



Changes in passenger rights

Presentation
24 June 2011

Your
passenger
rights



at hand



EUROPEAN COMMISSION

Flor DIAZ PULIDO
Deputy Head of Unit

Unit A4 - Services of general economic interest, passenger rights & infringements

EU Transport Policy

2001 White Paper European Transport policy for 2010 Time to decide

page 84: *“the next step is to extend the Community’s passenger protection measures to the other modes of transport, notably rail and maritime navigation and, as far as possible, urban transport services”*

2010 EU is the first integrated area with passenger rights rules covering all modes of transport (also for PRMs)

- Air
- Rail
- Sea and inland waterways
- Bus and coaches

2011 White Paper: “European Transport Area for the Future”

- towards a more consolidated and consistent framework (EU Charter ?)
- towards a single EU instrument on passenger rights (EU Codex ?)

EU Passenger Rights Legislation

- **Air Passenger Rights:**
 - » Regulation 889/2002 on liability in case of loss, delay and damage of luggage (applicable since May 2002)
 - » Regulation 261/2004 on air passenger rights in case denied boarding, cancellation and long delay (applicable since 2005)
 - » Regulation 1107/2006 on rights of air passengers with disabilities or reduced mobility (fully applicable since July 2008)
- **Rail Passengers Rights:**
 - » Regulation 1371/2007 (applicable since 3 December 2009)
- **Maritime Passenger Rights:**
 - » Regulation 1177/2010 (applicable from 18 December 2012)
- **Bus & Coach Passenger Rights:**
 - » Regulation 181/2011 (applicable from 1 March 2013)

Common rights to all modes

- **Non-discrimination** (not for rail; for air, Reg. 1008/2008 art 23.2)
- Assistance, information and accessibility for **PRMs**
- In cases of **cancellation and long delay**, right to automatic, immediate and standardised solutions:
 - » **information**
 - » **choice** between **reimbursement, re-booking and re-routing**
 - » **assistance** (meals/refreshments and, if necessary, accommodation) while waiting for re-routing
 - » **compensation** (except in case of extraordinary circumstances)
- Passengers shall receive **general information** on their rights
- An independent **National Enforcement Body** (NEB) designated to:
 - » handle complaints of alleged breaches
 - » supervise application (sanctions)

Differences between the modes

- Scope and exemptions
- Definition of delay in relation to the right to assistance, reimbursement, re-routing or compensation
- Right to assistance and care while waiting for re-routing and to this right
- Amount of compensation (lump-sum/distance vs. % of ticket)
- Circumstances under which the obligation to pay compensation applies
- Information regarding delay
- Handling of complaints from passengers (e.g. time line)

What's Next Regarding Passenger Rights Legislation?

Short term (2011)

- **Communication on an ex-post evaluation report on Regulation 261/2004**
- **Communication on an application report on Regulation 1107/2006 (PRMs)**
- **Staff Working Paper on statistics (on cancellation, delay, complaints, sanctions)**
- More uniform interpretation of EU PR legislation (guidelines - like for ash crisis)
- **Improvement of enforcement** through more systematic and more structured cooperation with NEB (ad hoc network) and stakeholders (ad hoc platform)
- **Impact assessment** to evaluate impact of different scenarios for the revision of Regulation 261/2004
- End 2011: Adoption of **horizontal communication** (“charter” ?) on basic rights in all modes of transport, notably right to information

Implementation: by whom ?

- **Transport operators** (carriers and infrastructure managers)
 - » to comply with the obligations of the Regulations
 - » to respond to complaints initially
- **Member States**
 - » designate one or more national enforcement bodies (NEBs) in order to:
 - deal with individual complaints (only after they have [not] been handled by the operator)
 - monitor the application of rules
 - adopt and apply sanctioning schemes (effective, proportionate, dissuasive)
- **European Commission**
 - » monitors the application and enforcement by MS
 - » organises meetings with NEBs to facilitate the exchange of experience and best practices
 - » provide common interpretative guidance for an uniform application of the regulations
 - » can start EU-Pilot and infringement procedures against MS in case of systematic lack of application/enforcement

Enforcement and complaint handling

- Innovative twofold system:
 - penalty schemes,
 - plus a complaint handling system to help Public enforcer to monitor application.

Complaint handling

- This complaint handling was not explained, so quickly different interpretations were given:
 - >> Does it mean keeping statistical records and drawing consequences to issue sanctions? **DE, IT.**
 - >> Does it mean using national schemes for out-of court procedures? **ADR: SE, FI; mediation: UK**
 - >> Does it mean for civil administration to provide citizens with a technical analysis of the circumstances of their case? **FR, PT.**
 - >> Does it mean inventing a new procedure, where national administrations provide something hybrid between technical analysis and arbitration? e.g. by imposing a sanction on carriers whenever they don't pay the due amount to passengers when the NEB's opinion says that passengers are entitled? **ES**

Complaint handling

- Commission encouraged an NEBs minimum common definition: analysis of the circumstances related to the transport disruption, and motivated opinion to passengers on how the regulation was applied by the carrier to their case.
- Under this common definition,
 - NEB's provision of mediation or arbitration is not obligatory;
 - NEB's opinions are not binding;
 - NEB's opinions may be presented in court as evidence, but their legal status is unclear;
 - NEBs can separate their two roles as public enforcers and as complaint handlers, but a flux of information between the two bodies must exist.
 - There is not obligation for NEBs to report whatsoever.

Cooperation on NEB complaint handling

Towards a Memorandum of Understanding between NEBs:

- Each passenger may complain to the appropriate NEB or to any other appropriate body designated by a Member State, about an alleged infringement
- NEBs shall exchange information on their work and decision-making principles for the purpose of coordinating their decision-making principles

Basic principles of cooperation:

1. Non-discrimination
2. Incident-based approach
3. Communication between NEBs
4. Coordination to avoid contradiction
5. Cooperation with European Consumer Centres
6. Information sharing on disruptions
7. Proactive approach to tasks
8. Alternative complaint handling
9. Language of communication
10. Harmonised data collection

What is the situation for ADRs in Transport?

- Experience shows that there are few ADR really operational in transport. Only the Nordic Countries (SE, FI and NO) and recently, NL
- The main reasons are:
- From carriers side:
 - » Carriers are reluctant to join ADRs;
 - » Carriers challenge ADRs decisions cause ADR don't have the technical expertise needed to decide on technical circumstances.
 - » Carriers argue that ADRs hamper the homogeneous application of the law because they are too local and lack of common "jurisprudence" principle.
- From passengers perspective:
 - » Aviation is largely a cross border business.
 - » When ADR are local, it is difficult for foreign passengers to know them or to have access;
 - » ADR's access is often limited to residents in the country, which in practice means that two passengers sit next to each other may have different right to access to the ADR;
 - » Carriers tend not to follow existing ADRs opinions, which are not binding;
 - » Not all carriers join the ADR, or the ADR is only applicable for the departure flights, which creates confusion and uncertainty for passengers.

What have we learnt from experience?

- Operators should report on quality standards and performance.
- Better use and improvement of the ESCP and national small complaint procedures;
- NEBs and consumer bodies must act on a general interest basis, and not only based on individual complaints;
- Operators may settle the claim with their passengers first, but within certain rules to avoid delaying consumer access to other forms of mediation-arbitration.
- Rail, maritime, coach transport have clauses imposing on carriers the obligation to have complaint handling procedures to ensure answers in a number of months (2 or 3 months).
- It will be impossible to impose on all member states a common Complaint Handling system.
- Whatever NEB Complaint Handling Member States choose to set up, it needs to ensure two goals:
 - » For authorities to have a reliable source of information to detect problems and trends
 - » For passengers to have an easy, quick and cheap way to assess whether from a technical view, carrier is likely to be right



Further information on our Website: