



European Economic and Social Committee

TEN/648

Rail passengers' rights and obligations

OPINION

European Economic and Social Committee

**Proposal for a regulation of the European Parliament and of the Council on rail passengers'
rights and obligations (recast)**

[COM(2017) 548 final - 2017/0237 (COD)]

Rapporteur: **Jan SIMONS** (NL-I)

Consultation	European Parliament, 05/10/2017 Council of the European Union, 10/10/2017
Legal basis	Article 91 TFEU
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	04/01/2018
Adopted at plenary	18/01/2018
Plenary session No	531
Outcome of vote (for/against/abstentions)	163/1/4

1. Conclusions

- 1.1 The Committee can endorse the Commission's proposals. In particular, it endorses the proposals to further clarify the current rules, provide better information to passengers, and, by removing national exemptions, promote the uniform application of passenger rights throughout the EU. In addition, the introduction of a *force majeure* clause as such is warranted, in order to align rail with the other modes of transport.
- 1.2 But a new provision (Article 22(4) about assistance in stations concerning persons with disabilities and persons with reduced mobility) may be problematic. The EESC firmly advise therefore to add to Article 22(4): "with the exception of unstaffed stations, which are covered by paragraph 3".
- 1.3 The Committee also has a number of proposals for tightening up the draft text; they are also set out in section 4.3, which we refer to here for the sake of brevity.

2. Introduction

- 2.1 The protection of passenger rights in all types of transport, and thus including rail, emerged as an EU objective back in the 2001 White Paper on Transport. A rail regulation to that end was adopted in 2007¹ and came into force in 2009.
- 2.2 This regulation provides passengers with minimum protection when travelling by train. The regulation obliges Member States, their respective authorities and railway undertakings to implement these provisions in their practice to safeguard passenger rights. In this context, Regulation (EC) 1371/2007 is an important harmonisation tool which should ensure that all passengers travelling by train in the EU have the same rights.
- 2.3 A 2011 European Commission communication on a European vision for passengers "Communication on passenger rights in all transport modes"² states that passenger rights are based on three cornerstones: non-discrimination; accurate, timely and accessible information; and immediate and proportionate assistance.
 - 2.3.1 It also enumerates ten core EU passenger rights applicable to all modes of transport:
 - 1) the right to non-discrimination in access to transport,
 - 2) the right to mobility,
 - 3) the right to information,
 - 4) the right to renounce travelling (reimbursement of the full cost of the ticket),
 - 5) the right to the fulfilment of the transport contract in case of disruption,
 - 6) the right to assistance,
 - 7) the right to compensation,

¹ [Regulation \(EC\) No 1371/2007](#).

² [COM\(2011\) 898 final](#).

- 8) the right to carrier liability towards passengers and their baggage,
- 9) the right to a quick and accessible system of complaint handling, and
- 10) the right to full application and effective enforcement of EU law.

2.3.2 The rights applicable to train passengers included in the 2007 regulation reflect the above mentioned 10 core passenger rights applicable to all modes of transport already.

2.3.3 However, the regulation provides Member States with very wide discretion towards the application of its provisions. Member States can grant broad exemptions from the application of the regulation. Although these exemptions are granted temporarily, not exceeding a maximum period of 15 years, they have a considerable impact on uniform application of the regulation.

2.3.4 Currently, only four Member States apply the regulation without any exemption, while the remaining 24 Member States have granted numerous exemptions for their domestic, urban, suburban or regional train services. The extensive application of these exemptions, despite being permitted legally, impairs the uniform application and enforcement of Regulation (EC) 1371/2007. Train passengers thus have different rights in different Member States.

2.3.5 In its 2013 report on the application of the regulation³, the Commission highlighted certain problematic areas, which were confirmed by an impact assessment in 2016/2017⁴.

2.4 In 2013, the Court of Justice of the European Union ruled (Case C 509/11 ÖBB-Personenverkehr) that the current Article 17 of the regulation does not allow for railway undertakings to be exempted from compensating passengers for delays caused by *force majeure*. This distinguishes rail from other transport modes.

2.5 Finally, it should be noted that this proposal concerns only railway undertakings that are licensed under Directive 95/18/EC; thus it does not apply to trams and metros. Furthermore, the proposal is underpinned by the Uniform Rules concerning the contract for international carriage of passengers and luggage by rail (CIV).

3. Summary of the Commission proposal

3.1 The proposed recasting strikes a balance between strengthening rail passenger rights and reducing the burden on railway undertakings.

3.2 The exemptions for long-distance domestic services are to be abolished by 2020. For services operated outside the EU, Member States are to be required to grant exemptions only if they can prove that passengers are adequately protected on their territory. To ensure legal certainty in cross-border regions, the regulation will apply in full to urban, suburban and regional services that operate across borders.

³ [COM\(2013\) 0587](#).

⁴ [SWD\(2017\) 317 final](#).

- 3.3 The proposal strengthens the rights of **people with disabilities and people with reduced mobility**, in compliance with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Member States can no longer exempt the provision of assistance and compensation for damaged mobility equipment⁵. Information must be provided in accessible formats in line with the requirements proposed in the European Accessibility Act⁶. Rail staff will have to be trained accordingly.
- 3.4 Passengers are to be given **basic information** on their rights at the time of booking. Notices informing passengers of their rights have to be placed in prominent positions in stations and on board.
- 3.5 In line with the *Interpretative Guidelines* of 2015⁷ and the 4th railway package of 2016⁸, railway undertakings and ticket vendors have to make efforts to offer through-tickets, but they can also prove that they informed passengers where their passenger rights do not apply to the whole journey.
- 3.6 The proposal specifies the responsibilities of national enforcement bodies, including in cross-border cases, and requires them to cooperate effectively.
- 3.7 The proposal introduces a general clause prohibiting any form of **discrimination**, aligning rail with other modes of transport.
- 3.8 To reduce the burden on railway undertakings, the proposal obliges station and infrastructure managers to also have contingency plans.
- 3.9 Railway undertakings are to get the right to redress, if delays were caused by a third party's fault or negligence. This measure aligns rail passenger rights with air passenger rights⁹.
- 3.10 To prevent railway undertakings having to pay compensation in situations that they did not cause and could not prevent, the proposal introduces a *force majeure* clause that applies only in very exceptional situations caused by severe weather conditions and natural disasters¹⁰.
- 3.11 The regulation will be listed in the Annex to the revised Consumer Protection Cooperation Regulation¹¹.
- 3.12 The proposal includes references to the COTIF (the CIV Uniform Rules), thus extending its rules to domestic rail transport in the EU.

5 [COM\(2017\) 548 final - 2017/0237 \(COD\).](#)

6 [COM/2015/0615 final – 2015/0278 \(COD\).](#)

7 [OJ C 220, 4.7.2015, p. 1.](#)

8 [OJ L 352, 23.12.2016, p. 1.](#)

9 [OJ L 46, 17.2.2004, p. 1.](#)

10 [SWD\(2017\) 318 final.](#)

11 [COM\(2016\) 283.](#)

4. Comments

- 4.1 In general terms, the Committee can endorse the Commission's proposals. In particular, it endorses the proposals to further clarify the current rules, provide better information to passengers, and, by removing national exemptions, promote the uniform application of passenger rights throughout the EU. In addition, the introduction of a *force majeure* clause as such is warranted, in order to align rail with the other modes of transport.
- 4.2 Recasting "starting from the existing legal instrument"¹² must not be a hard and fast rule. Sometimes, particularly where it emerges that a directive is being interpreted and applied differently by individual Member States, it is best to opt for a different legal instrument, in this case a regulation. Here, however, it is already a regulation; the recasting should therefore now lead to clear rules, which are not subject to multiple interpretations, but are uniformly applied, and backed up by new findings, which is largely the case. With regard to the remaining, less precise parts of the document, the EESC would like to make the following comments.
- 4.3 Proposals
- 4.3.1 It can sometimes be difficult for train staff to identify passengers with disabilities, and will be all the more so now that it is proposed to include mental and psychological disability in the definition of persons with reduced mobility. In the case of suspected fraud, this might lead to critical situations and operational difficulties. This issue should be given due attention in staff training (Article 26).
- 4.3.2 The remaining exemptions to **national long-distance services** should continue to be phased out gradually by 2024 in line with the existing regulation's requirement. Ending the exemption earlier, in 2020, as proposed by the Commission, could be too early for certain Member States. In that case, an appropriate solution should be found on a case-by-case basis, to enable a smooth transition.
- 4.3.3 The minimum compensations (Article 17(1)) are subject to a minimum of 60 minutes' delay. However, in current practice, shorter minimum delays have been known to apply. That possibility should be maintained by expressly mentioning this in the article.
- 4.3.4 With regard to the travel information to be provided, it should be added that where the minimum delay for compensation will almost certainly be reached or exceeded, this must be communicated to the passengers and, where possible, the relevant application forms for compensation actually made available.

¹² [COM\(2017\) 548 final - 2017/0237 \(COD\)](#).

4.3.5 Article 22 governs assistance at railway stations. Paragraph 3 sets out special arrangements for unstaffed stations. The proposed new paragraph 4 then fails to take due account of this. The Committee recommends adding "with the exception of unstaffed stations, which are covered by paragraph 3" after the last word in paragraph 4 ("operate").

Brussels, 18 January 2018

Georges DASSIS

The president of the European Economic and Social Committee

*

* *

N.B.: Appendix overleaf.

APPENDIX

to the opinion

The following points of the section opinion were rejected in favour of amendments adopted by the assembly but received at least one-quarter of the votes cast in favour of retention of the section opinion texts (Rule 54(4) of the Rules of Procedure):

4.3.6 Some of the provisions in the proposal may be problematic, misleading and/or confusing and one is even contradictory.

Outcome of the vote on the amendment:

Votes in favour:	73
Votes against:	50
Abstentions:	24

4.3.6.1 For instance the right (Article 10(5)) to buy tickets on board at no extra cost can be questioned in the cases where no tickets on board is sold to anyone and information is provided at departure stations about ticket purchase as already foreseen in Articles 10(2), 10(3) and 10(4).

Outcome of the vote on the amendment:

Votes in favour:	80
Votes against:	51
Abstentions:	13

4.3.6.2 Also the provision (Article 23(4)) that assistance should be available on board trains at all times when rail services operate might be a problem in cases where trains are running without on board staff generally, a situation already regulated by Article 23(2).

Outcome of the vote on the amendment:

Votes in favour:	91
Votes against:	48
Abstentions:	12

4.3.6.3 To avoid unnecessary disputes and unreasonable obligations the EESC advise firmly to delete both Article 10(5) and Article 23(4).

Outcome of the vote on the amendment:

Votes in favour:	90
Votes against:	48
Abstentions:	14

The following point was modified to reflect the amendments adopted by the assembly.

- 1.2 But some of the new provisions (proposed Article 10(5) about buying tickets on board; Article 22(4) about assistance in stations and Article 23(4) about the same on board the trains, all concerning persons with disabilities and persons with reduced mobility) may be problematic, misleading and/or confusing and even one is contradictory in relation with their foregoing paragraphs of the just mentioned articles, where these refer to unstaffed stations and trains. The EESC firmly advise therefore to delete Articles 10(5) and 23(4) and to add to 22(4): "with the exception of unstaffed stations, which are covered by paragraph 3".
