

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 99 final

Brussels, 24 April 1990

Proposal for a
COUNCIL REGULATION (EEC)
on common rules for a denied boarding compensation system
in scheduled air transport

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Introduction

1. The proposed Council regulation aims at problems resulting from overbooked scheduled flights. Apart from malfunctions of reservation systems and an insufficient exchange of information between travel agents and air carriers, overbooking is the result of the high degree of flexibility granted to passengers holding fully flexible tickets, i.e. having paid the full published economy, business or first class fare: They have the right not to present themselves for the flight for which they hold a confirmed reservation without losing the right to use this ticket without any additional charges on another flight to the same destination.

2. The high degree of flexibility has, however, created the so-called "no-show"-problem: For various reasons a certain number of passengers book seats and do not claim them. It is usual international practice that airlines which understandably do not want to risk finding empty seats as a result of "no-shows" accept a certain degree of overbooking. This behaviour, however, implies the risk that the number of passengers holding confirmed reservations and presenting themselves within the usual time-limit for check-in will exceed occasionally the number of available seats on that flight.

3. In principle, the air carrier's treatment of the passengers' interests in overbooking situations is a part of the quality of the service. One could therefore, in theory, argue that solutions to this problem should be left to the market. However, the level of the protection of consumers' interests in this field is often unknown and, therefore, not open for quality of the service comparisons between different air carriers. A lack of transparency

is given. More competition will normally generate an improved quality of the service and/or more attractive fares. It cannot be excluded, however, that certain air carriers might tend to neglect quality of the services considerations in areas in which transparency is widely lacking, i.e. the behaviour of an individual carrier in overbooking situations. Under these circumstances the public intervention is required in order to safeguard the interests of passengers.

4. The need for Community action in this area, however, arises not only from the objective of establishing reasonable minimum standards for passengers in an area which is normally not open for quality of the service comparisons between individual air carriers. It has furthermore to be taken into account that the economic environment in which air carriers have to operate has substantially changed and will continue to change following the Council measures of December 1987. These changes will lead to more competition and, as a part of this development, to a wider use of non fully flexible tickets.

5. In such a situation two basic problems have to be overcome. The first one is to decide on the criteria to be applied in allocating priority for boarding amongst passengers who are denied boarding. The second one is the question of a reasonable compensation in favour of passengers who are denied boarding. The current practice on these problems differs substantially between air carriers. Some apply recommendations published by international organisations like ICAO (International Civil Aviation Organisation), ECAC (European Civil Aviation Conference), IATA (International Air Transport Association) or AEA (Association of European Airlines), whereas others apply their own internal guidelines or do nothing to protect the interests of passengers who are denied boarding.

6. One could argue that passengers not turning up for the flight for which they hold a confirmed reservation are mainly responsible for overbooking situations and that common rules should establish at least a certain kind of financial responsibility on behalf of these travellers. However, the higher fare for fully flexible tickets already is said to take account of the no-shows by being based on a low (55%) break-even load factor. Furthermore, 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. Thus, air carriers are fully responsible if an overbooking situation forces them to breach -de facto- in a number of instances contracts with passengers holding confirmed reservations.

7. On the other hand passengers using non-fully-flexible tickets would seriously suffer from such a situation. They would in many instances forfeit their right for transport totally or partially if they do not turn up in time for a connecting flight irrespective of the reason for their delay. The air carrier in fact does get its money irrespective of whether the traveller turns up or not. It could, therefore, be considered as a serious breach of contract by the air carrier concerned if these passengers (with fully flexible tickets) are denied boarding as a consequence of the behaviour of other passengers who do not forfeit their right for transport in similar situations.

Therefore, the Commission has reached the conclusion that safeguards in favour of non-fully flexible ticket holders are required in order to establish a more reasonable balance of rights and obligations between air carriers and these passengers.

8. In addition to the need for a special safeguard in favour of the interests of non-fully flexible ticket holders rules concerning the level of compensations should be introduced in order to establish

common standards for the protection of the interests of passengers and to eliminate distortion of competition between air carriers resulting from different behaviours in with area of widely lacking transparency.

9. The proposed Council Regulation envisages exclusively the relations between air carriers and passengers holding confirmed reservations. However, it should not be ignored that the overbooking problems might occasionally also result from the behaviour of travel agents who confirm reservations without explicit acknowledgement from the air carrier. For these and other reasons the Commission's services are currently considering the development of a code of conduct for travel agents which inter alia would cover this aspect of the overbooking problem in scheduled air transport.

11. The structure of the proposed Council Regulation

1. The attached draft Council Regulation mainly establishes criteria referring to the two basic problems mentioned above. Following a description of the scope of application (Article 1) and the necessary definitions (Article 2) it specifies some priority criteria to be applied by air carriers as soon as it is evident that a certain flight is overbooked (Article 3). Apart from the necessity to give due consideration to passengers being handicapped or travelling for reasons of death and illness of family members, it is proposed to impose upon air carriers the obligation to start the selection procedure with a call for volunteers who are prepared to surrender their confirmed reservation on the basis of certain conditions.
2. If the number of passengers who have not responded to the air carrier's call for volunteers still exceeds the number of available seats people such as the air carrier's own employees travelling for

private purposes on a fare basis which is not available to the public should step down first if they have not already been asked to step down. Passengers holding non-fully flexible tickets shall be given boarding priority.

3. The second problem to overcome is the compensation to be paid if passengers holding confirmed reservations are denied boarding. The proposed compensation amounts are linked to the delay caused by denied boarding (25% or 50% of the value of a fully flexible one way ticket - Article 4). In view of the serious potential damage for passengers losing -because of overbooking- their right to an onward flight to their final destination an obligatory compensation of 100% of the value of a fully flexible one way ticket is envisaged.

In addition to these compensation amounts air carriers shall be obliged to provide further services in a reasonable relation to the additional waiting time (Article 5).

4. Article 6 deals with situations in which the air carrier shall not be obliged to pay compensations. This shall in particular be the case if passengers fail to fulfil their obligations or prefer to seek, instead of accepting cash compensations, a compensation of the damage by using established laws on damage compensation.
5. Article 7 contains obligations upon air carriers and Member States aimed at ensuring an effective and transparent implementation of the proposed Council Regulation.

Article 8 contains provisions aimed to ensure the necessary transparency on the common rules to be established by the proposed Regulation. Article 9 contains the usual clauses with regard to the date of entry into force.

Proposal for a
COUNCIL REGULATION (EEC)
on common rules for a denied boarding compensation system
in scheduled air transport

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal of the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas the Council measures taken in December 1987 represent a first step towards the establishment of a fully developed common air transport policy;

Whereas Community action in the field of the protection of the interests of air transport users is required in order to ensure a well balanced development following the changes of the general environment in which air carriers have to operate;

(1)

(2)

(3)

Whereas current practice in the field of denied boarding compensation differs substantially between air carriers;

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 clear and transparent criteria for boarding in the event of overbooked flights are required;

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

Whereas air carriers have to be obliged to pay certain compensation amounts and to provide additional services to passengers who are denied boarding;

Whereas passengers have to be clearly informed about applicable rules;

Whereas it is appropriate that the Member States provide for a special procedure in dealing with complaints in case of denied boarding,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation establishes common minimum rules applicable where passengers are denied access to a scheduled flight for which they have a valid ticket and a confirmed reservation departing from an airport located in the territory of a Member State of the European Community 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.

Article 2

For the purposes of this Regulation:

a) "denied boarding" means a refusal for passengers to be accommodated on a flight although they have:

- a valid ticket,
- a confirmed reservation on that flight, and
- presented themselves within the required time-limit for check-in.

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;

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.

- d) "overbooked flight" means a flight where the 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;
- e) "volunteer" means a person who has:
- a valid ticket,
 - a confirmed reservation and
 - presented himself within the required time limit for check-in and who responds positively to the air carrier's call for passengers being prepared to surrender their confirmed reservation in exchange for the carrier's offer of compensation;
- 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;
- g) "non-fully flexible ticket" means any ticket to which conditions are attached which limit the flights and/or air carriers on which travel is permitted and which limits the passengers' rights to cancel or vary the reservations with or without consequential financial penalties published by the air carrier as a standard condition of purchase;
- h) "fully flexible ticket" means any ticket which allows travel at any time and cancellation and/or variation of bookings and reservations at any time within a 12 month period from date of purchase and refund without financial penalty of the price paid for any unused element of carriage;

- i) "final destination" means the destination on the flight coupon presented at the check-in counter or, in the case of subsequent flights, on the last flight coupon of the ticket. Connecting flights which can be carried out without difficulties although a delay has been caused by denied boarding are not taken into account.
- j) "Intra-Community flight" means a scheduled flight between airports located within the European Community;
- k) "extra-Community flight" means a scheduled flight departing from an airport located in a Member State and arriving at an airport in a third country;

Article 3

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).
2. In the event of an overbooked class air carriers may request passengers holding first class or business class tickets to accept to be placed in a lower class. If they accept the air carrier shall be obliged to pay a refund at least amounting to the difference between the ticket value of the class originally booked and the ticket value of the class actually used. If they do not accept the provisions of paragraphs 3 and 4 shall apply.

3. If the number of passengers who have not followed the carrier's call for volunteers still exceeds the number of total available seats on an overbooked flight, the air carrier may deny boarding to passengers but only provided it is not possible to offer them empty seats in another class, in accordance with the following criteria :
 - a) Passengers such as airline or travel industry related employees travelling for private reasons on their own account on a reduced fare basis which is not available to the public and who have not been requested to step down before the call for volunteers shall be denied boarding first;
 - 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.
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;

Article 4

1. The air carrier 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.

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.

Article 5

In the case of the organization of a package tour by a tour operator, the air carrier shall be obliged to compensate the tour operator with the amount which would have to be paid by the latter in favour of passengers as compensation for failing to provide services and for which the tour operator is liable on the basis of Directive .../... (package travel).

Article 6

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:
 - a) in the event that any luggage has been sent on the original flight, at the choice of the passenger, collection and safe keeping at the point of destination or its return;
 - b) the expenses for a telephone call and/or telex/telefax message to the point of destination;
 - c) meals and refreshments in a reasonable relation to the waiting time;
 - d) hotel accommodation in cases where an additional overnight stay is necessary.

2. When a town, city or region is served by several airports, and an air carrier offers a passenger who has been denied boarding, a flight to an alternative airport to the destination airport that the passenger had booked, the passenger should be offered full compensation to cover the cost of travelling between the alternative airports or to an alternative close-by destination, whichever is the most convenient to the passenger.

Article 7

1. The carrier shall not be obliged to pay denied boarding compensation if the passenger fails
 - a) to comply with the air carrier's conditions of carriage;
 - b) to comply with the air carrier's or the airport's ticketing and check-in requirements;
 - c) to undergo a security check or other usual departure formalities.

2. The air carrier shall not be obliged to pay denied boarding compensation in cases where
 - a) the passenger is travelling free or at a discount fare which is neither directly nor indirectly available to the general public;
 - b) the passenger explicitly maintains his right to seek compensation of the damage in reliance on the laws relating to damage compensation established in the Member State concerned.

Article 8

Member States shall ensure that in their territories there is available, whether provided by public or private bodies, a rapid, efficient and inexpensive procedure for use by the consumer in dealing with his complaints concerning his rights in the case of denied boarding, where these are not resolved amicably. They shall inform the Commission of these procedural rules.

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.

Article 10

This Regulation shall enter into force on 1 December 1990.

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

Done at Brussels,

For the Council

ISSN 0254-1475

COM(90) 99 final

DOCUMENTS

EN

07

Catalogue number : CB-CO-90-154-EN-C

ISBN 92-77-59387-3

Office for Official Publications of the European Communities
L-2985 Luxembourg