

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws’

COM(2008) 816 final — 2008/0246 (COD)
(2009/C 317/16)

Rapporteur: **Mr Hernández BATALLER**
Co-rapporteur: **Mr RUSCHE**

On 12 February 2009, the Council decided to consult the European Economic and Social Committee, under Article 71 of the Treaty establishing the European Community, on the

Proposal for a Regulation of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws

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The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 26 June 2009. The rapporteur was Mr Hernández Bataller and the co-rapporteur was Mr Rusche.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 16 July 2009), the European Economic and Social Committee adopted the following opinion by 65 votes to 0, with 2 abstentions.

1. Conclusions and recommendations

1.1 The EESC endorses the Commission proposal because the regulation’s implementation would, in general terms, boost the internal market and passengers’ rights, especially the rights of passengers with disabilities.

1.2 The Committee regrets, however that the proposal does not give specific and more detailed coverage to the situation of people with disabilities or to higher levels of protection for fundamental rights and consumers’ economic rights.

1.3 With regard to people with disabilities, a framework should be established to guarantee accessibility in all circumstances, within the terms suggested by the EESC in this opinion.

1.4 Where safety is concerned, the highest possible level should always be applied, under the regulatory framework currently in force or under the framework that the EU Member States intend to apply in this field.

1.5 As regards other fundamental individual rights, such as the protection of privacy in databases, this should also be covered by a specific regulation that strengthens guarantees.

1.6 In the field of consumers’ economic rights, substantial improvements need to be made to a number of aspects of the legislation under consideration, such as alternative transport services

and reimbursement, compensation of the ticket price, passenger information and complaints.

2. Background

2.1 Article 38 of the Charter of Fundamental Rights of the European Union ⁽¹⁾ stipulates that Union policies shall ensure a high level of consumer protection. Meanwhile, Article 3 TEC establishes the strengthening of consumer protection as one of the activities of the Community, and Article 153 calls for the Community to protect the interests of consumers and ensure a high level of consumer protection.

2.2 In its White Paper on *European transport policy for 2010: time to decide* ⁽²⁾, the Commission proposed to establish the rights of passengers on all modes of transport, setting common principles for all transport modes ⁽³⁾ and identifying the need to strengthen a number of rights, such as specific measures for people with reduced mobility, automatic and immediate solutions when travel is interrupted (long delays, cancellations or refusal of carriage), passenger information obligations, and treatment of complaints and means of redress.

⁽¹⁾ OJ C 303, 14.12.2007, p. 1.

⁽²⁾ COM(2001) 370, 12.9.2001.

⁽³⁾ Similar to those set down in Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, OJ L 46, 17.2.2004.

2.3 In 2006, the European Commission launched a public consultation on maritime passenger rights, which partly focused on the protection of the rights of persons with reduced mobility during journeys by sea and inland waterway. The majority was in favour of a common minimum level of protection for passengers' rights throughout the EU, irrespective of the mode of transport or whether a journey takes place wholly within a single Member State or crosses an internal or external border.

2.4 Moreover, the overall conclusions of an independent study⁽⁴⁾ were that the protection of passengers in the EU was not fully satisfactory owing, among other things, to a lack of uniformity regarding the extent and depth of protection of the rights of passengers, the lack of a framework of immediate and predefined solutions in cases of cancellations and delays, and the lack of information to passengers about their rights in the case of a critical event.

2.5 The impact assessment essentially covered principles of compensation and assistance in the event of cancellations and delays, rules of accessibility, non-discrimination and assistance to disabled persons and persons with reduced mobility, quality standards and information obligations, rules for handling complaints and for monitoring compliance.

3. Commission proposal

3.1 The proposed regulation establishes common minimum rules regarding non-discrimination between passengers with regard to transport conditions offered by carriers, non-discrimination and mandatory assistance for disabled persons and persons with reduced mobility, the obligations of carriers towards passengers in cases of cancellation or delay; minimum information to be provided to passengers, the handling of complaints, and the enforcement of passengers' rights.

3.2 The proposal will apply to commercial passenger maritime and inland waterway services, including cruises, between or at ports or any embarkation/disembarkation point situated in the territory of a Member State to which the Treaty applies.

3.3 It sets down obligations for carriers in the event that travel is disrupted, relating to the provision of information, right to assistance, re-routing or reimbursement, compensation of the ticket price and other measures to aid passengers.

3.4 The proposal stipulates that each Member State shall designate an independent body or bodies responsible for the enforcement of the regulation, which can take the measures necessary to

ensure that the rights of passengers are respected, including compliance with the accessibility rules.

4. General comments

4.1 The EESC welcomes the minimum common rules contained in the proposal for a regulation, and hopes that the future will see a move towards greater, better protection for consumers, as stipulated by the EC Treaty. The Commission should expressly make clear that tourist excursions lasting less than one day are excluded from the scope of the proposal.

4.1.1 It is a bold proposal which, in line with the Commission's most recent approaches, places consumers at the heart of the internal market, seeing them as the end-recipients of the processes to open up national markets.

4.1.2 In addition to establishing a set of rules and principles guaranteeing the economic rights of maritime and river transport passengers at intra- and supra-national levels, the regulation sets down a system for recognising and protecting the rights of the public in general.

4.1.3 Moreover, the proposal supplements the legislation of many EU Member States which either does not deal with the issue or does so with a measure of uncertainty, meaning that the rights of disabled or elderly persons are not effectively protected. This affects systems for accessibility, information and assistance on the ship, as well as advance information, which could clearly be improved in many instances.

4.1.4 However, the EESC does not agree that Member States should be able to exclude services covered by public service contracts from the scope of the regulation: these are the services that are used most by citizens and potentially needed most by disabled persons. The Commission could include a subparagraph to follow points 19a) and b), calling on the responsible authorities to consider a scheme for automatic compensation in such cases.

Notwithstanding the existing legislation on maritime safety (Directives 1999/35/EC; 98/18/EEC and 98/41/EC), the EESC believes the regulation should expressly include passengers' specific, independent right to safety.

To this end, the concept of safety should cover accessibility in this area too; in other words, accessibility should be guaranteed not only during passengers' embarkation/disembarkation but also throughout the journey.

(4) Independent study commissioned by DG TREN in 2005-2006 on the Analysis and assessment of the level of protection of passenger rights in the EU maritime transport sector.

Guide-dogs, which are essential to their disabled owners, enabling them fully to exercise their right to free movement and mobility, must also be expressly permitted at all embarkation points and on all journeys falling within the scope of this regulation.

4.1.5 The EESC reminds the Commission of its duty to adopt and propose, at Community level, any measures needed to ensure that disabled persons and persons with reduced mobility have the same right as all other citizens to free movement, freedom of choice and non-discrimination. The 'social disability model', also covering obesity, should be implemented, so that transport modes can be used by everybody.

4.1.6 With regard to the legal basis (Articles 70 and 81 of the Treaty), the EESC believes that Article 153 of the Treaty should also be mentioned, as it calls for a high level of consumer protection in the activities of the Community.

4.1.7 The EESC considers it important that a regulation has been selected as the legal instrument, as the rules established by the proposal must be applied in a uniform and effective manner across the European Union to ensure both an adequate level of protection for maritime passengers and a level playing field for carriers.

4.1.8 The EESC agrees with the European legislators that co-regulation or self-regulation 'will not be applicable where fundamental rights or important political options are at stake or in situations where the rules must be applied in a uniform fashion in all Member States' ⁽⁵⁾. The proposal therefore complies with the principles of subsidiarity and proportionality.

4.1.9 However, with regard to Chapter III, the objective of guaranteeing uniform conditions for economic agents in the internal market can only be achieved in a restricted manner, as the regulation gives the Member States substantial leeway when it comes to rights in the event of delay or cancellation. The report to be drawn up by the Commission at the latest three years after the entry into force of the Regulation (Article 30) should specifically examine whether any disparity in legislation in this field affects competition or the proper running of the internal market.

4.1.10 The EESC acknowledges that transport primarily for the purposes of tourism, especially excursions and sightseeing, does not fall within the scope of the Regulation. Consideration should, however, be given to the situation of passengers who miss their connections due to problems at one stage of their journey.

⁽⁵⁾ European Parliament, Council and Commission Interinstitutional agreement on better law-making (2003/C 321/01), point 17.

4.2 The EESC stresses the importance of the ticket serving as proof of the conclusion of the transport contract, and considers it significant that the rules set down in the Regulation are considered imperative, unwaivable rights for passengers, without prejudice to the current body of protective legislation, particularly with regard to unfair terms ⁽⁶⁾ and unfair commercial practices ⁽⁷⁾.

A specific solution should be sought for derogating from the current, almost universal obligation for disabled travellers to inform carriers no less than 48 hours in advance of their intention to travel on a given route. Alternatively, and where appropriate, this obligation should be amended in a manner that is as favourable as possible to people with disabilities. This strict deadline for people with disabilities could clearly prevent them from fully benefiting from certain rights linked to the free movement of persons, such as the right to leisure, or the right to deal with any emergency situations in which they might be involved.

The EESC calls for some flexibility to be permitted in the notification system for on-board assistance. This mode of travel does not require passengers to book in advance, and imposes an obligation on persons with disabilities to notify their need of assistance in advance, which could breach their right to equal treatment. A distinction should, therefore, be made between long-distance and short-distance journeys, or the type of boat/ship used for transport. The European Commission should oblige carriers to provide the passenger with confirmation that notification has been received, to ensure that the passenger can prove that he or she did actually notify his or her assistance needs, in the event of a breakdown in the information transmission system.

4.2.1 In order to exercise the rights laid down in the United Nations Convention of the Rights of Persons with Disabilities, these people should have access to assistance at ports, at embarkation and disembarkation points, and on passenger ships. The EESC fully agrees that in the interests of social inclusion, this assistance should be free of charge, in line with Article 26 of the Charter of Fundamental Rights regarding the integration of disabled people.

4.2.2 The EESC therefore considers that the derogations for the refusal of carriage of persons with disabilities or reduced mobility should be based on objective, non-discriminatory, transparent, verifiable criteria.

⁽⁶⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. OJ L 95, 21.4.1993, p. 29.

⁽⁷⁾ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, OJ L 149, 11.6.2005, p. 22.

4.3 The EESC welcomes the provision in Article 8 of the regulation, on the basis of dialogue and consultation between civil society organisations and public authorities, under which carriers and organisations of disabled persons and persons with reduced mobility, and enforcement bodies, shall establish access rules. Quality standards should also be set in cooperation with associations of consumer organisations, in line with Article 22 of the proposal, taking into account the recommendations of the International Maritime Organisation and other international bodies with powers in this area.

4.4 The provision for a charge to be levied, as set down in Article 9.3 of the proposal, runs counter to the principle of not charging in the interests of inclusion, particularly when this is done unilaterally, as specified by the text. Nonetheless, the separation of accounts is a natural result of ensuring minimum transparency, although the audited annual overview should be made available to disabled people's organisations and consumer associations. However, the EESC recommends that an assessment be carried out to determine whether the burden involved in drawing up such an account should be shouldered by small and medium-sized enterprises.

4.5 The compensation in respect of wheelchairs and mobility equipment complies with the regulation's purpose of ensuring protection, as does the provision to make replacement equipment available to interested parties. Compensation should be full and should cover all damages incurred.

4.6 The obligations in the event of disruption to travel, as uniform minimum rules and given the lack of current legislation, are reasonable. The EESC can accept that, at Community level, there should be a degree of equivalence with rules protecting air transport passengers, but would like to see a recommendation to achieve the highest level of protection as soon as possible.

4.6.1 Automatic compensation of the ticket price, could prove to be a fair system, provided that it operates flexibly and efficiently. In the future, the system should move towards higher compensation percentages where delays are concerned.

4.6.2 The provision of Article 20 of the proposal, under which the legislation shall not apply if the delay has been caused by 'exceptional circumstances', should be clarified. This should be clarified in line with ECJ case law⁽⁸⁾, insofar as the provision does not apply to a technical problem occurring on the ship and causing the cancellation of travel, unless this problem derives from events which, by their nature or origin, are not inherent to the normal

performance of the activity of carrier. Moreover, simple compliance by the carrier with the minimum maintenance requirements for a ship should not alone serve as proof that the carrier has taken all 'reasonable measures' and is thus exempted from the obligation to pay compensation. The nautical conditions for each transport service should also be taken into account here.

4.6.3 In any event, the provision of Article 21, whereby nothing precludes passengers from seeking damages in respect of loss resulting from cancellation or delay of transport services before national courts, is fully in line with the fundamental right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights.

4.7 Information is important for passengers and should be accessible and in line with technological developments; the proposal is therefore relevant in this regard.

4.8 With regard to complaints, provided that they concern civil and/or commercial damages, reference should be made to the extrajudicial consumer organisations set up on the basis of Commission Recommendation 1998/257/EC of 30 March, or at least to bodies that meet the principles of independence, transparency, contradiction, effectiveness, legality, freedom and the possibility of representation.

4.9 National enforcement bodies should be empowered to fully enforce an effective, dissuasive and proportionate system of sanctions which, in all events, includes the possibility of ordering the payment of compensation to affected passengers as a result of having lodged a complaint.

The regulation should include the obligation to provide accessible, adequate and relevant information on any sanctions that might apply and on the passenger complaints procedure.

4.10 With regard to the protection of personal information and the free movement of data⁽⁹⁾, the EESC shares the Commission's concern for strict application of existing legislation in order to guarantee passenger privacy, in line with Directive 95/46/EC and ECJ case law. This is particularly relevant in the case of personal data that could be transmitted to third countries in the context of transport services. At any time, those whose details are on file should be made aware of this fact and of their right to access the file and to request the rectification or removal of data concerning them.

⁽⁸⁾ Judgment of 22 December 2008, case C-549/07 (Friederike Wallentin-Hermann/Alitalia-Linee Aeree Italiane SpA).

⁽⁹⁾ Right to privacy, Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

4.11 The EESC reminds the Commission of the need to review Directive 90/314/EEC, so as to bring it more closely into line with this proposal and other secondary Community law, and to:

- update the definitions and explanations of terms such as ‘inclusive price’, ‘package’ and ‘pre-arranged combination’;
- define more clearly the exact responsibility of the operator and the agent in the event of breach of contract or defective performance thereof, irrespective of whether the operator or agent has provided the service in question directly or indirectly;

- establish clearer, more comprehensive compensation for consumers in the event that the organiser cancels the contract.

4.12 Furthermore, the EESC reminds the Commission of the need to make explicit reference in the Regulation to the directives on maritime and inland waterway transport, which seek to achieve a high level of protection specifically for people with reduced mobility, and to adjust their geographical scope of application where necessary.

Brussels, 16 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI
