



30.1.2015

## NOTICE TO MEMBERS

**Subject: Petition 2554/2013 by Inaki Albin Diaz (Spanish), on access of disabled persons to railway services in Spain**

### 1. Summary of petition

The petitioner complains about a series of difficulties concerning access of disabled persons to railway services in Spain. According to the petitioner the Spanish railway operator "RENFE" did not implement an effective mobility policy for the disabled, in particular as regards the installation of special lifting platforms to allow access to the train coaches. The petitioner considers that this situation is not in line with the European Commission's Communication of 15 November 2010 entitled: European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe (COM(2010) 636).

### 2. Admissibility

Declared admissible on 24 October 2014. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 30 January 2015

#### General

A large part of the petition consists of general observations and reflections on human rights, equality and discrimination against persons with disabilities. According to the petitioner the Spanish incumbent railway undertaking, RENFE, denies that there is a norm, a law or whatever obligation to make trains accessible for persons with disabilities. He joins a newspaper article which mentions the railway line "Irún-Brinkola" on which RENFE has not installed lifting platforms/platform lifts. There is no date and the petitioner does not provide

any further details or facts.

### *Rights of Persons with Disabilities*

The European Commission is fully committed to protecting and promoting fundamental rights and to improving the situation of persons with disabilities in Europe. In January 2011 the EU became a Party to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) which in this way became integral part of the EU's legal order. The EU is bound by the UNCRPD to the extent of its competences.

Improving accessibility to the physical environment, transportation, information and communications technologies and systems (ICT) and other facilities and services, as a precondition for full participation of persons with disabilities, is one of the key objectives of the European Disability Strategy 2010-2020. EU structural funds (in particular the European Regional Development Fund) are important instruments available for improving accessibility of the built environment. The Common Provision Regulation (CPR) for the European Structural and Investment Funds for the programming period 2014-2020<sup>1</sup> requires Member States and the Commission to take appropriate steps to prevent any discrimination based on disability during the preparation and implementation of programmes and that accessibility for persons with disabilities is taken into account throughout the preparation and implementation of programmes. Managing authorities must ensure that all products, goods, services and infrastructures that are open or provided to the public and are co-financed by the ESI Funds, in particular as regards the physical environment, transport and ICT, are accessible to all citizens, including those with disabilities in accordance with applicable law, thereby contributing to a barrier-free environment for persons with disabilities and the elderly.

It is important to note that Spain ratified the UNCRPD and its Optional Protocol in 2007. As a State Party to the Convention, Spain is bound by the obligation to protect and safeguard all human rights and fundamental freedoms of persons with disabilities, in particular by taking "appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas" (as set out in Article 9 of the UNCRPD).

The UN Committee on the Rights of Persons with Disabilities adopted, on 11 April 2014, the General Comment No. 2<sup>2</sup> with a view to providing further clarity regarding the above-mentioned Article 9. State Parties are bound to ensure the right to access for persons with disabilities "through strict implementation of accessibility standards. Barriers to access to existing objects, facilities, goods and services aimed at or open to the public should be removed gradually in a systematic and, more importantly, continuously monitored manner, with the aim of achieving full accessibility." The need to adopt legislation and monitor its implementation is clear: "States parties are obliged to adopt, promulgate and monitor national accessibility standards. If no relevant legislation is in place, adopting a suitable legal

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<sup>1</sup> Regulation (EU) No 1303/2013, OJ L347, 20.12.2013, p. 320

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[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/2&Lang=en)

framework is the first step. States parties should undertake a comprehensive review of the laws on accessibility in order to identify, monitor and address gaps in legislation and implementation."

Under the Optional Protocol to the UNCRPD, when ratified, the UN Committee on the Rights of Persons with Disabilities can receive and consider communications from or on behalf of individuals or groups of individuals subject to the jurisdiction of a State Party to the Protocol who claim to be victims of a violation by that State Party of the provisions of the UNCRPD. One condition of admissibility of communications is that all available domestic remedies must have been exhausted.

### Rail transport

The legal acts regarding the accessibility of the EU rail system are:

- Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations<sup>1</sup>
- Until 31/12/2014: Commission Decision 2008/64/EC concerning the technical specification of interoperability relating to 'persons with reduced mobility in the trans-European conventional and high-speed rail system'<sup>2</sup>
- As from 1/1/2015: Commission Regulation 1300/2014 of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility<sup>3</sup>

Regulation (EC) No 1371/2007 aims at ensuring that persons with disabilities and reduced mobility (PRM) have the same opportunities to use rail transport on an equal basis with other passengers. To that effect the Regulation obliges railway undertakings to set up non-discriminatory access rules for these passengers so that they have equal rights to transport and cannot be refused reservation and ticket purchase unless this is justified under these access rules e.g. for reasons of safety or design of the vehicles (Article 19). Under Articles 22 and 23 of the Regulation, station managers at staffed stations and RUs should provide passengers with reduced mobility assistance free of charge to enable them to board and disembark from a train. The Regulation does not specify the means (ramps or other) to provide such assistance.

Under Article 2 of Regulation (EC) No 1371/2007 Member States may exempt certain services from the full application of the Regulation. Spain has granted exemptions to urban, suburban and regional services from Articles 10, 21-24 and 27. Articles 21 - 24 notably refer to the accessibility of railway services, assistance at railway stations and on-board trains as well as the conditions under which assistance is provided. This means that on those services, railway undertakings in Spain currently do not have to apply the Regulation. The exemption for Articles 21-24 and 27 has been requested for five years and may be renewed twice. The Commission will submit a report to the European Parliament and the Council on the state of exemptions in EU Member States by the beginning of 2015. The Articles of Regulation (EC) No 1371/2007 relating to the transport of persons with disabilities or reduced mobility do,

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<sup>1</sup> OJ L 315, 3.12.2007, p. 14–41

<sup>2</sup> OJ L 64, 7.3.2008, p. 72

<sup>3</sup> OJ L 356 of 12.12.2014, p. 110

however, apply to domestic (long-distance) services in Spain. It does not turn out clearly from the documents provided by the petitioner that there were problems related to the provision of assistance under Regulation (EC) No 1371/2007 on these services.

Under Article 28 of Regulation (EC) No 1371/2007, railway undertakings must define service quality standards covering i.a. the provision of assistance and provide annual reports on their service quality performance. The Spanish railway undertaking RENFE has published annual reports for the years 2011, 2012 and 2013 on the ERA website<sup>1</sup>. According to the information provided on the accessible rail transport, in 2013 permanent assistance was provided at 68 rail network stations and specific assistance was provided at 58 rail network stations.

The PRM TSI sets technical standards for accessible trains and stations with the objective of enhancing accessibility of rail transport to persons with disabilities and persons with reduced mobility. It applies to renewals or refurbishments of infrastructure and rolling stock since the entry into force of the Commission Decision 2008/64/EC on 1st July 2008. The revised version of the PRM TSI - Commission Regulation 1300/2014 - which will enter into force on 1<sup>st</sup> January 2015, will apply to the whole rail network in the EU; the 2008 Decision applies to the TEN-T network only, which does not include the line Irún-Brinkola which the petitioner refers to. In any case, there is no requirement for a systematic installation of platform lifts for passengers using wheelchairs in all stations.

Finally, RENFE, the incumbent railway company in Spain, has published a "Universal Accessibility Plan" in 2010. The Plan includes, among other things, the purchase of new trains and the adaptation of existing rolling stock, in particular suburban or commuter trains. This would include lines such as Irún-Brinkola. RENFE also has a service called "Atendo", a non-paying service offering assistance to, among others, passengers with disabilities and persons with reduced mobility.

### Conclusion

The UNCRPD, to which Spain and the EU are a party, calls for equal access to transportation and to the removal of accessibility barriers. The compliance with such obligations is subject to the examination by the UN Committee on the Rights of Persons with Disabilities on the basis of the periodic reports submitted by State Parties in accordance with Article 35 UNCRPD. The examination is conducted through interactive dialogues held with States Parties on the basis of their initial reports. Up to September 2014, the concluding observations from the Committee on those reports all contain recommendations concerning accessibility and Spain was no exception.<sup>2</sup>

In the area of transport there are EU wide rules taking into account the needs of disabled

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<sup>1</sup> [https://eradis.era.europa.eu/interop\\_docs/ruSQPreports/search\\_results.aspx](https://eradis.era.europa.eu/interop_docs/ruSQPreports/search_results.aspx)

<sup>2</sup> The reporting status on the UNCRPD on Spain can be followed on the following page: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=ESP&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=ESP&Lang=EN) ;

The 2011 concluding observations from the Committee on Spain's initial report can be found in this page:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fESP%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fESP%2fCO%2f1&Lang=en)

passengers, namely on rail passenger transport. Their implementation is the competence of the Member States, in this case of Spain. Any issues related to the lack of enforcement of Union and national law needs to be brought up at national level. Once domestic remedies have been exhausted in Spain, a complaint can be submitted to the UN Committee on the Rights of Persons with Disabilities in accordance with the Optional Protocol to the UNCRPD.

With regard to the application of Regulation (EC) No 1371/2007 on rail passengers' rights and obligations, Spain has excluded certain domestic rail transport services (urban, suburban and regional services) from certain articles, notably those relating to the transport of passengers with disabilities or reduced mobility. However, according to a case study on Spain which has been carried out in the framework of a study on the application of Regulation (EC) No 1371/2007 in EU Member States<sup>1</sup>, there do not seem to be any significant problems with the application of this Regulation in Spain, notably as regards requirements in terms of assistance to PRM passengers. The study notes that national law or the customer policy of the main national rail operator are in many respects more generous to passengers than required by the Regulation. The petition lacks clear and precise information which would allow the Commission to launch an investigation of the situation in Spain. Complaints from passengers should therefore first be directed to the rail operator and/or to the competent national enforcement body<sup>2</sup>. A further case study on the general application of Regulation (EC) No 1371/2007 in Spain could be included in a future application study.

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<sup>1</sup> <http://ec.europa.eu/transport/themes/passengers/studies/doc/2012-07-evaluation-regulation-1371-2007.pdf>

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[http://ec.europa.eu/transport/themes/passengers/rail/doc/2007\\_1371\\_national\\_enforcement\\_bodies.pdf](http://ec.europa.eu/transport/themes/passengers/rail/doc/2007_1371_national_enforcement_bodies.pdf)