

January 2018

Rail passengers' rights and obligations

Impact assessment (SWD(2017) 318 final/2, SWD(2017) 317 final (executive summary)) of a Commission proposal for a regulation of the European Parliament and of the Council on rail passengers' rights and obligations (recast) (COM(2017) 548 final)

Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above [proposal](#), adopted on 27 September 2017 and referred to Parliament's Committee on Transport and Tourism (TRAN). The proposal aims to amend Regulation (EC) No 1371/2007¹ in order to strengthen the rights for all EU rail passengers, and to reduce the 'burden on railway undertakings due to the inconsistent application of the regulation' (IA, p. 9). The proposal follows a Commission report ([COM\(2013\) 587 final](#))² on the application of the regulation, which 'highlighted certain problematic areas', and a second Commission report ([COM\(2015\) 117 final](#)) on exemptions granted by Member States, which 'identified the extensive use of exemptions as a major hindrance to the uniform application of the regulation' (explanatory memorandum of the proposal, p. 2).³ In addition, the proposal follows the ruling of the Court of Justice of the EU of 26 September 2013 in [Case C-509/11](#), which is linked to the 'force majeure' issue described in the following section.⁴ The European Parliament has regularly taken a stand on passenger rights, by submitting written questions or by adopting resolutions.⁵

Problem definition

The IA identifies **two main problems**, which are comprehensively described (IA, pp. 5-9):

- problem 1: passengers cannot always exercise their rights in full while using rail services;
- problem 2: burden on railway undertaking (RUs) due to the inconsistent application of the regulation.

In addition, the IA identifies **twelve drivers** (the first eight linked to problem 1, and the next three linked to problem 2), namely:

1. problems linked to the scope of the regulation (IA, pp. 11-14), as regards the exemptions foreseen in its Article 2(4), 2(5), and 2(6);⁶
2. problems linked to the protection of the rights of passengers with disabilities or reduced mobility – PRMs (IA, pp. 14-17);
3. information provision for passengers regarding their rights (IA, pp. 17-19);
4. compensation and assistance to passengers in case of missed connections, delays or cancellations (IA, pp. 19-21);

¹ [Regulation \(EC\) No 1371/2007](#) of 23 October 2007 on rail passengers' rights and obligations.

² See also CER and CIT (2012), [Implementation of the regulation on rail passengers' rights \(EC\) No 1371/2007: the rail sector's report](#).

³ For an appraisal on the implementation of the regulation, see M. Remáč, [Rail passenger rights and obligations](#), EPRS, 2016.

⁴ The Court concluded that 'Article 17 ... must be interpreted as meaning that a railway undertaking is not entitled to include in its general terms and conditions of carriage a clause under which it is exempt from its obligation to pay compensation in the event of a delay where the delay is attributable to force majeure...'

⁵ For information regarding, inter alia, the European Parliament's activity on passenger rights, see D. Scordamaglia, [Rail passenger rights in the European Union](#), EPRS, 2016.

⁶ An updated (March 2017) [summary table](#) regarding national exemptions is provided in Annex 5 of the IA (Table A12, p. 222).

5. [national enforcement bodies](#)' (NEBs) complaint handling and cooperation among them (IA, pp. 22-23);
6. discrimination of passengers on the basis of nationality, residence or currency used for the purchase of the tickets (IA, pp. 23-24);
7. existence of unclear definitions in the regulation (IA, pp. 24-25);
8. potential inconsistencies between the regulation and the uniform rules concerning the contract for international carriage of passengers and luggage by rail (CIV), which are reproduced in Annex I to the regulation (IA, pp. 25-26);⁷
9. contingency planning to protect and assist passengers in the event of major transport disruptions (IA, pp. 26-27);
10. burden on RUs in case of third party responsibility (IA, p. 27);
11. complaint handling by RUs (IA, pp. 27);
12. absence of a 'force majeure' clause (IA, pp. 27-31).

These are initially sketched (IA, pp. 9-10), and then extensively described in the IA (pp. 11-31). However, the terminology used to describe and categorise them as 'major' or 'secondary' issues is not consistent across the different sections of the IA. The evolution of the problems without EU action is described with respect to their underlying drivers (IA, pp. 31-35). According to the IA, most of the issues identified would not be addressed, and rail passengers would continue to face the identified problems, apart from some of the issues linked to the scope of the regulation (IA, p. 31). As regards RUs, should the regulation remain unchanged, they would continue to pay compensations in case of major disruptions caused by 'force majeure' events because the current legislation does not provide exceptions for compensations in such cases. According to the IA's estimates, these compensations could be in the range of €10-38 million per year (IA, pp. 34-35).

Objectives of the legislative proposal

According to the IA, the proposal has:

- two **general** objectives (p. 37):
 - promote equal and strengthened rights for all rail users, including PRMs, in the EU;
 - enhance RUs' competitiveness and better allow them to invest in the quality and effectiveness of rail passenger services, without negatively impacting the rights of passengers;
- two **specific** objectives (pp. 37-38):
 - improve the application and enforcement of the regulation, so that all passengers can fully exercise their rights when travelling by rail in the EU;
 - reduce the burden placed on railway undertakings across the EU;
- eight **operational** objectives (pp. 83-89):
 - a) reduce the scope for exempting rail services;
 - b) specify higher minimum standards for assistance to PRMs;
 - c) specify channels by which information on passenger rights are to be disseminated;
 - d) ensure that through-tickets are provided to passengers;
 - e) specify requirements in respect of reporting regarding complaints handling activities;
 - f) eliminate observed instances of discrimination in ticket prices by geography and sales channel;
 - g) ensure that all relevant stakeholders (apart from RUs) have contingency plans in place;
 - h) ensure that rail services are not unduly disadvantaged because of compensating passengers for force majeure events which could not have been foreseen or prevented.

The general objectives appear to be clear and consistent with the manner in which the problems have been defined. The first specific objective is also consistent with the first general objective; however, this may not entirely be the case for the second specific objective, as it appears to assume implicitly that a reduction in the burden sustained by RUs in the provision of their services will automatically translate into enhanced RU' competitiveness (with respect to other RUs?, or other modes of transport?, within the same Member State?), and into additional investments in the quality and effectiveness of rail passenger services. While this possibility cannot be ruled out,

⁷ The uniform rules concerning the contract for international carriage of passengers and luggage by rail (CIV) constitute Appendix A to the [Convention concerning international carriage by rail of 3 June 1999](#) (COTIF). According to the IA, the definition of Article 3(2) ('carrier') is potentially in conflict with the definition of Article 3(a), as defined in [CIV-Appendix A to the Convention](#) (p. 52). In addition, according to the IA (pp. 20-22), there is the risk of further potential inconsistencies between the two should the intergovernmental organisation for international carriage by rail ([OTIF](#)) decide to amend the CIV. This is because 'amending the CIV would mean that the extract in Annex I of the Regulation (which explicitly cannot be amended through Comitology) would differ from a revised CIV' (IA, p. 21).

the IA does not provide specific analysis or supporting evidence. The eight operational objectives are defined after selecting the preferred options, in line with the Commission's [better regulation toolbox](#) (tool #16, p. 100). All of them are clearly linked to the two specific objectives; however, it is uncertain that (a), (d), (f) and (h) can be truly operational as their formulation seems too broad. On the whole, these operational objectives are relevant and achievable, even though they do not appear to be time-bound. As such, they appear not to be entirely set according to the recommendations included in the better regulation toolbox (tool #16, pp. 100-101).

Range of options considered

The baseline scenario is analysed in depth (IA, pp. 31-35, and pp. 156-158), as are the retained options (IA, pp. 50-66, and pp. 159-173). However, the IA considers a certain number of policy options only for those issues which are considered 'major' (IA, pp. 46-48), and for the 'force majeure' issue (IA, pp. 76-82). These correspond, respectively, to drivers 1 to 5, and 12 in the problem definition section of this briefing. For the remaining 'secondary' issues (i.e. those that have been described under drivers 6 to 11), the IA considers only 'one possible solution (by problem) other than the baseline' (IA, p. 48). According to the IA, this choice is explained by the fact that 'the impact of the 'secondary' issues is only marginal on either railway undertakings or passengers, and ... policy options are limited for these issues'. Identified measures for secondary issues are summarised in Table 3 of the IA (pp. 43-45), and briefly illustrated in another part of the IA (pp. 66-72). According to the IA, some policy measures proposed by the stakeholders consulted were discarded, after being screened according to four criteria: legal feasibility, effectiveness and efficiency, political feasibility, proportionality and scope (IA, pp. 45-46). The results of such screening are summarised in Annex 5 (IA, Table A11, pp. 215-221), which also provides an assessment of the performance of the discarded measures with respect to the aforementioned criteria. However, the IA does not clarify why these specific criteria were selected, given that eight criteria are suggested in the better regulation toolbox (tool #17, p. 105). In the following table, the Commission's preferred options are highlighted in grey, while discarded measures are not included as they are too numerous.

ISSUE (D=DRIVER)	OPTION	DESCRIPTION OF CONSIDERED OPTIONS
-	-	Baseline: no further EU action
Scope of the regulation (exemptions) (D 1)	A	1. Remove, by 2020 (i.e. 4 years earlier than under the current provisions), exemptions for long-distance domestic rail passenger services. 2. Introduce, by 2024, a limit to the number of five-year periods for which a Member State can grant an exception from the application of the regulation to services with a significant part operated outside the EU.
	B	1. + 2. (i.e. identical to option A) + 3. (see below). 3. Remove, by 2020, the possibility to exempt urban, suburban and regional rail passenger services which operate <i>cross-borders</i> services within the EU.
	C	1. + 2. + 3. (i.e. identical to option B) + 4. (see below). 4. Remove, by 2020, the possibility to exempt urban, suburban and regional services.
Protection of the rights of PRMs (D 2)		
Applicability of PRM rights under Chapter V of the regulation (Articles 19-25) to all services	A	Guidelines to promote the application of the PRM rights.
	B	Regulatory provision on the application of the PRMs rights.
Information provision for PRMs	A	1. RUs and station managers would be required to make <i>journey information</i> accessible to <i>all</i> PRMs (i.e. persons with all kind of disabilities, not only to deaf and blind people who are <i>already covered</i> by the regulation).
	B	1. (i.e. identical to option A) + 2 (see below). 2. RUs and station managers would be required to make <i>information regarding passenger rights</i> accessible to <i>all</i> PRMs (i.e. persons with all kind of disabilities, including deaf and blind people who are <i>not covered</i> by the regulation).
Assistance to PRMs at the station and on board of the train	A	Exchange of best practices (between RUs and station managers) regarding training on disability awareness (through a platform set up by the Commission).
	B	Provision of appropriate levels of training on disability awareness (by RUs and station managers) to different categories of staff (depending on their degree of interaction with travellers).
Complaint handling mechanism for PRMs	A	Station and infrastructure managers (of stations of more than 10 000 passengers/day) would be required to handle passengers' complaints for services they are responsible for. This measure would be implemented through <i>guidelines</i> .
	B	Identical measure as under option A, but implemented through a <i>revision of the regulation</i> .
Information provision for (all) passengers (D 3)	A	The Commission would be required to provide guidance on what constitutes good practice regarding the provision of information on the regulation by RUs and station managers.
	B	RUs would be required to provide information on rail passenger rights together with the ticket (suggestions on how to do this concretely are provided in the IA, p. 42). RUs and station managers would be required to provide information on rail passenger rights in stations and on board of the trains.

ISSUE (D=DRIVER)	OPTION	DESCRIPTION OF CONSIDERED OPTIONS
Compensation and assistance to passengers in case of missed connections, delays or cancellations (D 4)	A	1. Definition of through-ticket and linked obligations (i.e. single journeys which are sold in a single purchase, under a single transport contract with multiple tickets, have always to be considered as a 'through-ticket' by RUs and ticket vendors. As a result, the rights under the regulation regarding compensation, for example, apply to the whole journey).
	B	1. (i.e. identical to option A) + 2 (see below). 2. Obligation to sell through-ticket wherever possible; burden of proof on RUs and ticket vendors if no through-ticket was sold (i.e. the obligations under the regulation do not apply to the whole journey but only to the different segments of the journey).
NEBs complaint handling and cooperation (D 5)	A	National enforcement bodies (NEBs) would be required to report publicly about their activities (including on the complaint handling mechanisms).
	B	Provision of detailed instruction (by whom?) on how to set up the complaint handling process. Duty to NEBs to cooperate on cross-border issues. The Commission's interpretative guidelines on Regulation (EC) No 1371/2007 (2015/C 220/01) would be made mandatory with regard to NEB responsibilities and competencies in cross-border cases (section 8.1, p. 9).
'Force majeure' clause (D 12)	A	Reintroduce a 'force majeure' clause for Article 17 ('compensation of the ticket price'). <i>Narrow</i> definition of force majeure.
	B	Reintroduce a 'force majeure' clause for Article 17 ('compensation of the ticket price'). <i>Broad</i> definition of force majeure.
Discrimination of passengers on the basis of nationality, residence or currency (D 6)	-	Introduce a general non-discrimination clause in the regulation, banning any form of discrimination (including price discrimination, on grounds of nationality, residence or currency of payment).
Existence of unclear definitions in the regulation (D 7)	-	' <i>Missed connection</i> ': would be defined as a situation where a passenger misses his/her next passenger service in a journey under a transport contract owing to a delay of the previous service. The concept includes cross-border journeys and services with other modes of transport under a single transport contract. ' <i>Comparable transport conditions</i> ' (in case of re-routing): would mean, depending on the circumstances, that passengers shall not be downgraded to transport facilities of a lower class. Comparable re-routing shall be offered without additional cost to the passenger, reasonable efforts shall be made to avoid additional connections and the total travel time when using an alternative mode of transport for the part of the journey not completed as planned shall be comparable to the scheduled travel time of the original journey. The needs of persons with disabilities and persons with reduced mobility have to be taken into account. ' <i>Carrier</i> ': alignment of the definition of carrier in the regulation to the definition included in the CIV rules, which may also encompass other modes of transport.
Inconsistency between the regulation and the CIV (D 8)	-	Adjust the text of the regulation to ensure consistency between the regulation and the CIV rules. Two possible implementation scenarios will be considered: ▪ remove Annex I from the regulation, and adjust its text accordingly in order to ensure consistency (notably when the CIV is amended); ▪ (add) new provisions to the regulation allowing the Commission to change Annex I to the regulation, containing an extract of the CIV rules, through delegated acts to reflect any changes to the CIV without requiring a whole revision of the regulation whenever CIV is amended.
Contingency planning (D 9)	-	Introduce the formal requirement for actors other than RUs (e.g. station and infrastructure managers, Member States) to have contingency planning in place in the event of major service disruption.
Burden on RUs in case of third party responsibility (D 10)	-	Introduce a provision in the regulation giving RUs the 'right to redress' to third parties if delays or cancellations were caused by their fault or negligence (according to the IA, this measure would be in line with the relevant provision of air passenger rights legislation).
Complaint handling by RUs (D 11)	-	Introduce a 3 months' time limit for rail passengers to submit their complaints to a relevant service-provider (according to the IA, this threshold is in line with the relevant provision of the proposal for a revision of the air passenger rights legislation).

(Source: author, based on IA)

According to the IA, the retained options have been selected after carrying out a comparison based on three main criteria: effectiveness, efficiency and coherence (IA, p. 48). In addition, the IA states that sensitivity analyses have been carried out for each policy option for 'major' issues (IA, p. 48), and for the force majeure issue, because the choice of the exemption regime could potentially impact on the conclusions reached in analysing the other issues; these are described in Annex 4 (IA, pp. 159-173). Retained options are assessed with respect to each driver, and not as a 'package'. The explanation provided in the IA that 'combining the various policy options for each of the issues under consideration into packages of policy options would lead to an unmanageable number of such packages to assess' (IA, p. 40) does make sense because the issues analysed regard very different aspects of the regulation. However, the retained options for at least three of the identified drivers appear to be rather artificial, though not intrinsically flawed; this is the case for those which are 'incremental', as they are identified by adding another measure to the previous one. As regards those drivers with only one option (in addition to the baseline), the Commission's approach appears not to be entirely in line with the better regulation toolbox, which recommends, in case of difficulty 'in identifying even two credible alternatives to the baseline ... [to] consider a

different level of option aggregation (sub-options, alternative detailed parameters, implementation modes, etc.). Alternatively, provide a strong justification for the fact that only the baseline and an alternative option are retained for in-depth analysis' (tool # 17, p. 105).

Scope of the impact assessment

The IA provides an assessment of the economic impact of the retained options over a period of 15 years (2020-2035), though the reason(s) for choosing such a timeframe appear to be missing from the methodological Annex 4 (IA, pp. 135-146). The impacts of each policy option is assessed both quantitatively and qualitatively, depending on the availability of data, based on a certain number of assumptions (IA, pp. 48-50). Therefore, a quantification of costs is provided 'individually' only for drivers 1, 2, 3 (IA, Table 19, pp. 73-75 and pp. 159-166), and 12 (IA, pp. 78-82 and pp. 169-171), while at an 'aggregate' level for drivers 6, 7, 8, 9, 10, and 11 (IA, table 18, pp. 71-72). The IA states that 'excessive costs for railway undertakings might lead to a lack of investment from their part that will generate deterioration of service quality and/or increase of costs of tickets. This can lead to decrease of passenger welfare and consequent decrease in demand'. While this 'course of events' cannot be excluded, the IA does not provide specific analysis or supporting evidence in this regard. Impacts on third countries, international trade or investments are briefly mentioned when analysing the issues related to the scope of the regulation (IA, p. 53), though the lack of emphasis on these impacts makes sense considering the problem definition and the objectives of the legislative proposal. Impact on public administrations is very briefly mentioned, but not quantified; again, the lack of a thorough analysis of this dimension seems to be justified. The impact on competitiveness is largely missing (see the SME test/competitiveness section of this briefing). Social impacts are also considered (including changes in passenger welfare due to the introduction of a 'force majeure' clause). Environmental impacts are not mentioned in the IA as 'the analysis did not identify any substantial environmental effects' (IA, p. 48). Considering the methodological complexity of quantifying costs and benefits for the retained options, and the difficulties surrounding the availability of data, the IA appears to provide a reasonably sound analysis and support for the selection of the preferred options and measures. However, the unavailability at the time of writing of the final report⁸ prepared by the external consultant on the IA exercise impedes any additional consideration.

Subsidiarity/proportionality

The explanatory memorandum of the proposal states (p. 6) that the legal basis is Article 91(1) of the Treaty on the Functioning of the European Union (TFEU), and that only coordinated EU action can address the issues deriving from the divergent application and enforcement of the regulation in the Member States, for at least the reasons illustrated in the IA (IA, pp. 36-37). EU action is also required to ensure legal certainty for all RUs with respect to the compensation for delays caused by 'force majeure' causes (IA, p. 36). As regards proportionality, the explanatory memorandum states that the additional costs for the sector and enforcement authorities 'are limited to those necessary to improve the application and enforcement of passengers' rights', and that 'higher costs ... are balanced inter alia by the introduction of a force majeure clause' (explanatory memorandum, p. 6). The IA does not contain a specific section on proportionality, which is mentioned throughout the text in describing how the proposed policy measures would impact on the proportionality principle. No reasoned opinions by national parliaments on the proposal's compliance with the principle of subsidiarity had been submitted by the deadline of 23 November 2017. However, the German Bundesrat has submitted comments for political dialogue, pointing out, inter alia, that the compensation system for delays and cancellations must not lead to a reduction in consumer protection levels and calling for a restrictive formulation of 'force majeure' to be inserted in article 17, paragraph 8 of the proposal.⁹

Budgetary or public finance implications

According to the explanatory memorandum (p. 6), the proposal has no implications for the EU budget.

⁸ Steer Davies Gleave, An impact assessment exercise concerning a possible revision of regulation (EC) No 1371/2007 on rail passengers' rights and obligations, Final report prepared for the European Commission, DG MOVE. Only its Annexe C, regarding the detailed analysis of the stakeholder consultation, is available (see the section on stakeholder consultation in this briefing).

⁹ Bundesrat, [written opinion](#), 961st meeting, 3 November 2017 (p. 3).

SME test/Competitiveness

Given the stakeholders affected by the Commission proposal (IA, Annex 3, pp. 132-134), and considering the problems and their underlying drivers, the absence of any analysis regarding SMEs in the IA appears justified. Competitiveness, on the other hand, is mentioned briefly throughout the IA when discussing the policy options to address issues linked to PRM rights, and 'force majeure'. In the first case, the IA states that policy scenario B ('regulatory provisions on the application of PRM rights') is 'expected to bring a slight indirect effect on the competitiveness of European rail businesses towards the other modes by an incremental increase in its modal share' (IA, p. 55). However, this statement is not substantiated by any supporting evidence or study. In the second case, the IA summarises the replies from RUs gathered during the stakeholder consultation, and states, without however substantiating this assumption, that 'a relief from the financial burden caused by 'force majeure' incidents is expected to reinforce their competitiveness and should allow them to invest in the quality and effectiveness of their services' (IA, p. 78). According to the IA, the scale of the reduced expenses would be higher under policy scenario B, i.e. 'reintroduction of a 'force majeure' clause for Article 17, and 'broad' definition of force majeure', than under policy scenario A ('narrow' definition of force majeure). In this case the analysis carried out is far more detailed, but focuses on the quantification of the compensation costs for rail industry and the impact on passengers (social impact) for the retained scenarios, without analysing in detail the issue of competitiveness. The analysis provided in the IA with regard to the impact on competitiveness appears therefore to be insufficiently developed and the statements provided could, perhaps, have been supported at least by evidence, especially considering that one of the two general objectives is to enhance RUs' competitiveness.

Simplification and other regulatory implications

According to the explanatory memorandum, the proposal is consistent with the 2011 white paper on a roadmap to a Single European Transport Area, [COM\(2011\) 144 final](#), which 'stressed the need for ... accessible ... passenger rail services and for mobility continuity in the event of travel disruption' and also called 'for clarification of passenger rights legislation and improved transport for elderly passengers and those with disabilities or reduced mobility' (explanatory memorandum, p. 5). In addition, according to the Commission, the proposal ensures consistency with the existing EU legislation on passenger rights covering air, bus and coach, sea and inland waterway transports, and with the [Package Travel Directive](#) (explanatory memorandum, p. 5). The revised regulation will also be included in the annex to [Regulation \(EC\) No 2006/2004](#) on cooperation between national authorities responsible for the enforcement of consumer protection laws (CPC Regulation), once the Commission [COM\(2016\) 283 final](#) proposal to [replace the CPC Regulation](#) is adopted (explanatory memorandum, p. 5, and IA, pp. 32-33). According to the explanatory memorandum (p. 5), strengthening the rights of persons with disabilities will also align the proposal with the [UN convention on the rights of persons with disabilities](#) (CRPD), and the European Disability Strategy 2010-2020, [COM\(2010\) 636 final](#).

Quality of data, research and analysis

The analysis of the identified problems, and their underlying drivers, builds on the aforementioned Commission reports COM(2013) 587 final and COM(2015) 117 final, and on the findings of an ex-post evaluation study,¹⁰ supplemented by additional studies and publicly accessible data gathered by the Commission, detailed in Annexes 1 (IA, pp. 96-97) and 4 (IA, pp. 141-155), respectively. Together with the additional analytical work and desk research carried out by the Commission, and the views provided by stakeholders (see the following section of this briefing), they provide ample and detailed insights and analysis on the different issues considered in the IA, making the overall analysis, and the assessments of the retained options, reasonably sound. However, much of the data requested from stakeholders was not provided, due to a number of factors (IA, p. 141). The IA states that a number of 'input assumptions' have been made in order to quantify the impacts arising from each of the retained options, and that 'in the absence of robust evidence to support the input assumptions, the validity of the results is checked via a number of sensitivity analyses that assesses the effect of variation in the input assumptions on the results' (IA, p. 135). This is in line with the Commission's better regulation toolbox, which indicates that 'the uncertainty

¹⁰ Steer Davies Gleave, [Evaluation of Regulation 1371/2007](#), Final report prepared for the European Commission, DG MOVE, July 2012.

which is inherent in the various estimates ... should be explicitly recognised and quantified as far as possible' and that 'the influence of the key variables should be investigated by a sensitivity analysis' (tool #57, pp. 455-456), in order to see how changes in the parameters affect the results.

Stakeholder consultation

The Commission gathered stakeholders' views through a 12-week open public consultation (OPC) conducted between 9 February and 5 May 2016, the results of which are described extensively in Annex 2 of the IA (pp. 98-124).¹¹ According to the Commission, the participation in the consultation was balanced overall, with a total of 190 replies received from a broad spectrum of stakeholders (IA, Figure 2, p. 98). The IA acknowledges that for three categories of stakeholders the sample size was low. This is indeed the case for industry federations (six replies), and for ticket vendors and station managers, where only one reply each was obtained, meaning that their replies are not statistically representative. As regards industry federations, even though the IA states that they represent 'a number of member companies', the low response rate should be taken into account when interpreting the feedback they provided. A targeted consultation of relevant stakeholders from 26 Member States was also carried out by an external contractor, the results of which are also described in Annex 2 (IA, pp. 125-131). The 26 Member States considered¹² were divided into two groups, differentiated by the methodology followed to gather information and the depth of the analysis. One group was the object of a 'full' case study, aimed at providing an in-depth understanding of the situation through both face-to-face and telephone interviews. Another group was the object of an 'overview' case study, carried out through telephone interviews only, and aimed at gathering data (IA, pp. 99-100). However, the IA does not clarify the selection criteria used to assign the Member States to either of the two groups. An analysis of results gathered from both the open public and the targeted consultations are presented in a separate section of Annex 2 (IA, pp. 100-108), which illustrates stakeholders' views with respect to some of the options, namely those regarding drivers D1, D2 (partially), D5, and D12. However, their opinions regarding several aspects of the identified drivers are clearly illustrated. A [detailed analysis](#), not annexed to the IA, has been made available separately on the DG MOVE website.

Monitoring and evaluation

According to the explanatory memorandum (p. 13), the Commission will monitor the implementation and effectiveness of the proposed new regulation through a set of core progress indicators, detailed in the IA (Table 24, pp. 83-89). They appear to be consistent with the corresponding operational objectives, although the IA points out that in one case (IA, Table 24, OO1.2, p. 84), the information regarding the number of PRMs seeking assistance is already reported, but not by all RUs, while in another case (IA, Table 24, OO1.3, p. 85) the necessary data is not already available but should be relatively simple to collect. The Commission will evaluate, five years after the entry into force of the proposed legislation, whether its objectives were reached.

Commission Regulatory Scrutiny Board

The Commission's Regulatory Scrutiny Board (RSB) adopted, on 17 February 2017, a [negative opinion](#) on a draft version of the IA report, recommending improvements with respect to a certain number of issues. Subsequently, on 12 May 2017, the RSB adopted a [positive opinion](#) on a resubmitted version of the IA report, where it recommended further improvements to some of the issues already highlighted in its first negative opinion, namely: clarifying the content and the practical implementation of some policy measures, and whether the preferred option regarding the introduction of the force majeure refers to the narrow definition (policy scenario A), or to the broad definition (policy scenario B), and provide a quantification of the reduction of passenger rights for both scenarios; better explaining how results were obtained in the impact analysis; referring more clearly to the position of each stakeholder's group with regard to the various policy options; giving time-bound targets to the monitoring arrangements. The final version of the IA summarises, in a very clear and comprehensive way, how it has addressed the RSB recommendations with regard to the first opinion (IA, Annex 1, pp. 90-96), but not with regard to the second; this is not in line with the better regulation toolbox (tool #8, p. 43). The final version of the

¹¹ The [published results](#) for [citizens](#), and [organisation, public authority, industry representative or other stakeholders](#) are available on the DG MOVE website.

¹² Cyprus and Malta were excluded from the consultation because their railway lines ceased operation in 1951 and 1931, respectively.

IA appears to have addressed most of the improvements requested by the RSB; however, some aspects could have been clarified further, such as the practical implications for RUs (e.g. concerning their commercial relationship with other RUs or how through-tickets would be priced) of the obligation to sell through-tickets (as indicated in the preferred option for driver 4), or concerning the problem of legal unfairness for RUs having to pay compensation for delays caused by force majeure events. In this respect, the RSB's recommendations appear to have been fully met regarding the request to substantiate the recourse to fairness, but only to a limited extent regarding the provision of analogies with other modes of transport. Finally, with regard to the monitoring arrangements, the IA does not seem to have included time-bound targets that express success or failure of the initiative, as requested by the RSB.

Coherence between the Commission's legislative proposal and the IA

The proposal seems to be aligned with the analysis carried out in the IA. However, the proposed new article 2(2) appears to lack any reference to time, contrary to what is indicated in the preferred option B for driver 1 (IA, pp. 40-41). With regard to unclear definitions (driver 7), the definition for 'missed connection' proposed in the new article 3(15) contemplates the possibility that a passenger misses one or more services also as a result of cancellation of one or more previous service, not only due to delay (IA, p. 44). However, in the proposed new article 3(15), the reference to the fact that the concept of 'missed connection' includes cross-border journeys and services with other modes of transport under a single transport contract (IA, p. 44) appears to be missing.

Conclusions

The IA clearly defines the problem, as well as the general and specific objectives; however, four of the operational objectives do not appear to be fully operational, as their formulation is too broad. On the whole, they are relevant and achievable, even though they do not appear to be time-bound. The terminology used to describe the underlying drivers is not consistent across the different sections of the IA; in addition, the explanations provided for their attribution to the two categories of 'major' and 'secondary' issues are not entirely convincing. The IA considers a certain number of policy options only for those issues which are considered 'major', and for the 'force majeure' issue; for the remaining 'secondary' issues the IA considers only one possible solution, in addition to the baseline. This approach appears not to be entirely in line with the guidelines provided in the better regulation toolbox. The analysis of impacts focuses on the economic dimension, which is consistent with the manner in which the problems have been defined. A quantification of costs is provided only for some of the drivers. Social impacts are also considered, while impacts on third countries, international trade or investments are briefly mentioned when analysing the issues related to the scope of the regulation. Impact on competitiveness is largely missing. The methodology used to compare the scope of impacts is well-developed; considering the methodological complexity of quantifying costs and benefits for the retained options, and the availability of data, the IA appears to provide a reasonably sound analysis and support for the selection of the preferred options and measures. The stakeholders' views regarding the different drivers and some of the options are described in the IA, while a detailed analysis is provided separately. The IA appears to have addressed most of the RSB's recommendations, even though it does not illustrate how it has addressed those included in the second opinion. The legislative proposal appears to be generally consistent with the analysis carried out in the IA, although two articles of the proposed regulation do not appear to be fully aligned with the corresponding preferred options.

This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on Transport and Tourism (TRAN), analyses whether the principal criteria laid down in the Commission's own better regulation guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

To contact the Ex-Ante Impact Assessment Unit, please e-mail: EPRS-ImpactAssessment@ep.europa.eu

Manuscript completed in January 2018. Brussels © European Union, 2018.

The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament. Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

www.europarl.europa.eu/thinktank (Internet) – www.eptthinktank.eu (blog) – www.eprs.sso.ep.parl.union.eu (Intranet)