

PEOPIL

THE Pan-European Organisation of Personal Injury Lawyers
www.peopil.com

PEOPIL RESPONSE TO THE EUROPEAN COMMISSION STAFF WORKING PAPER, “Rights Of Passengers In International Bus And Coach Transport”

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The *Pan European Organisation of Personal Injury Lawyers* (PEOPIL) was founded in 1996 and formally established as a charitable entity in 1998 to improve and promote co-operation and communication between European jurisdictions in the field of personal injury law. The development and expansion of PEOPIL is recognition that the issues involved in personal injury litigation frequently extend beyond national boundaries and require an international perspective and knowledge.

Currently PEOPIL has nearly 500 members from jurisdictions within the European Union, Non-European Union jurisdictions within Europe and 5 jurisdictions outside Europe.

The aims of PEOPIL are:

- To develop co-operation and networking of personal injury lawyers within Europe;
- To promote access to the legal system for consumers suffering personal injury;
- To promote higher standards of care and safety for consumers;
- To promote proper and fair compensation for all personal injury victims;
- To support and encourage the exchange of information and knowledge

PEOPIL is interested in the harmonisation process which is being carried out by the European Commission and European Parliament. In this respect PEOPIL has formulated written submissions in response to matters, including the European Commission's Green Papers on Liability for defective products, Compensation of Victims of Crime, Proposals for a Fifth Directive on Insurance against Civil Liability in respect of the use of motor vehicles, and on proposals for reform of Legal Aid.

PEOPIL has received grants from the European Commission to fund its continuing work including research in Comparative Law under the Grotius Project and under the Framework Programme for Judicial Co-operation in Civil Matters.

PEOPIL confines its comments upon matters raised within the Commissions staff working paper on the rights of passengers in international bus and coach transport to issues relating to compensation for personal injury or death and the rights of injured passengers, coach operators and insurers in this regard.

QUESTION 1

According to figures obtained by the commission, bus and coach travel currently accounts for 9.5% of all transport within the European Union, while between 1995 and 2002 bus and coach passenger-kilometre figures show a 5% increase. While there has been recent enhancement of air passenger rights through legislation including regulations 2027/97, 889/2002 and 261/2004, no such protection exists for bus or coach passengers. At the same time, the European Commission has expressed its commitment to extend passenger protection for those using other modes of transport beyond that provided to air travellers.

PEOPIL agree with the Commission's view that, "protection of international coach passengers is of special priority and urgency". In coming to this conclusion it is acknowledged that these passengers often have low incomes and are amongst the most economically vulnerable members of the community.

PEOPIL consider that there should be equal treatment (“a level playing field”) between bus and coach operators in different member states in terms of protection of passengers’ rights.

QUESTION 2

The above matters should be addressed at EU level. The most cost effective way to meet these objectives is by introduction of an appropriate Directive or Regulation.

QUESTION 3

While PEOPIL would also welcome regulation of domestic coach and bus services, it is international coach travel which should be a priority for regulation.

International carriage by coach raises the greatest problems for injured passengers. There is often a lack of certainty as to which national legislation applies in relation to issues of liability, compensation and other matters. Cross border litigation is notoriously complex and expensive and may serve as a bar to enforcement of passenger rights. Unnecessary obstacles to the enforcement of such rights should be removed wherever possible.

Regulation of international carriage by coach is also consistent with the ambit of Conventions covering international carriage by air and sea and the harmonisation of rules on cross border coach travel is not inconsistent with other community law.

QUESTION 5

PEOPIL considers that the current insurance regulations applicable to passengers injured in international coach travel fail to provide adequate protection.

Second Council Directive 84/5/EEC of 30 December 1983 established minimum amounts for insurance coverage as follows:-

- in the case of personal injury case of €350,000 per victim
- in the case of damage to property: €100,000 per claim, or a minimum of €500,000 for personal injury where more than one victim is involved in a single claim or, in the case of personal injury and damage to property, a minimum overall amount of €600,000 per claim whatever the number of victims or the nature of the damage.

The Fifth Motor Insurance Directive, amending Council Directives 72/166/EEC, 84/5/EEC, 90/232/EEC and 2000/26/EC became law on 11 May 2005. The Directive is to be transposed into domestic law by 11 June 2007. Article 2 of the Directive specifies minimum compulsory insurance cover in the case of personal injury, a minimum amount of cover of €1,000,000 per victim or €5,000,000 per claim, whatever the number of victims.

PEOPIL considers that these levels of insurance cover are wholly inadequate. PEOPIL previously called for significantly higher levels of minimum insurance cover under the 5th Directive and the present levels are a cause of great concern and potential injustice.

Recent coach accidents within the EU have involved large numbers of passengers who have suffered serious or fatal injuries.¹

While insurance cover under the 5th Motor Insurance Directive at €1,000,00 per victim is wholly inadequate, substantial further injustice may occur where a member state opts for minimum insurance coverage of only €5,000,000 per accident. In such a case, it is almost inevitable that in a serious coach accident involving multiple cases of serious injury or death amongst passengers, there will be insufficient insurance cover to adequately compensate victims. With coaches capable of carrying up to around 50 passengers each, the level of insurance cover could be as low as €100,000 per victim.

¹ including several recent accidents involving foreign tourists in Spain, France, Germany and Austria

As well as the likelihood of under compensation there is a real risk of conflict between passengers seeking to secure compensation from the insurance cover available and the risk of unnecessary legal and other costs being incurred to pursue such claims.

Enhanced levels of minimum insurance are urgently required to protect passenger rights and procedures should be improved to help passengers in the case of injury or death occurring in international carriage. PEOPIIL consider that minimum insurance cover for international bus or coach travel should be unlimited in amount.

QUESTION 6

PEOPIL consider that there should be a system which is comparable, and certainly no less favourable to the passenger than the regimes in force for air, rail, and maritime travel.

QUESTION 7

PEOPIL consider that coach operators should not be allowed to contest claims for death or injury up to the value of 100,000 SDR's. This is consistent with regulations (EC) No2027/97 of 9 October 1997 on air carrier liability as amended by Regulation (EC) No 889/2002 of 13 May 2002.

QUESTION 8

PEOPIL consider that the value of an advanced payment in the event of death should be €16,000 which is consistent with that allowed under the Community Regulations governing International Travel by air.

PEOPIL consider that there are practical problems in making advance payments to coach passengers who have suffered very minor injuries. PEOPIIL recommend that there should be an advance payment of €16,000 in cases where there is serious injury or where final compensation to an injured passenger is likely to exceed this sum. Additional interim payments of compensation should be permissible in accordance with the applicable law for determining the claim.

QUESTION 9

PEOPIL consider that there should be no upper limit upon liability in cases where fault is established against a coach operator, its employees or agents. In other cases, liability of coach operators should be limited to 100,000 SDR's.

QUESTION 10

PEOPIL consider that in cases of injury suffered in member states other than the state in which the journey began, the liability rules of the state where the injury was sustained should apply. PEOPIIL support the European Parliament's latest proposal for regulation on the law applicable to non-contractual obligations ("Rome II"), and consistent with this, PEOPIIL propose that the laws of domicile of the victim should be applied when assessing damages for injured coach passengers.

PEOPIL consider that there should be limited choice available in determining the jurisdiction for commencing personal injury claims arising from international coach travel. Consistent with the regulations governing international carriage by air, PEOPIIL propose that proceedings arising from death or personal injury of a bus or coach passenger shall be commenced in either the state where the contract of carriage is made, the state of final destination as disclosed by the contract of carriage, the state of domicile of the passenger, the state of the place of the accident, or the state where the carrier has its principal place of business.