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STATEMENT OF THE COUNCIL'S REASONS

Subject : Proposal for a Regulation of the European Parliament and of the Council on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws

- Statement of the Council's reasons
- Adopted by the Council on 11 March 2010

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 4 December 2008, the Commission presented the proposal for a Regulation of the European Parliament and the Council concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws¹.

On 23 April 2009, the European Parliament voted its opinion at first reading².

On 17 December 2009, the Council reached a political agreement on the draft Regulation. Following legal/linguistic revision, the Council adopted its position at first reading on 11 March 2010, in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union.

In carrying out its work, the Council took account of the opinion of the European Economic and Social Committee. The Committee of Regions declined to give an opinion.

¹ Doc. 16933/08.

² A6-0250/2009.

II. ANALYSIS OF THE POSITION AT FIRST READING

1. General

The proposal for a Regulation of the European Parliament and the Council concerning the rights of passengers in bus and coach transport forms part of the general objective of the European Union to ensure equal treatment of passengers, irrespective of the mode of transport they have chosen to travel with. Legislation of similar nature has already been adopted for passengers travelling by air³ or by rail⁴. It contains provisions on liability in the event of death or injury of passengers and loss of or damage to their luggage, automatic solutions when travel is interrupted, treatment of complaints and means of redress, passenger information and other initiatives. Furthermore, it lays down rules on information and assistance to disabled persons and persons with reduced mobility (PRMs).

Although the Council agreed with the Commission as regards the objective of the proposal, the Council's approach involved major adaptations of the original proposal. A number of the proposed provisions were not acceptable because they imposed too heavy administrative burdens ensuing costs on carriers and national administrations, without bringing an added value for passengers that would outweigh these inconveniences. Others were redrafted taking into account the different legislations in place in Member States, in order to avoid conflict between this draft Regulation proposal and existing national and European legislation. Finally, other provisions were redrafted with a view to simplifying and clarifying the Regulation.

³ 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, and repealing Regulation (EEC) No 295/91, OJ L 46, 17.2.2004, p. 1, and Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ L 204, 26.7.2006, p. 1.

⁴ Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, OJ L 315, 3.12.2007, p. 14.

Resulting from this approach, the Council first reading position modifies, to a certain extent, the original Commission proposal by redrafting it and deleting several provisions of the text. This implies that all amendments introduced in the European Parliament's first reading opinion related to these deleted provisions were not accepted by the Council.

The Council aims at a balanced solution that takes into account the rights of passengers as well as the need to ensure the economic viability of the operators of the bus and coach industry, which consists largely of small and medium-sized undertakings, and therefore integrated EP amendment 3 into its first reading position.

2. Key policy issues

i) Scope of application

In the Commission's initial proposal, the Regulation was to be applied in general to the carriage of passengers by bus and/or coach undertakings by means of regular services. Member States were only allowed to exempt urban, suburban and regional transport covered by public service contracts, if such contracts ensured a comparable level of passenger rights to that required in the Regulation. In addition, the European Parliament introduced one amendment allowing Member States to exclude under the above-mentioned condition from the scope the urban and suburban transport but not the regional transport.

The Council could not accept the scope as proposed by the Commission, nor the EP amendments related to it (amendments 1, 2 and 81), because it considered that urban, sub-urban and regional transport fall within the framework of subsidiarity.

Including regional transport into the scope, as proposed by the European Parliament, might pose problems both for passengers and for the industry. In big urban areas companies are usually operating a whole transport network including bus services, subway services, commuter trains and tram services. Frequently, all these services are of urban, suburban and regional character. Restricting the exemption only to urban and suburban services would mean that parts of these networks would be subject to rules which are designed for long distance. The companies operating these networks would then, within the same network, have to handle several systems of compensation, some of them not being really suitable for this type of transport. It would also confuse passengers travelling within these networks because they would face difficulties in knowing what rules are effectively applicable.

Furthermore, since there is a possibility for an exemption of regional railway services in the existing rail passenger rights regulation, not having a corresponding provision in the bus passenger rights regulation might distort competition between the two sectors. And bus and rail services often serve as an alternative to each other.

Therefore Council could not accept the EP amendments related to the scope. The Council thus proposes that the draft Regulation should apply to passengers travelling with national and international regular services, but with a possibility at national level to exempt urban, suburban and regional regular services. In addition, the Council introduces a provision ensuring that certain basic rights are applied to all bus and coach services without exception (i.e. non-discriminatory contract conditions and tariffs and right to transport for disabled persons and persons with reduced mobility as well as related derogations).

Member States are authorised to grant an exemption of maximum five years, which may be renewed twice, from the application of the provisions of this Regulation to domestic regular services. In addition, Member States can grant an exemption of maximum five years, renewable, to particular regular services a significant part of which, including at least one scheduled stop, is operated outside the EU.

Furthermore, in connection with the scope, a specific provision establishes that Member States who can ensure that the level of protection of disabled persons and persons with reduced mobility under their national rules is at least the same as under this Regulation can preserve their national rules in full.

ii) Changes to the infrastructure

As regards the infrastructure, the Council is ready to encourage and support any initiative regarding new equipment and infrastructure, which has to be acquired or built bearing in mind the needs of disabled persons and PRMs, as clearly stated in a recital. However, this Regulation is set in the framework of the legislation on consumer protection and therefore it cannot include obligations in respect of technical requirements for the carriers to modify or replace vehicles or infrastructure and equipment at terminals. Therefore all EP amendments regarding changes in infrastructure could not be accepted (amendments 6-10).

iii) Compensation and assistance in the event of accidents

The Commission proposal sets out the rules on bus and/or coach undertakings' liability for passengers and their luggage. Passengers would benefit from harmonised rules on liability of bus and/or coach undertakings. For any damage up to the amount of EUR 220 000, a bus and/or coach undertaking should have strict liability, i.e. not having the possibility to exclude its liability by proving that the accident was not caused by its fault. For damages above EUR 220.000 the liability would be based on fault, but unlimited. Passengers suffering an accident would be entitled to advance payments in order to address economic difficulties that they or their families might face as a consequence of death or injury.

However, the existing liability regimes in force in the Member States are very different as regards the basis for liability (strict unlimited liability, strict liability with force majeure exemptions and fault-based liability), and they cannot be reconciled.

Furthermore, legislation in the different Member States is partly built on Directive 2009/103/EC, relating to insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability ("Motor Insurance Directive"), and partly on national legislation going beyond EU law. These texts already regulate liability for bus passengers and it is essential to avoid conflicts between the present text and the above mentioned "Motor Insurance Directive".

Therefore, the Council adopted an approach building on the existing system, adding at the same time some basic elements of harmonisation. A minimum threshold per passenger and per item of luggage is proposed: 220.000 EUR per passenger in case of death or personal injury. In case of loss of or damage to luggage, 500 EUR with regard to urban, suburban and regional services and 1.200 EUR with regard to other regular services. This would align the compensation for luggage with the corresponding provisions in the "railway Regulation", while taking into account the specificities of urban, suburban and regional transport. As regards wheelchairs, other mobility equipment or assistive devices, the Council text provides for them to be always compensated in full, instead of being treated like ordinary luggage, even when damages are caused during the provision of assistance (in the spirit of EP amendment 46).

In addition, the text has been adapted to provide for assistance to passengers with regard to their immediate practical needs following an accident. Such a provision is not contained in the "Motor Insurance Directive" and represents a real benefit for bus passengers, while not increasing significantly the administrative burden for bus and/or coach companies.

In the light of the above, the Council could not accept the Commission's proposed approach nor the EP amendments related to liability (amendments 18-24).

iv) Rights of disabled persons and persons with reduced mobility (PRM)

The Council wholeheartedly supports the Commission's objective to ensure that disabled persons and persons with reduced mobility have non-discriminatory access to bus and coaches. The Council therefore follows the Commission proposal closely, although modifying some provisions in order to make them feasible and introducing certain simplifications and clarifications. Regarding this Chapter, the Council integrated several EP amendments in its text, either totally, or partially or in spirit.

Concerning the exceptions to the right to transport, the Commission had proposed that a disabled person could be denied transport with reference to safety requirements or the size of the vehicle. The Council has provided for a number of improvements, referring to the "design" of the vehicle instead of the "size", thus integrating in substance or in spirit EP amendments 26 and 27. Moreover, the Council has also accepted amendment 73 as regards the choice to be offered to a disabled person or a PRM when embarkation is denied.

According to the initial proposal, the carrier could require a disabled person or person with reduced mobility to be accompanied by another person who is capable of providing assistance. In the Council first reading position, if the carrier makes such a request with respect to a passenger service, the accompanying person shall be carried free of charge and, where feasible, seated next to the disabled person or PRM. This provision integrates in substance EP amendment 29.

The Council first reading text provides for non-discriminatory access conditions as well as for making them publicly available in a suitable format for disabled persons and PRMs, thus accepting, partially or completely, EP amendments 31 and 32. Moreover, the Commission shall make available on the internet a list of bus and coach terminals designated by Member States where assistance for disabled persons and PRM is provided, as in EP amendment 36.

As for the assistance to disabled persons and persons with reduced mobility, such assistance will be provided on the condition that the person concerned notifies the carrier or the terminal operator at the latest two working days in advance (the Commission had proposed 48 hours) and is present in the designated point at least 60 minutes before the published departure time. Thus the Council could not accept amendment 39 proposing a shorter period of 24 hours. Furthermore, if the person has specific needs of seating, the passenger should notify the carrier of such needs at the time of reservation, if the need is known at that time. This additional requirement, introduced by the Council, will allow for the carrier to cater for those specific needs and to give the best possible service to the person concerned.

Concerning the assistance on board, the Council has limited the scope of the Commission's initial proposal. The Council's text establishes that information has to be provided in accessible format as well as assistance for boarding and alighting during pauses in a journey, the latter, however, only if there are personnel other than the driver on board. This takes account of the fact that most vehicle are operated by the driver alone and therefore providing assistance during the journey will have an impact on the driver hours, thus on safety requirements.

Help to disabled persons and PRMs has to be provided free-of-charge at staffed terminals designated by the Member States and the personnel providing direct assistance to these persons should have received adequate training allowing them to assist such persons. Personnel, including drivers, who deal directly with the travelling public should receive disability-awareness training.

v) Passenger Rights in the event of cancellation or delay

The Commission proposal provided for obligations of bus and/or coach undertakings in the event of interrupted journeys, due to cancellation of a service or delays. The undertakings should pay compensation amounting to 100% of the ticket price, if they failed to provide alternative services or the required information.

While the Council fully supports the principle that carriers and terminal operators should take care of their passengers, it has modified the Commission proposal, taking into account the specific structure of the bus and coaches industry. A different treatment was agreed regarding passengers departing from terminals and passengers departing from bus stops, as it is neither possible nor reasonable to provide, for example, the same level of information on delays at a bus stop compared to a staffed terminal.

In the event of a delay of over two hours or a cancellation of the journey, the passenger may choose either to continue the journey using the same mode of transport, or to call for a transfer or to ask for the reimbursement of his/her ticket (paid within 14 days after the event and, if necessary, a return trip free of charge). In the case of a delay of more than two hours on journeys lasting over three hours, for passengers departing from a terminal, the carrier will be under the obligation to give passengers a meal or refreshments, in the spirit of EP amendment 53, but will not be under the obligation to provide accommodation, although the carrier must assist in finding accommodation. However, bus and coach passengers will not benefit from additional indemnities (paid in addition to the price of the ticket) as it is the case for maritime and rail passengers. Thus EP amendments related to compensation and accommodation have not been retained (amendments 49, 50, 51, 52, 54 and 55).

The European Parliament introduced some amendments regarding compensation and assistance in the event of delays in arrival and related exemptions in case of “force majeure” (amendments 56 and 57), thus relieving the carrier from being held liable for damage if it is caused by circumstances not connected with the operation of their services and which they could not have foreseen. The Council did not take on board such amendments as its text does not foresee any provisions on compensation in the event of delays in arrival.

Such compensations would be an additional liability for bus and coach undertakings and would create an excessive burden; moreover, drivers would be put under pressure to respect the timetable at any cost, thus putting road safety at risk.

Amendment 58 concerning information in formats accessible to disabled persons and persons with reduced mobility was taken on board by the Council.

vi) General rules on information, complaint handling and national enforcement bodies

According to the Council position at first reading, carriers and terminal managing bodies, within their respective areas of competence, provide adequate information to passengers throughout their travel, in accessible format where feasible. Furthermore, they shall inform passengers about their rights in an appropriate and comprehensible way, in the spirit of EP amendment 62.

As regards complaints, the Commission proposal contained rules on how carriers should handle them, in particular the far-reaching legal consequences of not replying to complaints.

The Council, though agreeing in principle with the Commission proposal, introduces more flexibility into the system in order to avoid any unforeseen consequences for the Member States' legal systems or administrative structures. In this context and in order to avoid additional bureaucracy, the Council did not take on board EP amendment 64, which introduced an obligation for bus and/or coach undertakings to issue annually a detailed report on complaints received.

In addition, the Parliament proposed that the national enforcement bodies should be independent (amendment 65). The Council first reading position specifies more clearly that these bodies should be independent of carriers, tour operators and terminal operators.

vii) Date of application of the Regulation

The Commission had proposed that the Regulation will enter into force 20 days after publication in the Official Journal of the EU and will apply a year after that date.

The Council first reading position provides that the Regulation will apply two years after its publication, thus accepting EP amendment 69 in substance.

3. Other amendments adopted by the European Parliament

Further amendments not included in the Council first reading position concern:

- changes to the definitions of "transport contract" (amendment 13), "ticket vendor" (amendment 14), "tour operator" (amendment 15), "cancellation" (amendment 16);
- proposed new definition of "accessible formats" (amendment 17);
- reference to "persons incapable of travelling without assistance because of their elderly or age" (amendment 34);
- assistance adapted to the individual needs of disabled persons or persons with reduced mobility (amendment 35);
- need to ensure that the passenger receives a confirmation of the notification of his or her assistance needs (amendment 40);
- any compensation awarded under the Regulation, which may be deducted from any additional compensation granted (amendment 59);
- penalties applicable to infringements of the Regulation, which could include ordering the payment of compensation (amendment 68);
- amendments 70, 71 and 72 concerning the Annexes to the Regulation.

III. CONCLUSION

In establishing its position at first reading, the Council has taken full account of the proposal of the Commission and the European Parliament's opinion at first reading. With respect to the amendments proposed by the European Parliament, the Council observes that a considerable number of amendments have – in spirit, partially or fully – already been included in its first reading position.
