



The Voice of European Railways

CER-CIT COMMENTS

Communication on passenger rights in all transport modes (COM/2011/898)

March 2012

COMMUNITY OF EUROPEAN RAILWAY AND INFRASTRUCTURE COMPANIES - COMMUNAUTÉ EUROPÉENNE DU RAIL ET DES COMPAGNIES D'INFRASTRUCTURE - GEMEINSCHAFT DER EUROPÄISCHEN BAHNEN UND INFRASTRUKTURGESELLSCHAFTEN



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On 19 December 2011 the European Commission published a Communication on passengers' right in all transport modes.

Passengers are at **the heart of the European railway sector**. Already before a European legislation was implemented, rail passenger operators took measures at national and trans-national levels to improve the quality of service offered. One example of European collaboration is the "Charter on Rail Passenger Services", through which European railways committed in 2002 to apply common practices. A platform gathering railways and representatives of passengers' associations was then set up to monitor the implementation of the Charter.

Looking at the future of the European legislative framework, CER and CIT support the Commission's vision of a **coherent legislation on passenger rights across modes, following an intermodal approach**. When pursuing this objective it should be ensured that the fundamental issues are tackled, e.g. legal coherence of European and international law, with the involvement of experts in transport law.

RAIL PASSENGER RIGHTS: THE MOST DEMANDING

In its Communication, the Commission states that Regulation 1371/2007 rail passenger rights are the most stringent in many areas, including accessibility for persons with reduced mobility (with legal requirements of the technical specifications for interoperability - persons with reduced mobility TSI PRM), reporting about minimum quality standards, obligation to re-routing/reimbursement/continuation after the shortest delay.

CER and CIT agree that the current inconsistencies between the legislation on passenger rights across modes need to be addressed. However, they should be **tackled not only by the recast of one individual legislation, but in an intermodal approach** to ensure more convergence between the four legislations.

FORCE MAJEURE: A RIGHT FOR THE CARRIER TO BE RELIEVED FROM ITS LIABILITY

The European Commission reminds in the Communication (point 7.2) that the rail passenger rights regulation relieves the carrier from its liability when delays are caused by "the fault of a third party of or a passenger, or by circumstances not connected to railway operation and which the carrier could not avoid and whose consequences could not be prevented".

CER and CIT **fully support this definition of extraordinary circumstances, which is similar to the one in annex I of regulation 1371/2007** (article 32, paragraph 2, of the CIV). This definition was drafted by experts of international transport law, and could be applied to other transport modes.

In the same vein, carriers should not be obliged by law to provide assistance (meals, refreshment, accommodation) in all circumstances, even in case of force majeure, as mentioned in point 6 of the Communication. **Carriers should not be liable by default in situations beyond their control**. Carriers do

not have the role of insurance companies: if passengers want to be guaranteed against any situation that can occur they may conclude special travel insurances.

TIME LIMITS FOR HANDLING AND SUBMITTING CLAIMS

The Communication mentions that the rail regulation sets deadlines for railway operators to handle complaints, but not for National Enforcement Bodies (point 9). CER and CIT support the **definition of a time limit for National Enforcement Bodies to handle complaints, and also for the passengers to send their claims**. Such a time limit exists in the maritime and road passenger rights (respectively 2 and 3 months). This would very much facilitate the practical handling of claims by railway operators as IT systems containing data on delays and disruptions do not archive this data for more than a few months.

SELF-REGULATION FOR THE CONTENT OF FARES AND TICKETS

The Commission proposes in its Communication a harmonised intermodal vision of the content of the transport service, the fare and the ticket. CER and CIT agree with the necessity of indicating a reliable source for pre-contractual information to passengers. CER and CIT however recommend leaving it to the operators to agree on common standards so as not to hamper the technological development in this area, such as the use of multimodal smart cards, of tickets issued in mms or sms format, or in small paper formats, etc.

FURTHER ENHANCE MOBILITY: YES, BUT WITH A BALANCE BETWEEN COOPERATION AND COMPETITION

The Commission makes some proposals to facilitate mobility in the EU and beyond, among others by further developing through tickets and intermodal re-routing. CER and CIT would like to underline that intermodal re-routing, as well as intramodal re-routing on another carrier's service, depend on **commercial bilateral agreements between transport carriers**. A number of such bilateral agreements already exist, or are under negotiation. Besides, it should be reminded that passengers cannot just take the next departing train without getting the green light of the carrier which whom they originally have a transport contract.

AN IMPROVED DIALOGUE FOR A BETTER ENFORCEMENT

When it comes to the enforcement of the regulation, the lack of legal clarity of certain aspects in the regulation 1371/2007 has already given rise to judiciary procedures. We would however like to stress that judiciary procedures take time and are costly. CER and CIT therefore strongly recommend the **dialogue between all stakeholders, especially national enforcement bodies and railway undertakings** at national and European levels. Concretely, CER and CIT promote this dialogue by organising a workshop on 10 May 2012 in Brussels where railways and National Enforcement Bodies will have the opportunity to exchange their experience with the implementation of the rail passengers' rights regulation.

TOWARDS CONSISTENT LEGISLATION ACROSS MODES: A SHARED VISION

The Commission confirms that a recast of the various passenger rights' legislations is foreseen in the coming years, starting in 2012 with the air passenger rights regulation 261/2004, and with the rail passengers' rights regulation 1371/2007 in 2013.

In this framework, CER and CIT would like to remind that the regulations on passengers' rights are private law directly applying to millions of contracts of carriage. If this contract law is of poor quality, it can only lead to confusion and uncertainty for the carriers, the passenger and the enforcement bodies, resulting in costly and long judicial proceedings. Therefore **any recast should be submitted to the scrutiny of legal experts in contract law and transport law**. Fundamental legal questions such as carrier's liability regime and its necessary limits, the articulation of European law with international law, should indeed be tackled before going into the details of the loopholes or unclear wording contained in the text of the regulations.

CER brings together more than 70 European railway undertakings, infrastructure companies and vehicle leasing companies, including long-established bodies, new entrants, and both private and public-sector organisations. In EU, EFTA and EU accession countries, CER members represent about 75% of the rail network length, more than 85% of the rail freight business and over 90% of rail passenger operations, with 1.2 million jobs directly created by CER members. CER promotes a strong rail industry that can form the basis of a long-term sustainable European transport system.

CIT is the International Rail Transport Committee, an association of more than 120 railway undertakings and shipping companies from Europe, the Maghreb and the Near East, with its seat in Bern (Switzerland). CIT helps its members implement international rail transport law. To achieve that, it draws up and maintains legal publications and boilerplate documents for international traffic by rail, standardises the contractual relationships between customers, carriers and infrastructure managers and represents the interests of carriers by rail vis-à-vis legislators and authorities.

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