

**Report of 1 June 2021 on enforcement
in
the calendar years 2019 and 2020
of**

**Regulation (EU) no. 1177/2010
of the European Parliament and of the Council
of 24 November 2010
concerning the rights of passengers when travelling by sea
and inland waterways (the maritime passenger rights regulation)**

Report on enforcement

Article 26 of Regulation (EU) no. 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterways (the maritime passenger rights regulation) states as follows:

”By 1 June 2015 and every 2 years thereafter, the enforcement bodies designated pursuant to Article 25 shall publish a report on their activity in the previous two calendar years, containing in particular a description of actions taken in order to implement the provisions of this Regulation, details of sanctions applied and statistics on complaints and sanctions applied.”

This report includes the Danish Maritime Authority’s statement on the enforcement of the maritime passenger rights regulation in 2019 and 2020.

Background

The Regulation entered into force on 18 December 2012. In general, the Regulation aims to ensure a level of protection for ship passengers comparable to that for passengers using other types of transport.

The Regulation includes rules on minimum rights for passengers travelling

- on passenger services where the port of embarkation is situated in the territory of a Member State,
- on passenger services operated by EU carriers from a port in a third country to a port in the territory of a Member State and
- on a cruise where the port of embarkation is situated in the territory of a Member State.

The Regulation does not preclude passengers from seeking compensation before national courts in accordance with national law for individual losses resulting from cancellation or delay of transport services.

Article 25 of the Regulation provides that each Member State shall designate one or more new or existing bodies responsible for the enforcement of the Regulation. Each body must take the measures necessary to ensure compliance with the provisions of the Regulation.

Article 25 also provides that any passenger may submit a complaint in accordance with national law to the competent body designated by a Member State about an alleged infringement of the Regulation. This body must provide the passengers with substantiated replies to complaints within a reasonable period of time.

Implementation of the rules of the Regulation

a. Responsibility for enforcement

The Danish Maritime Authority is responsible for the enforcement of rules related to carriers performing the transport, including shipowners. Sections 440 and 514 a of the merchant shipping act (*søloven*) provide the legal basis for laying down rules on compliance and application of the Regulation, including rules on the right to complain as well as on fees and penalties.

Pursuant to the merchant shipping act (*søloven*) and by authority, the Danish Maritime Authority has issued order 74/2013, as amended by order 7/2015. The order concerns the rights of ship passengers and the possibility of ordering anyone violating the Regulation, including carriers, travel agents, tour operators and ticket vendors, to rectify the matter immediately or within a specific period of time, cf. section 5.

The Danish Civil Aviation and Railway Authority is responsible for rules related to port terminals, including terminal operators, ticket vendors, travel agents and tour operators. Sections 1a, 17a and 18(3) of consolidated act 457/2012 on ports (*lov om havne*) provide the legal basis. The Authority has also issued order 1236/2014 on the right to supervise and complain about the accessibility of port terminals, etc., for disabled persons and persons with reduced mobility.

b. Right of complaint

b.1. The Danish Maritime Authority

Section 2 of order 74/2013 states that passengers can file complaints related to the Regulation to the Danish Maritime Authority, if the Danish Consumer Complaints Board or the Danish Travel Industry Complaint Board cannot consider them, or if they concern terminal operators. Prior to that, complainants must file complaints with the carrier, i.e. typically the shipowner.

b.2. The Danish Civil Aviation and Railway Authority

Section 2 of order 1236/2014 states that a complaint about a terminal operator's non-compliance with the obligations under the Regulation must be forwarded to the terminal operator. If the complaint is not accepted, the complainant can appeal the terminal operator's decision to the Danish Civil Aviation and Railway Authority.

Section 3 of order 1236/2014 states that a complaint about a ticket vendor's, travel agent's or tour operator's obligations under the Regulation must be forwarded to the ticket vendor, travel agent or tour operator. If the complaint concerns ship passenger rights in the port area and is not accepted, the complainant can appeal the reply from the vendor, travel agent or tour operator to the Danish Civil Aviation and Railway Authority.

b.3. The House of Committees

Section 9 of act 524/2015 allows consumers to bring complaints arising from an agreement between a consumer and an economic operator about the purchase of a product or a service before the Danish Competition and Consumer Authority. However, the House of Committees took over this competence on 1 January 2017. According to section 3 of order 65/2019, the House now acts as a mediator related to complaints that do not concern a dispute resolution body covered by the consumer complaints act (*forbrugerklageloven*) and are filed by a consumer. The order fixed the minimum price for goods and services concerned, including sea voyages, at DKK 1,050 from 1 January 2019. Adjustment of the minimum price takes place every three years.

Section 7 of order 65/2019 allows the Danish Consumer Complaints Board to consider a complaint in case mediation does not lead to an amicable solution and the consumer goes on to bring the complaint before the Board. It is a condition that the price of the good or the service, including sea voyages, is DKK 1,050 or more. Adjustment of the minimum price takes place every three years.

b.4. The Danish Travel Industry Complaint Board

The Danish Travel Industry Complaint Board considers complaints about package tours, including package tours by ship. It is a private complaint board approved by the Ministry of Industry,

Business and Financial Affairs in pursuance of section 6 of act 524/2015 on alternative dispute resolution in connection with consumer complaints.

c. Other issues

According to Article 2(4) Member States may exempt passenger voyages covered by public service obligations, public service contracts or integrated services from application of the Regulation, if national law secures the rights of passengers to a similar extent. Denmark has chosen not to use this option.

The Danish Maritime Authority has produced complaint forms, complaint guidelines as well as a summary of the Regulation, cf. <https://www.dma.dk/SikkerhedTilSoes/RettighederPassagerer/Sider/default.aspx>. An update of the guidelines took place in 2018. Consumers must pay a fee of DKK 160 in order to submit a complaint under the Regulation, cf. section 3 of order 74/2013 on the rights of passengers. However, persons with reduced mobility can submit complaints free of charge and use a special complaint form for the purpose. The Danish Civil Aviation and Railway Authority and the Danish Consumer Complaints Board also provide guidance on complaints.

Alternative Dispute Resolution (ADR)

It follows from Regulation (EU) 524/2013 on online dispute resolution (ODR) for consumer disputes that disputes between a trader and a customer from EEA States about goods and services purchased over the internet can be settled through the EU OTB website. The parties can access and use the website free of charge in all official EU languages on <https://ec.europa.eu/consumers/odr/main/index.cfm?event=main.home2.show&lng=UK>.

Inspection

The Danish Maritime Authority and The Danish Civil Aviation and Railway Authority carry out inspection of compliance with the provisions of the Regulation in their respective areas of responsibility, cf. section 20 of the act on safety at sea (*lov om sikkerhed til søs*).

The Danish Maritime Authority carries out passenger rights inspections as part of mandatory inspections, i.e. renewal surveys of passenger ships and examinations of the soundness of ship operations in terms of safety (International Safety Management auditing). This implies that Danish Maritime Authority surveyors carry out passenger rights inspections when they are on board ships and visit shipowners for other reasons, too. The inspections concern the following:

- Access conditions (article 9), i.e. that carriers have established non-discriminatory access conditions (9.1) and that information about them is available to the public (9.2).
- Quality standards for assistance if the carrier has performed more than 100,000 commercial passenger movements over the previous year (article 13), i.e. that carriers have established quality standards (13.1 and 13.2) and that information about them is available to the public (13.3).
- Training procedures (article 14).
- Information about passenger rights (article 23), i.e. information about the content of the Regulation (23.1), including the right of complaint (23.3), and its availability to public on board ships.

Order 74/2013 requires carriers covered by the Regulation to notify the Danish Maritime Authority if they perform more than 100,000 commercial passenger services in a calendar year. The Authority cooperates with the industry on the subject once a year.

The act on safety at sea (*lov om sikkerhed til søs*) states that the Danish Maritime Authority can issue enforcement notes. Non-compliance with an enforcement note may trigger a fine, cf. section 28 of the act.

Statistics for 2019-20

a. The Danish Maritime Authority

a.1. Control of ships

No complete statistics are available on the number of comments about non-compliance with the provisions of the Regulation. Instead, the Danish Maritime Authority in 2021 took a sample of survey reports with a representative portion of passenger ships covered by the Regulation in the two previous years. The 2021 sample was similar to samples from 2015, 2017 and 2019 with the notable exception that it included 20 survey reports, while the three previous samples included 10 survey reports each.

The survey reports in the 2021 sample did not include any comments about violations of the Regulation in the period 2019-20. Approvals and inspections related to newly built passenger ships in the same period led to 3 requirements for adaptations to ensure that passengers of all types, including disabled passengers, have equal opportunities for physical access, movement, accommodation and information on board.

In comparison, the 2019 sample of survey reports caused 1 comment about non-compliance related to accessibility. The deficiency was corrected before the survey, and no sanctions were imposed. The 2017 sample did not reveal any non-conformities with the Regulation. The 2015 sample caused 2 comments about accessibility. These non-conformities were corrected before the survey, too, and no sanctions were imposed.

a.2. Complaints

In the period 2019-20, the Danish Maritime Authority received 29 complaints, 7 inquiries plus 1 request for assistance from a foreign NEB. This represents an increase compared to the previous period 2017-18, when the Danish Maritime Authority received 8 complaints. Part of the increase is due to the covid 19 situation.

The Danish Maritime Authority also received a number of telephone inquiries related to the understanding of the Regulation and about specific cases. A few inquiries have subsequently led to an understanding between the shipowner and the passenger. The specific number is unknown, as the parties do not automatically notify the Danish Maritime Authority in case complaints are dropped.

The passenger was upheld or partially upheld in 8 of the 29 complaints. In addition, 5 complaints were resolved through information from the Danish Maritime Authority's to the shipping company about its duties or through the shipowner's voluntary accommodation of the passenger without further case processing or decision-making.

In 8 other cases, the passenger was not upheld because the complaint was unfounded. 4 of these concerned a passenger wanting a ticket refund in a situation where the ferry departed as planned and the passenger failed to show up for the departure due to covid travel restrictions for the passenger or fellow passengers.

The Danish Maritime Authority referred 2 complaints to a foreign NEB and 1 case to the House of Committees.

On 5 occasions, the Danish Maritime Authority did not process the cases because the complainants withdrew them or failed to pay the complaint fee despite invitations to do so.

The foreign NEB's request for support concerned a Danish shipping company that failed to respond to a request for information needed for processing a complaint. The Danish Maritime Authority contacted the shipowner, received a reply and forwarded it to the foreign NEB.

a.3. Special cases:

1. A passenger wanted to cancel his trip and receive a full ticket refund due to the authorities' requirements for wearing a face mask based on the Covid-19 situation. The Danish Maritime Authority declined.
2. At the beginning of the period, the Danish Maritime Authority received several complaints about a particular shipowner and therefore arranged a meeting about the rules in late July 2020. There have been no significant complaints about the company since.
3. Another shipowner called by phone about the understanding of the Regulation. The Danish Maritime Authority explained the Regulation during two telephone meetings, and there have been no complaints about the company.

b. The Danish Civil Aviation and Railway Authority

The Danish Transport and Railway Authority has stated that it received 0 complaints regarding the Regulation in the period 2019-20. This corresponds to developments in the previous 2017-18 period, where the Authority also received 0 complaints and therefore avoided applying sanctions for non-compliance with the Regulation.

c. The House of Committees

The House of Committees did not receive any complaints related to sea voyages in 2019. In 2020, the House received 1 complaint. However, the House rejected the complaint because it fell outside its area of competence.

In comparison, in 2018 the House received 10 complaints about sea voyages, resolved 4 through mediation and failed to do so in 2 other cases. Later, the Consumer Complaints Board received 1 of the latter complaints. The Danish Travel Industry Complaint Board received another 2 of the 10 complaints of which 1 was unrelated to the authority of the Board and 1 was revoked. In 2017, the House received 6 complaints about sea voyages. The House resolved 1 through mediation, forwarded 1 to the Danish Travel Industry Complaint Board and 1 to the Danish Maritime Authority and rejected 3 for lack of authority to deal with them.

In addition, the House has explained that it carries out mediation between consumers and traders. Consequently, the House does not impose sanctions for non-compliance with the maritime passenger rights regulation.