

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0464/2003

4 December 2003

*****III REPORT**

on the joint text approved by the Conciliation Committee 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 (PE-CONS 3676/2003 – C5-0518/2003 – 2001/0305(COD))

European Parliament delegation to the Conciliation Committee

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)

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PROCEDURAL PAGE

At its 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).

At the sitting of 3 July 2003 Parliament adopted amendments to the common position.

By letter of 22 September 2003 the Council stated that it was unable to approve all Parliament's amendments.

The President of the Council, in agreement with the President of Parliament, convened a meeting of the Conciliation Committee on 14 October 2003.

At the meeting the Conciliation Committee considered the common position on the basis of the amendments proposed by Parliament.

At the same meeting it reached agreement on a joint text.

At its meeting of 14 October 2003 the Parliament delegation approved the results of the conciliation unanimously.

The following took part in the vote: Charlotte Cederschiöld (Vice-President and chairwoman of the delegation), Giorgio Lisi (rapporteur), Françoise Grossetête, Konstantinos Hatzidakis, Georg Jarzembowski (for Giorgos Dimitrakopoulos), Ulrich Stockmann, Herman Vermeer (for Paolo Costa) and Mark Francis Watts.

On 1 December 2003 the co-chairmen of the Conciliation Committee established that the joint text had been approved, pursuant to paragraph III.8 of the Joint declaration on practical arrangements for the new co-decision procedure¹, and forwarded it to Parliament and the Council in all the official languages.

The report was tabled on 4 December 2003.

¹ OJ C 148, 28.5.1999, p. 1.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the joint text by the Conciliation Committee 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

(PE-CONS 3676/2003 – C5-0518/2003 – 2001/0305(COD))

(Codecision procedure: third reading)

The European Parliament,

- having regard to the joint text approved by the Conciliation Committee and the relevant Commission statement (PE-CONS 3676/2003 – C5-0518/2003),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2001) 784)²,
 - having regard to the amended proposal (COM(2002) 717)³,
 - having regard to its position at second reading⁴ on the Council common position⁵,
 - having regard to the Commission's opinion on Parliament's amendments to the common position (COM(2003) 496 - C5-0396/2003)⁶,
 - having regard to Article 251(5) of the EC Treaty,
 - having regard to Rule 83 of its Rules of Procedure,
 - having regard to the report of its delegation to the Conciliation Committee (A5-0464/2003),
1. Approves the joint text and draws attention to the Commission statement thereon ;
 2. Instructs its President to sign the act with the President of the Council pursuant to Article 254(1) of the EC Treaty;
 3. Instructs its Secretary-General duly to sign the act and, in agreement with the Secretary-General of the Council, to have it published, together with the statement by the Commission thereon, in the Official Journal of the European Union;
 4. Instructs its President to forward this legislative resolution to the Council and Commission.

¹ Texts Adopted, 24.10.2002, P5_TA(2002)0514.

² OJ C 103 (E), 30.4.2002, p. 225.

³ OJ C 71 (E), 25.3.2003, p. 188.

⁴ Texts Adopted, 3.7.2003 P5_TA(2003)0329.

⁵ OJ C 125 (E), 27.5.2003, p. 63.

⁶ Not yet published in OJ.

EXPLANATORY STATEMENT

Background

On 21 December 2001, the Commission submitted a proposal for a European Parliament and Council regulation with the objective of reinforcing the protection of and assistance offered to passengers in the case of denied boarding as a result of overbooking, cancellation or long delays of flights. The new regulation replaces the existing regulation 295/ 91 of 4 February 1991.

On 24 October 2002 Parliament adopted at first reading a total of 40 amendments. Following the Commission's amended proposal, the Council adopted its common position on 18 March 2003. Parliament concluded its second reading on 3 July 2003 adopting a total of 15 amendments to the Council's common position. These dealt in particular with the scope of the regulation and the various definitions, the aligning of the distance bands as a basis for defining passengers' rights, the assistance to be offered to passengers in the case of long delays, re-routing, the right of redress and the date of entry into force of the regulation.

The Council concluded its second reading on 22 September 2003 indicating that it could not accept all of Parliament's second reading amendments.

Conciliation

The constituent meeting of the Parliament delegation was held on 23 September in Strasbourg. The delegation mandated its chair Mrs Charlotte CEDERSCHIÖLD (Vice-President), Mr Paolo COSTA, chair of the Committee on Regional Policy, Transport and Tourism and Mr Giorgio LISI, rapporteur, to start negotiations with the Council.

A first trialogue was held on the same day allowing the representatives of the two institutions to have a first exchange of views on the various issues at stake. At a second trialogue on 7 October the two institutions reached agreement on 6 amendments. The conciliation procedure was formally opened on the evening of Tuesday, 14 October, in the Council. After more than five hours of deliberations the Conciliation Committee reached an overall agreement in the early hours of Wednesday, which was confirmed unanimously by the Parliament Delegation.

The main elements of the agreement reached in conciliation can be summarised as follows:

Three-distance band system

The regulation determines the amount of compensation to be paid to passengers in the case of denied boarding on the basis of a three distance band system, which distinguishes between three categories of flights: a) flights of less than 1.500 km; b) intra-Community flights of more than 1.500 km or all other flights between 1.500 km and 3.500 km; c) all flights not falling under (a) or (b).

The Council accepted Parliament's proposal to extend this system for defining passengers' rights to delays, the compensation to be paid to passengers when offered re-routing and the

level of reimbursement in the event of down-grading, thus establishing a single, clearer and more transparent framework for all eventualities.

Passengers' rights in the case of delays or a flight cancellation

The compromise reached on the issue of delays, which proved the most difficult to solve, is based on the introduction of a three tier system. In the case of long delays (two hours or more, depending on the distance of the flight) passengers shall be offered in all cases meals and refreshments corresponding to the waiting time as well as two telephone calls, telex, fax or e-mails, free of charge; when the expected time of departure is not until the next day, they shall also be offered hotel accommodation and transport to and from the place of accommodation; moreover, when the delay is at least five hours, passengers shall have the option to choose between reimbursement of the full price of the ticket together with, when relevant, a return flight to the initial point of departure.

Parliament's Delegation succeeded in removing any reference to 'extraordinary circumstances' as an excuse for air carriers for not offering any kind of immediate assistance to passengers, thus ensuring that passengers will be offered this kind of assistance in any case, independently of the reason that caused the delay or the cancellation. With a view to guaranteeing a homogeneous approach the same applies also to the case of a flight cancellation.

Time limit for check-in

Following a compromise proposal by Parliament, the time limit for check-in for passengers to be able to benefit from the regulation is set at 45 minutes before departure. This constitutes a compromise between Council's original proposal of 30 minutes and Parliament's second reading amendment of 60 minutes.

Exclusion of helicopters

Given that there was broad consensus between all involved parties that helicopters cannot be subject to the same conditions as aeroplanes as the former are, for example, more vulnerable to weather conditions, the two institutions agreed to introduce a new Article 3(4) to restrict the application of the regulation only to '*passengers transported by motorised fixed wing aircraft*', thus in effect excluding helicopters from its scope.

Right of redress

The Council accepted Parliament's position that tour operators or other third parties, other than a passenger, should have the right to seek reimbursement or compensation from the air carrier for expenses that they have incurred or losses they have suffered because of actions by the operating air carrier

Equal treatment of all modes of transport

On Parliament's insistence the Commission agreed to commit itself in a declaration '*to promote voluntary agreements or to make proposals to extend Community measures of passengers protection to other modes of transport than air, notably rail and maritime navigation*'.

Date for entry into force of the regulation

Following Parliament's suggestion the Regulation will enter into force 12 months after its publication in the Official Journal (rather than 3 months as proposed originally by the Council) so as to allow all involved parties to adapt more smoothly to the various changes introduced by the new legislation.

Conclusion

The outcome of the conciliation can be considered as very positive for Parliament's Delegation as it succeeded not only in taking on board the majority of Parliament's second reading amendments (9 out of 15, as they stood or with alternative formulations), but also to reach very satisfactory agreements on the other outstanding issues.

The Delegation therefore recommends that the House adopt the text at third reading.