

Berlin, October 20 2005

Response

to the European Commission on the Commission Staff Working Paper on the Rights of Passengers in International Bus and Coach Transport

Vzbv welcomes the initiative of the Commission to lay a foundation for bus and coach passenger rights throughout Europe.

Bus and coach passenger rights are an important tool for ensuring the quality of bus and coach services, and thus for making bus and coach journeys attractive to passengers. At the same time passengers have an interest in affordable bus and coach journeys. This means that EU legislation for bus and coach passengers' rights should provide for slim and efficient procedures in order to keep enforcement and administrative costs low.

What passengers are most concerned about, even prior to aspects of price and passenger rights, is safety of coach journeys. Particular as a consequence of the severe coach accidents in the last years existing rules on qualification and working conditions of bus drivers, especially regarding resting hours, should be re-examined, and their practical enforcement should be strengthened and harmonised throughout the European Union. The proposed initiative on passengers rights should be seen in context with these preeminent safety issues.

In detail, vzbv comments the questionnaire of the Commission as follows:

Need to regulate

Question 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 passengers' rights?*

We agree that a **"level playing field"** should be ensured. Equal treatment should be achieved both between bus and coach passengers in different Member States and between bus and coach passengers in comparison to other modes of transport.

Yet there are three important **limitations to consistency**:

First, bus and coach operators do not control the **infrastructure** on which they offer their services. Therefore they are unlikely to be able to recover compensation for delay from the infrastructure manager. This is different in the case of railway undertakings. This difference has to be taken into account when formulating rules about liability of bus and coach operators in cases of delays (see question 16).

Second, for bus and coach journeys which are part of a **package travel** there are specific rules (Directive 90/314/EC). A careful examination should be made to find out whether in the sector of package travels new rules make sense or not. For example, it is not appropriate for passengers to be compensated for delays within a one-week bus journey as long as departure and arrival times at the beginning and at the end of the journey are correct. Here the approach of the package travel directive is more appropriate: There is only a need to be compensated if there is an improper performance of the package tour contract as a whole. But, on the other hand, for fatalities and injuries there should be the same standards in the case of package travels and line operations.

Third, **regional differences** cannot be ignored. There is a clear need for Community legislation in the case of international long-distance bus operators, but for local urban transport general minimum standards are sufficient..

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

Passenger rights in international and long-distance national bus and coach journeys should be ruled by a EU regulation. For local urban transport the EU should respect the principle of subsidiarity and leave some discretion for national legislation.

Scope of regulation

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

See Questions 1 and 2.

Question 4: *Is any legislative action necessary to improve intermodality between coach services and other modes of transport? If so, what action in particular?*

There is a particular need to improve intermodality with regard to bus services to and from airports. Further consideration is required to find out what instrument would be most appropriate for this purpose. Bus companies cannot reasonably be burdened with all costs for missed flight connections – otherwise bus tickets would either be enormously expensive, or bus operators would require passengers to provide for two hours extra time in order to be in time for the flight. To avoid this, a cooperation requirement between airlines and bus operators might be appropriate.

Liability schemes

Questions 5 to 12:

The liability system with regard to coach transport should be adapted to that applying to the railway sector. This will require the mandatory insurance schemes to be adapted accordingly.

Passengers should be able to file a lawsuit in their country of residence.

Question 13: *What are the liability schemes in place in your country?*

For death and injuries to passengers, bus and coach operators are liable except if the accident is caused by force majeure (Straßenverkehrsgesetz, § 7). This liability cannot be either excluded or limited. (Straßenverkehrsgesetz, § 8a).

In the case of death, damages to be paid comprise compensation for the expenses of an attempted cure and for the economic loss which the deceased has suffered because his earning capacity was destroyed or reduced during his illness or because his needs were increased. The person liable to pay damages must also reimburse the cost of the burial to the person responsible for it. If at the time of the injury the deceased stood in a relationship to a third party by virtue of which he was legally bound to maintain the latter, or might become so liable, and if as a result of the death the third party has lost the right to maintenance, the person liable to pay compensation must pay damages to the third party to the extent that the deceased would have been liable to pay maintenance during the probable duration of his life. The duty to compensate arises even if the third party was conceived at the time of the injury, but had not yet been born (Straßenverkehrsgesetz, § 10).

In the case of injury to the person or to health, the damages comprise compensation for the expenses of the cure and for the economic loss which the injured party suffered because his earning capacity was temporarily or permanently destroyed or reduced as a result of the injury or because his needs have increased. Equitable compensation in money can also be claimed for non-pecuniary loss (Straßenverkehrsgesetz, § 11).

The maximum amounts to be paid when a person is killed or injured are fixed at either a lump sum of 600,000 € or periodic payments of 36,000 € per annum (Straßenverkehrsgesetz, § 12).

For loss of and damage to luggage liability is limited to a maximum of 1 000 € per passenger. This limitation does not, however, apply in cases entailing gross negligence or intention (Verordnung über die Allgemeinen Beförderungsbedingungen für den Straßenbahn- und Obusverkehr sowie den Linienverkehr mit Kraftfahrzeugen, § 14).

Cancellation, denied boarding and interruption of journey

Question 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?*

Denied boarding does not seem to be a frequent problem with coach journeys in Germany.

In cases of cancellation passengers the same rules should apply as in the case of railways (see Commission Proposal COM [2004] 143, Art. 16).

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

In principle: Yes. Most important, hotel accommodation should be provided for if a journey is interrupted overnight. Yet provisions for appropriate assistance have to be realistic. There may be situations when the coach operator cannot possibly organise assistance, e.g. if there is a breakdown on the motorway far away from the next city. The same applies to meals and refreshments.

Significant delays

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

Yes. For international and long-distance national journeys EU-wide rules would be appropriate. For local urban transports Member States should have discretion to determine the conditions for compensation.

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

For rules to be established on a European level, the minimum compensation payment should be calculated in relation to the price paid for the ticket. Passengers should be entitled to cash payment; vouchers could be an option, but not the only solution.

Question 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?*

Compensation rules for significant delays have to acknowledge that the coach operators do not control the road infrastructure which they use to deliver their services on. Also, coach operators normally will not be able to recover damages from the infrastructure manager if problems with the infrastructure lead to a significant delay. Therefore coach operators should be exempted from liability if the delay is due to an exceptional and unforeseeable problem with the road infrastructure (road damages due to landslides, major traffic jams due to accidents). However, the coach operators should not be exempted where an operator might reasonably have been expected to anticipate extended journey times and consequent delay – for example when congestion can be anticipated at peak travel periods.

Persons with reduced mobility (Questions 19 – 27)

For persons with reduced mobility the notion of creating a “level playing field” for all modes of transport is especially important. It is difficult to understand why the rights of a passenger should vary depending on mode or on whether they are planning to make an urban or a rural journey. The EU should, however, abstain from too detailed legislation, but provide for some discretion how to organise assistance for persons with reduced mobility. We believe that regulations in this area should focus on securing desired outcomes (e.g., requiring all vehicles to be made accessible to persons of reduced mobility by a certain date) rather than specifying the technical characteristics that might secure that outcome (e.g., requiring a low floor section in a vehicle, or requiring the installation of a hoist).

Quality standards

Question 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?*

Quality and reliability standards should be left to coach operators to be developed. For passengers, good performance is what counts. If there is transparency about the relevant performance criteria (see question 30), coach operators will have incentives to improve their performance. Therefore legislative action to establish quality and reliability standards at EU level is not required.

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

See question 28.

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

- *Punctuality (departures, arrivals, stops en route)*
- *Delays*
- *Level of user satisfaction*
- *Cancellations*
- *Interruption of journey*
- *Comfort*
- *Accessibility for persons with reduced mobility*

As discussed above (question 28), transparency about performance criteria is essential. Therefore it is important that coach operators are obliged to measure and disclose these. The proposed list of criteria is adequate.

Information obligations

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

The rules established in the Commission's proposal for rail passenger rights are (with minor adaption like accessibility for bikes) appropriate for coach passengers as well (COM[2004] 143 final, Annex I).

Question 32: *Should standard conditions of carriage be attached to passengers' tickets?*

The rules established in the Commission's proposal for rail passenger rights are appropriate for coach passengers as well (COM[2004] 143 final, Annex II).

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

In Germany the general rule concerning **standard business terms** is that they are incorporated into the contract "only if, during the conclusion of the contract, the user

1. expressly draws the other party's attention to them, or if, on account of the way in which the contract is concluded, an express reference to them is unreasonably difficult, he draws his attention to them by means of a clearly visible sign at the place where the contract is concluded and

2. gives the other party, in a reasonable manner that also appropriately takes account of any physical handicap of the other party discernible by the user, the possibility of gaining knowledge of their content,

and if the other party agrees that they are to apply." (Bürgerliches Gesetzbuch, § 305, Section 2).

However, with regard to conditions of carriage in public transport, there is an exception:

"Even if the requirements set out in § 305 (2) Nos 1 and 2 are not observed, if the other party agrees to their application, railway tariffs and regulations adopted with the approval of the competent transport authority or on the basis of international conventions and terms of transport, authorised in accordance with the Passenger Transport Act, of trams, trolley buses and motor vehicles in scheduled services are incorporated into the transport contract".

This means that coach operators do not have to disclose their conditions of carriage in order to incorporate them into the contract. This rule impairs the passengers' rights without any justification. EU law should require coach operators to enable passengers to inform themselves about the conditions of carriage.

For creating transparency about **fares** it would help to create a database that compares fares of different coach operators in comparable relations.

Question 34: *How should information for persons with reduced mobility be provided (text, audio support)?*

Since bus and coach transport are especially important for persons with reduced mobility, information for this group of passengers has to be in an adequate form. At the moment vzbv cannot judge which is the best solution for this purpose (personal assistance, technological options). Therefore the need for EU legislation for this purpose requires further consideration.

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 tour?*

Yes. Transparency about the coach operator is important to ensure quality competition.

Complaint handling

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

Yes. It is important that bus and coach passengers have access to inexpensive and consumer-friendly ways of dispute resolution.

Question 37: *Should a one-stop shop be set up for handling complaints about international services?*

The merger of the European Extra-Judicial Network (EEJ-Net) with the Network of European Consumer Centers should be used to develop a “one-stop-shop” for consumers seeking non-judicial dispute resolution of cross-border disputes.

For national bus and coach journeys Member States should be obliged to establish non-judicial dispute resolution schemes, but they should have discretion how to do so.

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

Yes.

Question 39: *If no reply is received to the complaint within the abovementioned time limit, should it be deemed to be accepted by the coach operator?*

Yes.

Question 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.

Question 41: *What role could consumer bodies play in handling individual complaints?*

See question 45.

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

No. Mandatory consultations will not improve things a lot for passengers. Mandatory schemes of alternative dispute resolution will suffice to bring coach operators in contact with consumer organisations.

Question 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 organisations?*

One year ago, the German Ministry of Consumer Protection set up a complaint-handling scheme for long-distance public transport (rail, airplane, coach and ferry journeys), the Schlichtungsstelle Mobilität (<http://www.schlichtungsstelle-mobilitaet.org>). It is a fairly small institution with a staff of 6 persons, but so far its work has proved the use of an independent consumer body offering passengers an efficient and inexpensive way of dispute resolution. Complaint handling by the Schlichtungsstelle Mobilität has been particularly successful in the railway sector. There have been few complaints with regard to coach operators so far.

Question 44: *Should extrajudicial dispute settlement procedures based on Commission recommendations 98/257/EC and 2001/310/EC suffice?*

See question 45.

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

The first responsibility to handle complaints should be with the operator. Extrajudicial dispute resolution schemes perform as an appeal body in cases where complaints have not been handled satisfactorily by the operator.

There are two different options of dispute resolution:

In the first option a consumer body is assigned the task of resolving conflicts on behalf of passengers. If passengers are unable to find a solution with the operator, they can approach the consumer body and engage it to handle the complaint. The consumer body then approaches the operator and tries to find a solution that is acceptable to both sides. The consumer body derives its authority from a legislative mandate and relies on public opinion to assert its views.

In the second option an impartial body (ombudsman) is equipped with the power to rule a conflict on behalf of both the operator and the consumer. The consumer, however, retains the possibility to turn to court if he or she is not content with the solution found by the ombudsman. The impartial body would consist of an equal number of representatives from the operators' side and the consumers' side.

The best solution would be to combine both mechanisms. The consumer body should rule the easy day-to-day appeals in a quick, efficient and inexpensive way, and the ombudsman should be available for appeals that cannot be handled by the consumer body alone.

Question 46: *What experience have you had concerning self-regulation of user/customer care rights at national level?*

Self-regulation has brought some improvements recently, but mainly due to the increased public awareness of consumer rights in public transport and the emerging discussions about legislative action for passenger rights.

Self-regulation

Question 47: *How should the European Commission encourage self-regulation schemes aiming at improving users' rights?*

This does not appear to be a core task for the European Commission.

Question 48: *To what extent should passengers have to rely on voluntary commitments by bus and coach operators?*

Voluntary commitments are welcome, but their legitimate purpose is to secure additional quality features, not to serve as a substitute for legal passenger rights.

Integrated ticketing

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

Coach services should be included in integrated ticketing systems wherever possible. Further consideration is required, however, in order to ascertain whether legislative action is helpful to promote integrated ticketing systems with regard to coach services.