

COMMISSION STAFF WORKING PAPER

Rights of passengers in international bus and coach transport

BEUC comments

BEUC welcomes the opportunity given by the European Commission to comment on the consultation document regarding the rights of passengers in coach and bus transport. Over the last years, consumers as passengers have been systematically discriminated compared to other groups of consumers, as most of the EU legislation protecting consumers recurrently excludes the transport sector. However, we believe that passengers should benefit from equal protective standards as other categories of consumers.

Some progress has already been made in relation with the rights of passengers in other modes of transport such as air, and in the near future also rail. We see no reason why passengers should have more or less rights depending on the mode of transport they travel with. We believe that all transport users in the Community should have a clear and coherent set of rights. Therefore a horizontal approach in the field of passengers' rights accompanied by specific measures in every mode of transport, are essential.

A particularity of coach and bus transport is that this means of transport is mostly used by consumers/passengers with lower levels of revenue and thus by groups of persons that are more vulnerable in the society. This fact makes it even more necessary to legislate in this sector by setting up minimum information requirements as well as establishing a liability scheme that allows passengers to receive fair compensation when things go wrong and that at the same time takes into account the necessity to offer affordable prices to consumers.

As the Commission acknowledges in its consultation document, currently passengers travelling by bus or coach, benefit from very few or no rights at all at EU level. At national level, some of our members have reported that the major problems that coach passengers have to face stem from the sheer lack of protective rules or even basic information requirements. Often there is no central point to handle and disseminate information. In many countries general services that care for coach passengers are inexistent and no specific mechanism to handle and deal with disputes and complaints are set up.

Please find below the answers to the questionnaire submitted.

Questionnaire:

Need to regulate

1: Given that passengers of other modes of transport enjoy many rights under international or community regulations which are not offered to bus and coach passengers, do you agree that equal treatment (a “level playing field”) should be ensured between bus and coach operators in different member states in terms of protection of passenger’s rights?

The answer is yes. Creating a level playing field would be to the interest of passengers as well as of operators. Bus and coach passengers are totally unprotected compared to passengers in other modes of transport. There is not legislation at the EU level neither at international level. Yet, there is no reason why passengers should have more or less rights according to the means of transport they choose. Therefore the EU must regulate in this area to ensure a minimum set of rights to bus and coach passengers throughout Europe.

2: Should this be addressed at EU level? What are de most cost-effective means to meet this objective?

Cross-border travelling by bus and coaches is steadily increasing in the EU. As we point out above, most member states do not dispose of appropriate legislation that protects basic consumer rights in this means of transport. We believe the best way to ensure uniformity of passengers’ rights throughout the EU, is to establish minimum rights at EU level.

Moreover setting up minimum rights at EU level would avoid an inconsistent development of those rights at national level.

Scope of regulation

3: Should only international services be regulated and domestic services be left to each Member State?

With the aim to offer an equal minimum level of protection to all kind of passengers, the ideal approach would be to cover both cross-border and national services. Member States should however be able to further develop and adapt the EU legislation to the specific needs of regional or local transport of each country.

4: Is any legislative action necessary to improve inter-modality between coach services and other modes of transport. If so, what action in particular?

In general inter-modality allows for a more efficient use of transport and significant gains in time and money, it should be promoted. Legislation should set out an obligation for Member States to promote inter-modality among transport operators.

Liability schemes

5: Are the mandatory insurance schemes already in place sufficiently adapted to the needs of international coach passengers? Should procedures be improved to help passengers in case of injury or death?

It is of utmost importance to ensure that carriers have the financial means to cover their liabilities vis-à-vis their passengers. Besides the general system of civil liability for motor vehicles established at EU level, bus and coach passengers are currently not protected against damages caused by death or injury.

Therefore we support the Commission's willingness to establish a compulsory and uniform regime of liability and insurance in the coach transport, as it exists in the air and rail sectors.

6: Should there be a liability system compared to that in air, rail and maritime transport?

A system of compensation to passengers in case of accidents that cause death and/or injury should be established. The system should be similar to that established for other modes of transport.

7: If so, up to which amount should coach operators not be allowed to contest claims for death and injury?

Death or injury causes the same damages to passengers whether they travel by plane, train or bus. The amount of compensation in case of death or injury should be similar or that existing in other modes of transport.

8: what should be the advance payment in the event of death or injury to passengers?

The advance payment should be high enough as to allow affected passengers to cover immediate economic needs. The amount should be similar to that established for other modes of transport

9: should there be upper limits of liability or should it be unlimited?

Their liability in case of death or injury should be unlimited and no limits should be imposed.

10: In case of injuries suffered in member states other than the state in which the journey began which national liability rules should apply? Those of the country where the passenger bought the ticket or those of the place of origin or destination or transit? Where should passengers be able to file a lawsuit?

The issue of applicable law would be better dealt with in the framework of the forthcoming revision of the Rome Convention of 1980 on applicable law. The future revision should extend the scope of application of the convention to include transport contracts.

However, given that at present passengers are not adequately protected, there is a need to include a provision in the proposal at stake that allows for the application of the law of the country of residence of the passenger.

As concerns the question of competent courts, the so-called “Brussels I” regulation unduly excludes transport contracts from its scope. However passengers should have the right to bring any action against railway operators in their country of residence. Therefore the question of jurisdiction should be dealt with, allowing passenger to file a lawsuit before the courts of their country of residence.

11: Should there be a minimum level of compensation for lost or damaged luggage?

Yes. The amount should be comparable to that applied in other modes of transport.

12: Should there be special provisions for mobility equipment lost or damaged within the journey?

Yes, coach operators should be liable in case of damage caused to mobility equipment. Where necessary, the coach operator should offer the passenger provisional replacement equipment.

13: What are the liability schemes in your country?

A large number of our members have reported the lack of legislation and liability schemes at national level. As a result, passengers are left alone when confronted with disruption of services, cancellations or delays. Given that, the EU should remedy this situation by putting forward adequate legislation in this field. In some cases even though some rules exist, passengers are usually unaware of them.

In Germany, in case of death, damages to be paid comprise compensation for the expenses for the attempted cure. The actor liable for paying compensation should also reimburse the cost of the burial; If the person deceased had under his/her responsibility the maintenance of other persons, the actor liable should pay damages to those persons to the extent that the deceased person would have been able for the expected duration of his/her life. The duty to compensate arises even if the third party was not born but conceived. In case of injury the damages comprise compensation for the expenses of the cure and for the economic loss that the injured party has suffered because his/her earning capacity was destroyed or reduced or because his/her needs had increased. The maximum amounts to be paid when a person is killed or injured are fixed at either a lump sum of 600.000 Euros or periodic payments of 36.000 Euros per annum.

Cancellation, denied boarding and interruption of journey

14: Should passengers receive compensation in the event of denied boarding or cancellation of a journey? If so, what should be the minimum amount of compensation?

Yes, passengers should be compensated for such failures in the provision of services. EU legislation should establish minimum amounts of compensation comparable to

those existing in other modes of transport although adjusted to the particularities of coach and bus transport. The amount of compensation should be sufficiently high to constitute an incentive for coach operators to care for an adequate provision of services.

Moreover passengers should be offered the choice between:

- Reimbursement of the full costs of the ticket for the part or parts of the journey not made and for the parts already made if the journey is no longer serving any purposes, together with a return service to the first point of departure at the earliest opportunity;
- Continuation or re-routing, under comparable transport conditions, to the final destination; or,
- Continuation or re-routing, under comparable transport conditions, to the final destination at a later date at the passengers convenience.

15: Should passengers be provided with adequate assistance (hotel accommodation, meals and refreshments, telephone calls) if their journey is interrupted?

Yes, passengers should not be left without proper assistance while waiting. Meals and refreshments should be offered. Hotel accommodation should be provided when the journey is interrupted overnight.

As far as possible the operator should foresee disruption events and be ready to provide assistance. However there might be situations where providing assistance is not feasible, for instance if there is a break down far from a city or an outlet offering meals and refreshments.

Significant delays

16: Should passengers receive compensation in the event of delays?

Yes, definitely. The experience with the recently adopted regulation on denied boarding cancellations and delays (216/2004) shows that too often services named as cancellations are subsequently considered and treated as delays, in order for operators to escape from responsibility. Significant delays and cancellations are seen by passengers as causing the same level of discomfort and thus they should be compensated in the same manner.

17: If so, what would be the minimum reasonable compensation payment (reimbursed tickets, cash)?

We suggest setting-up a system of two-part compensation, comprising, on the one hand a fixed amount (based on the duration of the delay) and a second sum based on the cost of the ticket. For major delays, the same rules as in case of compensation should apply.

Moreover, compensation should be provided in cash if the passenger so wishes.

18: What are possible reasons/factors for exempting coach operators from the obligation to reimburse passengers in the event of delays? Would it be satisfactory if a coach operator were to announce possible delays at the beginning of the journey?

No, this timeframe is not sufficient. Exemption from responsibility should only occur when the delay was caused by *force majeure* or exceptional circumstances.

When establishing the liability scheme in the case of delays one has to take into account that bus and coach operators find it more difficult than for instance railway undertakings to control the management of the infrastructure they use to provide their services (roads). In view of this, we think that minor delays should not qualify for compensation. Coach and bus operators should not be liable when there are exceptional circumstances that could not have been foreseen. Conversely, they should be liable if the problem was obvious and foreseeable (frequent traffic jams at peak hours...).

Persons with reduced mobility

19: Should coach operators be required to provide assistance to persons with reduced mobility?

Yes.

20: What should the assistance for persons with reduced mobility consist of?

Coach or bus operators must not deny access to transport to persons with reduced mobility. Adequate facilities which ensure easy access to transport should exist, and adequate care during the journey should be provided.

21: Should coach operators be required to provide for the transport of equipment for persons with reduced mobility (i.e. wheel chairs?). Given the design of their vehicles is this feasible?

We are aware that the current design of many vehicles does not allow for accessibility in every case. However the desired outcome is that wheel chairs should fit in coaches and buses which should be equipped with low floors or hoists. We believe that a reasonable solution could be to impose an obligation of accessibility to vehicles in new vehicles or as from a certain date.

22: Should any rules on facilities and assistance for persons with reduced mobility also be extended to urban transport? What are the existing practices in Member States?

Yes, urban transport is for persons whose mobility is reduced, as important, if not more important as coach transport.

23: should the same treatment be offered to persons travelling with small children?

Yes.

24: How and when should the coach operator be notified of the need for assistance for persons with reduced mobility?

A reasonable solution is to say that notification should happen when the ticket is bought.

25, 26: Should any additional facilities be available at coach terminals?

The infrastructure of the terminals should be fully accessible for persons with reduced mobility.

27: should organizations representing persons with reduced mobility be involved in consultations concerning all identified shortcomings in bus and coach transport?

Yes. Organisations representing persons with reduced mobility are best placed to understand their needs and therefore they should be consulted on any question concerning accessibility.

Quality standards

28: Is there a need to establish quality and reliability standards for international coach services at EU level? Or should coach operators be required to develop public quality standards for international services?

Coach operators should be required to establish and develop minimum quality standards. Besides, given that technological developments are likely to change consumers' needs and demand, quality standards should take those developments into account and evolve accordingly.

Moreover, the disclosure of performance rates and data is a key issue. The regular and systematic publication of performances would allow consumers to choose the service better adapted to their needs.

29: If so, how should compliance with quality standards be monitored?

Quality standards and compliance should be subjected to some sort of monitoring by an independent body from time to time. The results of these controls should be published and made available to the public.

30: What essential performance indicators should be measured and disclosed by coach operators? Is the following list of quality standards adequate?

We agree with the list of indicators proposed by the Commission. We propose to add an indicator regarding data on consumer complaints.

Information obligations

31: Which of the conditions of carriage should at least be mentioned on the ticket?

The name and telephone number of the coach or bus operator, the date of travel, class and type of service, the place of origin and destination, the all inclusive (including taxes and other charges) price of the ticket, indication of where to obtain a copy of conditions of carriage, indication of the place and the procedure to file complaints, conditions for refund.

32: Should standard conditions of carriage be attached to the passenger's ticket?

No. On the contrary this would overload the ticket with information. However, the conditions of carriage should be available at any points of sale and in buses and coaches.

33: How can access to information on conditions of carriage and fares be improved?

There are different ways in which information can be improved. For instance through leaflets available at coach stations and on buses and coaches, by displaying them on the boards of coach terminals or even using videos shown during the travel. They should also be given to the passenger when he/she buys a ticket. If the purchase is carried out through Internet the conditions should be published in the web-site.

34: How should information for persons with reduced mobility be provided?

It should be provided by the most appropriate means adapted to their needs.

Question 35: with regard to package tours, should the identity of the coach operator be disclosed upon conclusion of the contract or with reasonable notice before the start of the journey?

The identity of the operator should be disclosed to the passenger at the moment of the reservation.

Complaint handling

36: Should a complaint-handling mechanism be regulated at EU level?

Coach companies should have in place an in-house complaint system which must be fair, effective and transparent. Key elements of complaint handling should be defined through legislation (i.e. information, time-schedule for handling a complaint)

When the customer is dissatisfied, he/she should be addressed to the out-of court dispute resolution system adhered to by the coach operator.

37. Should a one stop shop be set up for handling complaints about international services?

Yes. Complaint handling is particularly important in cross-border cases. Ideally every consumer should be able to easily file complaints of cross-border nature in his/her own country.

38. What should be the maximum time limit for handling a complaint? Is four weeks a reasonable limit?

Complaints should be dealt with as soon as possible and no longer than within 4 weeks.

39. If no reply is received to the complaint within the above mentioned period, should it be deemed to be accepted by the coach operator?

Yes.

40. Should the number of complaints received by bus and coach operators (broken down by category, average time to handle the complaint etc be made public?

Yes.

41. What role could consumer bodies play in handling individual complaints?

Consumer organizations have to be adequately represented within the alternative dispute resolution mechanism that is adhered to by the service provider.

42: Should there be mandatory consultations between consumer organizations and coach operators? If so, what issues should they cover? (e.g. investigations of complaints not satisfactorily addressed by coach operators, consultation on changes of timetables, fares, conditions of carriage, compliance with users rights)

In general, transport operators should pursue a policy of transparency and open consultation with representative organizations interested in transport issues, including consumer organizations.

When the decisions to be taken are of relevance for consumers and have an impact on their interests and rights, prior consultation should be obligatory.

43: What are the existing practices concerning voluntary complaint handling-schemes in member states? Are there any instances of joint bodies set up by bus and coach operators and customers/users organizations?

In the majority of member states, no schemes are in place for handling complaints (Greece, Hungary, Polka, Sweden...). Where they exist, those are mostly financed and controlled by the industry and the representation of consumers is not guaranteed (*Provedores do cliente* in Portugal).

In Germany, one year ago a complaint handling mechanism was set up for long distance public transport: the Schlichtungsstelle mobilität. So far its work has proved successful, offering passengers an independent, efficient and inexpensive way of dispute resolution.

In Denmark, there is not any complaint handling scheme so far. However a scheme for compensation in public transport is currently being developed.

44: Should extra-judicial dispute settlement procedures be based on Commission recommendations 98/257 and 2001/310/EC?

Yes. The principles listed in these two recommendations are of utmost importance to ensure that consumer disputes are dealt with respecting those principles. However we think that these principles will not have the desired benefit as long as they are not turned into binding legislation across the EU.

The creation and development of out of court dispute resolution mechanisms is of utmost importance for consumers. However we point out that those schemes do not exist in every country. The level of penetration is far from being satisfactory and there are a number of countries where dissatisfied consumers are obliged to give up their complaints or be advised to go to court.

We strongly believe that the Commission should put forward a proposal for a binding legislation (i.e. directive) in the field of out of court resolution of disputes, in which those principles are set up and ideally improved (for instance in relation with e-commerce contracts).

45: What would be the most appropriate type of extrajudicial dispute resolution scheme to handle complaints in this area?

We think that the most appropriate system of out-of-court to solve consumer dispute is arbitration. Contrary to mediation in which the consumer might be ready to give up some of his/her claims for the sake of reaching an agreement (consensual approach), the intervention of an arbitrator who can impose a solution on the parties and who helps to counterbalance the economic imbalance between the parties, is often more adequate.

Self-regulation

46, 47 and 48: Self-regulation, voluntary commitments.

Self-regulation is not a solution for consumers/passengers. The unanimity of our members reported that self-regulation does not work in terms of protecting passengers. Many times coach operators avoid contact with complaining passengers and usually deny any responsibility for baggage, punctuality or quality of service.

The only way to ensure that passengers' rights are protected and properly enforced is through binding legislation. Voluntary commitments are a plus, but can never expect to replace legislation because they are not legally binding.

49: What is your opinion on inclusion of coach services integrated ticketing systems?

As the Commission acknowledges in its document, voluntary co-operation agreements to offer for instance integrated ticketing are almost inexistent. However, in the Euro-barometer survey mentioned above (February- March 2005) the majority of passengers supported the idea of a single ticket for combined travelling and claimed that this possibility would encourage them to travel more.

We welcome any system that gives the consumer the possibility to have easier access to the transportation systems as long as the transparency of prices is not undermined.

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