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## **REPORT**

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| From:           | General Secretariat of the Council  |
| To:             | Permanent Representatives Committee/Council   |
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| Subject:        | Proposal for a Regulation of the European Parliament and of the Council<br>on rail passengers' rights and obligations (recast)<br>– Progress report |

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### **1. INTRODUCTION**

The Commission submitted the above-mentioned proposal to the European Parliament and to the Council on 27 September 2017. The proposal is presented using the recasting technique.

The main reasons for the Commission to present the revision were to address the perceived problems relating notably to *force majeure* situations, use of exemptions, rights of persons with disabilities and reduced mobility, and availability of and information on so-called *through-tickets*.

## **2. WORK AT OTHER INSTITUTIONS**

The European Parliament has designated the Committee on Transport and Tourism (TRAN) as the responsible committee on this proposal and Mr Bogusław LIBERADZKI (SD, PL) as the rapporteur. The Committee on Internal Market and Consumer Protection (IMCO) will adopt an opinion on the substance of the proposal and the Committee on Legal Affairs (JURI) will adopt an opinion on the recast technique. TRAN is expected to vote on the report on 21 June 2018.

The European Economic and Social Committee adopted their opinion on the proposal at the 531<sup>st</sup> plenary session, on 18 January 2018. The European Committee of the Regions decided not to issue an opinion.

The Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission issued an opinion on the use of the recast technique on 19 February 2018.

## **3. WORK AT THE COUNCIL PREPARATORY BODIES**

The Working Party on Land Transport started its work on the proposal on 29 September 2017 with a general presentation on the proposal. On 5 October 2017 the impact assessment was analysed. However, the documentation was not complete and the impact assessment could not be examined in full detail.

The examination by article started on 17 October 2017 and it was continued on 25 October 2017 and 12 December 2017. Despite the considerable workload of the Working Party on Land Transport, the Presidency endeavoured to achieve as much progress as possible on the file during the working sessions on 16 February 2018 and 27 March 2018. At the meeting on 27 March 2018 the impact analysis was also briefly revisited by the Commission, together with a number of other open questions. This meeting concluded the work on the file during the Bulgarian Presidency.

The proposal was presented also to the Working Party on Consumer Protection and Information for information. The Working Party discussed the proposal on 11 October 2017 based on the presentation made at the Working Party on Land Transport on 29 September 2017.

The Council (TTE, Transport) was informed, under *Any Other Business*, on the intermediate state of play of the first examination on 5 December 2017 (doc. 14637/17).

#### 4. **OBSERVATIONS OF THE FIRST EXAMINATION**

The main objective of the Presidency was concluding the first examination of the file article by article. Although a large number of scrutiny reservations remain, the Member States expressed their initial positions on the substance of the main questions.

On the *impact assessment*, Member States raised the issues relating to the low level of cost estimates and the analysis of the concept of *force majeure*, which appears to be defined differently in the Commission proposal itself and in the annex excerpted from the applicable international convention (CIV/COTIF).

The Commission explained that the estimates on compensation costs were extrapolated based on statistics from two Member States. On *force majeure*, the Commission indicated that they consider the purposes to be different, CIV is targeted at cases involving damages, and the proposed modified regulation is for compensation purposes.

The issues and other remarks raised by the Member States during the first examination are recorded below by chapter. The observations listed may not be compatible with one another at this stage and they seek only to facilitate further work on developing the view of the Council on this proposal.

On the four cornerstones of the proposal it appears that:

- adding the concept of *force majeure* is widely supported, but the definition may need to be redrafted to precisely describe those cases where railway undertakings would be exempted from paying compensation;
- on cutting down *exemptions*, cross-border regional and commuter services was highlighted as a case where the implications would be disproportionate for the Member States having such services and the undertakings involved. Also existing contracts on public service provision may be affected;

- as regards the rights of persons with disabilities and reduced mobility, Member States share the objective of the proposal. Several Member States wish, moreover, that certain provisions are made clearer and more operative, as the legal instrument is a regulation. Finally, the increase of unmanned stations and trains poses a practical problem in terms of providing assistance and calls for a proportionate and fair solution;
- the views on the obligation to offer *through-tickets* are mixed. The ways to offer of these types of tickets more widely may need to be analysed and/or presented more clearly.

The observations noted down in this report, despite their diverse nature, seek to facilitate further work on developing the view of the Council on the proposal. After the first stage of discussions, no definite conclusions can be made yet on the general positions of the Member States. There are indications that the proposal should be improved in order to reach better legal clarity and proportionality. Therefore substantial further work on the compromise will be needed.

The concerns on the main outstanding issues, alongside with other remarks raised during the first examination, are recorded below in detail, chapter by chapter. The aim is to provide sufficient guidance on the necessary clarifications and improvements in view of the preparation of a compromise proposal.

#### **4.1. Chapter I - General provisions**

- Many Member States stated that in certain areas *regional services* are largely *cross-border* ones, with disproportional impacts on operators and public service provision if covered by the Regulation. Such a coverage would put them in unequal position with national regional services. Notably complaint handling mechanisms would be expensive to establish for large passenger volume services.
- For reasons of legal stability and stable long term planning, certain Member States oppose curtailing the exemption for domestic rail passenger services, which under the regulation in force may be granted until 2024.

- It was considered that the scope is unclear, referring to services with "a significant part" *operated outside the Union* which could be exempted from the Regulation.
- Certain Member States noted that the key concept of "station" is not defined, although in the Technical Specifications for Interoperability (TSI) a definition is readily available.
- It was also suggested that instead of the definition of "missed connection", the focus should be on the final delay for passengers.

#### 4.2. Chapter II - Transport contract, information and tickets

- Some Member States consider firmly that the provisions on *non-discriminatory conditions of transport contract* may need revising, due to the regulation on geo-blocking of services<sup>1</sup>, the reference to the place of *residence* of passengers, use of various currencies and preferential tariffs to certain groups by region.
- Some Member States consider that transport of *bicycles* may not be feasible on certain services, notably high speed ones, under the conditions proposed. Furthermore, the proposed conditions are not clear enough to apply them in practise, and it is unclear who decides where and when the restrictions can apply. The role of the station manager, in particular, is questionable.
- *More favourable conditions of the transport contract* should be possible to be provided also by ticket vendors and tour operators.
- Certain Member States maintain that instead of references to the *European Accessibility Act* yet to be adopted, 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) should be used as a reference.

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<sup>1</sup> Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC, OJ L 60, 2.3.2018.

- Some Member States asked that the actors and means of communication on *travel information* should be clarified, including obligations on ticket vendors.
- A number of Member States observed that the obligation of making "all possible efforts" to offer *through-tickets* is ambiguous, and the conditions for requiring to offer through-tickets should be examined. Furthermore, some Member States highlighted the importance of providing clear information to the passengers when buying a ticket, namely as regards the kind of ticket and the related rights. It was also pointed out that the legal consequences for not informing about the nature of different tickets are not made clear enough.
- It was highlighted that the right of persons with disabilities and persons with reduced mobility to buy tickets on-board in any case, without stipulating further conditions, may be very costly to guarantee. Some Member States reminded of the obligations provided for in the UN Convention on the Rights of Persons with Disabilities which may need to be taken into account in this context.

#### **4.3. Chapter III - Liability of railway undertakings for passengers and their luggage**

- Annex I (CIV) uses different terminology relating to a "carrier". It was highlighted that it is not obvious that this term corresponds to a *railway undertaking* in the Union legal vocabulary. Thus the need for a definition of that term should be analysed. Furthermore, the application of Title V, present in Annex I but not referred to in the articles, is unclear.
- Some Member States indicated the risk assessment for insurance purposes is not clear, notably in its relation with Directive 2012/34/EU.
- The provisions on *advance payments* do not take into account cases of suicide. Furthermore, it was also stated that accidents with serious injuries may also need to be covered.

#### 4.4. Chapter IV - Delays, missed connections and cancellations

- *Cancellations* should also be covered in terms of reimbursement and re-routing, to incorporate fully the work carried out on guidelines on rail passenger rights according to a number of Member States.
- Certain Member States also underlined that the *price difference* should be compensated when services are being *downgraded* due to re-routing.
- The revised text on *reimbursement conditions*, whilst favouring holders of through-tickets, could reduce the existing rights of passengers travelling with other types of tickets.
- The provisions on *re-routing of passengers, in particular those with disabilities and reduced mobility*, should be clearer and more operational according to a number of Member States.
- A large number of Member States noted that the rules on *reimbursement* in the case where the passenger abandons the journey due to the cancellation or delay are not obvious as it is not clear whether a reimbursement could be refused based on *force majeure*.
- The triggering condition of 60 minutes for the right to compensation should be defined as the delay *at the end* of the journey, thus also covering situations where the delay occurs during the journey.
- As regards compensations for *cumulated delays*, some Member States raised a number of practical questions relating to passengers with seasonal or annual subscriptions emerge, notably for regional and urban services. The system necessary to verify and record cumulative delays poses a disproportional cost to create and operate. Also the treatment of passengers travelling with free tickets for social policy reasons should be analysed.

- While the *concept of force majeure* as a ground to exempt railway undertakings from their obligation to compensate passengers was welcomed, a considerable number of Member States stated that the details of the definition of such a situation merits closer attention, notably as regards terrorist incidents and vandalism.
- Some Member States indicated that they would require railway undertakings to pay delay compensation whatever the reason for the delay. Other Member States wish to ensure that the factors such as poor maintenance of the vehicles or the infrastructure cannot constitute *force majeure*.
- For *contingency plans for station managers*, the threshold of 10 000 daily passengers raises both fundamental and practical concerns for certain Member States. The choice of the threshold has no foundation in the impact assessment and some Member States might have no stations covered at all by the Regulation. On the other hand, the calculation of the threshold may not be fair in cases where stations are a part of, for example, a shopping centre or the stations are used only seasonally.
- Concerning the *right of redress*, a fundamental question on the need and potential implications of this provision emerged. As civil law already covers this area, the proposed article may have unwanted implications.

#### **4.5. Chapter V - Persons with disabilities and persons with reduced mobility**

- Certain delegations pointed out that the right to take on-board *mobility equipment* is not ensured, while personal assistants and dogs are explicitly mentioned.
- Furthermore, several Member States noted that a range of terminology issues between this Regulation, other modal regulations for passenger rights and the draft European Accessibility Act needs verification.
- The deletion of Article 21 on accessibility in the Regulation in force was rejected by a number of Member States.



- As regards *assistance* in stations and on board, a large number of Member States considered the requirement to offer assistance at *all times* is drafted in a way which is not applicable today in unmanned stations and trains. Some Member States indicated though that the obligation to provide assistance “at all times” should be subject to an advance request by the passenger, in order to reduce the additional burden. Furthermore, the requirement to make *reasonable efforts* to enable mobility is not coherent with assistance at all times.
- The redrafting on *compensation regarding mobility equipment* poses a drafting question on "causing" loss or damage and on the tacit implication of removing the financial ceiling for compensation.
- The application of the new provisions proposed on *temporary replacements* is largely open to interpretation according to a number of Member States.
- Several Member States argue that the *training of staff* is disproportional in its requirement to cover all personnel, including those not in contact with persons with disabilities and persons with reduced mobility.
- The involvement of *training of third persons and organisations* in the training of staff is considered too prescriptive, going beyond the criteria of proportionality and subsidiarity.

#### **4.6. Chapter VI - Security, complaints and quality of service**

- On the *complaints* mechanisms, a wide range of criticism was expressed by a considerable number of Member States, notably on creating four different types of complaint handling mechanisms with different addressees where the passenger would not know whom to contact; maintaining incident data for a long period (two years); allowing a long period (six months) to complain; and involving ticket vendors.

- The requirement of establishing *service quality standards* for small station managers, less than 10 000 daily passengers, was indicated as disproportionate. On the other hand, it was noted that Annex III, section II, provides for obligations to the infrastructure managers but they are not mentioned in the operative article.

#### 4.7. *Chapter VII - Information and enforcement*

- In general, the reference to the European Accessibility Act was criticised by a large number of Member States, as the text is under negotiation and the transport sector has established sector specific rules, including technical specifications on interoperability.
- *Providing information on the ticket* was widely questioned for practical reasons by the majority of the Member States, as the tickets may be small in size or even non-existent, i.e. electronic, in many cases.
- *Reporting on rail passenger rights every year* was considered an excessive administrative burden; a cycle of two years was suggested by a number of Member States. Also the idea of a combined report of passenger rights across modes was presented as a way to combat administrative burden.
- Certain Member States consider that the *role of ticket vendors* in the reporting mechanism needs further analysis.
- Some Member States stated that the work of the *National Enforcement Bodies* needs to be more detailed on the possibility to delegate the work, or a part of it, to another body and to more clearly establish when certain stages start, pending on the completion of the file. Furthermore, the terminology on infringements and incidents need alignment. Finally, also the timing of various deadlines need more careful analysis and coordination according to a number of Member States.

- On the information exchange between National Enforcement Bodies, some Member States indicated that the role and powers of the *lead body* would need further clarity, as such a lead body could be another organisation than a National Enforcement Body. Also the implications to the various bodies from the reference to the Regulation on the protection of personal data ((EU) 2016/679) was questioned.

#### 4.8. *Chapter VIII - Final provisions*

- The mechanism on *penalties*, notably the various cross-references to different National Enforcement Bodies, was considered confusing and circular by several Member States.
- As regards *delegated acts*, the broad empowerment to the Commission was not supported by a number of Member States.
- On the *date of application* of the Regulation, it is obvious that the almost immediate entry into force is not enough to adapt the national systems. A longer phasing-in period, such as two years, was considered critical by several Member States.

#### 4.9. *Annexes*

- As regards *Annex II*, the references to the European Accessibility Act were widely rejected by a large number of Member States. The views on the role of ticket vendors vary and call for closer analysis.
- *Annex III* was considered convoluted, as a bureaucratic burden with no clear added value, and it calls for a critical analysis.

A considerable number of Member States insisted on the need to better explain and improve the provisions of the draft Regulation, notably to better link them with the objectives of the proposal.

## 5. CONCLUSIONS

The Presidency concludes that the first examination of the proposal on rail passengers' rights will present a good basis for future work on the text. A substantial number of issues calling for closer attention has been highlighted by the Member States. These issues range from key policy choices to numerous practical implications to both private and public stakeholders, as well as to the passengers. Also a number of technical drafting alignments and consequential modifications appear necessary.

The Bulgarian Presidency considers that developing a satisfactory compromise on the proposal would impose a level of negotiating resources which is not currently available due to other policy priorities. Such work will need to be carried out most likely during future Presidencies.

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