

Public consultation on a possible initiative at EU level in the field of passengers' rights in multimodal transport

Contact: Patrick Gibbels, APRA Secretary General, Clos du Parnasse 3a, 1050 Brussels,
+32(0)474882105, secretariat@passengerrightsadvocates.eu

One of the most difficult issues with regards to passenger rights in multimodal transport will be actual enforcement for European travelers. At this time it seems unlikely that the European Commission will be able to force independent, commercial businesses that provide long journey travel that could possibly be combined into multimodal packages to work together under one Regulation. Currently, different modes of transport do not provide single ticket travel. Any multimodal travel offered to passengers is done via tour operators and these fall with the Package Travel Directive (2015/2302/EU)¹. In 2015 the national railway company of the Netherlands introduced a trail insurance named *Schiphol Garantie Service*. Passengers travelling to Schiphol could purchase insurance for EUR 5 ensuring a replacement flight in the event their reservation was missed due to a delay by train. The test was cancelled due to a lack of interest from passengers².

When looking at the current passenger rights for each mode of transport, there are significant differences that will be difficult to combine in a new Regulation. In the Regulation (EC) 261/2004³ an airline is exempt from paying a financial compensation in the case of a cancellation or delay, in the event this has been caused by an extraordinary circumstance. In the case of Regulation (EC) 1371/2007, the European Court of Justice ruled in case C-509/11 ÖBB-Personenverkehr AG⁴ that it is not possible for a railway undertaking to include in its general terms and conditions of carriage a clause under which it is exempt from its obligation to pay compensation in the event of a delay where the delay is attributable to force majeure.

In Regulation (EC) 261/2004 the European Parliament and Council have consciously chosen to support passenger rights by imposing a financial compensation that is set based on the distance of the flight and the amount of delay incurred at the final destination (Article 7). No consideration is made for the price the passenger paid for their ticket. In the case of Regulation (EC) 1371/2007⁵, the compensation amount is based on the percentage of the ticket price paid by the passenger. To be effective the new regulation in multimodal travel must ensure that passengers are travelling all modes under one ticket. If, for example, a passenger's train to the airport was delayed by more than two hours, causing him to miss his flight the passenger would request a refund of their ticket. Who would be responsible for this refund? The train would be the cause of the delay but the most expensive part of the ticket would be with the airline.

Regulation (EC) 1371/2007 also describes passenger rights in the case of lost or damaged luggage. In the case of air travel, these rights fall within the scope of Regulation (EC) 889/2002⁶ and the Montreal Convention. Is it reasonable to extend the Montreal Convention and the Special Drawing Rights therein to train, bus and maritime travel?

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2015:326:TOC>

² <http://www.treinreiziger.nl/geen-vervolg-op-ns-proef-schiphol-garantie-service/>

³ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32004R0261>

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62011CJ0509>

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0014:0041:en:PDF>

⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:140:0002:0005:EN:PDF>

Conclusion

Whilst we appreciate the intentions of the proposals the consultation seeks to address, we have serious doubts as to the feasibility of it. Moreover, it is difficult enough to enforce the regulations and rights related to each individual mode of transport. It seems unlikely to generate adequate compliance with a catch-all regulation.