

Brussels, 05 February 2019

# **CER position paper**

## **on the Commission proposal COM(2017)548 – recast of Regulation (EC) 1371/2007 on Rail Passenger Rights**

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### **About CER**

The Community of European Railway and Infrastructure Companies (CER) brings together railway undertakings, their national associations as well as infrastructure managers and vehicle leasing companies. The membership is made up of long-established bodies, new entrants and both private and public enterprises, representing 71% of the rail network length, 76% of the rail freight business and about 92% of rail passenger operations in EU, EFTA and EU accession countries. CER represents the interests of its members towards EU policy makers and transport stakeholders, advocating rail as the backbone of a competitive and sustainable transport system in Europe. For more information, visit [www.cer.be](http://www.cer.be) or follow @CER\_railways on Twitter.

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## Summary of CER<sup>1</sup> position

The EU institutions are currently discussing the recast of Regulation 1371/2007 on rail passenger rights (Rail PRR). CER considers the protection of their customers first and foremost as the sector's own long-standing commitment.

Studies<sup>2</sup> of the Commission show that railway companies have taken the implementation of Regulation 1371/2007 very seriously by investing significant resources into meeting new requirements and into further speed up the complaint handling process.

CER is therefore working closely with all decision-makers and customers' associations to ensure that the proposal enables rail operators to keep up the good work in this area. Furthermore, Member States and the European Parliament should take into account that intermodal competition is already much affected by cost-related distortions between rail and other modes. Therefore, reasonable, balanced and enforceable rail passenger rights should be the outcome of this recast without jeopardizing the sector's competitiveness.

In this context, CER would like to highlight the following concerns related to the Commission's proposal:

- **Urban, sub-urban and regional services** are not different whether or not they cross a border. An artificial distinction of these services will adversely impact this market segment in favor of traffic by coach and private cars.
- Existing provisions governing the remaining exemptions to **national long-distance services should continue to apply**, while exemptions to urban/sub-urban/regional services and services where a significant part is **operated outside the EU** should be maintained, in line with the existing Regulation's requirements.
- The status quo on the **delay compensation requirements** is essential to avoid any increase in ticket prices that would affect the attractiveness and competitiveness of the rail sector vis-à-vis other transport modes benefitting by less stringent requirements.
- CER welcomes the introduction of the **force majeure principle** in the Regulation which is important for providing a balanced legislative framework between transport modes. However the proposal made by the Commission in art. 17.8 restricts the concept to severe weather conditions and natural disasters, therefore excluding a wide range of events which are beyond the control of railway undertakings, for instance decisions of public authorities in the current context of possible security threats, etc. .
- New delay compensation requirements on **passes and season tickets** are disproportionate, unrealistic to implement and would require railway undertakings to

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<sup>1</sup> This position was prepared in cooperation with the International Rail Transport Committee (CIT)

<sup>2</sup> 2013 Commission Report on the Application of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on Rail Passengers' Rights and Obligations, [COM\(2013\)587 FINAL](#). Steer Davies Gleave evaluation of Regulation 1371/2007, [Final Report](#), July 2012

reconsider the offers of these important products for frequent train travelers, commuters and tourists (e.g. Interrail passes).

- Legislative stability is key for the sector in order to deliver the **step-change needed in the area of ticketing** and for developing sound business environments for companies. Existing provisions on through-ticketing should not be changed as they underpin the ongoing business-driven progresses of railways and ticket vendors, in view of the 2022 deadline recently agreed in the fourth railway package.
- **Customer-friendly information on through-ticketing** is essential, but EU requirements should be realistic. Railway undertakings which have not committed to, and are not aware of the intended connection of a passenger holding separate tickets between two or more trains shall not be required to fulfil the obligations under this Regulation.
- **Enabling access for passengers with reduced mobility and disabled passengers is a high priority for the railway sector.** However, the proposed obligations in Chapter V to provide assistance at all stations and in all trains at all operating hours and the respective amendments to the exemption regime are unaffordable and also unrealistic regarding the recruiting of the new staff needed. The proposal should urgently be reconsidered based on a thorough impact assessment. Furthermore, the proposals would undermine the development of **digital railways and Automatic Train Operation (ATO)** which are key for the efficiency and competitiveness of the sector vis-à-vis other transport modes.
- In parallel, **the proposal should not interfere with the current investments in accessibility, the national implementation plans (NIPs) of the Member States and with the principle of legal certainty** regarding the comprehensive existing rail-specific accessibility requirements (PRM TSI)<sup>3</sup> and in parallel new references to the (not yet adopted) European Accessibility Act (EAA).
- The Regulation governs the contractual relationship between a carrier and a passenger. **Unnecessary business to business provisions**, such as those relating to the relation and exchange of data between infrastructure managers, stations managers, railway undertakings and ticket vendors, bring about unnecessary red-tape and should be dealt with on a contractual basis and, where appropriate, in the relevant legislative framework.

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<sup>3</sup> COMMISSION REGULATION (EU) No **1300/2014** of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility (PRM TSI)

## 1. Exemptions

The Regulation allows Member States to provide temporary exemptions from the application of some provisions of the Regulation, depending on the type of service, in order to take into account the difficulties of applying the entirety of the provisions. The Commission's proposal

- removes the possibility for Member States to exempt national long-distance traffic from some provisions of the Regulation;
- removes the possibility to exempt urban, suburban and regional rail passenger services, if they cross a border;
- limits the possibility to exempt traffic to or from non EU-countries;
- extends the mandatory character of the Regulation to the whole Chapter V (passengers with reduced mobility) instead of keeping it to Chapter's key articles on "right to transport" (former art. 19) and on "information" (former art. 20);

### Maintain the financial equilibrium of urban, sub-urban and regional services

These services have the same characteristics, regardless of whether they cross a border or not. The Commission proposal to lift exemptions to this market segment when it is cross-border would put the financial equilibrium of these services at risk.

Urban, suburban and regional services are different from long-distance services and require different solutions due to the characteristics of the market in the Member States, e.g. existing (gated) high-throughput metro and commuter networks. These services are usually frequent (e.g. a train every 5-15 minutes), they call at a high number of stations, operate on short distances and they do not require mandatory reservations. This makes many requirements unnecessary or unfeasible such as, for instance, the provision on meals and refreshments or the requirements to provide information during the journey at all stations, as per Annex II.

These services fiercely compete mostly with cars, coaches and buses and are operated almost exclusively under public service contracts. In this context, the relevant public authorities play a key role in organising these transport services as they have the best understanding of the needs of the regional and local population concerned. This also entails that public authorities play a key role in determining the level of financing and the quality requirements, which greatly differ across Europe.

More in general, it is relevant to highlight for both long-distance and local services that railway undertakings operate under different framework conditions across Europe. These conditions include for instance different levels of financial support for public service obligations (64.2% <sup>4</sup>of railway passenger transport (p/km) in the EU-28 operate under public service obligation (PSO)) or different levels of investment in rail infrastructure. **As an example, in South and East European countries only 64.5%, on average, of the net costs incurred for the discharge of the PSO was covered by the compensation granted.** Where the financial framework is not sustainable, rail operators risk to suffer the double problem of being on the one hand badly financed and on the other hand having to pay penalties for the lack of quality resulting from poor financing. The existing Regulation

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<sup>4</sup> Transport Statistical Pocketbook 2018

provides the necessary flexibility to Member States in order to take into account the framework conditions under which railway undertakings operate. It should also be noted that in some regions, competent authorities have already put in place a regime that goes far beyond the current EU requirements on rail passenger rights.

### Maintain legal certainty for exemptions to national long-distance services

The majority of EU Member States have already phased-out (or have never granted) exemptions to these long-distance services. Member States still applying exemptions to a limited number of articles are situated in the central and eastern part of Europe, where rail particularly suffers from a lack of investment in railway infrastructure and the level compensation of PSOs. Investments are planned until the end of the exemption periods to gradually ensure compliance with the Regulation. In order not to interfere with the ongoing investment plans and based on the principle of legal certainty, the concerned **Member States should be allowed to continue to apply existing rules**. Any termination not in line with the legitimate expectations and timelines stemming from the current Regulation may lead to unsuccessful implementation.

### Exemptions for services to/from non-EU countries are instrumental

The Commission proposal to exclude the possibility for Member States to exempt services to/from non-EU countries from some articles of the Regulation undermines the main purpose of exemptions to international passenger services with non-EU countries, which are instrumental for the continuation of several daily business and tourism services from/to non-EU countries.

The requirements applied in non-EU countries<sup>5</sup> are different and a significant part of these services is provided outside the EU. This makes the application of EU legislation on these services not possible. Solutions are in place to ensure that rail customers are protected in cross-border services with non-EU countries. This is generally regulated by bilateral governmental agreements (e.g. daily and night train connections between Helsinki, St. Petersburg and Moscow) or by contractual agreements between the carriers involved (e.g. the Paris/Nice-Moscow service). In this context, the Commission's proposed reference to applying relevant national law under art. 2(2b) cannot be implemented.

### Exemptions for specific services

Running night-train services poses different challenges to railway undertakings: Typically, there is more cargo-trains on the tracks at night which often have priority, causing delays for the night train. Strict compensation obligations for delays would put night-train services all over Europe in jeopardy. Considering that these services are a climate-friendly alternative to short-haul flights between European cities, we propose that the provisions of compensation for delays (art. 17) should not apply to night trains with couchette or sleeper cabins and a travel time of more than 8 hours.

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<sup>5</sup> Regarding East-West passenger traffic, third countries usually apply the Agreement on International Passenger Transport by Rail (SMPS), adopted by the Organisation for Cooperation of Railways (OSJD).

Services which are operated mainly for their historical interest or their tourist value, and do not have the carriage of passengers as their main purpose should also be excluded.

## Continue to support PRMs travel in an affordable and cost-efficient way

Provisions that allow passengers with disabilities and passengers with reduced mobility (PRM) access to travel by rail are mandatory in all rail services under the current regulation. In fact, no exemptions can be granted to Chapter V, apart for provisions under art. 20(2) to 25 (numbering of the current version of the Regulation).

However, if Member States had to implement the entirety of the provisions under the amended Chapter V to all services, e.g. including to all urban, sub-urban and regional services, as well as to services with non-EU countries, a thorough impact assessment should be developed in order to analyse the financial impact of the new provisions and in particular the unintended consequences in terms of closure of vulnerable lines and stations (See point 3 below for further comments on Chapter V).

## 2. Through-tickets

CER would like to caution against any changes in the current provisions on through-tickets, in order to not adversely affect the ongoing progress in the ticketing area.

**CER members are already offering a significant number of through-tickets**, as rail operators are multiplying the necessary agreements both among themselves and with ticket vendors. As part of this evolution, railway undertakings and ticket vendors are reshaping the way European railway products are distributed via the so-called Full Service Model (FSM), i.e. an enabler for better rail ticketing services throughout Europe and enhanced service quality (pre- and post-journey information support).

Likewise, efforts continue to be put into further developing the necessary operational and legal aspects to provide seamless door-to-door customer services and integrated mobility platform tools, coupled with an increasing simplicity with which customers can buy train tickets via innovative distribution and sales channels.

## Legislative stability needed until 2023

The fourth railway package recently entered into force, including provisions on through-ticketing systems which are consistent throughout the whole existing legislative framework<sup>6</sup>. Furthermore, a clarification of through-tickets was already provided in the 2015 Commission's Guidelines<sup>7</sup>.

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<sup>6</sup> Regulation **454/2011** on the technical specification for interoperability relating to the subsystem 'telematics applications for passenger services' of the trans-European rail system (TAP TSI), the recently adopted fourth railway package, Directive **2016/2370** amending Directive 2012/34/EU as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure and Regulation 1371/2007 on Rail Passenger Rights.

<sup>7</sup> Interpretative Guidelines on Regulation (EC) No 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations. In particular, see [here](#), e.g. page 5 points 2.2 and page 8 4.2.1.

This framework underpins the ongoing business-driven progresses, which will facilitate the step-change needed in the area of ticketing. Any change in the current framework may put the ongoing efforts at risk in view of the “rendez-vous” clause, set on 31 December 2022 in the recently published fourth railway package. By this deadline, the Commission is expected to monitor and report to the European Parliament on market developments regarding the introduction of through-ticketing systems.

### Fair and feasible provisions on customer-friendly information

The Commission proposal imposes detailed rules on how to inform passengers’ about the consequences of not having a through-ticket, when purchasing separate tickets for the same journey.

Whilst all passengers should be informed of their rights and obligations, this provision, as drafted, creates a number of legal uncertainties which could eventually result in railway undertakings being responsible for connections, between successive rail journeys, they had not committed to and/or are not aware of.

**The existing Regulation governs the contractual relationship between a carrier and a passenger.** As such, passenger rights (e.g. the right to receive delay compensation) only apply where the connecting trains are part of a single contract of carriage, as in that case the carriers concerned have committed to and are aware of the intended connection between the trains.

For instance, **railways should not be held responsible for a missed connection in case of a ‘self-package’ containing separate tickets** (e.g. passengers purchasing separate tickets from separate sales channels). Also, railway undertakings have only control over the information provided by themselves to rail customers and therefore should not bear the costs (e.g. to provide delay compensation) incurred because of the fault of a third party.

Finally, the prescriptive measures concerning the written form and type of the information to be provided to customers when purchasing a ticket make the proposal unrealistic. **Any requirement imposing detailed and systematic written information to be provided to customers purchasing a ticket can only be met by including this information in the conditions of carriage.** While innovative distribution and on-line sales channels are growing, a significant amount of tickets is sold by other channels, including for instance at small newspaper kiosks. Art. 10.6 should therefore clarify that the information should be provided through the general condition of carriage. This is where the customers typically would expect to find this kind of information.

### 3. Accessibility

Rail services are by far more accessible than they were in the past and many passengers with disabilities are able to take trains, in many cases without assistance. In this context, CER shares the EU’s commitment to support transport accessibility as a catalyst for social inclusion.

In the area of accessibility, **railways are at the forefront** also from a legislative perspective. Unlike other sectors or transport modes, accessibility of both stations and trains, as well as provisions on ticketing and information are already extensively regulated at European level in the rail sector with specific EU-wide accessibility requirements (PRM TSI). This legislative framework provides the pillar for the ongoing investment plans and for the recently adopted national implementation plans (NIPs) of the Member States.

The Commission's amendments to Chapter V and to the exemption regime create an incoherent legislative framework. **The Regulation should therefore ensure proportionality to allow a continued promotion of accessibility in a cost-efficient way** by making an efficient use of the scarce public and private financial resources available.

### Information in accessible format

Existing requirements under the PRM TSI Regulation cover very practical aspects which are key to enhance the day-to-day social inclusion of passengers with disabilities. These requirements include travel information on the accessibility of stations and rolling stock<sup>8</sup>. Despite scarce resources available, billions of euros are and will be invested over the next decade, based on the PRM TSI requirements, to continue improving the information to customers while removing barriers in stations and on trains.

However, in order to facilitate the travel experience of disabled passengers and passengers with reduced mobility better regulation principles should apply at EU level, also throughout this Regulation, in order to not interfere with the ongoing investment plans and in order to avoid conflicting and overlapping requirements, or references to a not-yet adopted Directive, (i.e. the European Accessibility Act (EAA)). In this context, the Commission proposed references to the EAA under art. 9.3, 18.6, 21.1, 22.3 and art. 30 should be removed while the reference to the PRM TSI should be maintained where relevant.

### Assistance

The provision of assistance is an essential feature of the rail services provided to passengers with disabilities and PRMs, as many existing stations and rolling stock still do not allow for spontaneous travelling. The sector has put in place measures to ensure a safe, easy and efficient process for passengers and for railway staff when providing the necessary assistance for people in need and when organising the efficient use of the limited resources in place, e.g. the dedicated staff to deal with an increased number of assistance requests.

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<sup>8</sup> See art. 7 of the PRM TSI on the "Inventory of Assets". Furthermore, see article 4.2.1.8 on ticketing, information desks and customer assistance points. Article 4.2.1.10 on essential visual information: signposting, pictograms, printed or dynamic information related, for instance, to the information concerning the departure of trains, the identification of station facilities. Very detailed provisions are provided for the fonts, the symbols, the pictograms, the tactile information, the information presented in digits, etc. Article 4.2.1.11 on essential spoken information. Article 4.2.2.7 on customer information (dynamic visual information, dynamic audible information as well as signage, pictograms and tactile information), in particular safety information, information concerning the route of the train, including information about delays and unplanned stops and information about on-board facilities.

In this context, assistance cannot be available at all railway stations and at all times when railways operate as proposed by the Commission. Unlike in the air sector, which has a few hundred airports across Europe, **there are more than 55,000 stations in the EU, the vast majority of which are very small, e.g. serving less than 1000 passengers per day, unstaffed, staffed at only certain hour or without adequate staff providing assistance.** The Commission's proposed new art. 22.4 is therefore unrealistic and disproportionate.

In the same vein, assistance cannot be available on all services at all times, in particular (but not only) on unstaffed and/or driverless trains. The Commission's proposal should take into account the possibility for technological advances in the rail sector and allow for trains to be unstaffed. Railway undertakings enable PRMs and disabled passengers to have access to travel by rail by providing assistance for boarding and disembarking the train. On-board staff, when available, make all reasonable efforts to assist PRMs during the journey. However, when PRMs or disabled passengers need specific assistance on board, he or she usually travels with an accompanying person responsible for further assistance.

Furthermore, it should be noted that it might be difficult in some cases for train staff to recognise passengers with disabilities or PRMs, in particular in the context of such a broad definition where mental disabilities are included. By providing an efficient use of the scarce resources available and in order to avoid the risk of fraud, it is appropriate that a passenger must be equipped of a disability or medical certificate issued by the national competent authority.

### Availability of tickets: purchase on board

The proposal to require railway undertakings to sell tickets on board (art. 10.5) is not always feasible, be it for technical reasons, security or antifraud grounds, or commercial and operational reasons (e.g. unstaffed trains or compulsory train reservations). The proposed requirement is also in contradiction with the Regulation itself in the very same article (art. 10(2) and 10(3)).

Railway undertakings provide alternative sale channels to all passengers, including to PRMs and passengers with disabilities, in particular at unstaffed stations or at stations where there is no ticket office or accessible ticketing machine.

Legislative measures should be technology-neutral instead of ruling that specific sales channels need to be available. This is key to allow railway undertakings to seek customer satisfaction, cost-efficiency and to develop and make use of innovative digital solutions.

Finally, such a requirement may further increase the high risk of fraud, in this case from non-PRM passengers, as railway staff is not able to check whether a passenger is entitled or not to PRM-specific services (in its guidelines<sup>9</sup>, the Commission prohibits railway undertakings from asking PRM certificates to passengers using a PRM-specific service).

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<sup>9</sup> Interpretative Guidelines on Regulation (EC) No 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations.

## Training of staff

Awareness and assistance training of staff is an important aspect of CER members work on improving the quality of services for PRMs and disabled passengers. Therefore, railway undertakings already provide appropriate training to their staff in contact with PRMs and disabled customers.

The measures proposed by the Commission on the training of staff are however disproportionate and too prescriptive, as railway undertakings would be required to provide training to all staff, not only to the staff in contact with PRMs and disabled customers. CER believes that operators should benefit from flexibility in deciding which staff should be trained (art. 26(a, b, c)).

Furthermore, CER believes that disability organisations are very valuable when designing PRM trainings. However, the Regulation should not prescribe how internal training courses are run. This goes against the subsidiarity principle (art. 26(d)).

## Assistance dogs and accompanying persons

There is an increased need for making an appropriate distinction between certified assistance dogs and dogs which are not. This is even more urgent if the definition of PRM and passengers with disabilities remains as broad as it is in the current Regulation. Without any distinction, there is high risk of fraud and violation of transport conditions applying to the transportation of animals of non-PRMs/disabled passengers.

## 4. Scope

This Regulation governs the contractual relationship between a carrier and a passenger. Unnecessary business to business provisions which could lead to legal uncertainty and costly court proceedings should be dealt with in the relevant legislative framework. This includes:

- The requirements on station managers and infrastructure managers regarding real-time data on trains (art. 9.4) conflicts with the current provisions at EU level<sup>10</sup> and will bring about unnecessary red tape.
- The provisions on station managers regarding contingency planning (art. 18.6) are not pragmatic and should not be placed in this Regulation. This area is already covered by the provisions adopted in the fourth railway package (art 13a of Directive 2016/2370). Furthermore, station managers are not in a position to coordinate contingency plans of all railway undertakings since the organisation and structure of station management differs in the Member States.
- The provision on a new right of redress (art. 19) should be left to business to business

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<sup>10</sup> Regulation 454/2011 on the technical specification for interoperability relating to the subsystem 'telematics applications for passenger services' of the trans-European rail system.

contractual agreements, as it does not increase the level of consumer protection.

- The proposals for a new complaint handling mechanism to be set up by station managers, ticket vendors and infrastructure managers (art. 28) would add red tape and legal uncertainty with no added value for the customer, who requires a single point of contact, i.e. the railway undertaking, in case of complaint handling. Also, in some countries the concept of station manager is not clearly defined, i.e. there would not be any recipient for the related legal requirements.

## 5. Delay compensation

### Force Majeure

The force majeure principle in the railway sector is governed by art. 32.2 of the international COTIF/CIV Uniform Rules<sup>11</sup>. An extract of these rules is included in the current Regulation in its Annex I.

The unclear wording in the Regulation when it refers to its Annex I where the force majeure principle is described, led in 2013 to a controversial ruling<sup>12</sup> by the Court of Justice of the EU, which concluded that railway undertakings may not be exonerated from their liability for delays in case of force majeure, unlike other modes of transport.

Concretely, this means that rail passengers are entitled to financial compensation for a delay of more than 60 minutes even if the delay is due to, for instance, severe weather conditions or terrorist attacks causing railway line closure. Because of this new interpretation, the rail sector is unfairly treated vis-à-vis other transport modes.

While this is certainly a benefit for rail passengers it constitutes a financial and administrative burden for the rail sector, in particular vis-à-vis the competitiveness with other transport modes where carriers subject to EU Regulation on passenger rights benefit from such a provision in their respective text.

Force majeure is a universal principle of law and a concept common to all modes of transport. In a context of discussions related to multimodality and to passengers' rights, **comparable principles on extraordinary circumstances governing other transport modes** would also make passenger rights easier to understand and to implement.

CER believes that an enforceable yet customer-friendly definition of extraordinary circumstances is the one included in art. 32.2 of the international COTIF/CIV Uniform Rules, and already included in Annex I of the Rail Passenger Rights Regulation. Since the rights provided in the Regulation build on the well-established international COTIF/CIV rules, as it is currently mentioned in the recitals 6 and 14 of the current Regulation, CER recommends including a clear reference to art. 32 of the CIV Uniform Rules in art. 17(8).

Considering the discussions on the revision of Directive 261/2004 on Air Passenger Rights and the need to have comparable principles across mode, **CER would be ready, in the**

<sup>11</sup> The Uniform Rules concerning the Contract of International Carriage of Passengers by Rail, Annex A to the Convention concerning international carriage by rail (COTIF)

<sup>12</sup> C-509/11

**context of EU initiatives on multimodality, to discuss with decision-makers and customer associations a list of events that could be considered or not as extraordinary circumstances.**

The proposal made by the Commission in art. 17.8 restricts the force majeure concept to severe weather conditions and natural disasters (e.g. earthquakes), therefore excluding a wide range of events which are beyond the control of railway undertakings, for instance decisions of public authorities in the current context of possible security threats (e.g. closure of stations or lengthy interruptions of traffic), personal incidents, etc. .

## Passes and Season Tickets

**Railway undertakings compensate holders of season tickets and passes for recurrent delays, based on compensation arrangements** (e.g. lump-sum, or percentages of the pass/season ticket) reflecting the financial framework and operational conditions in which each company operates.

The new proposed threshold (art. 17(2)) which requires railway undertakings to compensate delays under 60 minutes and to calculate delays cumulatively will severely impact the competitiveness of the sector and would require railway undertakings to reconsider their offers in terms of passes and season tickets.

Furthermore, the new proposed threshold will lead to a significant increase in the number of requests for compensation for very small delays and amounts. This will increase compensation costs disproportionately in relation to the delay compensation that will be paid out and, as a consequence, the administrative burden and the cost of verifying and processing claims would rise substantially. All in all, this provision lacks both clarity and practical feasibility.

The risk of fraud will also rise significantly. Passes and season tickets are offered also in combination to fare reductions and it is generally not possible to verify the number of trains the passenger has travelled on (e.g. passes valid for a certain type of service and distance).

Moreover, passes and season tickets are severely reduced in fare price. So the holders of these kind of tickets pay much less for a single trip compared to the holders of a normal origin-destination ticket. It would be contradictory to grant the holders of reduced tickets with much better passenger rights than other customers.

## Time frame for delay compensation

According to art. 17(5) the delay compensation shall be paid within one month after the submission of the request for compensation. This time frame can be too short in specific situations with an exceptional rise in requests due to major traffic disruptions. In these cases the time frame should be extended. This would also be in line with the provision on complaints in art. 28(2). According to this provision the addressee of the complaint shall answer within one month except for justified cases, in which it informs the passenger by what date within a period of less than three months the reply can be expected.

## 6. Re-routing and continuation in case of travel disruptions

In the unfortunate event of travel disruptions, e.g. delay or cancellation, CER members have established procedures to ensure passengers get to their final destination as soon as possible. When economically viable and feasible and where rail services cannot be continued anymore, this may also include alternative public land transport services, e.g. buses. A list of best practices was also included in the 2015 Commission's Guidelines<sup>13</sup>.

CER understands that the new provisions proposed in art. 16(2) are to be considered as a possibility, since re-routing options and conditions very much depend on a number of factors, and therefore must be decided on a case-by-case basis, as recognised by the above-mentioned Guidelines.

However, CER considers that the wording included in the Commission proposal could create legal uncertainties and opens the door to potential misinterpretations that could eventually lead to unfeasible requirements. For instance, mandatory re-routing from rail on different transport modes is impossible in several circumstances, because of the higher capacity of rail transportation in comparison to other modes. As an example, in one single hour and with up to five trains during peak periods, Eurostar carries 4.500 passengers from London to continental Europe. This is the equivalent of roughly 30 aircrafts or 90 buses every hour. Re-routing shall always be subject to commercial agreements between the carriers as done in any other modes.

A reference to the 2015 Guidelines may suffice to ensure that the proposed best practices are considered by the sector.

## 7. Rail-cycle solutions

It is the ambition of CER members to increasingly offer integrated mobility platforms and end-to-end intermodal customer services. Rail-cycle is one of many important intermodal and sustainable travel options, with bike carriage being one of the available solutions on many services operated by CER members.

The carriage of bikes is however not always possible due to operational and safety requirements. When bringing their bikes on board, passengers should ensure that their bicycles cause no damage to other passengers, their belongings or to the rail operations. Since operators need to consider various demands for the limited space available (rail gauge) on some trains, different solutions are offered by operators, including the possibility to carry bikes as registered luggage in a separate area when available. This would allow the railway undertakings to serve the needs of cyclists when bike carriage is not possible while reconciling this with the need of other customers.

CER members are putting significant efforts into supporting first- and last-mile solutions which facilitate bike journeys to and from railways stations, as means to further boost rail-cycle solutions and increase the rail stations catchment area. Increased investments in

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<sup>13</sup> Interpretative Guidelines on Regulation (EC) No 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations. In particular, see [here](#), e.g. page 10 points 4.2.3

safe bicycle parking and stands (bike & ride) at stations and the emergence of shared bike systems should be considered as effective alternative measures to the carriage of bikes on trains.

When looking at cycle-rail inter-modality, CER does not see the focus on passenger rights (or mandatory EU measures imposing bike carriage on trains) as a driver to further boost cycle-rail transport solutions. A mandatory measure imposing any minimum requirement on bike carriage by trains would obviously not be feasible across the EU and would not reflect the different possibilities available across the 28 Member States. In some Member States flexible service offerings are already provided, e.g on regional and sub-urban trains, where the carriage of as many bikes is permitted, as long as there is enough space available and safety and operation is guaranteed. In other Member States due to the long winter period passengers do not carry bikes on the train.

It is therefore to be welcomed that the Commission proposal provides certain flexibility by encompassing the possibility for railway undertakings to refuse bike carriage for safety and operational reasons. An unrestricted obligation to transport bicycles on the train would not be feasible from an operational point of view and cause inadequate costs for the system.

## **8. Annex III – Reporting on quality standards**

Railway undertakings make available a lot of information on service quality to customers and stakeholders, in line with the current version of Annex III on minimum service quality standards.

The Commission's proposal to amend Annex III results in overly prescriptive provisions that would put a disproportionate burden on railway undertakings without delivering value for the public. Also, publication of information such as costs of assistance provided and costs of compensation granted could be seen as commercially sensitive information.

## **9. Definitions, clarifications and implementation**

The definition of "**carrier**" and "**substitute carrier**" in the text is indispensable and should therefore not be deleted, since the Regulation governs the contractual relationship between the carriers and the passenger. Furthermore, a clearer definition of "**delay**", "**through-ticket**", "**journey**", "**transport contract**" and "**ticket vendor**" is also necessary to ensure the correct implementation of the Regulation and to preserve the contractual relationship between the passenger and the carrier as the main subject of the Regulation.

Another important issue is the unclear **relationship between the Regulation and the CIV Uniform Rules** (an extract of which is currently included in Annex), which constitutes a negative aspect and raises problems in the practical implementation. This led, for example, to the controversial ruling by the Court of Justice of the EU C-509/11, which concluded that railway undertakings may not be exonerated from their liability for delays in case of force majeure, despite the clear clause of exoneration from liability included in art. 32(2) of the CIV UR in Annex I. In this context, CER supports a deletion of Annex I (extract of the CIV Uniform Rules) provided that a **clear dynamic reference to the CIV Uniform rules is included in the Regulation**. This solution is provided for instance in

## Position Paper

20190205 CER position - Rail Passenger Rights Regulation (RECAST)



Regulation 889/2002 on air carrier's liability, with the Montreal Convention relevant to air transportation.

Finally, **appropriate transitional time** for the national transposition and application of the Regulation should be provided to the Member States and the sector, given the extent of the new requirements proposed in this recast and to allow for a successful implementation.

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