



COMMISSION OF THE EUROPEAN COMMUNITIES

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**Proposal for a
COUNCIL REGULATION (EC)**

amending Regulation (EEC) No 295/91 establishing common rules for a
denied-boarding compensation system in scheduled air transport

(presented by the Commission)

EXPLANATORY MEMORANDUM

A. INTRODUCTION

1. The third package of liberalization measures created an internal market for aviation, largely harmonizing the rules for operating both domestic and international air services. The rules laid down by Regulation (EEC) No 295/91¹ for a denied-boarding compensation system are a significant factor in protecting passengers' interests. However, application of the Regulation over the last five years coupled with recent developments in the sector have revealed a need to make a number of adjustments to the Community rules on this subject. In drafting this proposal the Commission took account of the conclusions of the consultation of experts from the Member States and interested parties on 5 March 1997².
2. Regulation (EEC) No 295/91 established a system to provide adequate compensation for passengers denied boarding on overbooked flights.

In practice, however, the Commission has noted a number of cases in which passengers were not, or not fully, compensated. To a large degree, the explanation for this state of affairs is that the passengers were uninformed. On the one hand, the vast majority of passengers denied boarding do not know their existing rights in this situation. On the other, despite their obligations under the Regulation, some airlines fail to inform or only partially inform passengers about their entitlements to compensation.

At the meeting on 5 March 1997, the organizations consulted recognized the need to improve the information given to passengers. However, the airlines asked for care to be taken not to introduce new unmanageable procedures at a prohibitive cost out of proportion to the objectives sought.

Another point to note is that the amount set for such compensation has remained unchanged since 1991 since the Regulation provides no mechanisms for adaptation to the changing economic situation. Although the airline associations have reservations about revision of the amount, there is strong support from consumers' organizations who feel that the amount set in 1991 must not be sacrosanct.

3. A number of changes in the air transport sector could also have an impact on operation of the Community denied-boarding compensation system
 - (a) The development of commercial agreements (e.g. code-sharing) sometimes gives rise to a situation where one carrier confirms the reservation and sells the ticket but another then denies boarding to the passenger at the check-in.

¹ OJ L 36, 8.2.1991, p. 5.

² Organizations consulted: Association of European Airlines, International Air Transport Association, European Regions Airline Association, Federation of Air Transport Users Representation in Europe, European Consumers' Organization, Guild of European Business Travel Agents, Airports Council International, Group of National Travel Agents and Tour Operators Association within the EU, Independent Air Carriers of the EC (ACE), European Conference of Civil Aviation (ECAC) and EFTA Surveillance Authority.

Situations like this must not impair the passenger's right to obtain the payments and additional services provided for by the Regulation. Consequently, to provide rapid, effective remedies for passengers, provision must be made for the carrier which denies boarding to assume the resultant obligations vis-à-vis the passenger. The carrier which assumes the obligations imposed by this Regulation vis-à-vis the passenger will always be able to obtain compensation in turn under its commercial agreement with the associate carrier to blame for the overbooking.

- (b) There is a trend towards ticketless travel, with papers being replaced by electronic "tickets". The IATA (International Air Transport Association) recently adopted standards on electronic tickets³. Now the "ticket" is contained in electronic form in the carrier's database. Some carriers now take bookings by telephone only and simply give passengers a reservation number. In all these cases, passengers arrive at check-in without a ticket and must simply present identity papers. Development of such new forms of ticketing must not, however, let carriers evade their obligations in the event of denied boarding on an overbooked flight.
- (c) Commercially, the borderline between scheduled and non-scheduled air services is also becoming blurred. Nor is there any longer any difference in terms of access to intra-Community links since 1 January 1993, under the third package of liberalization measures.

Generally, seats on non-scheduled flights are sold by tour operators as part of a package tour, in which the flight is combined with other pre-arranged services (accommodation, etc.). Increasingly, however, seat-only non-scheduled services are being offered, in which carriers sell passengers, either directly or via their authorized agents, seats with no other services. Conversely, it has become common practice to take a scheduled flight as part of a package tour.

Passengers who buy an air ticket as part of a package tour but are then denied boarding receive compensation under Directive 90/314/EEC on package travel, package holidays and package tours⁴. By contrast, passengers who buy seat-only tickets and are subsequently denied boarding on a non-scheduled flight are not covered by Directive 90/314/EEC, which applies only to seats sold as part of a pre-arranged combination of services, or by Regulation (EEC) No 295/91, which applies to scheduled flights only. There is therefore a risk that a certain category of passengers denied boarding on non-scheduled flights might not receive compensation.

There is therefore no longer any justification for drawing a distinction between passengers on scheduled and non-scheduled flights. However, one distinction which is still legitimate, due to the different contractual obligations, is between package-tour passengers, who must receive compensation for the combination of services concerned, and seat-only passengers.

³ "Expedited resolutions and recommended practices" adopted at the 17th meeting of the JPSC (Joint IATA/ATA Passenger Services Conference) in Los Angeles from 15 to 17 October 1996.

⁴ OJ L 158, 23.6.1990, p. 59.

4. Some air carriers still apply a reconfirmation policy and require passengers to meet this condition to qualify for compensation in the event of denied boarding. Such an approach is contrary to the objectives of the Regulation. Even if passengers reconfirm their booking, they will obtain no proof of having done so and could still be denied boarding, without justification, in the event of an error or fault by the carrier. Consequently, it must be stipulated that non-reconfirmation by no means allows carriers to withdraw passengers' right to compensation for denied boarding.
5. Although some carriers state that they pursue no overbooking policy, this is no adequate guarantee that the flight will not be overbooked (an error in the reservation system is always possible; sometimes the aircraft intended for the flight is replaced by a smaller aircraft; in the case of code-sharing, an associate carrier could have overbooked the flight, etc.).

Since the Regulation establishes rules simply for the *de facto* situation of denied boarding due to overbooking, irrespective of the cause, there is no reason to distinguish between carriers on the basis of their business practices.

B. COMMUNITY ACTION

6. In this context, the Commission considers revision of Regulation (EEC) No 295/91 necessary to make sure that air transport users are effectively given fair conditions of carriage, while keeping the situation acceptable for the air transport sector. The Commission's analysis took particular account of the following factors:
 - all passengers on any flight departing from an airport in the Community must be adequately covered;
 - passengers must be sufficiently informed of their rights to compensation if they are denied boarding;
 - Member States should ensure, in particular, that information will be displayed properly on notices at airports on their territory;
 - recent developments in air transport and ticketing must not impede proper application of the Community compensation system;
 - passengers should receive fair and equitable compensation commensurate with developments in the economic situation and in the quality of air services;
 - commensurate penalties providing an adequate deterrent should be imposed on carriers who break the rules;
 - application of the Regulation over the last five years has revealed the need for certain clarifications.
7. For these reasons, the proposal from the Commission provides, in particular, for:
 - ending the distinction between scheduled and non-scheduled flights in Article 1 of this Regulation, without prejudice to application of Directive 90/314/EEC (Article 5);

- improving information for passengers, in particular by displaying a notice at check-in counters (Article 3);
 - adapting Regulation (EEC) No 295/91 to the development of new forms of ticketing (Article 2);
 - ensuring that the entire available capacity of the aeroplane is used before boarding is denied (Article 3);
 - making it clear that the passenger will have the right to have the cost of his ticket reimbursed, including the cost of the part of his journey which has become useless for the purpose of his travel plan (Article 4);
 - raising the compensation thresholds on the basis of inflation rates since 1991 (Article 4);
 - making it clear that non-compliance by the passenger with additional conditions imposed by the carrier, such as reconfirmation of the booking by a set time before the flight, is no reason for the air carrier to withdraw the passenger's right to compensation in the event of denied boarding (Article 1);
 - making it clear that the air carrier denying boarding must pay the compensation to the passenger, irrespective whether or not it sold the passenger the ticket and confirmed the reservation (Article 4).
8. The Commission also intends to begin an information campaign with the object of familiarizing the public at large with its right to denied-boarding compensation of the same type which is already provided for by the Citizen of Europe campaign.

**Proposal for a
COUNCIL REGULATION (EC)**

amending Regulation (EEC) No 295/91 establishing common rules for a
denied-boarding compensation system in scheduled air transport

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84(2) thereof,

Having regard to the proposal from the Commission⁵,

Acting in accordance with the procedure laid down in Article 189c of the Treaty in cooperation with the European Parliament⁶,

Having regard to the opinion of the Economic and Social Committee⁷,

Whereas action by the Community in the field of air transport must aim at ensuring a high level of protection for users' interests;

Whereas Council Regulation (EEC) No 295/91⁸ laid down certain common minimum standards on this subject;

Whereas in the light of application of that Regulation, greater protection should be ensured for passengers' rights in this area;

Whereas passengers should be better informed of their rights in the event of their being denied boarding;

Whereas certain provisions of Regulation (EEC) No 295/91 should be clarified;

Whereas to avoid any disagreement about the check-in time, that time should be set at 30 minutes before the announced departure time, unless the passenger is informed otherwise in writing in advance;

Whereas since, in commercial terms, the borderline between scheduled and non-scheduled air services is becoming blurred, limitation of the scope of Regulation (EEC) No 295/91 to scheduled flights only is no longer sustainable, whereas that Regulation should also be extended to passengers on non-scheduled flights;

Whereas to provide effective protection for passengers, it should be made clear that air carriers cannot be exempted, by means of contractual clauses, from their obligations pursuant to Regulation (EEC) No 295/91;

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⁸ OJ L 36, 8.2.1991, p. 5.

Whereas to provide rapid and effective protection for passengers, arrangements should be made for the carrier which denies boarding to assume the obligations provided for under this Regulation vis-à-vis the passenger, without prejudice to that carrier's right to seek compensation from a third party in accordance with the relevant national legislation;

Whereas to ensure that air carriers cannot avoid the obligations incumbent upon them when boarding is denied, account should also be taken of the development of new forms of ticketing;

Whereas to ensure that all passengers will be treated in accordance with the objectives of this Regulation, a confirmed reservation indicates the existence of a transport contract between the air carrier and the passenger; whereas confirmed reservations may not be made subject to additional conditions such as reconfirmation;

Whereas to ensure that passengers are adequately informed of their rights in the event of being denied boarding, provision should be made for a notice at check-in counters; whereas, in this respect, it is particularly important that the Member States ensure compliance with these provisions at all airports on their territory;

Whereas it should be ensured that the air carrier uses the entire available capacity of his aeroplane before denying boarding, even if this means that the passenger will be transported in a class different from that for which his ticket was paid;

Whereas adequate compensation to a passenger who has been denied boarding should consist in the reimbursement of the cost of any part of his ticket which applies to a part of his journey which the passenger will not undertake and of any part which no longer serves any purpose in relation to his travel plan as a result of his being denied boarding;

Whereas in the light of economic trends, it is already necessary to adjust the compensation thresholds;

Whereas to ensure compliance with the provisions on the subject, penalties which provide an adequate deterrent and are proportionate should be introduced; whereas an appropriate system for adaptation thereof should, consequently, be set up;

Whereas Regulation (EEC) No 295/91 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article I

Regulation (EEC) No 295/91 is hereby amended as follows:

1. The term "scheduled" shall be deleted from the title of the Regulation.
2. Articles 1 to 4 shall be replaced by the following:

“Article 1

1. This Regulation establishes common minimum rules applicable where passengers are denied access to an overbooked flight for which they have a confirmed reservation departing from an airport located in the territory of a Member State to which the Treaty applies, irrespective of the State where the air carrier is established, the nationality of the passenger and the point of destination.
2. The obligations of air carriers vis-à-vis passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the contract of carriage.

Article 2

For the purposes of this Regulation:

- (a) “denied boarding” means a refusal to accommodate passengers on a flight although they have:
 - a confirmed reservation on that flight, and
 - presented themselves for check-in as stipulated and 30 minutes before the announced departure time or, where more time is prescribed, by the time indicated to the passenger in advance in writing by the air carrier or by its authorized travel agent;
- (b) “ticket” means a valid ticket or equivalent transport document, whether in paper form or paperless, including electronic, form, sold by the air carrier or its authorized travel agent;
- (c) “confirmed reservation” means that, to the exclusion of any other condition, the passenger has a ticket which contains
 - (i) in the case of a ticket,
 - a specification of the number, date and time of the flight, and
 - the notation “OK” in the appropriate space; or
 - (ii) in the case of a paper or paperless transport document equivalent to a ticket, indicates that the reservation has been registered and confirmed;
- (d) “overbooked flight” means any flight in return for payment where the number of passengers holding a confirmed reservation and presenting themselves for check-in within the required time limit and as stipulated exceeds the number of available seats, including cases where the aircraft intended for the flight has been replaced by another aircraft;

- (e) "volunteer" means a person who:
- has a confirmed reservation, and
 - responds positively to the air carrier's call for passengers prepared to surrender their confirmed reservation in exchange for compensation;
- (f) "final destination" means the destination on the ticket presented at the check-in counter or, in the case of successive 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.

Article 3

1. The air carrier must use the full capacity available on the aircraft before denying boarding.

If the passenger is placed in a class higher than that for which a ticket has been purchased, the air carrier may request no supplementary payment.

If the passenger agrees to be placed in a class lower than that for which a ticket has been purchased, he shall be entitled, in addition to the compensation in accordance with Article 4(2), (4) and (5), to reimbursement of the difference in price.

2. All air carriers must lay down the rules which they will follow when passengers are denied boarding in the event of an overbooked flight, including the rules laying down the priorities for passenger embarkation. These rules must include all the obligations arising from this Regulation. The air carriers shall notify these rules and any changes therein to the Member State concerned and to the Commission, which shall make them available to the other Member States. Any such changes shall enter into force one month after their notification.
3. The rules referred to in paragraph 2 shall be made available to the public by the carriers.

The legal entity responsible for passenger check-in must ensure that a notice containing the following text in letters at least two centimetres high is displayed at the check-in counters in a manner clearly visible for passengers:

"If you are denied boarding, ask at this check-in counter for the text stating your rights, particularly with regard to compensation."

4. The rules referred to in paragraph 2 must, where technically feasible, include the possibility of a call for volunteers prepared not to board.
5. In any event the air carrier must take into consideration the interests of passengers who must be given boarding priority for legitimate reasons, such as handicapped persons and unaccompanied children.
6. The rules referred to in paragraph 2 shall form part of the air carrier's conditions of carriage.

Article 4

1. In the event of boarding being denied, the air carrier denying boarding must offer the passenger the choice between:
 - reimbursement without penalty of the cost of the ticket for all parts of the journey not made or which no longer serve any purpose in relation to his original travel plan, or
 - re-routing, under comparable air transport conditions, to his final destination at the earliest opportunity, or
 - re-routing, under comparable air transport conditions, at a later date at the passenger's convenience.
 2. Irrespective of the passenger's choice mentioned in the case referred to in paragraph 1, the air carrier denying boarding shall, immediately after boarding has been denied, pay minimum compensation, without prejudice to paragraphs 4 and 5, amounting to:
 - ECU 185 for flights of up to 3 500 km,
 - ECU 370 for flights of more than 3 500 km,having regard to the final destination specified in the ticket.
 3. The Commission, acting in accordance with the procedure laid down in Article 9a, may adjust the amounts referred to in paragraph 2 where that is made necessary by economic trends.
 4. Where the carrier denying boarding offers re-routing to the final destination on an alternative flight, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked by two hours for flights of up to 3 500 km, and by four hours for flights of more than 3 500 km, the compensation provided for in paragraph 2 may be reduced by 50%.
 5. The amounts of compensation need not exceed the price of the ticket in respect of the final destination.
 6. The compensation shall be paid in cash or, with the written agreement of the passenger, in travel vouchers and/or other services.
 7. The distances given in paragraphs 2 and 4 shall be measured by the great circle track method (great circle route).
3. The introductory phrase in Article 6(1) shall be replaced by the following:
- “Apart from the minimum compensation amounts set out in Article 4, the air carrier denying boarding shall offer free of charge to passengers who are denied boarding.”

4. The following Article 6a shall be added:

“Article 6a

In cases where an 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 a third party in accordance with the national law applicable.”

5. Article 8 shall be replaced by the following:

“Article 8

Air carriers denying boarding shall provide each passenger affected by denied boarding with a notice setting out the denied-boarding compensation rules.”

6. The following Articles 9a, 9b and 9c shall be added:

“Article 9a

The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 9b

Member States shall determine the penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that it is implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify the Commission of those measures no later than 30 June 1998 and shall notify it of any amendments thereto without delay.

Article 9c

Each year the Member States shall compile a summary report of the cases of denied boarding due to overbooking which occurred at airports on their territory. Those reports shall be submitted to the Commission by 31 March of the year following the year covered by the report.”

Article 2

This Regulation shall enter into force on the twentieth day following the date of its publication in the *Official Journal of the European Communities*.

Article 1, point 5, shall not apply until six months after the date of entry into force of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

IMPACT ASSESSMENT FORM

The impact of the proposal on business, with special reference to small and medium-sized enterprises

Title of proposal:

Proposal for a Council Regulation (EC) amending Regulation (EEC) No 295/91 establishing common rules for a denied-boarding compensation system in scheduled air transport

Reference number:

The proposal

The impact on business

1. Who will be affected by the proposal?

- Which sectors of business?

Air carriers.

- Which sizes of business (what is the concentration of small and medium-sized-firms)?

The European market consists primarily of large companies (AEA) which take 31% of the market. Charter companies (ACE) take 56% of the Community aviation market. Medium-sized (ACE) and regional airlines (ERA) take 7% and 6% respectively. Small companies take an extremely marginal share⁹.

- Are there particular geographical areas of the Community where these businesses are found?

No.

2. What will business have to do to comply with the proposal?

To comply with this Regulation, air carriers will have to inform passengers in the appropriate way and grant them compensation in the event of denied boarding.

⁹ Communication from the Commission to the Council and the European Parliament on the impact of the third package of air transport liberalization measures (COM(96) 514 final, 22.10.1996).

3. What economic effects is the proposal likely to have?

- on employment:

None.

- on investment and the creation of new businesses:

None.

- on the competitive position of businesses:

The denied-boarding compensation system applies to all flights departing from an airport located in the territory of a Community Member State, irrespective of the State where the air carrier is established. Equivalent provisions exist outside the Community, notably in the USA.

4. Does the proposal contain measures to take account of the specific situation of small and medium-sized enterprises?

No.

Consultation

5. List the organizations which have been consulted about the proposal and outline their main views:

- The Government experts from the Member States and the interested parties have recognized the need to improve the information provided to passengers on their rights in the event of denied boarding.
- The consumers' associations have supported the Commission proposal, but the airlines have expressed more reservations stressing, in particular, the additional costs to which it could give rise.

Organizations consulted: Association of European Airlines, International Air Transport Association, European Regions Airline Association, Federation of Air Transport Users Representation in Europe, European Consumers' Organization, Guild of European Business Travel Agents, Airports Council International, Group of National Travel Agents and Tour Operators Association within the EU, Independent Air Carriers of the EC (ACE), European Conference of Civil Aviation (ECAC) and EFTA Surveillance Authority.

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