

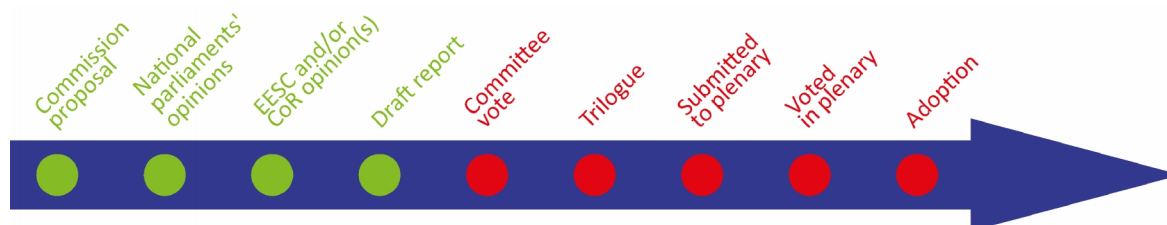
Rail passengers' rights and obligations in the EU

OVERVIEW

In 2007, the EU established a set of basic rights for rail passengers, which became applicable at the end of 2009. These rights provided for all passengers, including those with reduced mobility, a harmonised minimum level of protection, information and assistance. While the implementation of these rights has generally been smooth, recent reports have concluded that this is not done uniformly across the EU. Moreover, other shortcomings have prevented these rights from being used to their full potential.

On 27 September 2017, the European Commission presented a new proposal to address these shortcomings. In its work on this legislative proposal, the EU is seeking to strike a new balance between keeping rail operators competitive and providing adequate passenger protection.

Proposal for a Regulation of the European Parliament and of the Council on rail passengers' rights and obligations		
<i>Committee responsible:</i>	Transport and Tourism (TRAN)	COM(2017) 548 27.9.2017
<i>Rapporteur:</i>	Bogusław Liberadzki (S&D, Poland)	2017/0237(COD)
<i>Shadow rapporteurs:</i>	Renaud Muselier (EPP, France) Tomasz Piotr Poręba (ECR, Poland) Jens Rohde (ALDE, Denmark) Tania González Peñas (GUE/NGL, Spain) Michael Cramer (Greens/EFA, Germany)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Vote in TRAN committee on draft report	



Introduction

The first step the EU took to strengthen the rights of passengers in rail and other modes of transport was the adoption of the 2001 [White Paper](#) on EU transport policy for 2010. Air passengers' rights were the first to be regulated (2004), followed by those of rail, waterborne and finally bus and coach passengers (2011). Therefore, as of 2011, Europeans could enjoy what was the [world's first](#) integrated set of basic passengers' rights covering all transport modes. To further consolidate the implementation of these rights, the Commission reviewed them in December 2011. It defined ten [core EU passengers' rights](#), among which non-discrimination, accessibility, information, assistance, compensation, carrier liability and complaint-handling – and made them applicable to all modes of transport. In its 2011 [Roadmap to a Single European Transport Area](#), the Commission emphasised the need for high-quality, accessible and reliable transport services as a way to promote public transport. It also insisted on the need to make transport modes more accessible to the elderly and to disabled persons or persons with reduced mobility (DPRMs).

As part of the above developments, in 2007 the Parliament and Council adopted [Regulation \(EC\) No 1371/2007](#) on rail passengers' rights and obligations (hereafter 'Regulation 1371/2007' or 'the regulation'), which came into force at the end of 2009. In its 2013 [report](#) on the application of the regulation, the Commission highlighted some issues and shortcomings, which it later re-confirmed in a 2017 [impact assessment](#). It noted, for instance, the non-uniform application of provisions due to extensive use of exemptions, insufficient information for passengers and weak enforcement of rules. The Commission also mentioned its intention to further align rail passengers' rights with existing legislation on other transport modes, in particular as concerns non-discrimination, disability training, contingency planning, complaint-handling and enforcement. In the same spirit of consistency, the Commission proposed to introduce a new clause exempting rail companies from having to compensate passengers for delays due to *force majeure* circumstances, in line with the practices in other transport modes.

To achieve these objectives and address the shortcomings of the legal framework on rail passengers' rights, on 27 September 2017 the Commission published a [proposal](#) for a recast of Regulation 1371/2007. The proposal fits well with the process of rail passenger transport liberalisation launched by the EU roughly 15 years ago. The most recent step in this regard has been the [adoption](#) of the two pillars of the [fourth railway package](#): on technical compatibility in April 2016, and on governance and market-opening in December 2016. Indeed, liberalisation can bring passengers certain benefits, such as a wider choice of providers and routes, alongside more competitive prices. However, as some [experts](#) observe, it can also bring about situations where the services provided by rail companies are of diverging standards or lower quality. EU intervention is therefore intended to ensure greater consistency in the implementation of passenger rights across both Member States and service providers, and to level the playing field.

Existing situation

Regulation 1371/2007 was adopted with the aim to offer better protection to rail passengers. It applies to all rail journeys across the EU, provided by one or more rail companies [licensed](#) in accordance with specific requirements. Member States can exempt domestic, but also urban, suburban and regional rail passenger services from the application of the regulation. This [exemption](#) can be granted for five years and is renewable twice, for a maximum of 15 years (up to 2024). However, certain provisions (availability of tickets, through tickets and reservations, liability for passengers and luggage, insurance, right to transport, information on accessibility to DPRMs and personal security of passengers) are compulsory for all rail journeys.

The regulation establishes rules on the information that rail operators must provide to passengers, such as the conclusion of transport contracts and the availability of tickets. It also specifies the liability of rail operators in respect of passengers and their luggage, requesting, for instance, the

carrier to pay damages for passenger injury or death under certain circumstances. Passengers are entitled to carrying their bicycle if it is easy to handle, and where appropriate, for a fee.

In case of delays of over an hour or of cancellations, the regulation lays down a set of obligations for rail operators, such as reimbursement of the ticket or continuation/re-routing to the final destination. Moreover, passengers have a right to compensation, depending on the length of the delay, and to assistance services, such as meals, refreshments and, in certain circumstances, accommodation. The regulation establishes a broad range of services for DPRMs, such as non-discriminatory access to transport, information and accessibility of stations and trains, and assistance at stations and on board. Moreover, rail operators are liable to pay compensation for the partial or total loss of wheelchairs or other mobility equipment, with no limit to the amount payable.

In addition to ensuring the security of passengers, rail companies have to set up complaint-handling schemes and implement quality-management systems. Member States must designate one or more independent bodies for the enforcement of the regulation, which citizens can address over alleged infringements of the regulation. EU rail passengers' rights are underpinned by the Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV), an excerpt of which is presented in Annex I to the regulation. Annex II includes the minimum information that rail companies and/or ticket vendors must provide.

EU Court of Justice case law

The Court of Justice of the EU (CJEU) has issued several judgments in connection with the provisions of Regulation 1371/2007. In case [C-136/11](#) (*Westbahn Management GmbH v ÖBB-Infrastruktur AG*), the CJEU was asked to give an interpretation of the information that rail companies have to provide to their passengers during a journey. In its reply, the Court clarified that this obligation meant '...that the information on main connecting services must, in addition to scheduled departure times, also include delays to or cancellations of those connecting services, whichever railway undertaking operates them'.

In case [C-509/11](#), rail company ÖBB-Personenverkehr AG asked the CJEU if it was entitled to include in its general terms and conditions of carriage a clause exempting it from the obligation to pay compensation as a result of delay attributable to *force majeure* or to one of the reasons listed in Article 32(2) of the CIV uniform rules. The CJEU considered that exemptions based on a *force majeure* clause could not be granted to rail operators. In that respect, the CJEU confirmed that this lack of exemption distinguishes rail from other transport modes.

Parliament's starting position

In its [resolution](#) of July 2015 on delivering multimodal integrated ticketing in Europe, the European Parliament (EP) addressed, inter alia, the issue of passenger rights. It underlined that in the case of multimodal or cross-border journeys, passengers' rights could not be guaranteed. Therefore, the EP reiterated its call to the Commission, already expressed in its [resolution](#) of December 2011 on the roadmap to a single European transport area, to put forward a proposal for a charter of passenger rights covering all modes, 'with a clear and transparent protection of passengers' rights in the multimodal context'. The EP also emphasised the needs of DPRMs and elderly people in particular with regard to travel information, ticketing, reservation and payment systems.

In September 2015, the EP adopted a [resolution](#) on the implementation of the 2011 white paper on transport. It highlighted the need to complete the legislative framework for passengers' rights, eliminating possible loopholes. The EP called for making multimodal travel information, planning and ticketing services available to passengers, and to make transport more easily accessible to DPRMs. It also highlighted the needs of cyclists transporting their bicycles on trains. Lastly, the EP asked to remove extra charges for rail passengers travelling cross-border.

To give a complete picture, it is worth noting that, in the previous legislative term, the EP adopted a [resolution](#) of October 2012 on passenger rights in all transport modes. It invited the Commission to oversee the implementation of comprehensive regulations while avoiding ambiguities relating to passengers' rights, and to prepare a common frame of reference to further consolidate passenger law in all modes.

Preparation of the proposal

In its 2011 [communication](#) on passenger rights in all transport modes, the Commission put into perspective the set of ten EU passenger rights, explaining that they were founded on three cornerstones: non-discrimination, information and assistance. The Commission set itself the objective to clarify the rules and consolidate their implementation and enforcement.

An [ex-post evaluation](#) of the implementation of Regulation 1371/2007 was outsourced by the Commission and published in 2012. The report collected information from rail operators, infrastructure managers, national enforcement bodies (NEBs) and passenger representatives from 17 Member States. The report did not highlight any major problem regarding the implementation of the regulation, or any systematic non-compliance with its rules. Nevertheless, it noted that some of the objectives of the regulation had only partially been achieved and that this was due, in particular, to the exemptions that some Member States had introduced. In some cases, passenger services that had been exempted from the regulation were still accessible under other acts, such as national laws and government policy decisions, which lead to uncertainty among passengers. The report pointed out other specific problems related to enforcement, such as non-designation or lack of independence of NEBs, and lack of or inadequate sanctions for infringements. It also noted the presence of some unclear definitions in the regulation, providing room for different interpretations of how to deal with issues such as missed connections or carriage of bicycles. The report made a number of recommendations, one of which was for the Commission to consider whether exemptions should still be permitted, in particular for domestic long-distance services. It furthermore recommended improving awareness of passenger rights and developing guidelines for NEBs on ways to enhance enforcement, and insisted that rail operators should publish reports on the quality of their services. Last but not least, it asked the Commission to clarify what circumstances qualify as *force majeure*, if any, and when assistance should be provided in case of missed connections.

In its 2013 [report](#) on the application of the regulation, the Commission noted that rail companies had been implementing the rules 'relatively effectively' and that there had been no systematic non-compliance with the provisions. On non-discrimination in access to transport for DPRMs, the report noted that the accessibility of rolling stock and infrastructure varied significantly between Member States. It underlined the limited availability of through tickets and re-routing services in case of service disruption. The Commission considered that assistance could be improved for delays above one hour. It further considered 'the extensive use of exemptions as a serious obstacle to the fulfilment of the regulation's objectives'. Different regimes applying to domestic and intra-EU international services created inconsistency within the Single European Railway Area.

In 2015, the Commission published an [inception impact assessment](#) (IIA), in which it listed the main issues related to Regulation 1371/2007 that were affecting stakeholders. The assessment underlined the insufficient protection of passengers, notably on domestic services, and the legal uncertainty caused by exemptions. The latter, as well as the ambiguity of certain provisions, which leaves room for different interpretations, had led to an uneven playing field. The Commission also underlined that there was a possible risk of rail operators facing economic discrimination with regard to other modes of transport, due to their obligation to pay compensation to passengers for delays, including *force majeure* situations. The IIA also mentioned the absence of harmonised contingency planning, and the unclear link between Regulation 1371/2007 and its Annex I (CIV). In March 2015, the Commission published a [report](#) aimed at taking stock of the exemptions that had been granted by Member States between December 2009 and December 2014. It noted that only Denmark, Italy,

Slovenia and the Netherlands had been applying the regulation in full. It concluded that by 2020, very modest improvements could be expected in this regard; nevertheless, Belgium, Bulgaria, Estonia and Poland had expressed their intention to reduce their exemptions.

To improve the application of Regulation 1371/2007 and to promote best practices, the Commission published a communication with [interpretative guidelines](#) in July 2015. These provided additional explanations and recommendations to the most frequent issues raised by NEBs, industry representatives, passenger associations and the EP, without creating any new rules.

In 2015, an EPRS [study](#) on the Codification of passenger rights analysed the consequences that the lack of a consolidated legal framework for passengers' rights had on citizens and businesses. The study scrutinised how passengers' rights were codified in air, rail, road and water transport-related legislation and, on the basis of how they had been defined and how they were being applied, identified 82 gaps and inconsistencies within them, of which 38 were assessed as major. The most serious ones concerned the right to information and to non-discrimination in access to transport. The study estimated that these gaps cost transport users and society as a whole at least € 355 million annually. For rail, the most important costs were related to enforcement and intermodality issues. The study concluded that a single EU framework for passengers' rights could improve the situation, establishing as a first step a common frame of reference, as proposed by the EP in its resolution of October 2012.

The Commission proposal is accompanied by an [impact assessment](#) (IA), which pointed out certain major and minor issues related to the regulation and provided different policy options to address them. Among the major issues identified were exemptions, DPRM protection, information provided to passengers, compensation and enforcement. The IA analysed each of these issues with the help of three main criteria: effectiveness, efficiency and coherence. In the [executive summary](#) to the IA, the Commission observed that the combination of preferred options would bring rail companies' costs up by 5 % from the baseline scenario over a 15-year period, and would only have a minor impact on national budget and administrations, thanks to enhanced enforcement and complaint-handling. EPRS has published an [initial appraisal](#) of the Commission's impact assessment.

The changes the proposal would bring

The overall objective of the Commission proposal is to establish a better balance between measures aimed at strengthening passenger rights and measures aimed at limiting the burden on rail companies. To contribute to more uniform application of the rules, the proposal provides for the removal of exemptions for long-distance domestic services (by 2020), as well as for cross-border urban, suburban and regional services. The proposal updates passengers' rights in key areas. First of all, it introduces a general clause prohibiting discrimination, based, for instance, on nationality, location or currency of payment. Information to passengers about their rights is also reinforced. The proposal requires that such information be printed on tickets or provided electronically, and that notices on passenger rights be placed in prominent places at stations and inside trains. Passengers would also be entitled to more exhaustive information on through-tickets, in particular when their rights do not apply to the whole journey but only to some segments.

The proposal reinforces DPRMs' rights, in line with the [UN Convention on the Rights of Persons with Disabilities](#), to which the EU has been a party since 22 January 2011, and with the [2010-2020 European Disability Strategy](#). It creates an obligation for rail operators to provide information to DPRMs on accessible formats and to pay them full compensation for the loss of or repairs to damages to their mobility equipment. Moreover, railway staff would have to receive disability-awareness training. To enhance enforcement, the proposal clarifies the procedure for lodging complaints, specifies NEBs' responsibilities in cross-border cases and places a requirement on them to cooperate effectively. To reduce the burden on rail operators, the proposal places a requirement on station and infrastructure managers to have contingency plans. Additionally, rail companies

would have a right to redress, if delays are caused by a third party; this provision aligns rail passengers' rights with those of [air passengers](#).

Last, the proposal introduces a *force majeure* clause, exempting rail companies from having to pay compensation for delays caused by severe weather conditions or major natural disasters. This provision aligns rail legislation with other EU transport legislation, and its narrow definition is intended to leave limited room for diverging interpretations.

Advisory committees

Consultation of the European Economic and Social Committee (EESC) and the European Committee of the Regions (CoR) is mandatory, as the proposal is based on [Article 91\(1\)](#) of the Treaty on the Functioning of the European Union. The CoR decided not to issue an opinion on this proposal.

On 18 January 2018, the EESC adopted its [opinion](#) (TEN/648, rapporteur: Jan Simons, Group I – Employers, the Netherlands). It endorsed the Commission provisions proposed, in particular those aiming to clarify the rules, to provide better information to passengers and to harmonise the application of passengers' rights across the EU, by removing national exemptions. It recommended phasing out exemptions on national long-distance services not earlier than 2024, in line with the existing regulation. The EESC welcomed the introduction of the *force majeure* clause. It also put forward some proposals, such as addressing the specific needs of train staff to identify DPRMs, in particular those suffering from mental and psychological disability, which were incorporated into the Commission's proposal.

National parliaments

The [subsidiarity deadline](#) was 23 November 2017. No reasoned opinion was submitted by national parliaments by that date. The German, Italian and Portuguese legislative assemblies submitted their comments for political dialogue. Several national parliaments made observations on the *force majeure* clause: for instance, the German, Italian and Romanian assemblies expressed the view that this clause should be defined more precisely and further substantiated restrictively. The German Bundesrat welcomed the new provisions improving the carriage of bicycles, in an effort to boost inter-connectivity with different transport means.

Stakeholders' views¹

To prepare its proposal, the Commission carried out both an open public consultation and a targeted [one](#). The stakeholders consulted ranged from industry federations, rail companies and infrastructure managers, to passenger representatives, DPRMs' associations and public authorities. The public consultation was carried out from February to May 2016 and gathered a total of 190 replies. The targeted consultation was realised through interviews with 26 Member States. The answers received showed a broad consensus of passengers and DPRMs' associations that there was a low level of awareness of, and insufficient information about, passenger rights. This view was also shared by a majority of public authorities. Rail companies, on the contrary, considered that passengers were well informed. DPRMs' and consumer associations underlined the fact that stations and carriages were not accessible enough and that assistance was insufficient, and criticised the complaint-handling procedures. Opposing views were gathered on the introduction of the *force majeure* clause, with a majority of citizens, passengers, DPRMs' associations and NEBs opposing it, and industry federations and rail companies supporting it.

In 2012, the Community of European Railway and Infrastructure Companies (CER), the International Rail Transport Committee (CIT) and the European Passengers' Federation issued a common [report](#) on the implementation of Regulation 1371/2007. In its [position paper](#) on the Commission proposal, CER highlighted some of its concerns. First, it advocated granting exemptions to urban, suburban and regional services crossing a border and supported the gradual phasing out of exemptions to national long-distance services by 2024. It criticised the provisions requiring the mandatory sales of

tickets on board or the mandatory presence of staff on board or at stations at all times, calling them 'unrealistic'. Lastly, it advised using the *force majeure* definition provided in the CIV uniform rules.

The European Rail Infrastructure Managers' (EIM) [position paper](#) identified several provisions within the Commission proposal, focusing in particular on station and infrastructure managers, as burdensome or counter-productive. One such provision involved the right of redress or assistance in stations for DPRMs at all times.

BEUC, the European consumer organisation, [welcomed](#) the Commission proposal, in particular the provisions concerning discrimination, delays and cancellations. It supported the reduction of national exemptions but criticised the introduction of the *force majeure* clause, which would weaken consumers' rights to compensation. BEUC suggested improving existing compensation rules and introducing truly dissuasive penalties against rail operators.

In its [statement](#), the European Passengers' Federation (EPF) suggested cancelling the exemption for regional services. The EPF expressed the view that compensation for delays should start 30 minutes (as opposed to one hour) after the scheduled time and should apply to the complete journey. It advocated strengthening the monitoring of public transport by independent bodies.

The European Disability Forum (EDF), the European umbrella organisation representing DPRMs that launched the [freedom of movement campaign](#) in 2011, has [welcomed](#) the Commission proposal. It approved the clear reference to the UN Convention on the Rights of Persons with Disabilities and the absence of exemptions for disability-related provisions. It also supported the availability of re-routing and alternative transport services to DPRMs, the fact that they could count on assistance when trains operate, and the possibility for railway staff to receive training on disability issues. The EDF's main concerns were related to the 48-hour pre-notification rule to book assistance on trains, given that some EU Member States such as Spain have already reduced the notice period or even [abolished](#) this rule at major stations. It recommended that training be offered to all railway staff, covering all disabilities.

Legislative process

The file was allocated to the EP Committee on Transport and Tourism (TRAN), and on 25 October 2017, Bogusław Liberadzki (S&D, Poland) was appointed rapporteur. On 20 February 2018, the TRAN committee organised a [mini-hearing](#) on rail passengers' rights in the EU. The Commission proposal was generally welcomed by the stakeholders, who stated that the proposal brings a number of improvements. They reached a consensus on the need to clarify the issue of through-tickets, to remove the exemptions for regional and urban services and to strengthen NEBs' powers.

In his [draft report](#) published on 26 February 2018, the rapporteur welcomed the Commission proposal, in particular the provisions on DPRMs and the payment of compensation for travel disruption. On exemptions for long-distance domestic services, he suggested keeping the existing regulation's deadline of 2024. Regarding *force majeure*, he suggested introducing a broader definition covering all unexpected circumstances that are beyond rail companies' control, such as terrorist attacks. Lastly, the rapporteur proposed relieving ticket vendors from the obligation to provide continuous information to passengers. On 3 April 2018, 600 amendments were tabled to the draft report. These amendments were discussed at a [TRAN committee meeting](#) on 25 April. An overall consensus emerged on the need to reinforce DPRMs' rights, reduce the pre-notification period for booking assistance on trains and ensure a more seamless arrangement for the carriage of bicycles on board. Diverging views were expressed on the concept of *force majeure* and the usefulness of maintaining exemptions until 2024. The committee is due to vote on the draft report shortly.

The Council Working Party on Land Transport started examining the file at the end of September 2017, under the Estonian Presidency, and continued its work under the Bulgarian Presidency. Both presidencies were committed to ensuring that the first examination and impact assessment of the

proposal would be carried out and completed in good time. Member States expressed their [initial position](#) on the main issues. A consensus emerged on the introduction of the *force majeure* clause which, however, would need a more precise definition. Many countries feared that the removal of exemptions for cross-border regional and commuter services would place a disproportionate burden on undertakings. A vast majority of Member States supported the proposal to strengthen DPRMs' rights but insisted on more operative provisions. Views on the obligation to provide through-tickets were mixed.

On 16 May 2018, the Bulgarian Presidency observed that the first examination of the proposal represented a good basis for future debates, and that the work aimed at reaching a satisfactory compromise on the proposal would be completed under future presidencies.

EP SUPPORTING ANALYSIS

Remáč M., [Rights and obligations of rail passengers](#), Implementation Appraisal, EPRS, European Parliament, October 2016.

Vettorazzi S., [Rail passengers' rights and obligations](#), Initial Appraisal of a European Commission Impact Assessment, EPRS, European Parliament, January 2018.

Nogaj M., [Codification of passenger rights](#), Cost of Non-Europe report, EPRS, European Parliament, July 2015.

OTHER SOURCES

[Rail passengers' rights and obligations. Recast](#), European Parliament, Legislative Observatory (OEIL).

ENDNOTES

- ¹ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

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