the European Union).

This Regulation shall enter into force on (**twelve** months after its publication in the Official Journal of the European Union).

Justification

The decision-making process for this regulation is lengthy, and travel brochures for 2004 have already been published. They have not been altered to fit with the new rules put forward by this regulation, so there is a risk of illegality in the contractual offers made by the operators. Therefore a longer transition time needs to be allowed in order to update brochures and travel contracts.

EXPLANATORY STATEMENT

The European Parliament's first reading pointed out the weaknesses of the Commission's proposal for a regulation for compensation to air passengers in the event of denied boarding, cancellation or long delay. The main aim of the 39 amendments adopted by Parliament was to bring the proposed legislation into line with the real needs of passengers and to make it more practicable for air companies.

The Council's common position, although it significantly changed the initial form of the regulation, nevertheless incorporated several of Parliament's amendments. The Council has achieved a significant amount, but a few points remain unclear, particularly given the objective set out above.

Specifically, the rapporteur is proposing certain amendments to the following points:

Right of redress/principal liability/tour operators:

The rapporteur welcomes the Council's proposal to focus liability on the carrier operating the service. This achieves greater clarity, particularly with regard to passengers, and makes it possible to follow a simple line of reasoning in actual situations, i.e. when passengers are at airports and are confronted with the inconvenient situations listed in the regulation.

The definition of principal liability is coupled with the right of redress (Article 13), which is defined, but only for operating air carriers.

The rapporteur suggest that the reciprocity contained in Article 13 in the Commission's proposal should be reintroduced; in point of fact, tour operators (or any other third party) may find themselves in the situation of having to make up for deficiencies in the assistance which, under this regulation, the carrier operating the service is required to provide. The right of redress ought therefore to be expressly acknowledged for such cases too.

With the same aim of clarity, the definition of 'tour operators' should be restricted to travel organisers alone and should exclude 'retailers', who are not responsible for the content of contracts for organised travel; as Article 2(2) and (3) of Directive 90/134 precisely specify, the retailer is simply an intermediary. The rapporteur therefore proposes an appropriate amendment to Article 2(d) of this regulation.

Information and assistance in the event of cancellations:

The Council's proposal, although its starting-point is a principle that can be endorsed, is impracticable and could lead to confusion, at passengers' expense. The rapporteur suggests establishing a single compromise time-limit; on the basis of the Commission's amended proposal he proposes five days, adopting the reasoning on greater flexibility in trying to find new arrangements agreed on by the carrier and passengers.

It is also advisable to stipulate that carriers must identify the person in charge who has taken the decision to cancel the flight. This amounts to a useful disincentive to arbitrary cancellations ‘for technical reasons’.

Problems concerning differing distance criteria:

At first reading Parliament opted for a single distance criterion, i.e. division into three bands of distance expressed in kilometres. This choice was fully justified in view of the daily reality of Community air traffic and the need to have a consistent frame of reference. In its common position, the Council adopted three different criteria for division applying to compensation, delay and the placing of passengers in a lower class, and even introduced a new criterion (inside or outside the EU) with no clear justification. Such disparities do not serve to make the legislative text clearer and certainly do not help passengers to understand their rights. The rapporteur proposes that a single criterion should be used, and puts forward that of the three distance bands as proposed at first reading; the appropriate changes should be inserted in the relevant articles.

Entry into force:

The air sector, as is well known, is going through a very difficult period, and will have to face additional financial burdens to comply with this regulation.

In addition, various organisational changes will be necessary to comply with the new measures introduced by this legislation.

Finally, the special situation of tour operators’ travel brochures should be taken into account: for the 2004 summer season they will be printed before the entry into force of this regulation, which could lead to disparities between the travel contracts proposed and the new legislative provisions.

Therefore, entry into force after three months seem too tight, and the rapporteur proposes a longer period before entry into force (12 months), which is set out in the amendment to Article 19.