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R E P O R T

of the Committee on Transport and Tourism
 on the proposal from the Commission to the Council
 for a regulation on common rules for a denied
 boarding compensation system in scheduled
 air transport
 (COM(90)99 final - C3-0132/90)

Rapporteur: Mr. Edward McMILLAN-SCOTT

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A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)



= Consultation procedure requiring a single reading



= Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment



= Cooperation procedure (first reading)



= Parliamentary assent which requires the votes of a majority of the current Members of Parliament

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By letter of 18 May 1990, the Council consulted the European Parliament, pursuant to Article 84(2) of the EEC Treaty, on the proposal from the Commission of the European Communities for a Council Regulation (EEC) on common rules for a denied boarding compensation system in scheduled air transport (COM(90)0099 final - C3-0132/90).

At the sitting of 11 June 1990 the President of the European Parliament announced that he had referred this proposal to the Committee on Transport and Tourism as the committee responsible and to the Committee on the Environment, Public Health and Consumer Protection and the Committee on Legal Affairs and Citizens Rights for their opinions.

At its meeting of 23 to 25 April 1990 the Committee on Transport and Tourism had appointed Mr McMILLAN-SCOTT rapporteur.

The committee considered the Commission proposal and the draft report at its meetings of 26 to 28 September 1990 and 26 to 28 November 1990.

At the latter the committee decided unanimously to recommend to Parliament that it approve the Commission proposal with the following amendments

The committee then adopted the draft legislative resolution unanimously.

The following took part in the vote: AMARAL, chairman; TOPMANN, vice-chairman; McMILLAN-SCOTT, rapporteur; BOURLANGES, BRAUN-MOSER (for BONETTI), COIMBRA MARTINS (for LÜTTGE), McINTOSH, MÜLLER, PORTO (for von ALEMANN), ROMERA I ALCAZAR, SAPENA GRANELL, SARLIS, B. SIMPSON, SISO CRUELLAS (for FANTINI), STEWART, van der WAAL, VISSER and WIJSENBECK

The opinions of the Committee on Legal Affairs and Citizens Rights and the Committee on the Environment, Public Health and Consumer Protection are attached.

The report was tabled on 28 November 1990

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A.

Commission proposal for a Council regulation on common rules for a denied boarding compensation system in scheduled air transport

COMMISSION TEXT¹

AMENDMENTS

(Amendment No. 1)
Fourth recital

Whereas certain common minimum standards in the field of denied boarding compensations will contribute to ensure that more competition in air transport will not result in a deterioration in the quality of the air carriers' services;

Whereas certain common minimum standards in the field of denied boarding compensations will contribute to ensure that more competition in air transport will not result in a deterioration in the quality of the air carriers' services and that the interests of users will be adequately safeguarded;

(Amendment No. 2)
Sixth recital

Whereas in particular such criteria should improve the rights of non-fully flexible ticket holders;

Deleted

¹ For full text see OJ No. C 129, 24.5.1990, p.13

COMMISSION TEXT

AMENDMENTS

(Amendment No 3)
Article 2 (b)

For the purpose of this Regulation

b) "confirmed reservation" means that a ticket sold by the air carrier or its authorised travel agent contains

- a specification of the number, date and time of the flight, and
- the notation of "OK" in the appropriate space on the ticket signifying the registration by the air carrier as well as the express acknowledgement of the air carrier of the reservation;

For the purpose of this Regulation

b) "confirmed reservation" means that a ticket sold by the air carrier or its authorised travel agent contains

- a specification of the number, class of service, date and time of the flight, and
- the notation of "OK" in the appropriate space on the ticket signifying the registration by the air carrier as well as the express acknowledgement of the air carrier of the reservation; any disputes over the validity of the notation of "OK" on a given ticket shall not suspend the confirmed status of the reservation for the purpose of applying this Regulation.

COMMISSION TEXT

AMENDMENTS

(Amendment No 4)
Article 2 (c)

For the purpose of this Regulation

c) "scheduled flight" means a flight possessing all of the following characteristics:

- it is performed by aircraft for the transport of passengers or passengers and cargo and/or mail for remuneration, in such a manner that seats are available for purchase by members of the public, either directly from the carrier or from its authorised agents and
- it is operated so as to serve traffic between two or more points, either:
 - (1) according to a published timetable, or
 - (2) with flights so regular or frequent that they constitute a recognisably systematic series.

For the purpose of this Regulation

c) "scheduled flight" means a flight possessing all of the following characteristics:

- it is performed by aircraft for the transport of passengers or passengers and cargo and/or mail for remuneration, in such a manner that seats are available for purchase by members of the public, either directly from the carrier or from its authorised agents and
- it is operated so as to serve traffic between two or more points, either:
 - (1) according to a published timetable, or
 - (2) with flights so regular or frequent that they constitute a recognisably systematic series.

To the extent that non scheduled services provide "seats only" fares, which are sold directly by the carrier or its authorised agents, they shall be included in the definition of scheduled flight.

COMMISSION TEXT

AMENDMENTS

(Amendment No. 5)
Article 2 (d)

(d) 'overbooked flight' means a flight where a number of passengers holding a confirmed reservation and presenting themselves within the required time-limit before departure time of the flight exceeds the number of available seats on that flight; a flight cancelled for commercial reasons shall be considered as an overbooked flight.

(d) 'overbooked flight' means a flight where a number of passengers holding a valid ticket, a confirmed reservation and presenting themselves within the required time-limit before departure time of the flight exceeds the number of available seats on that flight; a flight cancelled for commercial reasons shall be considered as an overbooked flight.

(Amendment No. 6)
Article 2 (f)

For the purpose of this Regulation

(f) "compensation" means a valuable return in the form of money, a travel voucher and/or other services in favour of passengers holding a confirmed reservation for a scheduled flight and being voluntarily or involuntarily denied from boarding an overbooked flight;

For the purpose of this Regulation

(f) "compensation" means a valuable return in the form of money, a travel voucher and the services specified in Article 6 in favour of passengers holding a valid ticket, a confirmed reservation for a scheduled flight and being voluntarily or involuntarily denied boarding;

COMMISSION TEXT

AMENDMENTS

(Amendment No. 7)
Article 2(j)

(j) 'intra-Community flight' means a scheduled flight between airports located within the European Community;

(j) 'intra-Community flight' means a scheduled or other 'seat-only' flight between airports located within the European Community;

(Amendment No. 8)
Article 2(k)

(k) 'extra-Community flight' means a schedule flight departing from an airport located in a Member State and arriving at an airport in a third country;

(k) 'extra-Community flight' means a schedule or other 'seat-only' flight departing from an airport located in a Member State and arriving at an airport in a third country

(Amendment No. 9)
Article 2a (new)

Air carriers which resort to denied boarding as a result of an overbooked flight are under an overriding duty to provide an alternative flight schedule to the point of final destination for passengers who are the victims of denied boarding.

(Amendment No. 10)
Article 3 (1)

1. In the event of an overbooked flight air carriers shall in the first instance call for volunteers who are prepared to surrender their confirmed reservation in exchange for a confirmed reservation on an alternative flight to the final destination and refunds according to Article 4. Nevertheless the airline may, before the call for volunteers, refuse boarding for the passenger mentioned in paragraph (3)(a).

1. In the event of an overbooked flight air carriers shall in the first instance call for volunteers who are prepared to surrender their confirmed reservation in exchange for a guaranteed transport on an alternative flight to the final destination and compensation according to Article 4. Nevertheless the airline may, before the call for volunteers, refuse boarding for the passenger mentioned in paragraph (3)(a).

COMMISSION TEXT

AMENDMENTS

(Amendment No 11)
Article 3(1) a (new)

The call for volunteers shall be subject to security and operational arrangements as well as airport infrastructure conditions.

(Amendment No 12)
Article 3 (3) b)

b) Boarding priority shall be given to passengers travelling on a non-fully flexible ticket provided;

- they hold a valid ticket and a confirmed reservation for the flight in question,
- they have presented themselves within the required time-limit for check-in and
- the air carrier is unable to offer an alternative flight on the same or another routing to the final destination which is scheduled to arrive less than two hours later at the final destination.

b) Passengers denied boarding from a previous flight and passengers who have to make a connection and to whom the carrier cannot guarantee making this connection shall be given boarding priority.

COMMISSION TEXT

AMENDMENTS

(Amendment No 13)

Article 3(4)

4. Notwithstanding the criteria laid down in paragraph 3, air carriers should give due consideration to the interests of:

- passengers who have demonstrated the need to travel due to death or illness of a family member,
- aged or handicapped passengers and unaccompanied children, when allocating seats on an overbooked flight.

4. Passengers who have demonstrated the need to travel due to death or illness of a family member, aged or handicapped passengers, unaccompanied children and passengers travelling with children shall be given boarding priority.

(Amendment No. 14)

Article 3 (5) (new)

5. For passengers who have a non-fully flexible ticket and who are denied boarding the air carrier shall be obliged to remove all the restrictions attached to such ticket.

COMMISSION TEXT

AMENDMENT

(Amendment No 15)
Article 4 (1)

1. The air carriers shall be obliged to pay to passengers holding a confirmed reservation and having presented themselves within the required time-limits for check-in, who were prevented from boarding an overbooked flight and who have received and accepted a confirmed reservation for an alternative flight:

- minimum compensation of 25% of the value of the lowest fully flexible ticket to their final destination in cases in which the alternative flight is scheduled to arrive at the final destination at least 30 minutes later than the original flight but less than two hours later on an intra-Community flight or less than four hours later on an extra-Community flight.

- minimum compensation of 50% of the value of the lowest fully flexible ticket to their final destination in cases in which the alternative flight is scheduled to arrive at the final destination at least two hours later on an intra-Community flight or four hours later on an extra-Community flight.

The payment of denied boarding compensation shall not affect the passenger's right to use his ticket on another flight to the original point of destination or to seek a complete refund of the ticket value if he does not want to accept the alternative flight.

1. To passengers who are denied boarding, the air carrier shall be obliged to offer guaranteed transport on an alternative flight which most corresponds to the specifications of the initial flight and to pay:

- a minimum compensation of 25% of the value of the lowest fully flexible ticket to the passenger's final destination, with a maximum of 250 Ecus, in cases in which the alternative flight is scheduled to arrive at the final destination at least 1 hour later than the original flight but less than two hours later on a flight of a scheduled duration of less than four hours;

- a minimum compensation of 50% of the value of the lowest fully flexible ticket to the passenger's final destination, with a maximum of 500 Ecus, in cases in which the alternative flight is scheduled to arrive at the final destination at least two hours later on a flight of a scheduled duration of four hours or more.

The payment of denied boarding compensation shall not affect the passenger's right to use his ticket on another flight to the original point of destination or to seek a complete refund of the ticket value if he does not want to accept the alternative flight.

COMMISSION TEXT

AMENDMENTS

(Amendment No. 16)
Article 4 (3) (new)

3. The compensation must be paid in the form of money, if the passenger so wishes, at the time and place at which the denied boarding occurs. Air carriers may offer vouchers for future travel on the carrier's service as an alternative if their value is equivalent or greater than the payment in the form of money and the passenger agrees with such form of compensation.

(Amendment No. 17)
Article 4(3) (new)

3. Compensation may also cover expenses or losses arising from the delay or loss of the flight provided that proper proof can be furnished that:

(a) there is a causal link between the delay or loss of the flight and the damage claimed,

(b) no other means of transport could be substituted,

(c) the damage has been adequately assessed.

COMMISSION TEXT

AMENDMENTS

(Amendment No. 18)

Article 6 (1) b)

1. Apart from the minimum compensation amounts as set out in Article 4 the air carrier shall offer free of charge to passengers who are denied boarding:

b) the expenses for a telephone call and/or telex/telefax message to the point of destination;

1. Apart from the minimum compensation amounts as set out in Article 4 the air carrier shall offer free of charge to passengers who are denied boarding:

b) the expenses for telephone calls and/or telex/telefax messages, when these are justified by the delay caused to the passenger through his being denied permission to board;

(Amendment No. 19)

Article 6(1)(d)

(d) hotel accommodation in cases where an additional overnight stay is necessary.

(d) hotel accommodation in cases where an additional overnight stay is necessary or it is necessary to remain in the airport for at least eight hours.

(Amendment No. 20)

Article 7(2)(c) (new)

2. The air carrier shall not be obliged to pay denied boarding compensation in cases where

c) the flight is cancelled for technical, operational or safety reasons or is unable to accommodate the passenger because of substitution of a smaller aircraft when required by technical, operational or safety reasons. In both cases evidence has to be supplied proving that those reasons were beyond the air carrier's control.

COMMISSION TEXT

AMENDMENTS

(Amendment No. 21)
Article 7a (new)

Article 7a

If a flight is cancelled for commercial reasons passengers must be informed and offered an alternative flight. Otherwise a flight cancelled for commercial reasons shall be considered as an overbooked flight.

(Amendment No. 22)
Article 9

Air carriers shall, at the request of passengers affected by denied boarding, inform them of the responsible bodies to which complaints against the non-observance of this Regulation have to be addressed in the Member State where the ticket has been purchased. They shall provide each passenger affected by denied boarding with a claim form setting out the denied boarding compensation rules.

1. Air carriers shall indicate on the travel documents which they give to passengers a reference to the rules applicable to cases of overbooking under this Regulation. They shall place such information at the disposal of their customers at check-in desks.

2. In cases of denied boarding, the air carrier shall immediately supply to the passengers concerned a list of the competent bodies in the various Member States to which they may address a complaint for non-compliance with this Regulation, together with a claim form setting out the denied boarding compensation rules.

3. The air carrier shall provide passengers to whom boarding has been denied a certificate stating that these persons presented themselves within the time limits laid down for checking-in and that they have been victims of a situation of over-booking.

COMMISSION TEXT

AMENDMENTS

(Amendment No 23)
Article 9a (new)

The Council shall adopt, on the basis of a Commission proposal to be submitted at the latest by 1 July 1991, a code of conduct for travel agents, based on the principles of neutral, comprehensive, accurate and transparent information offered to the consumer.

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission to the Council for a Regulation on common rules for a denied boarding compensation system in scheduled air transport

The European Parliament,

- having regard to the proposal from the Commission to the Council (COM(90)99 final)¹,
 - having been consulted by the Council pursuant to Article 84(2) of the EEC Treaty (C3-0132/90),
 - having regard to the report of the Committee on Transport and Tourism and the opinions of the Committee on the Environment, Public Health and Consumer Protection and the Committee on Legal Affairs and Citizens Rights, (A3-0325/90),
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
 2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 5. Instructs its President to forward this opinion to the Council.

¹ OJ No. C 129, 24.5.1990, p.13

B

EXPLANATORY STATEMENT

I INTRODUCTION: THE OVERBOOKING QUESTION

1. The denial of permission to board an aircraft to passengers holding a valid ticket, a confirmed reservation and presenting themselves within the required time-limit before departure time of the flight is a source of considerable dissatisfaction and annoyance to passengers.

2. There are no official statistics on the exact number of passengers who are denied boarding by European airlines. Some airlines say the problem is very small and mention a figure of 1 passenger in 1000 and statistics from the USA indicate an average of 5 denials per 10.000 boardings, although these figures do not take account of people who answered the call for volunteers.

3. Denied boarding can derive from a number of causes. The most widely attributed is because there are no more seats available on that flight (overbooked flight). Overbooking is the result of the so called "no show" problem, i.e. passengers who do not check in for a flight on which they have "OK" reservations, because their tickets are fully flexible. The flexibility offered by full fare tickets (First, Business and Full Economy) implies that these tickets are valid for 1 year and allow cancellation and change of reservations without financial penalties such as the ones that apply to the non-fully flexible tickets. This means that passengers with fully flexible tickets do not lose their right to use their ticket with no additional charges on another flight to the same destination, or to refund the price paid, despite the fact they are not present for checking in although a confirmed reservation had been made.

4. According to the Association of European Airlines (AEA) around one million passengers a year do not check in for boarding; British Airways estimates that there is an average "no show" rate of 15-20% across its route network and other estimates suggest even a rate of 30% being reached at peak times.

5. Other problems can be involved, like late arrivals of connecting flights, flight cancellations due to operational, technical or safety reasons. Regardless of its cause many of which, in Europe, are the result of our inadequate air traffic control and handling systems, denied boarding means inconvenience to the passengers. Air carriers are liable for damages resulting from the failure to fulfil the contract.

6. "Air carriers prefer to maintain the high degree of flexibility in favour of business travellers and are not prepared to establish measures aimed at actively discouraging no shows" (Commission's Explanatory Memorandum paragraph 6). To tackle this situation air carriers often sell more seats than those available on the aircraft. Thus when overbooking happens air carriers are fully responsible for denial of permission to board as they are forced to breach - de facto - contracts with passengers holding valid tickets and confirmed reservations.

7. Two problems have to be faced. First, what criteria are to be used in allocating the available seats? Secondly what is a fair compensation to passengers denied boarding?

II EXISTING COMPENSATION SYSTEMS

8. There is a variety of systems applied by air carriers. Some follow recommendations published by international organizations, like AEA and IATA, but these are "voluntary guidelines" and it is up to each airline whether or not it follows them or, indeed, whether to operate any compensation.

Furthermore, even when there is a compensation system in operation by a particular airline, passengers are usually unaware of it and are not informed.

9. One of the usual procedures is the request for volunteers. Volunteers are persons who willingly accept the carrier's offer of compensation in exchange for relinquishing their confirmed reservations. Alternatively airlines can enforce their own systems of priority rules to decide which passengers shall be denied boarding on a particular flight in line with their own judgement of the relevant circumstances and the categories of passengers booked. This system can be used either in conjunction with the volunteer system or applied when there are insufficient volunteers.

III COMMISSION'S PROPOSAL

10. The Commission's proposal (COM(90) 99 final) provides an order of priorities for overbooked flights:

- First, the carrier must call for volunteers to surrender their seats; these passengers will be transferred to another flight and given a compensation.
- Secondly, if some passengers are denied boarding, the first must be those holding reduced-fare tickets, such as those issued to airline employees.
"Due consideration" must be given to passengers travelling owing to the death or illness of a family member, aged or handicapped passengers, and unaccompanied children. Likewise, holders of a non-fully-flexible ticket should also be given priority for boarding.

The Commission proposes that passengers denied boarding should be compensated in a way which takes account of the resultant delay. Minimum compensation is to be 25% of the lowest fully flexible ticket to their final destination where the delay is between half an hour and two hours on an intra-Community flight, and between half an hour and four hours on a flight to a destination outside the Community. Compensation of 50% is to be given if the delay exceeds those limits.

11. The carrier must also provide passengers with all facilities made necessary by the delay, e.g. safe keeping of luggage, telephone calls, meals and hotel accommodation if necessary, etc. Where no alternative flight can be provided, compensation is to be 100% of the lowest fully flexible ticket to the passenger's final destination.

IV UNITED STATES RULES ON OVERSALES

12. The general principle of the Regulation of the United States Civil Aeronautical Board is that in the event of an oversold flight every carrier shall ensure that the smallest practicable number of persons holding confirmed reservations are denied boarding involuntarily.

First of all carriers request volunteers for denied boarding before using any other boarding priority. If the number of volunteers is insufficient the carrier may deny boarding to other passengers in accordance with its boarding priority rules. These rules and criteria are established in writing by the carriers and shall not cause any undue or unreasonable preference or advantage to any particular person in any request.

The amount of compensation is at the rate of 200 percent of the sum of the values of the passenger's remaining flight coupons up to the passenger's next stopover ("stopover" means a deliberate interruption of a journey by the passenger, scheduled to exceed 4 hours, at a point between the place of departure and the final destination), or if none, to the final destination, with a maximum of US \$ 400.

However, the compensation shall be half (maximum \$ 200) if the carrier arranges for alternate transportation ("alternate transportation" is air transportation or other transportation used by the passenger which is planned to arrive not later than 2 hours after the time the passenger's originally scheduled arrival time, or 4 hours after for international flights).

Instead of this cash payment carriers may offer free or reduced rate air transportation if its value is equal or greater than the cash payment.

No compensation is paid if the passenger arrives not later than 1 hour after the planned arrival time of the original flight to his next stopover or, if none, to his final destination.

If the passenger is denied boarding because he did not comply with the usual rules and practices of flight, because the flight is cancelled or because a smaller capacity aircraft was substituted for safety or operational reasons, in all these cases the passenger is not eligible for denied boarding compensation.

The payment is made on the day and place the involuntary denied boarding occurs or within 24 hours (in case of alternate transportation) and the passenger may refuse all compensation and bring private legal action.

Finally, the American regulation also provides denied boarding compensation drafts and requests that every carrier gives passengers who are denied boarding involuntarily a written statement explaining the terms, conditions and limitations of this compensation and describing the carrier's boarding priority rules and criteria. This statement may also be given at any boarding location used by the carriers. The model of this statement is part of the regulation.

13. The main differences of the American system compared to the Commission's proposal are the following:

- (i) there is no mandatory set of priority rules in the USA concerning boarding - although the volunteer system is also applied - , but it is compulsory for airlines to publish the rules they use for allocating boarding priorities;
- (ii) a maximum amount of compensation is fixed (US \$ 400 if the airline cannot arrange alternate transportation and \$ 200 in the other cases) and the value of the compensation is calculated according to the face values of the passenger's ticket coupons;
- (iii) exceptions to eligibility for denied boarding compensation are larger including cancelled flights.

V CONCLUSIONS AND PROPOSED AMENDMENTS

14. Air passengers strongly resent being "denied boarding" and would usually prefer to fly than accept financial compensation.

Airlines, with the assistance of computers are able to provide higher load factors - and cheaper and more flexible tickets - through calculated overbooking. A contract exists between passenger and carrier. However, if broken, a resort to legal action would in most cases be disproportionate.

15. It is right that the Community should adopt a legally-binding system of denied boarding compensation, similar to that in the USA. In Europe, the high cost of scheduled flights and the pattern of tourism has given rise to "seat only" tickets on many services, and these also need to be covered by denied boarding compensation (see Amendment No. 3).

16. In the rapporteur's view, the best way of protecting the rights of ticket holders with non-fully flexible tickets is not, as the Commission proposes, to give them boarding priority (Article 3(3)(b) of the proposal), but to remove all the restrictive conditions attached to such tickets and turn them into fully flexible tickets. Such is the purpose of Amendments Nos. 2 and 14.

17. Amendment No. 3 takes account of the fact that fraudulent use of the 'OK' notation is fairly widespread: some travel agents insert the 'OK' notation in the relevant box on the ticket without having received confirmation from the air carrier expressly acknowledging the reservation. Indeed, this fact is recognized by the Commission in point I(9) of the explanatory memorandum. The amendment is designed to prevent difficulties for passengers in such cases, and should be taken in conjunction with Amendment No. 23, which seeks a definitive solution to the problem by drawing up a code of conduct for travel agents based on specified principles.

18. Amendments Nos. 20 and 21 are concerned with the problems caused by cancelled flights. While the Commission proposal treats any flight cancelled

for commercial reasons as an overbooked flight (Article 2(d), the rapporteur prefers to distinguish between flights cancelled for technical reasons, and those cancelled for commercial reasons, providing a separate procedure for each.

19. Your rapporteur thinks that it is right that a schedule of priority boarding be established and Amendments Nos. 10, 11, 12 and 13 are designed to improve the content of the Commission proposal in this area.

20. Amendments Nos. 15 and 16 address the question of fair compensation for passengers who are denied boarding and are based in part on the system used in the United States.

21. Finally, Amendments Nos. 18, 19 and 22 seek to improve the protection of passengers' rights, the main purpose of this proposal.

OPINION

(Rule 120 of the Rules of procedure)

of the Committee on Legal Affairs and Citizens' Rights
for the Committee on Transport and Tourism

Draftsman: Mr Freddy BLAK

At its meeting of 28 June 1990, the Committee on Legal Affairs and Citizens' Rights appointed Mr Freddy BLAK draftsman.

At its meetings of 15/16 October 1990 and 30/31 October 1990, it considered the draft opinion.

At the latter meeting, it adopted the conclusions as a whole unanimously.

The following took part in the vote: STAUFFENBERG, chairman; VAYSSADE, vice-chairman; GARCIA AMIGO, GRUND, INGLEWOOD, SALEMA, TURNER, WIJSENBECK and ZAVVOS.

EXPLANATORY STATEMENT

Amendments Nos. 1 and 2

Since this draft regulation is designed to promote the rights of consumers of air transport services, it would seem opportune to establish the air carrier's duty to provide an alternative flight schedule for passengers, who are the victims of overbooking (cf. amendment no. 1 proposing a new article 2a).

If the duty of the air carrier to provide an alternative flight schedule is accepted, then one can discard the Commission's proposal at Article 3(3)b) that, in an overbooking situation, priority be given to passengers with non-fully flexible tickets, i.e. to passengers, who have generally paid less money for their ticket. Thus amendment no. 2 seeks to remove the preferential treatment to be afforded passengers with non-fully flexible tickets, but to maintain it, of course, for passengers with confirmed reservations for the flight in question.

Amendment No. 3

This amendment merely seeks to ensure that, in allocating seats for an overbooked flight, the air carrier grants a certain priority to passengers with accompanying children.

Amendments Nos. 4 and 5

These amendments maintain the spirit of the Commission's text, but seek to eliminate any misunderstandings, by setting out clearly the rights to compensation of passengers, when, on the one hand, refusing the alternative flight proposed and, on the other hand, faced with a situation where the air carrier has failed to propose an alternative flight. Where no alternative flight is proposed, it is evident that the non-fully flexible ticket-holder's potential loss is greater (cf. amendment no. 5).

Conclusions

In the light of the foregoing, the Committee on Legal Affairs and Citizens' Rights calls on the Committee on Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Commission text

Amendments

(Amendment No. 1)
Article 2a (new)

Air carriers, which resort to denied boarding as a result of an overbooked flight, are under an overriding duty to provide an alternative flight schedule to the point of final destination for passengers who are the victims of denied boarding.

(Amendment No. 2)
Article 3(3) b)

b) Boarding priority shall be given to passengers travelling on a non-fully flexible ticket provided:

- they hold a valid ticket and a confirmed reservation for the flight in question,
- they have presented themselves within the required time-limit for check-in and
- the air carrier is unable to offer an alternative flight on the same or another routing to the final destination which is scheduled to arrive less than two hours later at the final destination.

b) Boarding priority shall be given to passengers, holding a valid ticket and a confirmed reservation for the flight in question, provided that:

- they have presented themselves within the required time-limit for check-in and
- the air carrier is unable to offer an alternative flight on the same or another routing to the final destination which is scheduled to arrive less than two hours later at the final destination.

(Amendment No. 3)
Article 3(4)

4. Notwithstanding the criteria laid down in paragraph 3, air carriers should give due consideration to the interests of:

- passengers who have demonstrated the need to travel due to death or illness of a family member,
- aged or handicapped passengers and unaccompanied children,

when allocating seats on an overbooked flight.

4. Notwithstanding the criteria laid down in paragraph 3, air carriers should give due consideration to the interests of:

- passengers who have demonstrated the need to travel due to death or illness of a family member,
- aged or handicapped passengers and unaccompanied children,
- passengers with accompanying children under the age of 12,

when allocating seats on an overbooked flight.

(Amendment No. 4)

Article 4(1) second sub-paragraph

The payment of denied boarding compensation shall not affect the passenger's right to use his ticket on another flight to the original point of destination or to seek a complete refund of the ticket value if he does not want to accept the alternative flight.

However, in the event of a passenger refusing to accept the alternative flight, he shall still be entitled to the compensation payable under this paragraph, without prejudice to the right of the fully flexible ticket-holder to use his ticket on another flight or to the right of the non-fully flexible ticket-holder to a refund of the ticket value to the point of final destination or part thereof.

(Amendment No. 5)

Article 4(2)

2. The air carrier shall be obliged to pay compensation of 100% of the value of the lowest fully flexible ticket to his final destination in cases where the passenger loses his right for a flight to his final destination because of denied boarding and the air carrier is unable to offer an alternative flight.

2. If the air carrier fails to perform its duty under Article 2a, it shall be obliged to pay:
- to a passenger with a fully flexible ticket, the compensation provided for under paragraph 1 second indent; or
- to a passenger with a non-fully flexible ticket, who loses his right to a flight to his final destination, the compensation provided for under paragraph 1 second indent and compensation of 100% of the value of the lowest fully flexible ticket to that final destination.

OPINION

of the Committee on the Environment, Public Health and Consumer Protection

Letter from the chairman of the committee to Mr AMARAL, chairman of the Committee on Transport and Tourism

Brussels, 17 October 1990

Subject: Proposal for a Council Regulation (EEC) on common rules for denied boarding compensation system in scheduled air transport
(COM(90) 0009 final - Doc. C3-0132/90)

Dear Mr Amaral,

At its meeting of 17 October 1990, the Committee on the Environment, Public Health and Consumer Protection examined this proposal.

The aim of this proposal is to find an acceptable solution to the problems which beset many air travellers as a result of the increasingly common practice of over-booking. Over-booking can have its advantages for the consumer as it allows passengers a high degree of flexibility. However, when an airline mis-calculates the numbers of 'no-shows', the consequences for the passenger can be extremely unpleasant.

While the committee welcomes the proposal in general it has, nonetheless, a number of criticisms of specific provisions:

- (i) The scope of the regulation is confined to scheduled flights. The committee considers that charter flights should be included here until such time as the package travel directive is adopted. In any case, those travelling with 'seat-only' tickets on charter flights should be covered by this regulation. The regulation should also cover flights to the Community which are operated by Community-based airlines;
- (ii) The proposed procedure for dealing with over-booked flights seems fair although volunteers who surrender their confirmed reservation should be offered guaranteed carriage to ensure that they are not bumped a second time. On the question of over-booked classes (Article 3(2)), up-grading should also be used, where available;
- (iii) On the question of boarding priority the categories outlined in Article 3(4) should be extended to include persons who are ill, travelling with young children or with connecting flights;
- (iv) The system of compensation as laid down in Article 4 needs to be reviewed entirely. Compensation should be at a sufficiently high level to deter airlines from systematic over-booking. It should also be based on the actual

inconvenience suffered e.g. expenses incurred, cost to traveller of missed connections, length of delay, etc. The proposed system of a percentage of the value of the ticket seems illogical;

- (vi) Article 6(1)(a) provides for the eventuality that luggage has been sent on the flight to which the passenger has been denied boarding. In view of current security regulations, this would seem totally illegal;
- (vii) Article 6(1) (d) provides that hotel accommodation should be provided where an overnight stay is necessary. This should be extended to people whose flights are delayed by more than 8 hours;
- (viii) Article 7(2)(b) states that the air carrier should not be obliged to pay compensation if the passenger 'explicitly maintains his right to seek compensation...'. This should be deleted as it is a serious limitation of consumers' rights.

My committee would appreciate it if the Committee on Transport and Tourism would take due account of the above points when drawing up its draft report.

Please consider this letter as the opinion of the Committee on the Environment, Public Health and Consumer Protection.

Yours sincerely,

(sgd) Ken COLLINS

The following were present at the vote: Mr COLLINS, Chairman; Mrs SCHLEICHER, Vice-Chairman; Mr ALAVANOS; Mrs BANOTTI; Mrs BJORNVIG; Mr BOMBARD; Mr BOWE; Mr de la CAMARA MARTINEZ; Mr CANAVARRO; Mrs CECI; Mr CHANTERIE; Mrs DIEZ DE RIVERA; Mr FLORENZ; Mrs GREEN; Mr GUIDOLIN; Mr HADJIGEORGIOU (deputizing for Mr ALBER); Mrs JENSEN; Mr LANNOYE (deputizing for Mr AMENDOLA); Mrs LLORCA VILAPLANA; Mr MONNIER-BESOMBES; Mrs OOMEN-RUIJTEN; Mr PARTSCH; Mr PIMENTA; Mrs POLLACK; Mrs ROTH-BEHRENDT; Dr SCHWARTZENBERG; Mr SMITH, L.; Mr VALVERDE LOPEZ; Mrs VEIL; Mr VITTINGHOFF; Mr WIJSENBEEK (deputizing for Mr BERTENS).