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EUROPEAN COMMISSION
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 Mr Francois Lamoureux

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 dg/hs

Rights of passengers in international bus and coach transport
Commission staff working paper 13 July 2005/TREN A5 MD/D (2005) 115613
Your letter dated 25 July 2005 to the Permanent Representative of the Federal
Republic of Germany at the European Commission,
Dr. Wilhelm-Heinrich Schönfelder


Dear Mr Lamoureux,

as a supplement to our statement of 30. September 2005 we send you an English translation which perhaps will help to speed up the matter.

Naturally we are in prepared and interested to give further statements and personal elaborations to this subject.

Yours sincerely

RDA-INTERNATIONALER BUSTOURISTIK VERBAND E. V.


 Dieter Gauf
 Senior Managing Director
 Enclosure

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17. 10. 2005							
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30.09.2005

Be/is

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**Rights of passengers in international bus and coach transport
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Your letter dated 25 July 2005 to the Permanent Representative of the Federal
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Dear Mr Lamoureux,

our position from the viewpoint of the German bus and coach travel industry to the EU Commission's staff working paper and questionnaire is as follows:

1.

To the set of questions concerning improved transport of persons with reduced mobility (Questions 19 - 27).

We may firstly inform you in this matter that transportation of disabled passengers in long-distance bus and coach travel already was and is operated very smoothly. If the disabilities are not out of the ordinary and if, for example, folding wheelchairs and the like are available, then there are no problems whatsoever in transporting these persons. In addition, modern long-distance busses and coaches can also be lowered for easier boarding. Some organisers also offer special travel for groups of severely disabled passengers and most of them have also had - for many years now - specially equipped buses suitable for even the most severely handicapped persons with, e.g. additional access doors, elevator, barrier-free toilets, etc. On the other

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hand, generally fitting normal busses and coaches with assisting devices for the disabled will hardly be possible because this - apart from the question of costs - involves considerable technical problems. And it would also reduce the number of available seats:

A normal 4-star bus or coach has between 44 and 46 seats, whereas 4-star busses or coaches fitted to cater for persons with reduced mobility have only 38 seats. Furthermore, the additional fittings in a normal bus or coach would aggravate the already existing weight problem.

In our legal consulting to members, we have never encountered any cases in which problems arose in this connection. In the end, the question of transporting passengers with reduced mobility is surely best resolved through correspondingly good care and accompaniment of these passengers. It has long been the case that these passenger groups provide for sufficiently qualified companions themselves. If a disabled person participates alone in travel or a tour, the operator's service personnel of course invariably endeavours to cater fully for all this person's special needs. For this reason, the RDA has for many years had special training courses for this in its programme of tour guide seminars. In view of these facts, the RDA sees no need for the EU legislative to take further regulatory action here: The bus and coach travel sector is well aware of its responsibility and duty to care for these persons. Should regulatory measures nevertheless be taken at EU level, it would also need to be considered that the individual bus travel organiser could not assume the financial investments for across-the-board infrastructure changes introduced in this connection.

2.

Extending the rights of passengers in air transport pursuant to Regulation (EC) No. 261/2004 on compensation and assistance to cover bus and coach transport (Questions 1 - 4, 14 - 18, 28 - 35):

The RDA sees neither reason nor necessity for this. In detail, may we state the following:

2.1.

To begin with, passengers are fully protected in this respect under Council Directive 90/314/EEC of 13 June 1990 on package travel, package holiday and package tours and its implementation in German travel contract law (Arts. 651a ff BGB - *German Civil Code*) and in the BGB Information Regulation. The German passenger is one of the best-protected consumers measured in terms of other areas of law. This is particularly true with regard to the criteria discussed here, i.e. punctuality, long delay and cancellation of travel, as well as information to the passenger.

2.1.1.

Travel law entitles coach passengers to discounts for late arrival, for instance, because delay is one of the deficiencies covered by Art. 651 c BGB (cf. court decisions overview by Führich, *Reiserecht (travel law)*, 5th Edition 2005, note. 339 ff - 337- and note 115 ff). It has therefore been practice until now - analogue the

existing Regulation (EEC) 295/91 already effective in air traffic - that passengers must accept delays in longer journeys up to a maximum of four hours without claim to compensation, and that every delay longer than this is subject to percentage reduction rates. Delays must generally be weighted even more severely in the case of shorter travel lasting only one to three days.

It is therefore in the most fundamental interests of the bus travel organiser himself that he brings his passengers as punctually as possible to their destination because he must otherwise expect that the passengers can reduce the travel price. This is particularly the case if, for example, the passengers are late for dinner in the hotel or miss it altogether, or if any other parts of the evening programme are wholly or partially missed. The same applies to any delayed journey start or late return.

Since the new Regulation (EC) No. 261/2004 on common rules for compensation and assistance to air passengers came into effect in February 2005, passengers in combined flight/bus package travel now have a double claim in the case of delays or cancellation: Firstly, a direct claim against the airline itself and, in addition, the already existing claim to reduction or damage compensation against the organising bus operator under travel law.

2.1.2.

As far as travel cancellations are concerned, here again the German consumer is protected as far as possible. Travel advertised in a catalogue and then contractually agreed must be operated in every case. Otherwise, the operator makes himself liable for damage compensation. Not only must he refund the travel price, but must also, for each day of the holiday or tour, pay the travel customer compensation for vacation time taken fruitlessly, e.g. according to the Frankfurt Table this is at least EUR 75 per day. The travel operator may only not operate travel if he has expressly reserved this right contractually by specifying a minimum number of participants, has in addition again informed the travel customer of this minimum number of participants in the travel booking confirmation and has notified the cancellation to the travel customer at least 21 days before the departure date (Art. 651a BGB in conjunction with Art. 4 VI EU Package Travel Regulation and Arts. 6 and 8 BGB-InfoVO *Information Regulation*). This is therefore the only exception in which the travel organiser can at all cancel travel. So the passenger's rights are to this extent also sufficiently protected.

2.1.3.

Set of questions on information duties (Questions 31 - 35):

Under the BGB Information Regulation, the operator is not only obliged to make concrete and detailed statements of all travel performances in catalogues and prospectuses, but is moreover also obliged to notify any departure or arrival time changes to the passenger before the travel begins (Art. 8 BGB Information Regulation). If he fails to fulfil this duty, the travel customer can also diminish the travel price or assert damage compensation claims. In this respect, neither from the viewpoint of German travel customers nor of German bus travel organisers can there be any further need for action by the EU legislative.

2.2.

In addition, the Directive 90/314/EEC EU on package travel, package holiday, package tours has itself been under critical review by the European Parliament since 1999, as well as by the Commission since 2003 (see SEK 1999, 1800 and the Bushill-Matthews Report of 19.12.2001, A5-0463/2001). Here again, further significant improvements are intended in favour of the travel customer with the disadvantages and additional obligations this simultaneously implies for the operators. The corresponding legislative acts in connection with the also intended equalisation of all consumer protection directives or regulations (see KOM 2002 208 = ABI. EG Nr. C 137/2 of 8.6.2002) must, in the opinion of the RDA, firstly be awaited before additional, further travel customer rights independent of this can be developed here or even deliberated at all.

2.3.

Apart from this, there is a further and decisive reason why extending the denied boarding, cancellation and long delay Regulation (EC) 261/2004 to cover bus travel is out of the question.

To begin with, bus travel cannot be compared with aviation because the latter is frequently structured as scheduled or similar kinds of traffic, whereas bus or coach travel is mainly only operated as package travel, which cannot be compared with scheduled or similar types of traffic. For this reason alone, lump sum delay allowances due independent of the travel price would be neither rational nor appropriate to the situation.

Other than in air and railway traffic, bus travel must be operated in road traffic. It is a well-known fact that delays in air traffic are primarily caused by problems in regulating the individual slots/corridors. But airlines are able to take these matters into their own hands by making contractual arrangements with airports, other airlines and air traffic control authorities to ensure that they can operate their flights punctually. The same applies to rail traffic. Here again the railway is, as a rule, also the owner of its rail network and can therefore ensure that timetables are designed so that delays do not happen. Even if the railway operators do not own the rail tracks themselves, they can still ensure this by way of contractual agreements with the owners of the railway network.

The situation in bus and coach travel is entirely different. The bus travel operator has no opportunity to ensure through any kind of contractual agreement that as little traffic as possible is on the road when he is. Whether or not bus travel can be operated punctually depends most decisively on the road traffic circumstances such as traffic jams and queues, winter road conditions, and so on. So the bus travel operator can only attempt here to ensure punctual arrival at the destination by correspondingly careful advance planning. As already explained, if for no other reason, he will do this because otherwise he is threatened with financial loss due to diminished travel prices.

So the provisions of travel law already put considerable "pressure" on the bus travel operator to operate his travel punctually and perform all services promised in his programme. And not only that, because he must also observe the times drivers are allowed to steer the vehicle and their rest times. In this connection, I may allow myself the reminder that the EU legislative currently intends to tighten the driving and rest times (Regulation EEC No. 3820/85 and 3821/85).

Another aspect is that, other than in air and rail traffic, busses and coaches are unable to recover time by increasing speed because, as we all know, there are speed limits of 80 km/h or at most 100 km/h for busses and coaches in force throughout Europe.

We do not see how these contradictions can be reconciled, particularly in view of the safety aspects of paramount importance in bus and coach travel.

This would compel the operator to strictly observe driving and rest periods, and all further safety aspects, as a matter of supreme priority, and then on the other hand, in addition to the "pressure" he is already under from travel law stipulations, threaten him with separate delay allowances and other financial disadvantages if he does not arrive punctually enough at the travel destination.

If the current representations in this working paper of the Commission should actually prevail, the safety aspects that must be complied with as a matter of priority in bus and coach travel would be counteracted in an irresponsible way. It cannot be that, on the one hand, the German legislative and the EU itself can demand compliance with all safety regulations with reference to the coach accidents of past years and, on the other hand, seriously think about introducing consumer rights in coach travel, which cannot be compared with air and rail travel factually and legally, diametrically opposed to the intentions of those safety regulations existing precisely in favour of the consumers such as e.g. the EC social regulations (Regulation (EEC) No. 3820/85 and 3821/85).

3.

To the questions of liability for injury or death of persons (Questions 5-13):

Under German law, it is already so that the liability for injury to persons in the transport of persons with busses or coaches can no longer be limited at all (Art. 23 PBefG - *German Passenger Transportation Act* - and Art. 8a StVG - *German Road Traffic Act*). So the pan-Europe regulation now envisaged is wholly superfluous from the German viewpoint.

At best, it could serve to reintroduce maximum liability limits here in favour of the operator, which would of course be welcome from the operators' point of view. As far as the contractual liability for damage to property is concerned, this is also unlimited in principle in bus and coach transport but can, however, be admissibly restricted in general terms and conditions of business to EUR 4,000.00 (Art. 23 PBefG). This is sufficient and appropriate for bus and coach travel and there is therefore no need to take action. Furthermore, the passenger has the tort liability claims (such as e.g. from Arts. 823 ff BGB) additionally and without restriction.

In otherwise, this complex would need to be intensely deliberated first with insurance companies, especially with regard to the effects this must be expected to have on insurance premiums and the inevitable additional financial burden on the operators this would bring.

4.

Treatment of complaints (Questions 36-46):

In this matter, German travel contract law contains sufficient stipulations, especially the period of one month to report deficiencies, as well as the two years statutory period of limitations for final settlement of travel deficiencies, so that for this reason also, at least from the German viewpoint, sufficient legal instruments already exist and there is no need for action here to introduce an additional EU complaints procedure. The latter also appears meaningless because, apart from the EU Regulation on package travel, package holiday and package tours, the various EU countries have differing travel law provisions and differing legal instances decide the claims of passengers, depending on the country in question.

In summary, the RDA takes the view that:

Air traffic, rail traffic and road traffic are absolutely incomparable within the context discussed here. The bus or coach is the safest means of earthbound transport. This should and must remain so and may not be called into question by suppositions far removed from realities for an - allegedly - better consumer protection.

We would therefore be most grateful if you shared our opinion, especially in the matter "expansion of the EU air passenger rights" to bus and coach transport, and endeavour that the propositions of the working paper, which in our view must be adjudged as thoroughly damaging, do not find their way into EU legislation.

Kind regards

(Ms) Bech-Schröder
Attorney at Law
Legal Counsel to the RDA