Codification of Passenger Rights

Cost of Non-Europe Report

STUDY

EPRS | European Parliamentary Research Service

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July 2015 – PE 536.367
Abstract

This report analyses the costs for citizens and business of the absence of a consolidated framework for Passenger Rights as well as the feasibility and the merits of such a consolidation in a single legislative instrument. The study analyses the current state of play on Passenger Rights in the four modes of transport (rail, road, water and air transport), and points to a number of regulatory and practical gaps and inconsistencies, which result in passengers not being equally protected across the various transport modes. The lack of a consolidated and consistent framework weakens the effective enforcement of passenger rights, affects the quality of service and creates barriers for seamless travel. The costs of these shortcomings for transport users and the whole society amount to at least 355 million euro annually.

Although requiring a complex legislative effort, establishing a single EU framework for passenger rights in the form of an EU Codex, combining amendment of the existing regulations and consolidation of rules, would present the highest added value in tackling the current deficiencies. A Common Frame of Reference could be a first, intermediary, step to such a consistent and harmonised revision of passenger rights.

Cost of Non-Europe reports are designed to study the possibilities for gains and/or the realisation of a ‘public good’ through common action at EU level in specific policy areas and sectors. They attempt to identify areas that are expected to benefit most from deeper EU integration, in other words where the EU added value is potentially significant.

The aim of this report is to determine the benefits that would stem from establishing a consolidated framework for passenger rights. In particular, it analyses the question of ‘gaps’ and inconsistencies in the current passenger right legislation, and the cost - expressed when possible in quantitative terms - to citizens and the society of not remedying them. This Cost of Non-Europe report also looks at the costs and benefits of the main codification options.

This paper has been drawn up by the European Added Value Unit of the Directorate for Impact Assessment and European Added Value, within the European Parliament’s Directorate-General for Parliamentary Research Services.

This report is based on the main findings of the external study commissioned for the purpose and provided by Milieu Ltd.
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by Levent Altan, Paola Banfi, Linda De Keyser, Agnieszka Markowska, Nathalie Meurens and Marilena Verbari, Milieu Ltd.
Executive summary

Although the EU has secured an overall high level of protection of passenger rights, a number of regulatory and practical gaps and inconsistencies nevertheless prevent users from fully enjoying their rights. These lacunae, and especially the lack of clarity of existing passenger rights across the modes of transport result in discrepancies in the protection of passengers and create barriers for seamless travel concerning all different modes of transport.

The lack of a consolidated and consistent framework for passenger rights weakens their overall transparency and enforcement, affects the quality of service and can be an obstacle preventing passengers from fully enjoying the benefits of inter-modality. As such, it entails real costs for transport users and the whole society, which have been estimated to amount to at least 355 million euros annually.

<table>
<thead>
<tr>
<th>Area</th>
<th>Main costs identified</th>
<th>Estimate (million euro)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transparency</td>
<td>Time lost by the passengers while searching for adequate information on the final price of ticket and other services included</td>
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<td>Difficulties for passengers to understand and enforce their rights</td>
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<td>Quality of service</td>
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<td>Enforcement</td>
<td>Value of time lost in complex and inefficient complaint handling procedures for passengers, and carriers' and NEBs' staff</td>
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<td>Weakened ability of passengers to claim their rights</td>
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<td></td>
<td>Insufficient incentives for carriers to fully comply with passenger rights</td>
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<tr>
<td>Intermodality</td>
<td>Positive gains of having seamless intermodal travel:</td>
<td>138</td>
</tr>
<tr>
<td></td>
<td>Time-savings due to easier and faster changes between transport modes</td>
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<tr>
<td></td>
<td>Integrated ticketing and combined check-in procedures</td>
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</tr>
<tr>
<td></td>
<td>Lower risk of missed connections for passengers</td>
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</tr>
<tr>
<td></td>
<td>Environmental benefits due to replacement of air travel with rail</td>
<td></td>
</tr>
<tr>
<td></td>
<td>More smooth and seamless transport contributes to the fulfillment of broader EU objectives in the Single Transport Market</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>355</td>
</tr>
</tbody>
</table>
The EU is in a position to address these problems by establishing a single EU framework for passenger rights. A combined approach which includes amendment of the existing regulations and consolidation of rules would present the highest added value in tackling the current lack of transparency and the inequality of passenger rights across the transport modes. Establishing a Common Frame of Reference as a first step, as proposed by the European Parliament\(^1\), would pave the way for a consistent and harmonised revision of passenger rights.

Introduction

The transport sector is regularly the number one source of cross-border complaints. In 2012, for instance, one third of complaints to the European Consumer Centres Network were related to transport\(^2\). In travel and tourism where transportation is key component, more than half of all complaints relate to transport services. This data suggests that passenger rights are both a vital element of a well-functioning Single Market, but as well an important issue of concern, since they are often not respected to the letter.

This is notwithstanding the fact that an important part of the common transport policy is centred on efforts to codify and standardise the rights of passengers across the European Union. Over the last decade, the EU has adopted legislative measures to protect passengers across the four modes of transport, air, rail, waterborne and road. But the fact that those sectors were adopted at different timeframes and have different scope and terminology, result in a differentiation in the level of protection offered across the transport modes. Besides, it creates uncertainty and confusion both for passengers and carriers and subsequently generates additional costs and societal burdens. The idea of a single EU Framework covering passenger rights for all modes of transport has been regularly discussed in recent years. The European Parliament Bach report on passenger rights in all transport modes affirmed that a “holistic approach is needed, so as to integrate all passenger rights […] into a common legislative framework”\(^3\).

The present Cost of Non-Europe report provides an overview of the main problems resulting from the fragmentation of passenger rights legislation at EU level and their costs for society. Furthermore, it outlines and discusses the main options for creating a consolidated network for passenger rights.

The study annexed to this paper develops the rationale behind these findings and contains further details on the methodology used.

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\(^2\) European Consumer Centres Network,

\(^3\) European Parliament, Resolution of 23 October 2012 on passenger rights in all transport modes (2012/2067(INI)).
Main concerns with the current state of passenger rights

The Regulations adopted in the four modes of transport guarantee an overall high level of protection of the ten core passenger rights, as defined by the European Commission and endorsed by the European Parliament\(^4\) (see table 1 for definition of the rights). The effective protection of transport users is however weakened by a number of subsisting problems.

First, gaps exist in all modes of transports. This is the case where an issue is not explicitly regulated by EU law. For example, none of the EU Regulations explicitly set out the right to claim reimbursement from the carrier when, due to the carrier’s failure, the passenger himself has been forced to arrange re-routing. It also occurs when the legal provision exists but it is not - or not well enough - applied in practice. A case in point is the right to renounce travelling, where passengers and National Enforcement Bodies (NEBs) have raised concerns that in practice there are problems in getting the refund, in full amount and within the timeframe prescribed by the regulations. The right to mobility and in particular the right to assistance is also particularly problematic.

Box 1: The right to assistance in practice

In 2013, a research carried out in the UK revealed that:
- only 79 per cent of people with disabilities were assisted off the train by staff, 5 per cent were helped by passengers and 15 per cent did not receive any help;
- despite booking assistance in advance, station staff were prepared for the passenger with a disability only on 66 per cent of occasions. Of those who were given an appointed meeting place, 70 per cent were actually greeted by staff there.
- 78 per cent were advised to seek out a member of staff when they arrived at the station. This includes a large proportion of visually-impaired passengers for whom it proves even more challenging.

Source: Passenger Assist summary report, March 2014

In addition, the extent of the protection varies greatly from one transport mode to another\(^5\). For example, there are big differences relating to carrier liability and namely the compensation for personal injury or death, which are not justified by the specificity of the transport modes. Also the differences in terminology may have an impact on the practical implementation of rights as they create confusion and give rise to different interpretations. For instance, assistance must be provided "free of charge" for rail, waterborne and bus transport and "at no additional cost" for air transport.


\(^5\) Some differences in legislation between the four modes of transport are objectively justified due to the specific characteristics of each mode of transport. These are not considered here as inconsistencies.
<table>
<thead>
<tr>
<th>The right and its content</th>
<th>Major problems identified</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Right to non-discrimination in access to transport</strong>&lt;br&gt;Protection against direct or indirect discrimination based on nationality, residence, disability or reduced mobility.</td>
<td>– Unclear scope of the exception to the right to non-discrimination based on safety reasons, resulting in confusion and cases of refusal to access transport&lt;br&gt;– absence of rules in air and rail transport that foresee the transport free-of-charge, or at a reduced fare, for the person accompanying a passenger with a disability or reduced mobility (PRM), when the carrier requests the PRM to be accompanied.&lt;br&gt;– absence of a non-discrimination rule in access to transport on the grounds of sex, racial or ethnic origin, religion or belief, age or sexual orientation (in line with Article 19 TFEU)</td>
</tr>
<tr>
<td><strong>Right to mobility</strong>&lt;br&gt;Accessibility of infrastructure and assistance at no additional cost for passengers with disability or reduced mobility.</td>
<td>– accessibility requirements of transport infrastructure, when existent, are weak. Only the Rail Regulation offers a base for accessibility requirements – yet limited to new rolling stock and infrastructures.&lt;br&gt;– inconsistencies in the extent of the assistance that must be provided to PRMs (e.g. air and rail carriers are not required to provide temporary replacement of mobility equipment in cases of loss or damage); problems in practice with the application of this right&lt;br&gt;– lack of definition of the concept of “reasonable efforts” for the provision of assistance in case the PRMs do not notify their request for assistance</td>
</tr>
<tr>
<td><strong>Right to information</strong>&lt;br&gt;Information provision before the purchase of tickets, at various stages of travel, and in case of disruption; specific rights for PRMs</td>
<td>– unequal rules across transport modes on price transparency requirements and problematic implementation: in practice, the provision of clear information on price, in air transport is often not applied correctly, some carriers show the final price using an opt-out system for additional services,&lt;br&gt;– inconsistencies in legislation concerning the requirement to inform passenger on their rights: e.g. in air transport, this requirement is limited to denied boarding and flight cancellation.&lt;br&gt;– regarding PRMS, differences in the requirements of when and in which format the information on the rights should be provided</td>
</tr>
<tr>
<td>The right and its content</td>
<td>Major problems identified</td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Right to renounce travelling in case of disruption</td>
<td>− Some elements of the right across the four modes are not entirely clear, e.g. what a refund should cover and when it should be paid, thus leaving room for divergences in the interpretation.</td>
</tr>
<tr>
<td>Right to withdraw from the contract and have ticket price reimbursed for long delays, cancelled travel or denied boarding.</td>
<td>− In practice, passengers reported having problems in obtaining the full refund and getting it within the timeframe prescribed by the Regulations.</td>
</tr>
<tr>
<td>Right to the fulfilment of the transport contract in case of disruption</td>
<td>− Lack of clarity of a number of concepts, leaving room for interpretation, e.g. “comparable conditions” or no “additional cost”.</td>
</tr>
<tr>
<td>Right to receive alternative transport service/transport as soon as possible, or to rebook for long delays, cancelled travel or denied boarding.</td>
<td>− Vague, inconsistent or left out elements of this right in the four transport modes, e.g. the right to claim reimbursement for re-routing arranged by the passenger is not explicitly guaranteed in any of the Regulations.</td>
</tr>
<tr>
<td>Right to assistance in case of delay or cancellation</td>
<td>− Different exemptions for the provision of assistance across the four transport modes, e.g. extraordinary circumstances</td>
</tr>
<tr>
<td>Minimum level of care in case of long delays or cancellation.</td>
<td>− Several elements require clarifications, since they give rise to issues in practice, such as whether or not the right to assistance applies in cases of re-routing, reimbursement, and missed connections.</td>
</tr>
<tr>
<td>Right to compensation under certain circumstances</td>
<td>− Lack of clarity in the air transport with respect to &quot;extraordinary circumstances&quot;.</td>
</tr>
<tr>
<td>Financial compensation in case of long delays, cancelled travel and in case of involuntarily denied boarding in air travel.</td>
<td>− Complex and differing regulation across transport modes: e.g. specific conditions (e.g. re-routing not offered in bus and coach transport) and exemptions (e.g. delay caused outside the EU for rail travel) that apply to the individual transport modes.</td>
</tr>
<tr>
<td>Right to carrier liability towards passengers and their baggage</td>
<td>− Differences in the liability rules with respect to loss or damage due to delays;</td>
</tr>
<tr>
<td>Liability and compensation for e.g. death and injury of passengers and damage to luggage.</td>
<td>− Differences relating to compensation for personal injury or death;</td>
</tr>
<tr>
<td></td>
<td>− Absence of requirement for the compensation to cover maintenance of dependents in air and water transport.</td>
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</tbody>
</table>
The analysis shows that, besides the right to assistance which gives rise to a lot of complaints as seen above, the most problematic other rights are the right to information, the right to compensation and the right to full application and effective enforcement. Those are indeed the crucial ones to guarantee that passenger rights are applied in practice: in order for passengers to exercise their rights, they need to be aware of them, to easily claim them and have access to efficient public and private enforcement mechanisms.

These manifold gaps and inconsistencies of a regulatory and practical nature prevent users of all modes of transport, including disabled passengers and passengers with reduced mobility, from fully enjoying their rights. In addition, the fragmentation of legislation resulting from those inconsistencies results in discrepancies in protection and creates a barrier for seamless travel across the different modes of transport. These become all the more significant in case of intermodal travel.

**The specific case of intermodal travel**

While intermodal travel offers a number of advantages to passengers, namely in terms of seamless travel, it contains a number of challenges as regards regulating passenger rights. There is currently no specific set of rights applying to passengers travelling in intermodal schemes. The set of passenger rights (air, rail, waterborne or bus) will depend on the type of intermodal scheme. In some cases, different sets of rules apply to different legs of the journey (e.g. air passenger rights apply to the flight and rail passenger rights apply to train journey), in other cases, one set of rules applies to the whole journey.
When different sets of rules apply, passengers’ protection will differ from one leg to another, because of the differences in the existing EU legislation in the transport sector. On the other hand, where one set of passenger rights apply to the whole journey, this can give rise to problems resulting from the inadequacy of applying for instance air passenger rights to the train leg of the same trip.

Box 2: Passengers and inter-modal travel

<table>
<thead>
<tr>
<th>Advantages of intermodal travel</th>
<th>Factors affecting the exercise of passenger rights in intermodal travel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time savings for passengers resulting from schedule coordination</td>
<td>Lack of passenger awareness as to which rights apply to different legs of the journey</td>
</tr>
<tr>
<td>End-to-end check-in and integrated baggage handling</td>
<td>Inadequacy of a transport mode legislation applying to journeys of another mode</td>
</tr>
<tr>
<td>Reliability, punctuality, assistance</td>
<td>Unequal protection from one leg to another</td>
</tr>
</tbody>
</table>

While the lack of more widespread intermodal connections can be seen as a policy gap rather than a legal gap, the lack of clarity and inconsistencies of existing passenger rights across the modes of transport can create barriers to intermodal travel. A clear framework for passenger rights, including a section on intermodal journeys, as called for most recently by the Parliament in the Koch report⁶ would consolidate and enforce our rights to all modes of transport, facilitate intermodal journeys and contribute to creating a Single European Transport Area.

⁶ European Parliament Resolution of 7 July 2015 on delivering multimodal integrated ticketing in Europe (2014/2244(INI)).
The cost of absence of a consolidated framework for passenger rights

The complexity, fragmentation, inconsistency and in some cases incompleteness of the passenger rights framework have engendered negative consequences for passengers. They weaken the overall transparency and enforcement of passenger rights, affect the quality of service and can be an obstacle preventing passengers from fully enjoying the benefits of inter-modality. They result in practical problems, which entail real costs for passengers and the whole society. As such, the lack of EU action to consolidate the framework for passenger rights represents a "cost of non-Europe", which can, and has - partly - been quantified.

Methodology

The cost of non-Europe for passenger rights has been assessed by examining the impact of the above-identified gaps and inconsistencies against the six main areas highlighted in the Bach Report relating, directly or indirectly, to all the ten passenger rights analysed in the previous section:

1. Transparency: relates to the need to have clearly established rules across the four modes of transport.
2. Quality of service: covers selected quality of service aspects (accessibility of the transport infrastructure, punctuality, assistance in case of disruption, etc).
3. Information: the right to receive comprehensive and timely information
4. Liability: understood here as including the substantive legal and contractual requirements falling on transport companies and transport infrastructure managers - the failure of which triggers their liability.
5. Enforcement: relates to the complaint handling procedure set up by the transport companies and NEBs, and to effective enforcement of EU legislation by the NEBs.
6. Intermodality: refers to the capacity to combine different modes of transport or different legs of the same mode of transport in a door-to-door transport journey in an integrated and flexible way.
### Table 2: The six areas and the relevant passenger rights

<table>
<thead>
<tr>
<th>Areas highlighted in Bach Report</th>
<th>The most relevant EU Passenger Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Transparency</td>
<td>(1-10) Relates to all EU Passenger Rights</td>
</tr>
<tr>
<td>(2) Quality service</td>
<td>(1) Right to non-discrimination</td>
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<td></td>
<td>(2) Right to mobility</td>
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<tr>
<td></td>
<td>(6) Right to assistance</td>
</tr>
<tr>
<td>(3) Information</td>
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</tr>
<tr>
<td>(4) Liability</td>
<td>(4) Right to renounce travelling</td>
</tr>
<tr>
<td></td>
<td>(5) Right to fulfilment of the transport contract</td>
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<td>(6) Right to assistance</td>
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<td></td>
<td>(7) Right to compensation</td>
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<tr>
<td></td>
<td>(8) Right to carrier liability towards passengers and their baggage</td>
</tr>
<tr>
<td>(5) Enforcement</td>
<td>(9) Right to a quick and accessible system of complaint handling</td>
</tr>
<tr>
<td></td>
<td>(10) Right to full application and effective enforcement of EU law</td>
</tr>
<tr>
<td>(6) Passenger intermodality</td>
<td>(4) Right to renounce travelling</td>
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Due to the lack of systematic and comparable data, especially acute in some areas (namely information and liability), the quantitative assessment focused on a number of selected burdens for passengers and thus not all six areas could be covered. Furthermore, it only focused on the net social costs, i.e. costs which do not entail a transfer of value from carriers to passengers and vice versa. Thus, for instance financial compensation in cases of liability due to cancellations, delays and baggage was not included. On the other hand, it has to be noted that some of the burdens related to all areas have partly been accounted for within the quantitative estimates related to the enforcement area.
**Transparency**

The lack of clearly established rules regarding travel, unambiguous passenger’s rights and coherent all-related arrangements across all transport modes may lead to disinformation, confusion and the loss of time spent on looking for optimal solutions or in filing complaints that are ultimately inadmissible as a result of the lack of understanding of the rights.

Another aspect of transparency relates to information on prices during the purchasing process and procedures surrounding the purchasing process. EU legislation establishes requirements to ensure that transparent information on air fares and air rates is provided by carriers during the purchasing process (including online purchase). According to a study on price transparency, however, 17% of airlines and travel agents do not comply with the requirement to indicate prices inclusive of all unavoidable and foreseeable taxes, fees and charges from the first stage of the booking process and in their advertising.

The quantitative cost assessment in this area focused on estimating the aggregated value of time lost by passengers trying to figure out the final ticket price for possible comparison with other travel offers. Assuming that the deficiencies in transparency lead to passengers wasting about 15 minutes, the cost of this "gap" was estimated at approximately **130 million euro annually**.

**Quality of service**

Quality of service can be understood as to how companies meet customer’s needs while being economically competitive. While this area is very broad, the assessment of burdens due to gaps and inconsistencies focused on three elements, namely accessibility for and assistance of passengers with disabilities or reduced mobility (PRMs), non-discrimination, and the assistance to all passengers in case of disruption, with the latter being also assessed quantitatively.

Existing EU regulations requires consistent assistance to passengers for all transport modes during disruptions in the form of, for example, meals, refreshments, vouchers and payment for accommodation. This kind of assistance can be viewed as a standard for decent quality of service. The carriers must factor such costs in their budget estimates. Therefore, the lack of any assistance in case of major disruptions can be classified as an external cost, i.e. the social cost that is imposed by the carriers on the passengers while, in principle, this cost should be borne by the carriers. The magnitude of this cost burden has been approximated by referring to the minimum assistance which in cases of disruptions should have been granted to the passengers. Assuming - very cautiously - that the value of minimum assistance that would be needed in case of disruption equals 3 euro per person, the cost of this burden has been estimated at around **18 million euro annually**.

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8 Price transparency provisions in Regulation 1008/2008 and other relevant EU legal texts (European Commission, DG MOVE, January 2012).
**Enforcement**

Enforcement is a transversal, essential element of the protection and exercise of all passenger rights. The gaps and inconsistencies in the area of enforcement, as well as those relating to all other areas (including also transparency, quality of service, information and liability) have a number of negative implications. On one hand, the problems with the protection of particular passenger rights trigger an increased number of complaints. On the other hand, because of lack of transparency and gaps in information about complaint procedures passengers file less complaints than they could were they aware of their rights. Complex and lengthy complaint handling procedures affect passengers in terms of loss of time, confusion and emotional burden. They also have wider economic impacts as weak complaint handling and enforcement decrease the economic incentive for carriers to comply with the legislation.

The quantitative assessment of burdens in this area focused on the value of the time which is wasted due to the inefficiencies resulting from legal gaps - around 20% of the total time needed in the current state of play situation to handle the complaints. Based on this assumption and on the estimate of the value of time currently needed for complaint-handling procedures, the cost of non-Europe in this area has been estimated at the level of **69 million euro annually**.

**Intermodality**

Intermodal travel presents many benefits for passengers and the EU economy. Integrated ticketing, booking and journey planning allow time savings for the passengers spent otherwise on planning, booking and purchasing two separate trips and allows for seamless journey and swift connections. Integrated intermodal travel increases the quality of travel using different transport modes because it allows a wider range of travel options than using one single mode of transport. It enables better planning in connecting between modes and improved travel information. Finally, it increases the quality of service offered in case of disruption. As seen in the previous section, the lack of adapted or specific passenger rights in case of modal travel is however problematic for passengers and the exercise of their rights.

The quantitative assessment of the cost of non-Europe in the area of intermodality is looked at differently than for other areas. The analysis focuses on the assessment of the positive gains of having seamless intermodal travel, mostly manifesting as time-saving benefits due to easier and faster changes between the different transport modes and combined check-in and ticketing procedures. The assessment is built on two case studies:

- High-speed train (HST) connections with airports based on an example of London Heathrow airport.
- Integrated ticketing based on an example of the AIRM rail connection in Germany.
The lack of more wide-spread HST connections into airports has been estimated to cost approximately 129 million euro annually. The lack of integrated ticketing has been estimated, based on a time loss of 15 minutes per passenger not using an integrated ticketing system, which reaches a level of 9 million euro annually. Altogether, the quantitative assessment of cost of non-Europe in this area comes at the level of 138 million euro per year.

Summary

Monetary costs of some of the identified problems have been estimated at 355 million euro annually. They are based on the available (limited) data in the different transport modes and on conservative assumptions. As such, they can be seen as the lower denominator of the actual costs, which could in fact be double the estimated amount.

In addition, passenger rights problems result in other, non-monetary burdens, such as annoyance and stress, the weakened ability of passengers to claim their rights, lower demand stemming from passengers dissatisfaction from travel experience and the resulting preference for individual travel means. The wider social impacts relate to, for example, missing clauses on non-discrimination and lack of clearly defined liability rules and sanctions for carriers who do not implement passenger rights properly.

The lack of a consolidated framework for passenger rights can be seen as an important obstacle for creating a truly integrated Single Market in Transport. Moreover, higher standards and better alignment of the passenger transport regulations across the Member States would contribute to higher satisfaction of the passengers, which would ultimately result in higher demand for services not only in the transport sector but also in related sectors of the economy such as tourism. Thus, codification of passengers’ rights has a potential to benefit all the stakeholders involved, including the passengers, the carriers and the economy as a whole.
Table 3: A summary of Cost of non-Europe estimates/ Impacts of the lack of consolidated framework for passenger rights

<table>
<thead>
<tr>
<th>Area</th>
<th>Main costs identified</th>
<th>Qualitative assessment</th>
<th>Estimate (million euro)</th>
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</thead>
<tbody>
<tr>
<td><strong>Transparency</strong></td>
<td>- Time lost by the passengers while searching for adequate information on the final price of ticket and other services included</td>
<td>- Difficulties for passengers to understand and enforce their rights</td>
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<td></td>
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<td>- Annoyance and stress resulting from lack of transparency and unfair business practices</td>
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<td><strong>Quality of service</strong></td>
<td>- Cost of not having assistance during disruption</td>
<td>- Limited accessibility for and assistance of PRMs</td>
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<td>- Economic impact on companies in terms of a lower demand from PRMs</td>
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<td><strong>Enforcement</strong></td>
<td>- Value of time lost in complex and inefficient complaint handling procedures for passengers, and carriers' and NEBs' staff</td>
<td>- Weakened ability of passengers to claim their rights</td>
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<td><strong>Intermodality</strong></td>
<td>Positive gains of having seamless intermodal travel:</td>
<td>- Lower risk of missed connections for passengers</td>
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<tr>
<td></td>
<td>- Time-savings due to easier and faster changes between transport modes</td>
<td>- Environmental benefits due to replacement of air travel with rail</td>
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<tr>
<td></td>
<td>- Integrated ticketing and combined check-in procedures</td>
<td>- More smooth and seamless transport contributes to the fulfillment of broader EU objectives in the Single Transport Market</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td>355</td>
</tr>
</tbody>
</table>
The perspective for a Code on passenger rights

As described in the previous sections, the current status of passenger rights with scattered provisions, gaps and inconsistencies between transport modes and a difficult implementation scheme clearly prevents passengers from fully enjoying their rights.

While full harmonisation is neither possible nor desirable due to the reliance of some aspects of passenger rights on international conventions and the specificities of the transport modes, the establishment of a single EU framework for passenger rights, would present a number of advantages. Due to the cross-border nature of transport, the EU is in a position to provide added-value in regulating the transport sector and enhancing passenger rights by addressing the gaps and inconsistencies and regrouping passenger rights under a single legal instrument.

Table 4: Summary of main codification options and their merits

<table>
<thead>
<tr>
<th>Option</th>
<th>Necessary action</th>
<th>Improvement of clarity</th>
<th>Reducing inequalities</th>
<th>Legislative effort</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simple codification with no prior amendments</td>
<td>Consolidation into a single legislative instrument, classified according to the mode of transport</td>
<td>+</td>
<td>0</td>
<td>low</td>
</tr>
<tr>
<td>Simple codification with prior amendments</td>
<td>Substantial amendments to individual Regulations prior to consolidation</td>
<td>++</td>
<td>++</td>
<td>high</td>
</tr>
<tr>
<td>Wider approach to codification (recasting)- EU codex</td>
<td>Establishing a single legislative instrument with amendments made while establishing the new act</td>
<td>++ +</td>
<td>++ +</td>
<td>high</td>
</tr>
<tr>
<td>Common Frame of Reference (CFR)-non-binding</td>
<td>Setting principles, definitions and model rules for passenger legislation for all modes of transport as a basis for further consolidation of passenger law</td>
<td>++</td>
<td>++</td>
<td>low</td>
</tr>
<tr>
<td>Charter- non-binding</td>
<td>Set of fundamental rights and obligations</td>
<td>++</td>
<td>0</td>
<td>high</td>
</tr>
</tbody>
</table>

The options discussed in recent years, and summarised above range from a simple codification to an "EU Codex"\(^9\), passing through a Common Frame of Reference\(^10\).

---


The final value-added of such an instrument would depend on the approach chosen and its aptitude to address the two main problems of the existing passenger rights framework: the lack of clarity and transparency and the inequality of passenger rights across the transport modes. It would also depend on the length and complexity of the legislative effort required to establish a consolidated framework.

For instance, a Charter or a simple codification without prior amendments would bring clarity to the existing passengers' rights, but would not - or to a very limited extent - address the lacunae existing between transport modes. This could be done either by amending the current regulations (simple codification with prior amendments), or adopting a new regulation replacing all of the existing ones (wider approach to codification). Both approaches would however require a complex legislative effort.

In this respect, establishing a Common Frame of Reference (CFR) could facilitate the revision process in the above-mentioned options. A CFR could help reduce the complexity and time-consuming legislative work by clarifying terms, concepts and scope in advance of the codification work. As such, it would pave the way to a consistent and harmonised revision of passenger rights.
Abstract

This study analyses the costs for citizens, business, and other stakeholders of the absence of a consolidated framework for passenger rights as well as the feasibility and the merits of such a possible consolidation in a single legislative instrument. In order to assess such costs, this study analyses the current legislative instruments on passenger rights in the four modes of transport to identify any gap and inconsistency within each mode and between the modes of transport. The study then assesses the estimated types of costs relating to those gaps and inconsistencies. Finally, it identifies and analyses possible options for codification of passenger rights in a single instrument.
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LINGUISTIC VERSIONS
Original: EN

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This document is available on the Internet at:


PE 536.367
DOI 10.2861/835732
CAT QA-06-14-231-EN-N
**Acknowledgement**

The authors of this study are grateful for the generous advice and the thoughtful feedback of Professor Klaus Tonner, Simon Field, Jens Karsten, Milieu Senior Policy Advisor Niall Lawlor and the support of Alexander Zaciu and Gillian Kelly from Milieu.

The Committee on Transport and Tourism initiative report of **Keith Tailor** (Greens/European Free Alliance) on the functioning and application of established rights of people travelling by air (2011/2150/INI). This own-initiative report is the Parliament's answer to the European Commission's Communication from the Commission on the application of Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights (**COM(2011)0174**). In its resolution of 29 March 2012, the European Parliament suggests that further research should examine the possibility and feasibility of establishing a single legislative instrument on passenger rights. In a later resolution adopting the so-called Bach report, the European Parliament reaffirmed the need to integrate all passenger rights into a common legislative framework.
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Abbreviations

ADR  Alternative Dispute Resolution
CFR  Common Frame of Reference
CJEU  Court of Justice of the European Union
CoNE  Costs of Non Europe
COTIF  1980 Convention concerning International Carriage by Rail
CPC  Consumer Protection Cooperation (Regulation)
CRPD  Convention on the Rights of Persons with Disabilities
DB  Deutsche Bahn
EC  European Community
ECC-Net  European Consumer Centres Network
EU  European Union
FTE  Full-time equivalent earnings
IATA  International Air Transport Association
HST  High Speed Train
NEB  National Enforcement Body
PRM  Passenger with disabilities or reduced mobility
SCM  Standard Cost Model
SDR  Special Drawing Rights
TEU  Treaty on the European Union
TFEU  Treaty on the Functioning of the European Union
Charter  Charter of Fundamental Rights of the European Union
Cost of Non-Europe report on the Codification of Passenger Rights

Executive Summary

Since the Rome Treaty, transport policy has been at the forefront of the European Union's (EU) priorities, aiming at removing cross-borders obstacles and contributing to the free movement of citizens and goods, and later to the development of a single market in transport. Until the 1980s, transport in Europe was organized at national level, leading to major differences in transport structures and how transport is regulated in each country. Those differences contributed to a number of physical, technical and fiscal barriers to trade and free movement (e.g. immigration controls at borders) within the EU.

The transport sector is a key component of the EU economy. It concerns more than 800 million air passengers annually, around 400 billion passenger-kilometres travelling on national railway networks per year, around 400 million maritime passengers every year and bus and coach travel combined account for around 500 billion passenger kilometres per year.

Over the last decade, the EU has adopted legislative measures to protect passengers across four modes of transportation, i.e. air, rail, waterborne and road, acting on the basis of Article 91 and/or Article 100 TFEU related to the common transport policy. The legislative efforts resulted in the adoption of several regulations in this field. Alongside EU legislation, international conventions have been adopted to regulate certain aspects of passenger rights (i.e. related to carrier’s liability).

---

13 Main air passenger rights are in force from 2005, whilst rail, maritime and road passenger rights are in force since 2009, 2012, and 2013 respectively.
The rights to passengers have been summarised into 10 core passenger rights by the European Commission and endorsed by the European Parliament\(^\text{14}\), covering a set of basic rights in air, rail, water and road transport. They consist of the:

<table>
<thead>
<tr>
<th>10 Core Passenger Rights</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Right to non-discrimination in access to transport</td>
<td>Protection against direct or indirect discrimination based on nationality, residence, disability or reduced mobility.</td>
</tr>
<tr>
<td>2. Right to mobility</td>
<td>Accessibility and assistance at no additional cost for passengers with disability and reduced mobility.</td>
</tr>
<tr>
<td>3. Right to information</td>
<td>Information provision before the purchase of tickets, at various stages of travel, and importantly, in case of disruption.</td>
</tr>
<tr>
<td>4. Right to renounce travelling in case of disruption</td>
<td>Right to withdraw from the contract and have ticket price reimbursed for long delays, cancelled travel or denied boarding.</td>
</tr>
<tr>
<td>5. Right to the fulfilment of the transport contract in case of disruption</td>
<td>Right to receive alternative transport service/ transport as soon as possible, or to rebook for long delays, cancelled travel or denied boarding.</td>
</tr>
<tr>
<td>6. Right to assistance in case of delay or cancellation</td>
<td>Minimum level of care in case of long delays.</td>
</tr>
<tr>
<td>7. Right to compensation under certain circumstances</td>
<td>Financial compensation in case of long delays, cancelled travel and in case of involuntarily denied boarding in air travel.</td>
</tr>
<tr>
<td>8. Right to carrier liability towards passengers and their baggage</td>
<td>Liability and compensation for e.g. death and injury of passengers and damage to luggage.</td>
</tr>
<tr>
<td>9. Right to a quick and accessible system of complaint handling</td>
<td>Right to lodge a complaint with carrier if dissatisfied with service. May subsequently lodge a complaint with the competent National Enforcement Body (NEB).</td>
</tr>
<tr>
<td>10. Right to full application and effective enforcement of EU law</td>
<td>Right to count on the proper application of EU passenger rights by carriers. Enforcement of EU rules by NEBs should happen through effective, proportionate and dissuasive sanctions for infringements.</td>
</tr>
</tbody>
</table>

Despite securing strong passenger rights through legislative action, significant challenges remain. The scope of the passenger’s protection varies from a mode to another, creating several inconsistencies and gaps. The differences in the level of protection offered to passengers create uncertainty and confusion both for passengers and carriers. Whilst some differences appear objectively justified due to the nature of the mode or situation, several differences in the existing legislation do not appear to be justified. In addition, the information available suggests that, in practice, passengers often do not enjoy the rights to which they are entitled.

The idea of a single EU Framework Regulation covering passenger rights for all modes of transport has been discussed in recent years. The European Parliament Bach report on passenger rights in all transport modes affirmed the need for “a holistic approach is needed, so as to integrate all passenger rights [...] into a common legislative framework”\(^{15}\).

This study analyses the costs for citizens, business, and other relevant stakeholders of the absence of a consolidated framework for passenger rights as well as the feasibility and the merits of such a possible consolidation in a single legislative instrument. In order to assess the costs of the absence of a single legislative act on passenger rights, the current legislative instruments on passenger rights in the four modes of transport have been scrutinised to identify any gap and inconsistency within each mode and between the modes of transport. Some difference in legislation across the four modes of transport may be justified due to the specificity of a mode of transport, in our analysis, only the differences for which no objective justification could be identified are considered gaps or inconsistencies. The estimated types of costs relating to those gaps and inconsistencies have then been assessed. Possible options for codification of passenger rights in a single instrument have also been identified and analysed.

**A. The mapping of gaps and inconsistencies**

The analysis of the gaps and inconsistencies is based on two main criteria to enable to identify a difference in legislation as a gap or inconsistency. Under the first criterion, we assessed whether or not the legislation across the four transport modes guarantees the rights and if it is sufficiently defined. Under the second criterion, we assessed whether or not the right is effectively applied (by the carriers) and enforced (by the national enforcement bodies) in practice.

---

\(^{15}\) European Parliament, *Resolution of 23 October 2012 on passenger rights in all transport modes (2012/2067(INI)).*
The table below shows the number of gaps and inconsistencies identified for each right.

<table>
<thead>
<tr>
<th>Rights</th>
<th>Gaps in legislation and/or practice</th>
<th>Inconsistencies in legislation</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Right to non-discrimination in access to transport</td>
<td>6</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>2. Right to mobility</td>
<td>5</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>3. Right to information</td>
<td>8</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>4. Right to renounce travelling in case of disruption</td>
<td>4</td>
<td>10</td>
<td>14</td>
</tr>
<tr>
<td>5. Right to the fulfilment of the transport contract in case of disruption</td>
<td>5</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>7. Right to compensation under certain circumstances</td>
<td>1</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>8. Right to carrier liability towards passengers and their baggage</td>
<td>3</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>9. Right to a quick and accessible system of complaint handling</td>
<td>3</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>10. Right to full application and effective enforcement of EU law</td>
<td>3</td>
<td>2</td>
<td>5</td>
</tr>
</tbody>
</table>

Where legislation is in place, but is not implemented in practice, it is considered as a gap (a gap in practice). Many of the gaps and inconsistencies in legislation also result in problems in practice. In the analysis made in Section 3.4.2, the issues of practical implementation have been considered when assessing whether a gap or inconsistency is major or minor. In several cases, there is a lack of data on whether the gap or inconsistency results in problems in practice.

In the EU regulations, the right to non-discrimination in access to transport is recognised under limited grounds and applicable to specific situations in all four modes of transport. One of the most significant gaps relate to the absence of rules in air and rail transport that foresee the transport free-of-charge, or at a reduced fare, for the person accompanying a passenger with a disability or reduced mobility (PRM) when the carrier requests the PRM to be accompanied. Another important gap in legislation is the absence of a non-discrimination rule in access to transport on the grounds of sex, racial or ethnic origin, religion or belief, age or sexual orientation (in line with Article 19 TFEU).

The practical implementation of the legislation also seems to be problematic - in particular in the interpretation of the extent to which carriers may derogate from the right to non-discrimination, i.e. denied boarding of a PRM based on comfort reasons rather than strictly safety reasons.
The **right to mobility** entails two elements: 1) accessibility of transport services and 2) assistance for PRMs to access those services. Regarding the first element, accessibility requirements of transport infrastructure, when existent, are rather weak. Only the Rail Regulation offers a base for accessibility requirements – limited to new rolling stock and infrastructures.

In practice, accessibility of the transport infrastructure is problematic. Some inconsistencies exist in the extent of the assistance that must be provided under the obligation to provide assistance, (e.g. air and rail carriers are not required to provide temporary replacement of mobility equipment in cases of loss or damage), and some terms would benefit clarification, such as the notion of “reasonable efforts” to provide assistance when no prior notification is made.

The **right to information** is a particularly important right to ensure that passengers receive all of the needed information to plan and complete their journey, as well as to ensure that they know their rights and are able to exercise them. In existing EU legislation, this right is particularly problematic due to the many gaps and inconsistencies across the transport modes. An example of inconsistency in legislation concerns the requirement to inform passenger on their rights. In air transport, the EU legislation only requires carriers to inform passengers on their rights in case of denied boarding and flight cancellation. The most important issue concerning the PRMs’ right to information is to guarantee that they receive the information in a format they can use. The legislation across the modes provide different wording about the format in which the information on travel and accessibility or access conditions must be provided, i.e. “accessible format” or “appropriate format” (which could lead to different interpretation).

In practice, the provision of clear information on price, in air transport is not always applied correctly, whereby some carriers show the final price using an opt-out system for additional services, i.e. the passenger needs to refuse the addition service such as insurance, rather than the required opt-in system, i.e. where the passenger should be allow to select the additional service in addition to the base price.

The analysis of the **right to renounce travelling** showed both issues with regard to the legal provisions and their practical implementation. Some elements of the right across the four modes are not entirely clear, e.g. what a refund should cover and when it should be paid, thus leaving room for divergences in the interpretation. In practice, passengers reported having problems in obtaining the full refund and getting it within the timeframe prescribed by the Regulations.

With regard to the **right to fulfilment of the transport contract in the case of disruption**, the most important gaps relate to the lack of clarity of a number of concepts, leaving room for interpretation, e.g. “comparable conditions” or no “additional cost”. Some elements of the right are inconsistent or left out of the four Regulations, e.g. the right to claim reimbursement for re-routing arranged by the passenger is not explicitly guaranteed in any of the Regulations.
The provision of the **right to assistance** slightly differs across the transport modes. Many differences seem to reflect the individual features of the transport modes. As for other differences, it is less clear if they are justified, e.g., it is not clear why exemptions due to extraordinary circumstances are guaranteed only in the waterborne and bus sectors. Furthermore, there are a few elements which require clarifications, since they give rise to issues in practice, such as whether or not the right to assistance applies in cases of re-routing, reimbursement, and missed connections.

The **right to compensation** is a common source of many passenger complaints. The regulation of compensation is complex and it differs among the transport sectors. While compensation can be claimed under similar travel disruptions (e.g., cancellations, delays), there are specific conditions, e.g., not offered in case of re-routing in bus and coach transport, and exemptions, e.g., extraordinary circumstances, that apply to the individual transport modes. No clear justification could be identified for all of these differences. Across the four modes of transport, legislation guarantees the **right to carrier liability towards passengers and their baggage**. A total of eight gaps and inconsistencies have been identified. One of the most important inconsistencies concerns the difference in compensation for personal injury or death across the modes. An example of a significant gap relates to the absence of requirement for the compensation to cover maintenance and dependants in air and waterborne transport.

The assessment of the **right to a quick and accessible system of complaint handling** in the legislation as well as its practical implementation shows that there are considerable gaps and inconsistencies with regard to this right. The most important issue is that the role of national enforcement bodies (NEBs) in individual complaint handling is not clarified in any of the Regulations. While some flexibility must be allowed for the Member States to establish complaint handling systems in line with their legal and administrative traditions, the lack of clarity results in different approaches to the roles of NEBs across the Member States. Most passengers are often confused and unaware of the fact that most NEBs cannot take decisions that are binding on the carrier and cannot enforce a passenger’s individual claim.

The assessment of the **right to full application and effective enforcement of EU law** also reveals significant gaps and inconsistencies. The EU law across the four modes does not specify how the national enforcement mechanisms should work. On the one hand, it gives the Member States flexibility to consider the different national circumstances. On the other hand, it leads to divergences and inefficiencies in the application and enforcement of passenger rights in practice.

In **intermodal** travel, in some cases, different sets of passenger rights apply to different legs of the journey, e.g., air passenger rights apply to the flight leg, and rail passenger rights apply to the train journey. In other cases, one set of existing rules apply to all legs, e.g., air passenger rights apply to the air and rail legs of the journey. Where one set of passenger rights apply to the whole journey, there is a risk of inadequacy – a single transport mode legislation applying to journeys on another mode of transport. Because of the differences in existing EU legislation in the transport sector, within an intermodal journey, passengers’ protection will differ from one leg to another. This situation creates
Confusion for passengers and there is a higher risk that passengers are not fully informed on all the aspects of their journey and rights.

Overall, 84 gaps, inconsistencies and issues were identified across the four modes of transports for which we could not identify an objective justification (such as the specificities of a transport mode). Of the 84 differences, 42 consist of inconsistencies and 40 of gaps, while two issues relate to intermodal transport. The gaps and inconsistencies related to gaps in legislation or practice within one or all modes of transport, or related to inconsistencies between the regulations in the four modes of transports. This situation leads to an inequality of protection between the different modes of transport.

**B. The Costs of No European action**

This study assesses the costs of the EU not taking action – by looking at the most important burdens which results from the gaps and inconsistencies in existing EU legislation. For reasons of feasibility and methodology, the assessment is carried out on the basis of six areas of passengers’ rights (transparency, quality of service, information, liability, enforcement and intermodality). Each of the six areas refers to one or several rights and, overall, they cover all 10 core rights. The costs have been assessed in quantitative and qualitative terms. The quantitative analysis focuses on selected aspects of four areas (transparency, quality of service, enforcement and intermodality). However, it indirectly covers all the six areas, since issues in the areas of information and liability have partly been accounted for in the calculations related to enforcement. The assessment of the monetary costs focuses on the net social costs, i.e. costs which do not entail a transfer of value from carriers to passengers and vice versa. In addition, the monetary assessment of the burdens related to the legal gaps and inconsistencies has been carried out for the most relevant aspects of the six areas.

In order to provide a monetary value to the most significant burdens, scenarios have been created based on a number of assumptions, which are to the highest possible extent based on available data found through desk research and/or validation by stakeholders. Nevertheless, the estimates should be treated with caution as a rough estimation rather than precise values. Due to the lack of sufficient data – especially from the road and waterborne sectors, the development of such scenarios was not feasible for all transport modes, areas and burdens. Moreover, the quantitative assessment relates only to some cost elements since many of the identified burdens such as emotional stress or passenger satisfaction cannot be monetised due to methodological constraints and/or gaps in data availability. Therefore, the resulting numbers can be seen as a lower bound estimate.

Overall, the monetary costs concerns legal costs, costs in lost time lost for complaint handling, litigations and due to the lack of transparency, costs related to the lack of assistance to the passengers, and costs of having non-optimal intermodal connections.

The quantitative cost assessment in the **area of transparency** focuses on the gap resulting from the lack of full implementation of the legal provisions on transparency. The assessment makes an estimation of the time lost by the passengers while searching for
adequate information on the final price of the tickets and other services included (or not) in the final price. Assuming that passengers lose, on average, 15 minutes in which to understand the final ticket price – since it is estimated that 17% of airlines and travel agents do not comply with the legislation on price transparency, the estimate of costs related to the lack of price transparency reaches approximately €130 million annually. Qualitative assessment of this area also pinpoints to annoyance and stress resulting from the gaps and inconsistencies on price transparency rules as well as unfair business practices influencing competition.

In the area of quality of service, information on practical implementation shows that the assistance is not always provided to passengers in case of disruption. The quantitative assessment has been carried out in relation to the provision of minimum assistance to the passengers during disruptions. The cost of not having such assistance, and assuming that the minimum assistance needed in case of disruption costs €3 per passenger, has been estimated to equal approximately €18 million annually. The most prominent unquantified elements pertaining to this area include accessibility for, and assistance to, PRMs. While the situation in this area seems to be generally improving, there are still situations where the lack of appropriate accommodation of PRMs’ requires addressing in regard to reduced access to transport for this group of the society. It is also noted that improvements in this area are likely to benefit a much larger share of the society than the group of PRMs - up to 20% of the EU population, including parents with young children and elderly. Another major burden identified in this area is the lack of clear statement on non-discrimination in access to transport on the grounds of sex, racial or ethnic origin, religion or belief, age and sexual orientation, which impacts on core values of EU society.

The burdens in the area of information could not be directly assessed in a quantitative manner due to the lack of available data to support monetisation and the lack of feasible methodologies. However, since the lack of sufficient information about various aspects of travel often triggers passengers’ complaints, the quantitative estimates in the enforcement area are seen as relating, in part, to this area. The qualitative assessment of issues in this area stresses the fact that, if passengers are often not aware of their rights due to information gaps, they will not exercise their rights and claim for compensation, or ask for the provision of assistance they are entitled to. This results in practical problems overlapping with other analysed areas. A specific aspect in this area is information to the PRMs, which is not always provided in a format accessible for them.

Liability is another area which has not directly been assessed in a quantitative manner. Since the assessment is limited to net social costs, financial compensation in cases of liability due to cancellations, delays and baggage is not included in the CoNE, since financial compensation is considered a transfer of value from one group of stakeholders (transport carriers) to another (passengers). On the other hand, some of the burdens related to liability such as the lack of clear definition of liability in various circumstances resulting in longer enforcement procedures, have partly been accounted for within the quantitative estimates related to the enforcement area. The qualitative assessment of the burdens in this area pinpoints to time and financial losses suffered by the passengers facing various types of disruptions and problems such as lost luggage.
The quantitative analysis of burdens in the **area of enforcement** focuses on the complaint handling procedures. The legal issues related to various aspects of travel, e.g. the lack of clear and consistent definition of ‘extraordinary circumstances’ among the different travel modes, results in the low efficiency of complaint handling procedures. The value of time lost in these procedures due to the gaps and inconsistencies has been estimated to equal **€69 million annually**, which is an aggregate for all of the transport modes. As noted above, the costs of inefficient enforcement procedures analysed in the area of enforcement also refer to other areas including transparency, information, quality of service and liability. The qualitative assessment of burdens in this area underlines emotional stress, annoyance and confusion. Moreover, the lack of a clear and strong enforcement role for the NEBs gives insufficient incentive for businesses to fully comply with passenger rights. This decreases the effectiveness of the legislation due to compliance failure and passenger rights, both nationally and across the EU.

The **area of intermodality** is looked at differently in our assessment. The analysis of this area focuses on the assessment of the positive gains of having seamless intermodal travel, mostly manifesting as time-saving benefits due to easier and faster changes between the different transport modes and combined check-in and ticketing procedures. The lack of more wide-spread intermodal connections can be seen as a policy gap rather than legal gap since intermodality is not sanctioned within the law, albeit clarification of which passenger rights applying to the different legs of journey and inconsistencies across modes can create barriers to intermodal travels.

Due to limited data availability, the quantitative assessment of the absence of widespread intermodal connections focuses on two aspects: 1) more wide-spread availability of high-speed train (HST) connections to large European airports and, 2) integrated ticketing allowing time savings for passengers purchasing tickets for air-rail combined trips. Both aspects have been quantified using the value-of-time savings resulting from the annual time saved by passengers thanks to HDT connection into airports. The lack of more wide-spread HST connections into airports has been estimated to cost approximately **€129 million annually**. The lack of integrated ticketing has been estimated based on a time loss of 15 minutes per passenger not using an integrated ticketing system, which reaches a level of **€9 million annually**. Altogether, the quantitative assessment of CoNE in this area comes at the level of **€138 million per year**. The qualitative assessment mentions a multitude of benefits that are not quantified, including lower risks of missed connections for the passengers, and generally more smooth and seamless transport which contributes to the fulfillment of broader strategic EU objectives in the Single Transport Market.

The monetary costs of some of the legal gaps and inconsistencies in legislation and its practical implementation mentioned above, can be added up to a **total value of almost €355 million annually**. To summarise, these costs relate mostly to issues of price transparency, lack of assistance in case of disruption, time lost in the low efficiency of complaint handling procedures and the lack of more wide-spread intermodal connections.

As mentioned before, this number should be treated as a lower bound estimate due to the adopted conservative approach and the fact that not all the burdens were feasible to assess in monetary terms. Table A below gives a summary of quantitative estimates.
As already mentioned for each area, the qualitative assessment which complements the calculations of CoNE shows a multitude of aspects which often escape monetisation. In addition, a number of broader economic impacts have been identified – including impacts on passenger dissatisfaction from travel experience which may result in relatively more passengers choosing individual travel means, i.e. personal cars. Generally speaking, transport is a significant contributor to the economic growth, accounting for approximately 5% of the EU GDP\(^\text{16}\). Gaps, inconsistencies and violation of passengers’ rights might, therefore, hamper the growth of passenger transport and all of the positive economic effects related to this growth.

Table 5: A summary of CoNe estimates according to areas and transport modes

<table>
<thead>
<tr>
<th>Area</th>
<th>Transport mode</th>
<th>Estimate (million euro)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transparency</td>
<td>Air</td>
<td>130</td>
</tr>
<tr>
<td>Quality of service</td>
<td>Air</td>
<td>18</td>
</tr>
<tr>
<td>Enforcement</td>
<td>Air</td>
<td>54</td>
</tr>
<tr>
<td></td>
<td>Rail</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Road</td>
<td>0.31</td>
</tr>
<tr>
<td></td>
<td>Waterborne</td>
<td>4</td>
</tr>
<tr>
<td>Total enforcement</td>
<td></td>
<td>69</td>
</tr>
<tr>
<td>Intermodality</td>
<td>Air-rail (HST airport connections)</td>
<td>129</td>
</tr>
<tr>
<td></td>
<td>Air-rail (integrated ticketing)</td>
<td>9</td>
</tr>
<tr>
<td>Total intermodality</td>
<td></td>
<td>138</td>
</tr>
<tr>
<td>TOTAL for all areas and modes</td>
<td></td>
<td>355</td>
</tr>
</tbody>
</table>

C. The codification options

The existing EU legislation on passenger rights is fragmented across the four modes of transport in separate pieces of legislation. Most of these regulations have been negotiated and adopted at different times. Therefore, they have adopted slightly different approaches, wording and terminology, resulting in gaps and inconsistencies across the four modes of transport. In addition, the content of the right is, in some cases, very detailed – specifying various conditions to benefit the right, and exemptions. The interpretation of the CJEU has also added substantial content to those rights. As a result, the EU passenger rights are regulated in a very complex and non-harmonised manner. Due to the cross-border nature of transport, the EU is in a position to provide added-value in regulating the transport sector and enhancing passenger rights by addressing the gaps and inconsistencies and regrouping passenger rights under a single legal instrument.

The merits of the following codification options have been assessed:

- Simple codification with no prior amendment – Option A
- Simple codification with prior amendments – Option B
- Wider approach to codification or recasting – Option C
- Common Frame of Reference (CFR) – Option D
- Charter – Option E

In order to assess which form of codification offers the best added-value, we looked at whether or not the option addresses the two main problems of the existing passenger rights framework: the lack of transparency and the inequality of passenger rights across the transport modes.

If transparency is the main goal of the European legislator, a Charter or simple codification without amendment (options A and E) seems to offer the best value-added option. Both codification options would present the existing passenger rights in a more transparent and visible form, while entailing lower costs. However, neither option addresses the issues of the existing legal framework, or removes the inequalities existing between passengers across the modes. In terms of CoNE, options A and E only partly improve the areas of transparency, i.e. by consolidating the 10 core rights, and information, i.e. by facilitating the provision of information where all of the rights can be found in one document, without affecting any of the main costs. Therefore, the impact of EU action would be very limited and impact the passenger rights as well.

If addressing inequality between passengers is a priority for the European legislator, substantial amendments would need to be made in the existing passenger rights legislation. This could be done either by amending the current regulations (option B), or adopting a new regulation replacing all of the existing ones (option C). Depending on the extent of the amendments made, options B and C have the potential to substantially improve passenger rights in all of the six areas and, therefore, reduce their related costs.

Both options B and C would require a long and complex legislative effort – for option B in particular. Compared to option B, option C would entail going through the legislative process only once, whereas in option B, each regulation’s revision will require a separate legislative process. In addition, either option (B or C) may result in a European Passenger Rights Code that is complex and/or lengthy. Therefore, it would not fully eliminate transparency issues and could make it more difficult to amend and further improve its effectiveness.

Option D could, however, facilitate the revision process in options B or C and pave the way to a consistent and harmonised revision of passenger rights. A CFR could support the codification process and help reduce the complexity and time-consuming legislative work by clarifying terms, concepts and scope in advance of the codification work. Although a CFR would be a valuable support to the revision of passenger rights, establishing a CFR may, in itself, be a long and complex task.
1. Introduction

1.1 - Policy context

The introduction of the EU internal market in transport - starting with airline services in the 1980s, helped transform a sector which was previously characterised by fragmentation, limited competition and low consumer choice. The resulting introduction of competition and passenger rights, covering most, if not all, of the modes of transport, has meant that the internal market in transport today is reasonably well-developed and not as fragmented as 30 years ago.

In order to limit any potential negative impacts from the liberalisation of Europe’s transport markets on service quality, accompanying measures have been taken at EU level, over the last decade, to protect passengers. Starting with the reinforcement of air passenger rights in 2004\(^\text{17}\), the EU has adopted legislation on passenger rights across all four main modes of transportation, i.e. air, rail, waterborne and road\(^\text{18}\). In addition, the ongoing revision of the legislation covering air passenger rights will, once enacted, provide enhanced protection for air transport passengers.

Despite these advances in passenger rights, significant challenges remain. There remain gaps and inconsistencies in the legislation covering passengers across the different transport modes. This is acknowledged by the European Parliament\(^\text{19}\), by industry\(^\text{20}\) and by other stakeholders\(^\text{21}\), as creating uncertainty and confusion both for passengers and carriers. The conditions for claiming rights and their scope under EU legislation differ across the transport modes, e.g. circumstances under which passengers are entitled to compensation. Moreover, some specific issues, such as the definition of ‘extraordinary circumstances’, have given rise to a large number of cases before the EU Court of Justice, thereby adding to the complexity of the existing regulation and its different interpretation across national courts. Some convergence on this issue between modes would most likely improve passengers’ understanding of their rights and the application of these rules by carriers.

\(^{17}\) Air passengers already enjoyed certain rights under the Regulation 2027/97 which translated the Montreal Convention into EU law.


\(^{20}\) See Community of European Railway and Infrastructure Companies (CER), “A holistic approach is needed on passenger’s rights”, press release, 23 October 2012, and CER workshop material. See also the Position of the European Regions Airline Association (ERA) stating that passenger rights should be established covering the basic rights on all modes of transport.

The idea of a single EU Framework Regulation covering passenger rights for all modes of transport has been discussed in recent years – most notably as a result of the introduction of passenger rules in the areas of rail, maritime, bus and coach transport. In 2011, the European Commission published its Roadmap to a Single European Transport Area, listing among its future initiatives to ‘assemble common principles applicable to passengers’ rights in all transport modes […] and at a later stage, consider the adoption of a single EU framework regulation covering passenger rights for all modes of transport (EU Codex)’. In its own-initiative report adopted in 2012, the European Parliament proposed that further research be undertaken to consider the feasibility of establishing such a single legislative instrument. The Commission’s response at the time was that the consolidation of existing legislation would be rather complicated and that it would be more effective to use limited resources to ensure that consumer rights legislation is prepared on a complementary basis. The so-called Bach report on passenger rights in all transport modes, as adopted by the European Parliament, reaffirmed that “a holistic approach is needed, so as to integrate all passenger rights […] into a common legislative framework”. The Commission, in response, shared the European Parliament’s view that for effective passengers’ rights there is a need to reduce regulatory fragmentation and “to strive for greater harmonisation of passengers’ rights across transport modes”.

1.2 - Objectives of the research paper

Against this background, the European Parliament’s Committee on Transport and Tourism has requested the preparation of a Cost of Non-Europe (CoNE) Report on the Codification of Passenger Rights. The objective of the research paper is to analyse the costs, for citizens, businesses and other relevant stakeholders, of the absence of a consolidated framework for passenger rights and the feasibility and merits of such a consolidation in a single legislative instrument.

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24 European Parliament, Committee on Transport and Tourism, Own initiative report on the functioning and application of established rights of people travelling by air 2011/2150(INI), 5 March 2012.
25 Follow up to the European Parliament resolution on the functioning and application of established rights of people travelling by air, adopted by the Commission on 12 June 2012 (SP(2012)426-0).
26 European Parliament, Resolution of 23 October 2012 on passenger rights in all transport modes (2012/2067(INI)).
27 Follow up to the European Parliament resolution on passenger rights in all transport modes, adopted by the Commission on 5 February 2013 (SP(2013)71).
2. Methodology

The objective of this study is to provide the European Parliament with a comprehensive qualitative and quantitative analysis of the benefits of EU level action consolidating the framework of passenger rights into a single legislative instrument, such as for instance, a Code of Passenger Rights, and a comparative assessment of the costs involved in the absence of an EU-consolidated legislative instrument. To achieve this objective, the research methodology is based on four steps; each one building on the other.

1. Mapping the status quo, i.e. the state of play of the passenger rights guaranteed under the current EU legislation, including their practical implementation, and the identification and analysis of the regulatory and practical gaps and inconsistencies – see Section 3;

2. Examination of the most significant costs related to the current state of play, i.e. identification, quantification and qualitative assessment of the significant cost areas – see Section 4;

3. Identification of codification options for passenger rights. This step includes an assessment of the options, i.e. legal and economic analysis of the merits and feasibility of each option, taking into account the particularity of each transport mode – see Section 5;

4. Conclusions and options for further actions – see Section 6.

The mapping of the current state of play on passenger rights and the analysis of the main gaps and inconsistencies (step 1) are formulated using the structure of the ‘10 Main Passenger Rights’ provided by the European Commission in its 2011 Communication28 on Passenger Rights. The 10 core passenger rights cover an integrated set of basic passenger rights in all modes of transport – by air, rail, water and road, providing the minimum protection for citizens. The European Parliament broadly endorsed the 10 specific rights29.

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29 European Parliament, Resolution of 23 October 2012 on passenger rights in all transport modes (2012/2067(INI)).
Based on the gaps and inconsistencies identified in step 1 in the current EU passenger rights’ legislation and its practical implementation, the research paper assesses qualitatively and quantitatively, where possible, the economic costs and societal burdens arising from the existing status quo issues. The costs and societal burdens of the state of play are examined against six areas:

1. Transparency
2. Quality of service (persons with disabilities or reduced mobility)
3. Information
4. Liability
5. Enforcement
6. Intermodality.

Those six areas have been highlighted in the European Parliament’s Bach Report as areas which, together with the 10 core rights, form the core safeguards across all transport modes. The choice of the six areas as a structure for the costs assessment is based on their relevance for the social and economic analysis. Since the costs of the absence of EU action relate to issues that are not specific to one right, but cross-cutting rights, the six areas present a better platform for the costs analysis. The six areas also allow for combining elements that are not reflected in the 10 rights, such as intermodality and transparency.

Building on the analysis of the main gaps and inconsistencies in the current EU passenger rights and the costs and societal burdens that they imply, Section 5 identifies three options for codification of passenger rights. For each option the merits, i.e. the potential benefits and costs or burdens of the option, and the feasibility, i.e. the political, economic and practical achievability of the option will be considered.

Finally, Section 6 concludes the study with the key findings and proposes options for further action.
3. Mapping passenger rights in the EU

3.1.- Why are there concerns related to passenger rights?

Since the 1980s, transport is recognised as a key economic factor in Europe leading to deeper market integration. The first legislation at the (then) European Community level focused on air transport. Basic protection for passengers was introduced in 1991 by establishing a compensation system for denied boarding. In its 2001 White Paper, the Commission claimed its intention to introduce rules protecting passengers’ rights in all modes of transport. In 2004, the EU air passenger rights were further enhanced, followed by specific EU legislation adopted in 2009, 2012 and 2013 for the other modes of transport.

Overall, EU law now provides basic passenger rights in the four modes and, at the same time, facilitates mobility and social integration ensuring safety and passengers’ protection. However, as a result of being negotiated and adopted at different time periods, the regulations differ in scope and terminology making it more difficult for passengers to exercise their rights. Notwithstanding some scope and terminology issues, the protection afforded by these regulations is seen as very strong. However, from the practical point of view, it is widely recognised that the full set of rights is not yet completely and correctly implemented. For this reason, EU policy makers have listed EU passenger rights among the future challenges of the EU Single Market.

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34 See, for instance, EUBusiness, (Air Passenger Rights Revision), 06 February 2014. Most stakeholders contacted for this study also agreed that the four regulations offer a very strong protection of passenger rights in the EU.
35 European Parliament, Resolution of 23 October 2012 on passenger rights in all transport modes (2012/2067(INI)).
36 European Commission, The 20 Main Concerns about the Single Market, 2011. On the occasion of celebrating the 20 years of the EU Single Market, it was concluded that despite the efforts to inform passengers about their rights and to monitor enforcement, in practice passenger rights are often not well respected.
The information available suggests that passengers often do not enjoy the rights which they are entitled to. According to the European Consumer Centres Network (ECC-Net), the transport sector is regularly the number one source of cross-border complaints. In 2012, for instance, one third of complaints to the ECC-Net were related to transport – 22% of them to air transport. In travel and tourism where transportation is of vital importance, more than half of all complaints relate to transport services. Most issues concern transport by air, followed by rail, road, sea and inland waterways (see table 1 below).

While the EU’s aim is to have strong standards of protection for passengers, gaps and inconsistencies of a regulatory and practical nature may prevent users of rail, air, water, bus and coach transport, including disabled passengers and passengers with reduced mobility, from fully enjoying their rights. In addition, the fragmentation of the legislation resulting from the gaps and inconsistencies creates a barrier for seamless travel across the different modes of transport. The following detailed analysis of the 10 rights will help shed a light on the gaps and inconsistencies in the legislation – a necessary step to envisage the harmonisation of passenger rights.

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**Table 6: ECC-Net travel and tourism complaints in 2012**

<table>
<thead>
<tr>
<th>Rank</th>
<th>Area</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nr. 1</td>
<td>Transport services</td>
<td>Passenger transport by air</td>
</tr>
<tr>
<td>Nr. 2</td>
<td></td>
<td><em>Accommodation services</em></td>
</tr>
<tr>
<td>Nr. 3</td>
<td>Transport services</td>
<td>Car rental</td>
</tr>
<tr>
<td>Nr. 4</td>
<td>Transport services</td>
<td>Luggage transport by air</td>
</tr>
<tr>
<td>Nr. 5, 6, 7</td>
<td></td>
<td><em>Package holidays and accommodation services</em></td>
</tr>
<tr>
<td>Nr. 8</td>
<td>Transport services</td>
<td>Passenger transport by rail</td>
</tr>
<tr>
<td>Nr. 9</td>
<td>Transport services</td>
<td>Passenger transport by road</td>
</tr>
<tr>
<td>Nr. 10, 11</td>
<td></td>
<td><em>Accommodation services</em></td>
</tr>
<tr>
<td>Nr. 12</td>
<td>Transport services</td>
<td>Other purchased transport services</td>
</tr>
<tr>
<td>Nr. 13</td>
<td>Transport services</td>
<td>Passenger transport by sea and inland waterway</td>
</tr>
<tr>
<td>Nr. 14</td>
<td>Transport services</td>
<td>Luggage transport by road</td>
</tr>
<tr>
<td>Nr. 15</td>
<td>Transport services</td>
<td>Combined passenger transport</td>
</tr>
</tbody>
</table>
3.2.- Legal basis for EU action

The EU has a general competence to act in various areas related to passenger rights—those areas include transport, trans-European networks, consumer protection, justice and internal markets. This competence is shared with the Member States. This means that the Member States can only act in those areas as long as the EU has not yet exercised its competence. In addition, the principle of subsidiarity applies, meaning that the EU must act ‘only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States’.

One of the EU’s main objectives has been to develop a common transport policy. While the common transport policy initially focused on the opening and integration of a single EU transport market, the focus has since extended to safety, sustainable development, energy and passengers. Title VI of the Treaty on the Functioning of the European Union (TFEU) provides the basis for regulating the common transport policy. More specifically, the existing regulations take Article 91 and/or Article 100 as the main legal bases. Article 91 relates to the power of the European Parliament and the Council to lay down common rules on international transport, the operation of transport services and measures on transport safety. Article 100 gives competence to the European Parliament and the Council, acting in accordance with ordinary legislative procedure, and consultation with the Economic and Social Committee and the Committee of the Regions, to regulate sea and air transport.

In addition to these general areas of competence, the TFEU (Article 19) gives the EU competence on specific issues, such as the competence to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The Charter of Fundamental Rights of the European Union guarantees several important rights relevant to passengers. In particular, the right to non-discrimination, right to the integration of persons with disabilities, the right to access to services of general economic interest and the right to consumer protection. However, the Charter cannot be a basis to extend the competence of the EU and only applies in relation to the implementation of EU legislation.

3.3.- EU passenger rights

As mentioned above, passenger rights are currently not codified into one single legislative instrument. On the contrary, the rights are scattered through various pieces of legislation, which have been negotiated and adopted years apart, resulting in sometimes significant differences. In addition, within the various regulations, the rights are not

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38 Article 4 of the Treaty on the Functioning of the European Union.
39 Article 5(3) of the Treaty on the European Union.
40 Article 19 of the Treaty on the Functioning of the European Union.
41 Articles 21, 26, 36 and 38 of the Charter of Fundamental Rights of the European Union.
42 Article 51 of the Charter of Fundamental Rights of the European Union.
necessarily formulated by the same approach. Moreover, even within one transport mode, different aspects of a right may be included in different provisions or even spread across different regulations, adding an extra layer to their complexity.

### 3.3.1 Existing EU instruments

The EU has adopted several regulations aimed at protecting passengers in four modes of transport, i.e. air, rail, water and road. The main EU legislative instruments regarding passenger rights are:

- Air Regulation – in force since 2005;
- Regulation 1107/2006 on the rights of PRMs travelling by air;
- Recast Regulation 1008/2008 (air services);
- Regulation 889/2002 (air carrier liability);
- Rail Regulation – in force since 2009;
- Waterborne Regulation – in force since 2012;
- Regulation 392/2009 (waterborne carrier liability);
- Bus Regulation – in force since 2013.

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43 For other legislative instruments in this field see the bibliography.
It is important to understand that each regulation has a different scope and does not necessarily cover all the transport services under one mode. For simplicity reasons, further in this study, reference is often made to ‘the four Regulations’; meaning the main Regulations in each of the four transport modes. Only when legal precision requires, we distinguish the specific regulation which is different from the main ones. For instance, instead of referring to the Air Regulation, reference is made to Regulation 1107/2006, when it comes to the rights of PRMs in air travel. The main Regulations per transport area we consider are:

- The Air Regulation, which applies to passengers departing from an airport located in the EU or passengers departing from an airport outside the EU flying to an airport situated in the EU.

- The Rail Regulation, which applies to rail journeys and services of railway companies licensed in accordance with Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings. In addition, Member States have the option to exempt for a specified period certain types of rail services from the application of the Regulation, such as urban, suburban or regional rail services.

- The Waterborne Regulation applies to passenger services where the port of embarkation or disembarkation is situated in the EU. The Regulation does not apply to ships with less than 13 passengers, ships with less than four crew members or covering less than 500 metres one way, and, excursion and sightseeing tours other than cruises. In addition, Member States have the option to exempt for a specified period certain types of ships from the application of the Regulation.

- The Bus Regulation applies to passengers travelling on regular services – i.e. it does not apply to day trip services and non-regular holiday travels – where the boarding or alighting of passengers is located in the EU and for services covering a distance of at least 250 km. This effectively excludes inter-city buses and coaches, taxi services and car rental services, and, most national buses and coaches.

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In addition to the above instruments, specific EU legislative instruments provide additional protection for passengers, e.g. for waterborne transport, Directive 2009/45/EC on the safety rules and standards for passenger ships and Directive 2010/40/EU on the framework for the deployment of Intelligent Transport. The Package Travel Directive 90/314/EEC, currently under revision, provides harmonised standards applying to package travel, package holidays and package tours in the EU, to guarantee consumers' rights when they buy these services. The Consumer Rights Directive aims at increasing transparency for passengers with regard to the purchase of tickets online. According to the Directive the price of tickets should be clearly indicated and any charges that passengers were not informed about in advance are banned.

The EU is currently active on further developing passengers' rights. The Air Regulation is being revised and it is awaiting the Council's first reading position. The revised regulation aims to improve enforcement by clarifying key principles and implicit passenger rights that have given rise to many disputes between airlines and passengers in the past, while taking into account the financial implications for the air transport sector and ensuring that air carriers operate under harmonised conditions in a liberalised market. The Commission will also propose, in 2014, a Directive, i.e. the European

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54 Directive 2010/40/EU of the European Parliament and of the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport, OJ L 207/01 of 6 August 2010. This Directive aims at creating a safer and more efficient transport system through innovative transport technologies in Europe and also provides that efficient EU-wide multimodal and real-time travel information services in the field of road transport especially should be set up within the Union.
57 Article 5 of the Consumer Rights Directive 2011/83/EU.
Accessibility Act, aimed at improving access to goods and services, including transport infrastructure and services, for people with disabilities\textsuperscript{61}.

The Services Directive\textsuperscript{62} does not apply to transport but it specifically states that it applies to service providers in the field of tourism, e.g. travel agencies. The Service Directive provides examples of the rules regarding non-discrimination – based on the nationality of the service provider or the service recipient. It also provides rules on the provision of information regarding the requirements to exercise and access, – as a consumer, service activities. Similarly, it provides general information on the means of redress available in the case of disputes between providers and recipients\textsuperscript{63}.

### 3.3.2 Ten core EU passenger’s rights

The abovementioned legislative instruments provide a number of rights to passengers, which were summarised into 10 core passenger rights by the European Commission in its 2011 Communication on Passenger Rights in all transport modes\textsuperscript{64}:

1. The **right to non-discrimination** in access to transport protects passengers against discrimination directly or indirectly based on nationality, residence, disability or reduced mobility, depending on the situation.
2. The **right to mobility** guarantees accessibility and assistance at no additional cost for passengers with disability and reduced mobility (PRMs).
3. The **right to information** guarantees the provision of information on passenger rights before the purchase of tickets, at various stages of travel, and importantly, in case of disruption.
4. The **right to renounce travelling** guarantees to passengers the right to withdraw from the contract and get reimbursement of the ticket price in the event of long delays, cancelled travel or denied boarding.
5. The **right to the fulfilment of the transport contract in case of disruption** provides passengers with the right to receive an alternative service of transport as soon as possible, or to rebook at their best convenience in the event of long delays, cancelled travel or denied boarding.

\textsuperscript{61} European Disability Forum, (‘European Accessibility Act: EDF Calls on the European Commission to deliver a legislative proposal on the accessibility of goods and services’) and European Commission, Roadmap to the European Accessibility Act, 2011.


6. The **right to assistance** guarantees passengers a minimum level of care in case of long delays.

7. The **right to compensation** guarantees financial compensation under certain conditions, in case of long delays or cancelled travel and in case of involuntarily denied boarding in air travel.

8. The **right to carrier liability towards passengers and their baggage** establishes carriers' liability for the carriage of passengers (e.g. in case of death, injury) and their luggage, including in some cases of delay, which guarantees passengers with compensation determined according to the individual damages suffered. This right is regulated under International conventions and EU Law.

9. The **right to a quick and accessible system of complaint handling** ensures that passengers have the right to lodge a complaint with the carrier if dissatisfied. In case of a negative answer, or dissatisfaction with the carriers' reply, they have the right to lodge a complaint with the competent National Enforcement Body (NEB).

10. The **right to full application and effective enforcement of EU law** guarantees passengers the right to count on the proper application of EU passenger rights by carriers and an effective enforcement of EU rules from the NEBs. The four Regulations require Member States to designate enforcement authorities to ensure that passenger rights are respected. The NEBs should impose effective, proportionate and dissuasive sanctions for infringements, creating an economic incentive for carriers to comply with the Regulations.

The 10 rights are described in greater detail in Section 3.3 below, together with their legal analysis.

### 3.4.- State of play of passenger rights in the EU

This Section provides a detailed description of each right and examines gaps and inconsistencies across the four modes of transport. Each gap and inconsistency identified will then be assessed as major or minor following a specific methodology, which is described under Section 3.4.2.

When analysing each right, a brief description of how the core EU passenger rights are being implemented will be provided to illustrate the main problems faced by passengers in practice. It is important to note, however, that most of the available information is on air and rail passenger transport. Desk research reveals very little, or almost no

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65 Most studies, reports and a Special Eurobarometer 319 survey on passenger rights concern air transport: Review of Regulation 261/2004 (European Commission, DG MOVE, 2007); Evaluation of Regulation 261/2004 on the application and enforcement of the Regulation on air passengers' rights in the EU Member States (European Commission, DG Energy and Transport, 2010); Exploratory study on the application and possible revision of Regulation 261/2004 (European Commission, DG MOVE, 2012); Report on the assessment on rules on penalties applicable to infringements to Regulation (EC) 1107/2006, concerning the rights of disabled
information, concerning the application of waterborne and road transport passenger rights. This is due to the fact that the Waterborne and Bus Regulations have become binding only in December 2012 and March 2013. So their first assessment is due in 2015 and 2016 respectively, when the Commission will present its report to the European Parliament and the Council. Nevertheless, where relevant information is available on the Waterborne and Bus Regulations, it will also be duly reflected.

This section concludes with an overview of the 10 passenger rights and the level of protection they guarantee, taking into account the gaps and inconsistencies identified.

### 3.4.1 Methodology

The EU legislation provides for 10 core passenger rights, the content of which is spread over several regulations, which were negotiated and adopted years apart. As a result, gaps and inconsistencies in the protection of passenger rights exist across the four modes of transport. In order to classify an issue as a gap or an inconsistency under this research paper, a methodological approach has been defined based on two main criteria. Each of the 10 core EU passenger rights is analysed to identify gaps and inconsistencies in the legal framework across the four transport modes, using two overarching criteria:

- **Criterion No 1: Provision of the right in the legislation**

  This criterion aims to assess whether the legislation across the four transport modes guarantees the right and whether it is sufficiently defined. We scrutinize the regulations to see whether all the aspects of the right are protected by the legislation and to what extent, as well as any limitations and exceptions. Finally, we examine what happens if the carrier fails to guarantee the right (i.e., specific penalties in case of a breach of the right established in addition to the general enforcement system or specific right to compensation).


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67 To compensate for the lack of information, attempts were made to get feedback from stakeholders. However, they confirmed that in this early stage almost no information is available on how these regulatory instruments work in practice.

68 Article 29 of the Waterborne Regulation requires the Commission to report on the operation and effects of the Regulation by 19 December 2015, and Article 32 of the Bus Regulation requires such reporting to be done by 2 March 2016.
− **Criterion No 2: Practical implementation of the right**

This criterion aims to assess whether the right is effectively applied (by the carriers) and enforced (by the NEBs) in practice.

For the purposes of this study gaps and inconsistencies are considered as major or minor depending on the consequences for exercising the right in practice. This distinction between minor and major gaps and inconsistencies will then be used for the cost assessment of no EU action, for developing the different passengers’ rights codification options and the analysis of possible economic impacts.

Differences in legislation that stem from the specific characteristics of each mode (industries, markets, and in relation to passengers) are not considered as inconsistencies. In order to assess whether legal differences are objectively justified or stem from an inconsistent legislative approach, each gap or inconsistency has been examined **on a case by case basis**. The assessments have been validated by consultations with a various range of stakeholders (a selection of transport industries, consumer rights organisations and national enforcement bodies), as well as a senior expert in transport law. Nevertheless, the constraints of this study do not allow one to carry out extensive stakeholder consultations. Therefore, the validation results should be seen as indicative rather than definite. In addition, due to the scarcity of information on the implementation of some of the rights, especially with regard to the waterborne and road transport regulations, the analysis for those modes of transport focuses on the analysis of the legislation.

For the purposes of this study we will qualify gaps and inconsistencies as major or minor according to the following methodology:

<table>
<thead>
<tr>
<th>Qualification of gaps and inconsistencies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gap</strong></td>
</tr>
<tr>
<td>A gap is the absence of a legal provision, i.e. an issue is not explicitly regulated by the law, or when the legal provision is there but it is not applied in practice. An issue, not regulated by a regulation in one mode – in contrast to other modes, is considered a gap if the issue triggers a right for passengers, i.e. the right to be reimbursed. If the issue does not trigger a right, it will be considered as an inconsistency. A gap in EU law can also be the legislator’s deliberate choice, for instance, leaving the matter for national regulation (e.g. complaint handling and enforcement by the NEBs).</td>
</tr>
<tr>
<td><strong>Minor</strong></td>
</tr>
<tr>
<td>The existence of legal gaps presupposes that the regulation of passenger rights across the four modes is incomplete. However, if in the absence of a legal norm the matter can be dealt with through interpretation and no evidence points to practical difficulties in applying the right, this will be qualified as a minor gap.</td>
</tr>
<tr>
<td><strong>Major</strong></td>
</tr>
<tr>
<td>If a legal gap causes problems in practice, e.g. the implementation of passenger rights is adversely affected, this will be considered as a major gap. Furthermore, a gap will always be major if the legal provision is there but it is not applied in practice.</td>
</tr>
</tbody>
</table>
Qualification of gaps and inconsistencies

<table>
<thead>
<tr>
<th>Inconsistency</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>An inconsistency means a lack of harmony between the protection afforded to passengers by the Air, Rail, Waterborne and Bus Regulations or other applicable legislation. However, the four transport modes have different characteristics. Therefore, EU passenger rights across these modes should not be identical but comparable. Thus, differences justified by the individual features of the transport modes are not considered as inconsistencies.</td>
<td></td>
</tr>
</tbody>
</table>

- **Minor** Minor inconsistencies are differences in law across the four transport modes that may affect the clarity of EU passengers’ rights as a whole and thus inter-modality in passenger transport but without having an adverse effect on the passenger rights established in the individual transport mode.

- **Major** Major inconsistencies are differences in law across the four transport modes that render the protection offered to passengers less effective either in general or against the best protection guaranteed in other transport modes.

To analyse the gaps and inconsistencies the applicable legislation regulating passenger rights in the four modes of transport will be analysed. In addition, changes proposed in the proposal for amending the Air Regulation will be mentioned for information purposes, since the text is still under review.

### 3.4.2 Legal analysis of the 10 core EU passenger rights

1. **Right to non-discrimination in access to transport**

The right to non-discrimination in access to services, including transport, is recognised in European and international law. The International Convention on the Elimination of Racial Discrimination guarantees the right to access transport without distinction as to race, colour, or national or ethnic origin, while the Convention on the Rights of Persons with Disabilities (CRPD) provides similar grounds for non-discrimination in access to transport for persons with disabilities. The right to non-discrimination entails the prohibition of direct and indirect discrimination. In addition, in the case of the ground of disability (or reduced mobility), it includes a requirement of reasonable accommodation – i.e. to take “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”. Those international provisions have been

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70 Article 25 of the International Covenant on Civil and Political Rights also guarantees the right and the opportunity, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and without unreasonable restrictions to have access, on general terms of equality, to public service (which includes transport).

71 Article 2 of the CRPD.
ratified most of the EU Member States and apply to the EU institutions in the case of the CRPD\textsuperscript{72}.

At the EU level, the right to non-discrimination in access to transport is guaranteed but only under limited grounds of protection – i.e. nationality, residence and persons with disabilities or reduced mobility – and it pertains to certain specific situations – the offering of rates, to issue a ticket and boarding (see table below).

Table 7: Overview of the right to non-discrimination in all four modes of transport

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>When?</strong></td>
<td>Nationality and residence: flight reservation\nDisability or reduced mobility: flight reservation and boarding</td>
<td><strong>Not covered in the proposal</strong></td>
<td>Disability or reduced mobility: reservation and boarding</td>
<td>General (all passengers): reservation\nNationality: reservation\nDisability or reduced mobility: reservation and boarding</td>
<td>General (all passengers): reservation\nNationality: reservation\nDisability or reduced mobility: reservation and boarding</td>
</tr>
<tr>
<td><strong>What?</strong></td>
<td>Nationality and residence: non-discriminatory access to air fares and rates\nDisability or reduced mobility: obligation to accept a reservation and to embark</td>
<td><strong>Not covered in the proposal</strong></td>
<td>Disability or reduced mobility: obligation \textit{at no additional cost} to accept a reservation, \textit{to issue a ticket}, or may not require to be accompanied, unless this is strictly necessary</td>
<td>General (all passengers): to issue a ticket\nNationality: no direct or indirect discrimination in contract conditions and tariffs\nDisability or reduced mobility: obligation \textit{at no additional cost} to accept a reservation, \textit{to issue a ticket} or to embark</td>
<td>General (all passengers): to issue a ticket\nNationality: no direct or indirect discrimination in contract conditions and tariffs\nDisability or reduced mobility: obligation \textit{at no additional cost} to accept a reservation, \textit{to issue a ticket} or to take on board</td>
</tr>
</tbody>
</table>

\textsuperscript{72} Finland, Ireland and the Netherlands have signed the CRPD but have not yet ratified the convention.
<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Exceptions</strong></td>
<td>Nationality and residence: none</td>
<td>Not covered in the proposal</td>
<td>Disability or reduced mobility: refusal for safety reasons or physically impossible due to aircraft characteristics; or may require to be accompanied by another person</td>
<td>General (all passengers): unless under national law other documents give entitlement to transport</td>
<td>General (all passengers): unless under national law other documents give entitlement to transport</td>
</tr>
<tr>
<td>Nationality: none</td>
<td></td>
<td></td>
<td>Nationality: none</td>
<td>Nationality: none</td>
<td>Nationality: none</td>
</tr>
<tr>
<td>Disability or reduced mobility: for safety reasons or physically impossible due to the vehicle design; or may require to be accompanied by another person free of charge</td>
<td></td>
<td></td>
<td>Disability or reduced mobility: for safety reasons or physically impossible due to the ship design; or may require to be accompanied by another person</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>If not?</strong></td>
<td>Disability or reduced mobility: 1) in case of denied reservation: obligation to make reasonable efforts to propose an acceptable alternative and 2) in case of denied boarding: choice between right to reimbursement or re-routing</td>
<td>Not covered in the proposal</td>
<td>Disability: National enforcement to take measures to ensure that the rights of passengers are respected.</td>
<td>Disability or reduced mobility: 1) in case of denied reservation: obligation to make reasonable efforts to propose an acceptable alternative and 2) in case of denied boarding: choice between right to reimbursement or re-routing</td>
<td>Disability or reduced mobility: 1) in case of denied reservation: obligation to make reasonable efforts to propose an acceptable alternative and 2) in case of denied boarding: choice between right to reimbursement, continuing of journey or re-routing</td>
</tr>
</tbody>
</table>
The right to non-discrimination in access to transport is guaranteed under specific grounds of protection – i.e. nationality, residence and passengers with disabilities or reduced mobility (PRMs) – and for certain specific situations – the offering of rates, to issue a ticket and boarding. However, the legislation is not fully consistent across the different modes of transport.

The right to non-discrimination on the offering of fares and rates protects passengers from price discrimination when reserving transport tickets. The right is guaranteed in the air, waterborne and bus transport Regulations, but does not exist for rail passengers in the EU legislation.

The absence in the Rail Regulation of the right to non-discrimination on the offering of fares and rates based on nationality or residence does not appear to be justified. The reason for such a gap is not entirely clear and may be the result of the fact that the regulation has been negotiated several years before the more recent Waterborne and Bus Regulations. The gap can be considered as minor as Article 18 TFEU guarantees the right to non-discrimination based on nationality and is considered as a general principle of non-discrimination under EU law. For consistency and clarity, the regulations should nevertheless provide an explicit prohibition of discrimination based on nationality and residence.

The right to non-discrimination on the offering of fares and rates in the air, waterborne and bus transport Regulations varies in scope from one mode to the other. Such discrimination is not allowed based on nationality in the air, waterborne and bus transport Regulations, which is in accordance with Article 18 of the TFEU. Additionally, the air transport legislation explicitly protects passengers from discrimination based on the place of residence of the customer, or the place of establishment of the air carrier’s agent or other ticket seller within the EU. No objective justification could be identified from the fact that the place of residence criteria is not covered in Waterborne and Bus Regulations. This inconsistency between the modes is considered minor since there is no clear information identifying this inconsistency as having an impact in practice.

Both waterborne and bus regulations extend the scope of this right to contract conditions. The EU legislation does not define the notion of contract conditions in the context of transport. It can cover a wide range of situations, e.g. the conduct of the passenger, extent of the carrier’s liability, luggage and accessibility. Therefore, the scope of protection of the right to non-discrimination is greater for waterborne and bus passengers. This should however be considered as a minor inconsistency. As a result of Article 18 TFEU, the right to non-discrimination based on nationality is guaranteed within the EU (i.e. extending to

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74 Confirmed by a stakeholder and senior expert consultation.

75 The CJCEU has affirmed that ”Member States nevertheless remain subject to the general principle of non-discrimination on grounds of nationality enshrined in Article 18 TFEU”. CJCEU Case C-628 International Jet Management GmbH, 18 March 2014, para 59.

the contract conditions). For consistency, the regulations should ensure nevertheless similar wording and scope.

The right to non-discrimination on the issuance of a ticket is only specifically provided in the Waterborne and Bus Regulations. The legislation does not provide specific grounds (such as nationality or residence), but this right is also specifically guaranteed to persons with disabilities and reduced mobility (PRMs). The Rail Regulation also guarantees the right to non-discrimination on the issuance of a ticket for PRMs. In air transport, this right is indirectly covered for PRMs, by the right to non-discrimination based on disability or reduced mobility, for the reservation or purchase of a ticket. It can, however, be considered an inconsistency that the right to non-discrimination on the issuance of a ticket is not explicitly guaranteed for all passengers in air and rail transport. This inconsistency between the modes is considered minor since there is no evidence indicating that this inconsistency has an impact in practice.

The right to non-discrimination on the ground of disability or reduced mobility is guaranteed to passengers in all four modes of transport. The right to non-discrimination is protected in relation to the reservation or purchase of a ticket in all four transport sectors. Such protection applies to passenger embarkation only in air, waterborne and road transport. In rail transport, while railway companies and station authorities are required to have in place non-discriminatory access rules and to assist PRMs in boarding trains, there is no explicit right to non-discrimination in relation to the boarding of a train as it exists in the other modes of transport. This gap in the rail transport legislation appears not to be significant since the requirement of non-discriminatory access rules and the right to mobility is guaranteed (see below point 2 right to mobility). In addition, it does not appear that in practice railway companies refuse the boarding or embarkation of PRMs. In practice, a refusal to embark a PRM usually is based on a lack of accessibility of the train station (e.g. lack of access to the platform due to inexistent ramp or lift) or of the train (e.g. lack of wheelchair space in the train). In such cases, most carriers report that they try to agree with the passengers on suitable alternatives.

The Commission’s report on the application of the Rail Regulation notes that refusals to accept reservations from PRMs have been very rare. No general statistics exist, but the highest rate reported by one stakeholder was that 3% of requests were denied. Cases of refusal are usually the result of space limitations (e.g. limited wheelchair spaces). It is reported that, in some rare cases, wheelchair passengers had to purchase first class tickets to access a train, which can be considered discriminatory if these are not offered at a

77 Article 4 of the Waterborne Regulation No 1177/2010 and Article 4 of the Bus Regulation No 181/2011.
78 Article 7 of the Waterborne Regulation No 1177/2010 and Article 9 of the Bus Regulation No 181/2011.
79 Article 19 of the Rail Regulation No 2007/1371.
80 Article 3 of the Regulation (EC) No 1107/2006 on the rights of disabled persons and persons with reduced mobility when travelling by air; Article 20 of the Rail Regulation No 2007/1371; Article 7 of the Waterborne Regulation No 1177/2010 and Article 9 of the Bus Regulation No 181/2011.
reduced fare\textsuperscript{81}. While such cases have been very rare, this is nevertheless a concern as the Rail Regulation does not foresee the right to be reimbursed in case of denied boarding of PDMRs. This gap is assessed as minor since in practice it does not appear to be largely problematic as a result of the very low number of cases reported.

Under EU law, exceptions to the right to non-discrimination on the ground of disability cannot be justified for comfort issues or commercial issues. Exceptions are however allowed for reasons of safety or because the transport is physically inaccessible due to the characteristics of the transport system in the air, waterborne and bus transport regulations (see right to mobility below for further details).

In case the carrier refuses a reservation or boarding, carriers must make reasonable efforts to offer an acceptable alternative to the passenger (air, rail, waterborne, bus). The PRMs denied embarkation have, in any case, the right to ticket(s) reimbursement or rerouting (air, waterborne, bus). Alternatively, the transport company may require the PRM to be accompanied by another person capable of providing assistance if necessary (air, rail, waterborne, bus)\textsuperscript{82}. The Rail Regulation does not foresee reimbursement in case of denied boarding, which can be considered a minor gap as the passenger will be able to claim for reimbursement based on contract law. Nevertheless, such right should be explicitly stated in the Regulation.

When requiring PRMs to be accompanied by another person, the Rail Regulation and Regulation 1107/2006 (air) do not provide the requirement to carry them free-of-charge as opposed to the Bus and Waterborne Regulations. The Waterborne Regulation however limits the requirement to carry the accompanying person free of charge to regular ship services, effectively excluding cruise-ships\textsuperscript{83}. Thus, persons requested to accompany PRMs by carriers on cruise-ships, trains or airplanes could potentially be asked to pay the full ticket price. In its Interpretative Guidelines, the Commission recommends that where an air carrier requires a PRM to be accompanied, the seat should be offered for free or at a significantly discounted rate. Alternatively, some airlines, in such case, have established the practice to ask another passenger onboard to take the role of an accompanying person\textsuperscript{84}. In rail transport, it is a standard practice to apply the same discount to accompanying persons than the one applied to the PRM\textsuperscript{85}. It is noted that some countries outside of the European Union have adopted legislation to require transport operators to

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\textsuperscript{82} Article 4 of the Regulation (EC) No 1107/2006 on the rights of disabled persons and persons with reduced mobility when travelling by air; Article 20 of the Rail Regulation No 1371/2007; Article 8 of the Waterborne Regulation No 1177/2010 and Article 10 of the Bus Regulation No 181/2011.

\textsuperscript{83} European Commission, Activity report of the NEBs for maritime passenger rights, 18 March 2013.


\textsuperscript{85} Information provided by senior transport expert.
carry free of charge the accompanying person, when such person is requested by the carrier.\textsuperscript{86} This \textit{inconsistency} is therefore assessed as \textbf{major} since requiring (sometimes arbitrarily) a PRM to be accompanied effectively doubles the cost of travelling for the passenger in case the carrier does not offer substantially discounted rates or free travel. In addition, requiring that carriers carry free of charge the person accompanying the PRM under their request would provide an economic incentive to limit such requirement to strict safety reasons (as opposed to comfort reasons).

Indeed in air transport, some confusion exists on when carriers may derogate from the right to non-discrimination based on safety reasons. There is a lack of clarity in the legislation as to what is understood by the safety requirements, which can be considered a gap. Sometimes safety requirements are mixed with the comfort of passengers (eating, using the lavatories, etc.)\textsuperscript{87}. The exception based on safety reasons should however be interpreted strictly. In practice, arbitrary decisions lead to denying PRMs boarding transport\textsuperscript{88}. Most violations of the right to anti-discrimination in access to transport are reported predominantly in air transport\textsuperscript{89}. Several instances have been reported of passengers suffering from unjustified refusal (e.g. related to comfort issues rather than safety) or restrictions on reservations or boarding\textsuperscript{90}. For example, an airline refused to board four deaf persons on the basis that the airline policy is not to take more than two persons with reduced mobility at the same time on board for safety reasons\textsuperscript{91}. It appears that some airlines have a policy requiring a PRM to be accompanied in order to board the plane\textsuperscript{92}.

There is insufficient information on the practical implementation of the waterborne and bus transport regulations in order to assess whether there are gaps resulting from the lack of implementation of the right to non-discrimination on the ground of disability in these modes of transport.

Abusive use of the safety requirements to justify denied boarding of PRMs can be considered a \textbf{major gap}. It is not clear, however what the extent of the problem is, in practice, since little data has been gathered to identify the number of possible cases. In 2012, NEBs received 3757 complaints of denied boarding in the EU. Again, it is not clear, how many of these complaints were related to PRMs and the use of the safety

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\textsuperscript{86} See for example the United States \textit{Air Carrier Access Act, Section 382.35}.


\textsuperscript{88} Feedback from stakeholder consultation.

\textsuperscript{89} European Commission, Passenger rights: what passengers with reduced mobility need to know when travelling by air, \textit{MEMO/12/422}, 14 June 2012.

\textsuperscript{90} \textit{Ibid}.

\textsuperscript{91} Interfederal Centre for Equal Opportunities, \textit{Annual Report 2012}, May 2013, p.80.

\textsuperscript{92} The French Equality Body (Défenseur des droits) notes that certain airlines have a practice to systematically require PRMs to be accompanied and to refuse the boarding of an unaccompanied PRM without assessing whether the passenger is able to travel by him/herself. See the Rights Defender (Défenseur des droits), \textit{Annual Report 2013}, June 2014, p. 65.
derogation. On the other hand, the number of complaints received by the NEBs cannot be indicative of the overall problem since it does not account from the fact PRMs must first complaint to carriers, with a smaller portion of them turning to NEBs. In addition, only a portion of victims actually complaint – an estimated 10% actually claim for their entitlement.

According to the Rail, Waterborne and Bus Regulations, the right to non-discrimination on the ground of disability in relation to the reservation, purchase or issuance of a ticket should be guaranteed at no additional cost. The air legislation does not clearly provide such guarantee, which is a clear gap as any requirement to pay additional fees would in fact constitute discrimination. Since passengers do not need to declare their disability during the booking process, PRMs can choose not to disclose their disability when booking a ticket. As a result, despite the fact that the air legislation should specify that the payment of additional fees constitutes discrimination, this gap is considered as minor as in practice it does not appear largely problematic.

The grounds of non-discrimination and the situations protected by the EU legislation are rather limited in comparison to international standards, which include grounds such as race, gender, language, religion or other status. While Directive 2000/43/EC and Directive 2004/113/EC protects citizens from discrimination based on sex, racial or ethnic origin in access to services available to the public (i.e. transport), it would be beneficial if it was clearly stated in EU passenger rights legislation. The other grounds of non-discrimination (i.e. religion or belief, age or sexual orientation) still need to be fully recognised under EU law regarding access to services.

While most of the cases of discrimination reported relate to the ground of disability, the ground of race or ethnicity appear to be the second highest ground of discrimination cases in access to transport. In Ireland, research by the National Disability Authority (2011) found that nearly one in four people with a disability encounter difficulties accessing public transport. The number of people who perceive discrimination in access to transport is particularly low, respondents with Black ethnicity reported a much higher risk of discrimination, and are over six times more likely than respondents with White ethnicity to report discrimination in this domain. Nationality and religion were also

93 NEBs have received 3757 complaints of denied boarding in 2012 in the EU. It is not clear however how many of those related to PRMs and using the safety derogation. European Commission, Complaint handling and enforcement by Member States of the Air Passenger Rights Regulations, SWD(2014) 156 final, 7 May 2014.


95 Article 19 of the Rail Regulation No 2007/1371, Article 7 of the Waterborne Regulation No 1177/2010 and Article 9 of the Bus Regulation No 181/2011.

96 Feedback received from stakeholder consultation.

97 For instance, in Belgium, in 2012, the equality body received 12 complaints based on discrimination in transport based on racial ground and 26 complaints on access to transport based on disability ground (this data include access to transports not covered by EU regulations). Source: Interfederal Centre for Equal Opportunities, Annual Report 2012, May 2013, p. 80.

significantly associated with subjective discrimination in relation to transport services\textsuperscript{99}. A certain number of discrimination cases have been reported on the other grounds as well.

The absence of additional grounds recognised in other EU legislation and international conventions is a clear gap and can be considered as a **major gap** due to the importance of non-discrimination as a core value of the EU and the fact that passenger rights may be adversely affected in practice by the gap. However, it can be argued that a general non-discrimination provision applying to all modes of transport and including additional grounds of protection would be better suited to address this gap in general non-discrimination legislation, such as the proposal for the Directive on Equal Treatment\textsuperscript{100}. The proposed Directive includes the prohibition of discrimination on the grounds of religion or belief, disability, age, or sexual orientation in accessing services available to the public including transport services. If adopted, it would apply to the public and private sectors in all modes of transport.

In conclusion, regarding criterion 1, the right to non-discrimination in access to transport is recognised under limited grounds and applicable to specific situations in all four modes of transport. However, there are clear gaps and inconsistencies across the four modes, some of which are significant. Regarding criterion 2, the practical implementation of the EU regulations is problematic in particular in the interpretation of the allowed derogation from the right based on safety reasons. Another practical consideration crucial for the full implementation of the right to non-discrimination based on disability is to ensure full accessibility of stations, airports and port and bus terminals to PRMs. The right to mobility discussed below is particularly relevant to ensure accessibility.


### Table 8: Gaps and inconsistencies with regard to the right to non-discrimination

<table>
<thead>
<tr>
<th>Issues</th>
<th>Gap</th>
<th>Inconsistency</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Minor</td>
<td>Major</td>
</tr>
<tr>
<td>1. The Rail Regulation does not foresee the right to non-discrimination based on nationality and residence</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>2. The Waterborne and Bus Regulation do not extent passengers’ protection from discrimination against the place of residence</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>3. The air legislation does not extend the scope of the right to non-discrimination to contract conditions, while the Waterborne and Bus Regulations do</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>4. The right to non-discrimination on the issuance of a ticket is not explicitly guaranteed for every passenger in the air and rail transport sectors</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>5. The air legislation does not specify that PRMs are guaranteed the reservation, purchase or issuance of a ticket at no additional cost</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>6. The Rail Regulation does not foresee the right to non-discrimination based on disability to embark a train</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>7. Unclear scope of the exception to the right to non-discrimination based on safety reasons which result in not being strictly applied resulting in confusion and cases of refusal to access transport</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>8. The Rail Regulation does not foresee the right to be reimbursed in case of denied boarding of PRMs</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>9. Air and rail legislation do not foresee transport free of charge or at a reduced fare for the person accompanying a PRM when requested – Waterborne Regulation limits this possibility to regular services excluding cruise-ships</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. None of the regulations include the grounds of sex, racial or ethnic origin, religion or belief, age or sexual orientation (in line with Article 19 TFEU)</td>
<td>✓</td>
<td></td>
</tr>
</tbody>
</table>

### Right to mobility

The right to mobility complements the right to non-discrimination on the ground of disability and reduced mobility as the right aims to allow PRMs to travel on an equal basis with other passengers. It entails two elements: 1) accessibility of transport services and 2) assistance for PRMs to access those services. The CRPD, which has been ratified by the EU, provides that persons with disabilities should have access, on an equal basis with others, to transportation. State Parties to the Convention must take measures to eliminate
obstacles and barriers to accessibility of transportation and to ensure that private entities that offer facilities and services open to the public take into account all aspects of accessibility for persons with disabilities and that assistance is provided to facilitate accessibility.\textsuperscript{101}

The EU legislation overall guarantees the right to mobility, including the requirement of adopting accessibility standards (rail, road, waterborne) and ensuring assistance at no additional cost for PRMs (air, rail, road, waterborne). The scope, and the conditions under which assistance must be provided, differ from one transport mode to another. All the transport regulations provide a similar definition of the terms ‘disabled person’ or ‘person with reduced mobility’ to include “any person whose mobility when using transport is reduced due to any physical disability (sensory or locomotor, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or age, and whose situation needs appropriate attention and the adaptation to his or her particular needs of the service made available to all passengers”\textsuperscript{102}. As a result of this definition, a person with decreased mobility due to old age, a pregnant passenger or passenger with obesity could qualify for assistance, depending on the reduction of mobility experienced by the passenger and safety considerations\textsuperscript{103}. Difficulties in implementing the right to mobility have been identified across all transport modes.

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\textsuperscript{101} Article 9 of the CRPD.

\textsuperscript{102} Article 2(a) of the Regulation (EC) No 1107/2006 on the rights of disabled persons and persons with reduced mobility when travelling by air; Article 3(15) of the Rail Regulation No 1371/2007; Article 3(a) of the Waterborne Regulation No 1177/2010 and Article 3(j) of the Bus Regulation No 181/2011.

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<td>• To provide PRMs assistance without additional charge at the airport to enable the passenger to take the flight (handling of baggage and mobility equipment, move within the airport, embark and disembark) and on board (carry mobility equipment, guide dogs, seating arrangements, assistance to use toilet)</td>
<td>• To establish, or have in place, non-discriminatory access conditions for the transport of PRMs</td>
<td>• To establish, or have in place, non-discriminatory access conditions for the transport of PRMs</td>
<td>• To establish, or have in place, non-discriminatory access conditions for the transport of PRMs</td>
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<td>• To ensure that the station, platforms, and other facilities are accessible to PRMs</td>
<td>• To ensure that the station, platforms, and other facilities are accessible to PRMs</td>
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<td>• In the absence of accompanying staff, to make all reasonable efforts to enable PRMs to access Assistance</td>
<td>• In the absence of accompanying staff, to make all reasonable efforts to enable PRMs to access Assistance</td>
<td>• In the absence of accompanying staff, to make all reasonable efforts to enable PRMs to access Assistance</td>
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<td>• To provide PRMs with assistance free of charge at the station (to board or to disembark), and on board (assistance to ensure PRMs access to the same services as other passengers)</td>
<td>• To provide PRMs with assistance free of charge at the station (to board or to disembark), and on board (assistance to ensure PRMs access to the same services as other passengers)</td>
<td>• To provide PRMs with assistance free of charge at the station (to board or to disembark), and on board (assistance to ensure PRMs access to the same services as other passengers)</td>
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<td>• Provide assistance free of charge to PRMs at terminals (luggage handling, move within terminals to bus and boarding) and on board buses and coaches (information and board/air light if pauses in a journey)</td>
<td>• Provide assistance free of charge to PRMs at terminals (luggage handling, move within terminals to bus and boarding) and on board buses and coaches (information and board/air light if pauses in a journey)</td>
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<td>• Provide assistance free of charge to PRMs at terminals (luggage handling, move within terminals to bus and boarding) and on board buses and coaches (information and board/air light if pauses in a journey)</td>
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The above table shows that the issue of accessibility is mentioned in rail, road and waterborne transport modes, albeit specific requirements in terms of accessibility exist only in the Rail Regulation\(^\text{104}\). The Rail Regulation provides that the station, platforms, and other facilities must be accessible to PRMs through compliance with the Technical specifications for interoperability (TSI)\(^\text{105}\). The TSI set out standards for interoperability that railway undertakings must apply. These standards concern the design, construction, placing in service, upgrading, renewal, operation and maintenance of the parts of this system. With respect to PRMs, the TSI requirements are limited to new and renewals of rolling stock and infrastructure\(^\text{106}\). In practice, it is mostly the national law or policy, or

\(^{104}\) Article 21 of the Rail Regulation No 1371/2007; Article 9 of the Waterborne Regulation No 1177/2010 and Article 11 of the Bus Regulation No 181/2011.


\(^{106}\) The European Disability Forum notes that the TSI PRM is not going far enough in its requirements. As an example, new smaller stations are not required to ensure accessibility.
the policy of the railway which sets accessibility requirement for a railway undertaking.\textsuperscript{107}

Fully accessible railway stations all over the EU remain a challenge. For example, in Belgium, only 13 (out of around 543) railway stations were fully accessible in 2011.\textsuperscript{108} Europe-wide, 19\% of Europeans do not use the train because of accessibility issues.\textsuperscript{109} Even when the accessibility requirement is generally complied with, some problems are identified regarding pre-journey information and pre-notification. Namely, carriers often omit information on the physical accessibility of the arrival station, the maximum size and weight of wheelchairs, and appropriate onboard facilities.\textsuperscript{110}

The Rail, Road and Waterborne Regulations indicate that carriers and station/terminal managers must establish, with the active involvement of PRMs representative organisations, non-discriminatory access rules for the transport of PRMs. Research indicates that the extent of involvement in this process has varied from one Member State to another. Some railway companies have actively involved representative organisations (e.g. through the establishment of an advisory board or regular consultations). In other cases, this involvement has been limited to e.g. simple communication of the policy to PRMs organisations. The European Disability Forum has reported that the railway industry was generally not receptive to requests for accessibility improvements to rolling stock and infrastructure.\textsuperscript{111}

With regard to waterborne transport, Directive 2009/45/EC\textsuperscript{112} on safety rules and standards for passenger ships obliges Member States to ensure that appropriate measures are taken to enable safe access to passenger ships. However, the Directive does not specify what those measures should be.\textsuperscript{113} The absence of specific requirements for the modification or replacement of the infrastructure might potentially lead to implementation problems in the future, since many ports are not fully accessible.\textsuperscript{114}

For bus and coach transport, Directive 2001/85/EC requires vehicles of more than eight seats to be accessible for persons with reduced mobility, including wheelchair users.\textsuperscript{115} The Directive lays down a number of specific requirements to this end. A number of Member States have complied with the Directive for national type-approval vehicles.

\textsuperscript{107} Evaluation of Regulation 1371/2007 (European Commission, DG MOVE, July 2012) p. 79.
\textsuperscript{108} Steiner, P., “Belgium: only 13 stations fully accessible to persons with reduced mobility in the whole country”, 7 November 2011 available in French here.
\textsuperscript{109} European Commission, “Eurobarometer: Half of all Europeans are satisfied with their railways, but more needs to be done to improve the service offer”, Press release, 16 December 2013.
\textsuperscript{111} Ibid., p. 83.
\textsuperscript{112} Article 8 of the Directive 2009/45/EC on safety rules and standards for passenger ships.
\textsuperscript{113} Grimaldi e Associati, Passenger Ship Safety Legislative Review, April 2011.
\textsuperscript{114} European Commission, Activity report of the NEBs for maritime passenger rights, 18 March 2013.
\textsuperscript{115} Article 3 of the Directive 2001/85/EC of the European Parliament and of the Council of 20 November 2001 relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver’s seat, and amending Directives 70/156/EEC and 97/27/EC.
since 2003. However, the Directive only applies as from 2010 to all new vehicles put into service in the EU\textsuperscript{116}.

The Commission has been planning since 2011 to propose for a European Accessibility Act to improve and remove barriers to accessibility of goods and services (including transport) to PRMs\textsuperscript{117}. It is not yet clear when and if such legislative proposal will be issued.

Overall, it can be concluded that there is a gap in the EU legislation resulting from the absence of accessibility requirements in the air transport and limited accessibility requirements in the rail, bus and waterborne sectors. This \textit{gap is assessed as major} since accessibility is an important requirement for PRMs to access transport and inaccessibility would result in having passenger rights adversely affected\textsuperscript{118}. It can also be considered a \textit{major gap} that the accessibility requirements are not always complied with in practice and that many transport infrastructures remain inaccessible in the rail sector.

As shown in the above table, the legislation in the four modes provides comparable requirements in terms of assistance. The assistance is aimed at making sure that the person takes the transport, for which (s)he holds a reservation – provided that the person gave prior notification to the carrier and/or the transport authorities (air, rail, waterborne, bus). The regulations provide more details on the type of assistance provided in their annexes (air, rail, bus, waterborne). In all four modes, the assistance covers assistance at the terminal, including the boarding and disembarking, and assistance on board\textsuperscript{119}.

The Commission interpretative guidelines of the Regulation 1107/2006 on air transport underline that each assistance request should be assessed on its own merits and that the assistance provided be proportionate to the reduction in mobility. As a result, the type of assistance should be assessed on a case-by-case basis. The transport company cannot however request the passenger to provide a proof of the disability or medical conditions unless they are needed for safety reasons\textsuperscript{120}.

\begin{quote}
"I've been left on a train at 01:00, with no ramp to help me off."
Wheelchair user
BBC news

In 2013, a research carried out in the UK revealed that only 79% of people with disabilities were assisted off the train by staff, 5% were helped by passengers and 15% did not receive any help.
\end{quote}

\textsuperscript{117} European Commission, \textit{Roadmap to the European Accessibility Act}, June 2011.
\textsuperscript{118} No data, information could be identified on the extent of (in)accessibility of transport within the EU. Stakeholders confirmed the importance of clear and mainstreamed EU accessibility requirements.
\textsuperscript{119} Article 7 of the Regulation (EC) No 1107/2006 on the rights of disabled persons and persons with reduced mobility when travelling by air; Article 23 of the Rail Regulation No 1371/2007; Article 10 of the Waterborne Regulation No 1177/2010 and Article 13 of the Bus Regulation No 181/2011.
The assistance also covers the handling of the passenger’s mobility equipment and his/her luggage. Mobility equipment can be understood as “any equipment the purpose of which is to provide mobility”. Those should not be limited to the equipment needed only during transport. The four regulations foresee compensation in case of loss or damage to the mobility equipment when handled by the carrier or terminal operators. However, the regulations differ on the extent of the compensation. The air regulation 1107/2006 refers to international and national law on this issue. The Montreal Convention applies to air transport, meaning that any damage or loss of mobility equipment is dealt in the same way as any other luggage. As a result, air carriers do not have to assume full liability in case of damage or loss of mobility equipment. A maximum liability of 1131 SDR for all luggage is set under the Montreal Convention albeit mobility equipment can often exceed this limit when it has to be replaced. The Rail Regulation provides that there is no financial limit to the compensation, while the Bus and Waterborne Regulations foresee that the compensation is equal to the cost of replacement or repair. It has been reported that while compensation procedures are usually in place, it is considered potentially difficult for passengers to obtain the full value of the damaged mobility equipment without court action. Since such issues do not appear to have triggered many complaints, the inconsistency can be assessed as minor.

In addition, the Bus and Waterborne Regulations require carriers to provide temporary replacement of the mobility equipment. While no information was found on whether temporary replacement is in practice provided by air and rail carriers, the requirement is lacking from the legislation, which can be considered an inconsistency.

Indeed, one of the issues that can arise from the provision of assistance is loss or damage of mobility equipment when handling such equipment. Between 4% and 7% of the complaints related to air PRMs received by NEBs concerned this issue in 2010, 2011 and 2012. This relatively small number can be considered as the tip of the iceberg. The full scope of the issue is difficult to estimate as many passengers are unaware of their rights and NEBs’ procedures. In case the PRM’s wheelchair is damaged and not functioning, the passenger would need a replacement wheelchair for continuing his/her journey or simply moving around the infrastructure and avoiding being placed in a difficult position. This difference in the Air and Rail legislation results, in a number of cases, where passengers bear the cost of replacing or repairing the damaged mobility equipment.

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121 Ibid.
122 Feedback from stakeholder consultation.
125 See as example the story of this traveller in electric wheelchair whose wheelchair arrived broken at the Brussels airport, Davenport, R., “Travelling with a disability in Europe”, The Washington Post, 25 July 2013.

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In line with the methodology, this gap is assessed as major since the differences in the legislation across the four transport modes render the protection offered to passengers less effective against the best protection guaranteed in other transport modes.

The person in need of assistance first needs to notify the carrier at least 48 hours before travelling (36 hours for bus transport) in order to benefit from the assistance. At the terminal, station or airport, the PRM will go to a designated point, from where the person will be assisted.

The Bus Regulation provides a slightly shorter period for pre-notification: 36 hours instead of 48 hours in other modes of transport. The difference in period for notification period between buses and other modes of transport does not appear to be justified due to the specificities of bus transport as the bus transport encounters similar issues as rail transport, i.e. the need to ensure that staff is available at the (smaller) train stations or bus stops.

In practice, in the rail sector, many railway companies provide shorter pre-notification periods, e.g. 24 hours, or none, e.g. Eurostar does not require assistance pre-notification, requiring simply that passengers arrive at the station one hour before their train departure\(^{126}\). However, not all rail companies are in compliance. Some companies request notification of up to 72 hours\(^ {127}\). The inconsistencies in terms of pre-notification periods in the legislation, and in practice, have the potential to curb the ability of PRMs to travel on short notice. Since the extent to which the issue is problematic is not known, the inconsistencies are tentatively assessed as minor.

In the event that the passenger does not or is unable to notify the carrier in advance, the carriers and transport authorities must make all reasonable efforts to provide assistance so that the passenger is able to take the transport (air, rail, waterborne, bus)\(^ {128}\). None of the regulations define the concept of ‘reasonable efforts’, which suggests a softer obligation upon carriers and transport authorities. As a result, in such cases, the carriers and transport authorities could decide to give priority to pre-notified assistance\(^ {129}\). This could lead to delays for the passenger. Indeed, some rail operators have reported safety or operational constraints that limited the number of passengers requiring assistance which could be carried simultaneously. If a train has only two designated places for wheelchairs and both are occupied, then a passenger would be required to travel on the next available service\(^ {130}\). The guidelines of the European Civil Aviation Conference suggest that PRMs who have not pre-notified the carriers should not wait longer than 45

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\(^{127}\) Ibid.


\(^{130}\) Evaluation of Regulation 1371/2007 (European Commission, DG MOVE, July 2012) p. 84.
minutes before receiving assistance. The lack of a binding definition of ‘reasonable efforts’ is considered a minor gap since no evidence points to the practical difficulties. The terms should however be clarified in the legislation.

Assistance must be provided free of charge (rail, waterborne, bus) or at no additional cost (air). The difference of wording between “free of charge” and “no additional cost” is not entirely clear. In practice, the difference in terminology may have an impact in a situation where a passenger must make a phone call to request assistance. The terms “free of charge” would entail that some calls can be made through a toll-free number. In accordance with the “no additional cost” terminology, it would be sufficient that the phone number requires paying local call costs, without any additional fee. It has been reported that, in some cases, if assistance has to be requested by phone, a fee is charged for the call on top of the local call cost. In fact, a frequent ground of complaint of PRMs to NEBs is the lack of toll-free pre-notification tools. It is also one of the main issues of non-compliance in the air sector. In the rail sector, many railway companies provided standard local phone numbers, rather than ‘toll free’ numbers, for requesting assistance. While the pre-notification is available at no additional costs, the small local call charges seem at odds with the free of charge requirement under the regulations. Overall, the inconsistency in legislation and practice can be considered as minor because it does not severely affect passenger rights.

Under EU legislation, carriers must give priority to carrying persons with reduced mobility and any persons or certified guide dogs accompanying them, or, at least, accommodate them (air, waterborne, bus).

Lastly, the legislation requires transport authorities to designate the points of arrival and departure at which persons with disabilities or reduced mobility can announce their arrival and request assistance (air, rail, waterborne, bus). At the meeting of the Commission’s expert group for bus and coach passenger rights, issues were raised about designated bus stations. As required by the Regulation, Member States must designate bus stops where PRMs may receive appropriate assistance. At that time, a significant number of Member States had not designated such bus stops. Furthermore, from those that did, some designated stations that were not always the major ones, and others designated many bus stops and stations – but they were not staffed to provide

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131 ECAC, ECAC policy statement in the field of civil aviation facilitation, ECAC.CEAC Doc No. 30, December 2009, Annex 5 C.

132 Ibid, p. 84.


135 Evaluation of Regulation 1371/2007 (European Commission, DG MOVE, July 2012) p.84.


assistance. It is not clear if similar issues exist in the other modes of transport. This gap, in practice, can be assessed as minor because the extent to which it affects passenger’s right to assistance is not known.

Table 10: On the gaps and inconsistencies identified with regard to the right to mobility

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<tr>
<th>Issues</th>
<th>Gap</th>
<th>Inconsistency</th>
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<td>11. Absence of accessibility requirements in the air legislation and limited accessibility requirements in the rail, bus and waterborne sectors</td>
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<td>12. Issues of accessibility remain, in practice, in the rail sector. Accessibility requirements are not always complied with</td>
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<td>13. Regulations differ in terms of compensation in case of loss or damage to the mobility equipment. In air transport, carriers do not assume full liability</td>
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<td>14. Air and rail legislation does not require carriers to provide temporary replacement of the mobility equipment in case of loss or damage</td>
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<td>15. Differences in terms of assistance pre-notification periods in the legislation and in practice</td>
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<td>16. Lack of definition of the concept of ‘reasonable efforts’ for the provision of assistance in case the PRMs do not notify their request for assistance prior to the day of departure</td>
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<td>17. For some carriers, phone numbers to request assistance are available upon payment of a fee in addition to the local call costs</td>
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<tr>
<td>18. A number of Member States have not designated such bus stops for assistance and, some designated stations are not always the major ones, or they are not staffed to provide assistance</td>
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In conclusion, regarding criterion 1, the accessibility requirements of transport infrastructure under the right to mobility, when existent, are rather weak. Only the Rail Regulation offers a base for accessibility requirements; yet limited to new rolling stock and infrastructures. As for the obligation to provide assistance, some inconsistencies exist in the extent of the assistance provided, although they can be qualified as minor since the impact in practice appears minimal. The concept of reasonable efforts in case of absence of pre-notification has yet to be defined to ensure a consistent approach across the modes. Regarding criterion 2, practical implementation is an issue particularly regarding the accessibility of the transport infrastructure. Weak EU legal requirements in terms of accessibility do not support strong implementation across the EU. Some additional concerns relate to the lack of compliance in guaranteeing assistance free of charge and the designation of arrival and departure bus points for PRMs.

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138 European Commission, Activity report of the NEBs for bus and coach passenger rights, 18 July 2013.
3. **Right to information in case of disruption**

The right to information relates to all transport modes (see tables below) and covers information on passenger rights before the purchase of tickets, at the various stages of travel, and importantly in case of disruption. Besides the general rules on travel information (Table 6 below), specific provisions are set forth with regard to information for PRMs (Table 8 below). The protection of the right to information is aimed at making sure that passengers are aware of their rights and are informed of all necessary elements to take a reasoned decision with regard to their travel.

**Table 11: Overview of the right to information in all four modes of transport**

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<td><strong>Information to be provided before the purchase of a ticket</strong></td>
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<tr>
<td>Information content</td>
<td>Air fares and air rates must include the applicable conditions</td>
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<td>General contract conditions; time schedules and conditions for the fastest trip and lowest fares;</td>
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<td>The final price must be indicated and must include the air fare or air rate, all applicable taxes, charges, surcharges and fees</td>
<td>Not covered in the proposal</td>
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<tr>
<td>How?</td>
<td>Optional price supplements must be clear, transparent and unambiguous at the start of the booking process.</td>
<td>Not covered in the proposal</td>
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<td><strong>Pre-journey information and information during the travel</strong></td>
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<tr>
<td>Information content</td>
<td>NEB contact details</td>
<td>Passengers must be informed in the event of cancellation; Explanation must also be given on possible alternative transport</td>
<td>Information on compensation and assistance in</td>
<td>Passengers’ rights and obligations, NEB contact details</td>
<td>Passengers’ rights and obligations, NEB contact details</td>
</tr>
<tr>
<td></td>
<td>Passengers must be informed on their rights and complaint handling processes</td>
<td>Passengers at the airport must be informed about cancellations</td>
<td>Passengers’ rights and obligations, NEB contact details</td>
<td>Decisions to discontinue services</td>
<td>Adequate travel information</td>
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<td>On-board services; next station; delays; main connecting services;</td>
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<td>In the event of cancellation or delay in departure passengers should know</td>
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<td>case of denied boarding, cancellation or delays for at least two hours</td>
<td>and their rights in unexpectedly ceased operations as in the case of insolvency</td>
<td>security and safety issues</td>
<td>In the event of a delay in arrival or departure, passengers must be informed of the situation and the estimated departure and arrival times</td>
<td>informed of the estimated departure and arrival times. In case of a missed connection – they must be informed of alternative connections</td>
<td>the estimated departure time. In missed connections, they must be informed of possible alternatives</td>
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</table>

**When**

- At check-in information on compensation and assistance in case of denied boarding, cancellation or delay of at least two hours
- In the event of cancellation passengers must be informed two weeks to one hour before departure

At the check-in desks (incl. self-service check-in) and at the boarding gate

- In the event of cancellation or delay in departure, passengers must be informed as soon as possible, no later than 30 minutes after the scheduled departure time, and of the estimated departure time as soon as this information is available.

- NEB contact details: at the station and on the train
- Decisions to discontinue services must be made public in advance
- In the event of a delay in arrival or departure, passengers must be informed of the situation as soon as information is available.

- NEB contact details: publicly available on board ships, in ports, if possible, and terminals
- Adequate travel information throughout travel
- In the event of a delay in arrival or departure, passengers must be informed of the estimated departure and arrival times.

- Information on passengers’ rights: publicly available and as far as possible in accessible formats.
- Information on passengers’ rights: in accessible formats upon request

**How?**

- NEB contact details: in a written form
- A notice on compensation and assistance in case of denied boarding, cancellation or delay for at least two hours must be clearly visible

- NEB contact details: in an appropriate manner
- Decisions to discontinue services must be made public by appropriate means

- Information on passengers’ rights: publicly available and as far as possible in accessible formats.
- Information on passengers’ rights: in accessible formats upon request

- In the event of cancellation or delay [...] information must be provided by
In air transport, Regulation 1008/2008 requires carriers to provide transparent information on air fares and air rates before the purchase of a ticket in any form (including the internet). The acceptance of the final price, optional price and supplements must be on an ‘opt in’ basis\textsuperscript{139}. Notwithstanding this legal requirement, in practice, some airlines and travel agents, in practice, do not indicate prices inclusive of all unavoidable and foreseeable taxes, fees and charges from the first stage of the booking process, or in their advertising\textsuperscript{140}. This gap, in practice, is considered major because some carriers do not fully comply with the requirement, thus, adversely affecting passengers’ right to transparent information on air fares and rates.

In addition, while the Regulation clearly specifies that the acceptance of optional prices and supplements has to be on an ‘opt in’ basis\textsuperscript{141}, some air carriers use a system based on ‘opt-out’. According to such system, the price proposed already includes supplements for certain services that the passenger specifically needs to ‘opt out’ from, if he/she does not wish to purchase them. This is considered a major gap due to the problems in practice to ensure the application of this requirement. Such practice may mislead the passenger regarding the ticket price and the services to purchase.

Similarly as in air transport, rail passengers must be informed by railway undertakings and ticket vendors, in the most appropriate format, of the general conditions applicable to the contract including conditions for the fastest trip and for the lowest fares\textsuperscript{142}. However the Rail Regulation does not go into details explaining what components of the price need to be mentioned and when. This inconsistency is considered major because it seems to create problems in practice. For instance in the rail sector, the ticket information

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|}
\hline
\hline
& to passengers & & & & \\
\hline
& In case of cancellation or denied boarding a written notice on compensation and assistance must be provided to passengers & & & & electronic means to all passengers, upon request \\
\hline
\end{tabular}
\end{table}


\textsuperscript{140} Price transparency provisions in Regulation 1008/2008 and other relevant EU legal texts (European Commission, DG MOVE, January 2012).


\textsuperscript{142} Article 8 of the Rail Regulation (EC) No 1371/2007.
is not provided in full, i.e. only the total price is shown after all choices have been made and therefore it is difficult to identify the cheapest ticket\textsuperscript{143}.

Unlike in air and rail transport, the Waterborne and the Bus Regulations do not set rules with regard to information on ticket prices. The absence of any right to transparent information on price is therefore considered a \textit{major gap} as it could give rise to transparency issues. Since price is an important element of the decision to opt for a transport service, the potential lack of transparency could limit the capability of passengers to take reasoned decisions about their travel. While there is scarce information on the practical consequences of such a gap, a clear provision on price transparency would be preferable.

Another element of the right to information is the right of passengers to be informed about their rights and of the NEB contact details before travelling (air, rail, waterborne, bus)\textsuperscript{144}. In air transport, the requirement for carriers to inform passengers on their rights is limited to the situation where passengers are denied boarding and flight cancellation\textsuperscript{145}. Since it is essential that passengers know their rights in all situations, this \textit{inconsistency is considered as major}. In addition, in practice, studies have shown that, in both air and rail transport, the lack of information can be an issue for passengers\textsuperscript{146}. The NEBs also confirmed that violation of the right to information is a common source of complaints in air transport, and more so in the cases of denied boarding or cancelled flights\textsuperscript{147}. A survey carried out in Germany, Denmark and the UK showed that just over half of the passengers surveyed were correctly informed about their rights in case of disruption\textsuperscript{148}. Similarly, a study on the evaluation of the Rail Regulation found that railway undertakings were often not compliant, either because the information is incorrect, incomplete or difficult to find\textsuperscript{149}. No sufficient information on the implementation of the regulations in bus and waterborne transport is available to assess whether or not it is also a concern in those transport modes.

\begin{flushright}
\textsuperscript{143} \textit{Report of the study Evaluation of Regulation 1371/2007 by Steer Davies Gleave on the application and enforcement in the Member States of the Regulation on rail passengers' rights and obligations} (European Commission, DG MOVE, 2012), Appendix F.
\textsuperscript{146} \textit{Report of the study Evaluation of Regulation 1371/2007 by Steer Davies Gleave on the application and enforcement in the Member States of the Regulation on rail passengers' rights and obligations} (European Commission, DG MOVE, 2012), Appendix F.
\textsuperscript{147} Evaluation of Regulation 261/2004 on the application and enforcement of the Regulation on air passengers' rights in the EU Member States (European Commission, DG MOVE, 2010), p. 36.
\textsuperscript{149} \textit{Report of the study Evaluation of Regulation 1371/2007 by Steer Davies Gleave on the application and enforcement in the Member States of the Regulation on rail passengers' rights and obligations} (European Commission, DG MOVE, 2012), Appendix F, p. 231.
\end{flushright}
The issues on the provision of information on rights, in practice, can be considered a **major gap** since the provision of information on passenger’s rights is crucial for passengers to be able to exercise their rights.

The Regulations are silent as to how the information on passenger’s right should be provided, e.g. paper copy, on board, or via the internet. The Air Regulation, however, requires carriers to inform passengers on compensation and assistance in case of denied boarding, cancellation, or delay, in a clear notice displayed in a visible manner. This requirement only exists in the Air Regulation. It also falls short in clarifying the format, e.g. paper, electronic, board or individual copies. The legislator may have aimed to leave the flexibility to carriers, on how to provide this information. However, the fact that the Regulations (except air) do not specify how the information on passengers’ rights should be provided, e.g. through the internet, at the station or on board, may contribute to the lack of compliance in the provision of information as mentioned above. The **inconsistency** between Regulations is assessed as **minor** as no clear information could be identified as to the impact this has in practice.

The Waterborne and Bus Regulation state that passengers must receive adequate information on their journey. This requirement is non-existent in the Rail and Air Regulations. Furthermore, since the Waterborne and Bus Regulations do not define what “adequate information” means, the requirement lacks clarity. The lack of definition of “adequate information” and the absence of clear rules on how the information must be provided in the air and rail sectors, can be assessed as **two minor gaps** since no information suggests that they create issues in practice.

Passengers must also receive clear information on cancellations and delays. The Air Regulation provides that in case of cancellation the air carrier must inform the passengers between two weeks and one hour before departure and it must also provide an alternative transport option. The new Air Regulation will propose that, in the event of cancellation or delay, passengers must be informed as soon as possible and, in any event, not later than 30 minutes after the scheduled departure time.

In the rail sector, in case of delays, passengers must be kept informed by the railway company, or the station manager, of the situation and the newly-estimated departure and arrival time, as soon as such information is available. The wording “as soon as available” gives a lot of time flexibility to railway companies in which to adapt to the disruption. On the other hand, it increases the risk of inadequate information. In practice, rail passengers are not always satisfied about the information provided in the situation of delay during their journeys. However, the extent to which this is problematic, is not clear.

Similarly, in waterborne and bus transport, passengers should be informed of the estimated departure (and arrival in case of the Bus Regulation) as soon as the information is available, and not later than 30 minutes after the scheduled departure time.

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151 European Commission (Flash Eurobarometer 382).
(waterborne, bus)\textsuperscript{152}. The Bus Regulation goes further stating that in case of a delay and cancellation information must be provided by electronic means if passengers have requested this and have provided the necessary contact details to the carrier. A similar provision is not found in the Regulations for the other modes of transport. This could be explained by the fact that the Bus Regulation was adopted later in time and thus the legislator took into account the latest developments in electronic communication. Since new technologies have become an integral part of most people’s daily lives, EU law could/should encourage the use of information and communication technologies to facilitate the promotion and protection of EU passenger rights in all modes.

The above inconsistencies across the four modes, as to when and how the passengers should be informed in case of cancellation and delays, are assessed as minor because the extent to which it is problematic, in practice, is not clear.

Lastly, passengers should receive information on alternative connections in case of cancellation or delay (air, waterborne, bus)\textsuperscript{153}. Similar provisions are not found in the Rail Regulation. This is considered as a minor inconsistency as it affects the clarity of the information provided to the passenger without however having an adverse effect on the passengers’ right to information.

\begin{table}[h]
\centering
\caption{Gaps and inconsistencies identified with regard to the right to information}
\begin{tabular}{|l|c|c|c|c|}
\hline
\textbf{Issues} & \textbf{Gap} & \textbf{Inconsistency} \\
 & \textbf{Minor} & \textbf{Major} & \textbf{Minor} & \textbf{Major} \\
\hline
19. Airlines and travel agents often fail to comply with the price transparency requirements & & \checkmark & & \\
20. Some air carriers use an ‘opt-out’. Accordingly, the price proposed already includes supplements for certain services that the passenger specifically needs to ‘opt-out’ from, if he/she does not wish to purchase them & & \checkmark & & \\
21. The Waterborne Regulation and the Bus Regulation do not set rules on ticket price information. & \checkmark & & & \\
22. In contrast to other Regulations, the Rail Regulation does not explain what components of the ticket price need to be mentioned and when. & & & \checkmark & \\
23. In air transport, the requirement for carriers to inform passengers on their rights is limited to denied boarding and flight cancellation & & & \checkmark & \\
24. In practice, it is reported that air and rail passengers are not always informed of their rights. & \checkmark & & & \\
25. The Regulations do not specify how the information on passengers’ rights should be & \checkmark & & & \\
\hline
\end{tabular}
\end{table}


The right to information in the relevant EU legislation is guaranteed in the four modes of transport. However, certain inconsistencies were identified especially in the rail and air transport with regard to information on price and to provision of information in case of delay or cancellation. Gaps in legislation were also identified, e.g. the lack of definition of “adequate information” provided on the travel. The practical implementation of the right is an issue, notably with regard to information on passengers’ rights to price transparency in the air transport, where the rules on the ‘opt in’ in choosing the services proposed are not correctly implemented.

Besides the general rules on travel information (above, Table 6), specific provisions are set forth with regard to information to be provided to PRMs (below, Table 8).

Table 13: Overview of the right to information in all four modes of transport
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>accept a reservation</td>
<td>conditions</td>
<td>on conditions of carriage, journey information, access conditions for PRMs and accompanying persons</td>
<td>Information on the refusal to accept a reservation or to provide a ticket</td>
<td>Information on the refusal to accept a reservation or to provide a ticket</td>
<td>booking and information, access conditions</td>
</tr>
<tr>
<td></td>
<td>• Information on the refusal to accept a reservation or to provide a ticket</td>
<td>• Information on the refusal to accept a reservation or to provide a ticket</td>
<td>• Information on the refusal to accept a reservation or to provide a ticket</td>
<td>• Information on the refusal to accept a reservation or to provide a ticket</td>
<td></td>
</tr>
</tbody>
</table>

**When?**

- **Reasons for refusal:** immediately; on request: within five working days of the request in writing
- **Reasons for refusal:** immediately; on request: notified to the PRM no later than five working days of the request in writing
- **Reasons for refusal:** immediately; on request: notified to the PRM in writing, no later than five working days of the request
- **Reasons for refusal:** immediately; on request: in writing, within five working days of the request
- **Reasons for refusal:** immediately; on request: at the latest on departure at terminals
- **Reasons for refusal:** immediately; on request: in writing, within five working days of the request

**How?**

- **For blind and visually impaired persons,** information on compensation and assistance in case of denied boarding, cancellation or delay for at least two hours must be provided using appropriate means
- **Safety rules**
- **Travel information:** in the most appropriate format taking into account specific needs
- **In unstaffed stations,** easily accessible information must be displayed on the nearest staffed stations and directly
- **Information on passenger rights:** in accessible formats and in the languages in which information is generally given to passengers
- **Relevant information on the journey:** in appropriate and
- **Information on passenger rights:** in accessible format at the request of a PRM
- **General information concerning the journey and the conditions of carriage:** in appropriate and accessible formats for PRM

*Not covered in the proposal*
The right to information includes specific guarantees for PRMs, which cover the general information on passenger’s rights and specific information tailored to PRMs.

In order for PRMs to be informed about their rights, such information should be provided in a format accessible to them. This is specifically guaranteed by the Waterborne and Bus Regulations. The Rail Regulation on the other hand only requires that passengers receive information about their rights in an “appropriate manner”. Air

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passengers must also receive a written notice on their rights in case of denied boarding, delay and cancellation. The Air Regulation only foresees that the information should be provided through appropriate alternative means to visually impaired and blind passengers. This leaves out PRMs who may need other types of accessible format (e.g. in an easily accessible language for passengers with intellectual disabilities)\(^{155}\). The proposal of the revised Air Regulation does not fill this gap.

In terms of when such information should be provided, only the Bus Regulation specifies that information on passengers’ rights must be provided at the latest on departures\(^ {156}\). These **inconsistencies** between the Regulations can be considered **major** as it relates to the way information is provided to people with disabilities. PRMs need to be aware of their rights in order to exercise them. The format by which they receive the information is particularly crucial for many PRMs. If they do not get information in accessible format, they may not be able to enforce their rights.

The EU legislation foresees the duty to provide **general information on the travel and on accessibility and access conditions for the transport of PRMs and their mobility equipment (rail, bus, waterborne)**\(^ {157}\). In air transport, Regulation 1107/2006 specifically requires carriers to inform PRMs on all safety rules and any restrictions due to the aircraft size that apply to their carriage and to their mobility equipment\(^ {158}\). However, there is however no clear requirement to inform on access conditions of departure and arrival airports. While this information is important for the planning travels, this **inconsistency is assessed as minor** due to the lack of information on the extent to which this is problematic in practice.

PRMs should also receive information on the travel and accessibility or access conditions in an accessible format (air, waterborne, bus)\(^ {159}\). The Rail Regulation provides that information must be given in the most ‘appropriate format’ taking into account the needs of people with auditory and/or visual impairment\(^ {160}\). Such provision – although different in wording, seems to be similar to the concept of ‘accessible’ format provided in the other modes Regulations. Yet, a uniform approach in this regard would be preferable to avoid any possible differences in the interpretation. This **inconsistency is therefore considered minor**.

\(^{155}\) Article 14 of the Air Regulation (EC) 261/2004. The Regulation (EC) No 1107/2006 on the rights of disabled persons and persons with reduced mobility when travelling by air leaves Member States the task to take measure to ensure that PRMs are informed about their rights. The Preamble mentions that all essential information provided to air passengers should be provided in alternative formats accessible to PRMs. The Preamble reference is not however a hard law requirement.


\(^{158}\) Article 4 of the Regulation (EC) No 1107/2006 on the rights of disabled persons and persons with reduced mobility when travelling by air.


\(^{160}\) Article 8 of the Rail Regulation (EC) No 1371/2007.
With regard to information on access conditions, such information must be made available physically or through the Internet and in an accessible format on the request of PRMs (waterborne, bus).\(^{161}\) Similarly, no provision is found in air and rail transport. This inconsistency is considered minor as it does not seem to have an adverse effect on the right to information. The inconsistency, only concerns details about the way information on access needs to be provided. The Rail Regulation specifically provides that, in stations where staff are not available, easily-accessible information must be displayed concerning the nearest staffed station, and directly-available assistance must be provided for PRMs. However, in practice, in the rail sector, information on the physical accessibility of the arrival station, the maximum size and weight of wheelchairs, and on appropriate on board facilities, are sometimes lacking.\(^{162}\)

Taking into account latest telecommunication advances, one of the most recent regulations, the Waterborne Regulation, provides that the persons needing assistance must notify the carriers about their assistance needs (see above, right to mobility) and they must receive confirmation of the assistance by any available means (e.g. electronic means).\(^{163}\) Such detail is not present in the other modes of transport. This inconsistency is considered minor as it probably depends from the fact that the earlier Regulations were adopted in a period when the use of electronic means was less common among passengers. However, such reasoning cannot be extended to the Bus Regulation which, although being more recent than the Waterborne Regulation, does not provide for such notification.

In certain cases (see above, right to non-discrimination), reservation or provision of a ticket (and in case of air transport also embarkation) can be refused to a PRM (air, rail, waterborne, bus).\(^{164}\) The reasons for such refusal must immediately be communicated to the passenger (air, waterborne, bus). If the passenger so requests, such reasons must be notified in writing within five days from the request. The Rail Regulation does not specify that the reasons for refusal must be ‘immediately’ communicated to the passenger. While delays in knowing the reasons for such refusal might impede passengers to effectively complain, since no information can be found on the extent of which it is a problem in practice, this inconsistency is considered minor. The Bus Regulation provides further protection for passengers, stating that in case of such refusal passenger must be informed on acceptable alternative services. Such rule is not present in any of the other Regulations. This inconsistency is considered minor as it relates to details concerning travel planning and it does not adversely affect passengers’ rights.


\(^{162}\) COM (2013) 587 final.

\(^{163}\) Article 9 of the Waterborne Regulation (EU) No 1177/2010.

In conclusion, the right to information for PRMs is guaranteed in the EU legislation across the four modes of transport. However, certain inconsistencies were identified. Such inconsistencies are mostly considered minor as they do not have a heavy adverse effect on the enjoyment of such right by PRMs. However, most inconsistencies would deserve further attention from the EU legislator as they may have a direct effect on passengers’ right awareness and on the possibility for the passenger to enforce their rights. The most important issue is to guarantee that PRMs receive the information about their right in a format that they can use.
4. **Right to renounce travelling when the trip is not carried out as planned**

In the event of long delays, cancellations, denied boarding or overbooking, where applicable\(^{165}\), passengers have the right to choose not to continue the journey and to receive the reimbursement of the ticket price instead. Where relevant\(^{166}\), a return service to the point of departure must be ensured. This right for passengers is established in all four transport modes (see table below).

**Table 15: Overview of the right to renounce travelling in all four modes of transport**

<table>
<thead>
<tr>
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<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>When?</strong></td>
<td>Long delays (5 hours), cancelled travel or denied boarding</td>
<td>Clarified:</td>
<td>Where delay in the arrival at the final destination is (or is expected to be) more than 60 minutes</td>
<td>When service is (or is expected to be) cancelled or delayed in departure for more than 90 minutes</td>
<td>When service is cancelled or delayed in departure for more than 120 minutes, or it is overbooked</td>
</tr>
<tr>
<td>Refund?</td>
<td>Full cost of the ticket at the price it was bought for the part of the journey not made and the part made that no longer serves the purpose</td>
<td>Full flight price at which it was bought, for the part of the journey not made and the part made that no longer serves the purpose</td>
<td>Full cost of the ticket for the part of the journey not made and the part made that no longer serves the purpose</td>
<td>Ticket price for the part of the journey not made and the part made that no longer serves the purpose</td>
<td>Ticket price</td>
</tr>
<tr>
<td>How?</td>
<td>Choice between reimbursement, re-routing and re-booking offered to the passenger</td>
<td>No change</td>
<td>Choice between reimbursement, re-routing and re-booking, immediately offered to the passenger</td>
<td>Choice between reimbursement and re-routing immediately offered to the passenger</td>
<td>Choice between reimbursement and re-routing immediately offered to the passenger</td>
</tr>
</tbody>
</table>

\(^{165}\) Overbooking as an option is mentioned under the Bus Regulation.

\(^{166}\) Return to the point of departure as part of the right to renouncing travelling is foreseen in air, waterborne and road travel. In rail travel, such assistance is set out for when the train is stuck on the track.
This right to renounce travelling consists of three main elements. First, an offer must be made by the carrier to the passenger to choose between reimbursement and re-routing (air, rail, waterborne, road) and re-booking (air, rail). Then, if the passenger prefers reimbursement, (s)he is entitled to a refund of the ticket price (air, rail, waterborne and road). The refunding option is closely linked to the right to the fulfilment of the transport contract explained under point 5. Finally, where relevant, this right also includes a return service to the point of departure, at the earliest opportunity (air, rail, waterborne, road)\textsuperscript{167}.

The legal framework for all four transport modes states that the right to renounce travelling applies to delays, cancellations, denied boarding or overbooking, where applicable\textsuperscript{168}. In delays, the right is triggered by time limits that vary according to the transport mode: 5 hours – air; 60 minutes – rail; 90 minutes – waterborne; 120 minutes – road transport. The method of how delays are calculated also differs across modes. In rail travel, what counts is the arrival at the final destination. In air, water and road travel, delays for the purposes of reimbursement are calculated against the scheduled time of departure. Due to the individual characteristics of the four transport modes, these differences seem to be justified.

The right to renounce travelling applies to all major travel disruptions. Yet, the law does not distinguish between e.g. different delays such as in terminals or on board the vehicle. Often, delays happen whilst passengers are on board the aircraft (tarmac delays) or when a train is blocked on the track. In the absence of explicit rules governing such situations, it is not clear how passengers waiting on board a vehicle could exercise their right to renounce travelling. This \textbf{gap is considered as major} because it is rather difficult for passengers to renounce travelling in case of delays on board the vehicle. The proposal amending the Air Regulation, if adopted, would clarify that passengers affected by tarmac delays of five hours are entitled to reimbursement and to disembark the aircraft.

\textsuperscript{167} Article 8 of the Air Regulation No 261/2004; Article 16 of the Rail Regulation No 1371/2007; Article 18 of the Waterborne Regulation No 1177/2010 and Article 19 of the Bus Regulation No 181/2011.

\textsuperscript{168} Overbooking as an option is mentioned under the Bus Regulation.
Such clarification might also be useful for other transport modes, in particular for train
delays\textsuperscript{169}.

To benefit from the right to renounce travelling, passengers need to know whether the
travel disruption they face triggers this right. They also should know how to get the
refund if they decide not to continue the journey. The general right to information is
foreseen for all transport modes (see above, right to information). However, the
Regulations do not explicitly require that carriers inform passengers on the process of
renouncing travel (e.g. notification in writing, proof of offer made/accepted/rejected).

While it seems to be part of the general right to information, the NEBs confirm that
insufficient and incorrect information is a common source of passenger complaints\textsuperscript{170}.

According to surveys, around a half of air transport users in 2009, were not (correctly)
informed about their rights\textsuperscript{171}. Further clarification would be needed to ensure that
passengers are fully informed of their rights, including to renounce travelling. This gap is
therefore assessed as \textbf{major} due to the serious impact on passengers’ abilities to exercise
their right to renounce travelling.

The obligation to offer choice between reimbursement, re-routing and re-booking, where
applicable\textsuperscript{172}, rests upon the carriers. The Bus and Waterborne do not require carriers to
offer re-booking, but solely a choice between reimbursement and re-routing. It is not clear
whether the lack of triple choice, including re-booking can be justified by the transport
mode specificities. The \textit{inconsistency} across the modes is considered as \textbf{minor} as the re-
routing should still be offered to passengers.

While the Rail, Waterborne and Bus Regulations set out that passengers should be
offered the choice \textit{immediately}\textsuperscript{173}, the Air Regulation does not fix any timeframe. It might
seem implicit that the choice is offered on the spot, but the absence of clear rules gives
room for interpretation. In addition, the proposal for amending the Air Regulation – as it
stands, does not remedy this legislative inconsistency. This \textit{inconsistency is considered as \textbf{minor}} at this stage as no sufficient data exist to indicate how problematic it is in
practice.

\textsuperscript{169} According to some stakeholders, specific differences as regards the right to disembarkation in
case of long on-board delays might be justified due to the specific characteristics of the
individual transport modes. However, this issue requires more extensive stakeholder
consultation which is not allowed due to the time constraints to this study.

\textsuperscript{170} Evaluation of Regulation 261/2004 on the application and enforcement of the Regulation on air
passengers’ rights in the EU Member States (European Commission, DG Energy and Transport,
2010), p. 36.

\textsuperscript{171} European Commission, \textit{(Special Eurobarometer 319): Impact assessment} of the Proposal for a
Regulation amending Regulation (EC) No 261/2004 on air passenger rights and Regulation (EC)
No 2027/97 on air carrier liability (European Commission, DG Move, 2013), p. 12; \textit{Evaluation of
Regulation 261/2004 on the application and enforcement of the Regulation on air passengers’
rights in the EU Member States} (European Commission, DG Energy and Transport, 2010), p. 36.

\textsuperscript{172} The option for re-booking at a later stage is set out in the Air and Rail Regulations.

\textsuperscript{173} Article 16 of the Rail Regulation No 1371/2007; Article 18 of the Waterborne Regulation No
According to the ECC-Net, in 2010, almost half of the cases (47%) of air passengers did not receive the reimbursement and/or assistance they were entitled to\textsuperscript{174}. However, this figure should be taken with caution because the European airspace was paralysed in 2010 by volcanic ash eruptions leading to more flights being cancelled and more reimbursement claims being filed. Furthermore, the European Consumer Organisation (BEUC) believes that the obligation regarding reimbursement is more frequently complied with than the obligation to provide assistance.

Currently, the Air, Rail and Waterborne Regulations are silent on what happens if the carriers fail to offer the choice between reimbursement, re-routing and re-booking as required by the Regulations. Only the Bus Regulation foresees that passengers, in addition to a refund, are automatically entitled to compensation if the carrier has failed to do so\textsuperscript{175}. This gap in air, rail and waterborne compared to bus transport may confuse passengers and could be problematic in case of intermodal travel. It could therefore be rectified. In addition, the obligation to compensate in case carriers fail to offer the choice provides an economic incentive for carriers to guarantee the right. This gap is therefore assessed as major.

The time limits for the payment of reimbursement differ across the transport modes. Passengers travelling by air and water are to receive refunds within seven days, rail passengers within one month, and bus and coach passengers within 14 days. It is also possible that the reimbursement is paid in forms other than money, – provided the passenger accepts (waterborne, road).

With regard to the time limits, the formulation of when the deadline starts running differs across modes. For instance, the Air Regulation requires reimbursement to be paid \textit{within seven days} but it does not clarify from which point in time (e.g. after the passenger’s request). In this sense, the Bus Regulation is more precise stating that the period of reimbursement starts after the choice of reimbursement or re-routing has been offered to the passenger or when the passenger has requested it. This lack of clarity within the other Regulations (air, rail, waterborne) can be used to prolong the period of the reimbursement to the detriment of passengers and as some NEBs indicate – occasionally, when reimbursement is provided, it may take several months to receive it\textsuperscript{176}. This inconsistency is assessed as minor due to a lack of information on the extent to which this is causing a problem.

The right to reimbursement covers the refund of the ticket price but the term \textit{ticket price} for the purposes of refund is not defined. The Air and Rail Regulations require the full cost of the ticket to be paid back, while Waterborne and Bus Regulations simply refer to the ticket price. Regulation 1008/2008 (air services) indicates what the final price should include, but even then it is not entirely clear whether the refund should also include all fees, taxes and other charges paid by the passenger. In addition, transport companies

\textsuperscript{174} ECC-Net, \textit{Air Passenger Rights Report 2011}, October 2011, p. 27.

\textsuperscript{175} Article 19(2) of the Bus Regulation No 181/2011.

\textsuperscript{176} Exploratory study on the application and possible revision of Regulation 261/2004 (European Commission, DG MOVE, 2012), p. 172.
should generally make it clear which costs will be reimbursed from the beginning of the ticket reservation process according to Directive 2005/29/EC on unfair commercial practices\(^{177}\). This gap is considered as minor because from desk research and limited stakeholders’ consultations no evidence could be identified to illustrate that it is an important concern in practice.

Finally, all Regulations, except for bus and coach transport, ensure that the refund covers both ticket price for the part of the journey not made and the part that was made under the condition that it no longer serves the purpose for the passenger’s original travel plans. In theory, this could also occur in the bus and coach transport sector. Therefore, for the purposes of legal clarity, it might be useful to adopt a uniform approach to what should be reimbursed under the right to renounce travelling. This gap is assessed as minor because from desk research and limited stakeholders’ consultations no evidence could be identified to illustrate that it is an important concern in practice – most likely due to the fact that the Bus Regulation is quite recent.

<table>
<thead>
<tr>
<th>Issues</th>
<th>Gap</th>
<th>Inconsistency</th>
</tr>
</thead>
<tbody>
<tr>
<td>37. None of the Regulations distinguish between different delays, e.g. in terminals and on board the vehicle, and do not foresee the right to disembarkation in case of long on-board delays</td>
<td>![Minor] ✓</td>
<td>Minor</td>
</tr>
<tr>
<td>38. None of the Regulations explicitly require passengers to be informed of the right and process of renouncing travelling</td>
<td>![Minor] ✓</td>
<td>Major</td>
</tr>
<tr>
<td>39. The Bus and Waterborne do not require to offer re-booking, but solely a choice between reimbursement and re-routing</td>
<td>![Minor] ✓</td>
<td>Major</td>
</tr>
<tr>
<td>40. The Air Regulation does not indicate from which point in time passengers should be offered reimbursement/re-routing</td>
<td>![Minor] ✓</td>
<td>Major</td>
</tr>
<tr>
<td>41. The Air, Rail and Waterborne Regulations are silent on what happens if the carrier fails to offer the choice of reimbursement, while the Bus Regulation in such situations obliges the carrier to compensate</td>
<td>![Minor] ✓</td>
<td>Major</td>
</tr>
<tr>
<td>42. Difference across the four modes in terms of time limit to process the reimbursement.</td>
<td>![Minor] ✓</td>
<td>Major</td>
</tr>
<tr>
<td>43. None of the Regulations are entirely clear about whether the refund of the ticket price should include any or all fees, taxes and other charges paid by the passenger</td>
<td>![Minor] ✓</td>
<td>Major</td>
</tr>
<tr>
<td>44. In contrast to the Air, Rail and Waterborne Regulations, the Bus Regulation does not foresee reimbursement of the tickets used for the part of</td>
<td>![Minor] ✓</td>
<td>Major</td>
</tr>
</tbody>
</table>

In conclusion, the analysis illustrates issues both with regard to the legal provision of the right to renounce travelling and its practical implementation (criteria 1 and 2 of the methodology). Some elements of the right across the four modes are not entirely clear (e.g. when and how information on the right to renounce travelling should be provided, what a refund should cover and when it should be paid) thus leaving room for divergences in the interpretation of this right. Furthermore, passengers and NEBs have raised concerns that in practice there are problems in getting the refund, in full amount, and in getting it within the timeframe prescribed by the Regulations. Therefore, more precise and uniform formulation of the right to renounce travelling would be preferential for the benefit of EU passengers.
5. **Right to the fulfilment of the transport contract in case of disruption**

In the event of long delays, cancelled travel or denied boarding, passengers have the right to receive an alternative service of transport, as soon as possible, or to rebook at their convenience, where applicable. This right is established for all four transport modes (see table below).

**Table 17: Overview of the right to fulfilment of transport contract in all four modes of transport**

<table>
<thead>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>When?</strong></td>
<td>Cancelled travel or denied boarding</td>
<td><strong>Added:</strong> Missed connections in case of delays or change of schedule to a preceding flight</td>
<td>When delay in the arrival at the final destination to be (or is expected cancelled or delayed in) is (or is expected or delayed in departure for more than 60 minutes, or it is more than 90 minutes, or it is overbooked)</td>
<td>When service is cancelled or delayed in departure for more than 120 minutes</td>
<td>When service is cancelled or delayed in departure for more than 90 minutes, or it is overbooked</td>
</tr>
<tr>
<td><strong>How?</strong></td>
<td>Re-routing under comparable transport conditions, to their final destination at the earliest opportunity; or at a later date at the passenger’s convenience, subject to availability of seats</td>
<td>Clarified: If the air carrier cannot reroute under its own comparable transport services within 12 hours, it conditions, to conditions, as comparable must consider the other carriers or transport modes, subject to seat availability at the passenger’s convenience, at no additional cost</td>
<td>Continuation or Re-routing to the final destination, under comparable cost and under comparable conditions, as set out in the transport contract, at the earliest opportunity or earliest opportunity at the passenger’s cost</td>
<td>Continuation or Re-routing to the final destination, at no additional cost and under comparable conditions, as set out in the transport contract, at the earliest opportunity or at the earliest opportunity at no additional cost</td>
<td>Continuation or Re-routing to the final destination, at no additional cost and under comparable conditions, as set out in the transport contract, at the earliest opportunity or at the earliest opportunity at no additional cost</td>
</tr>
<tr>
<td><strong>If not?</strong></td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
</tbody>
</table>

The right to the fulfilment of the transport contract in case of travel disruptions entails the right to continue the journey (by rail, bus), or to be provided with an alternative service.
service of transport (all transport modes), or to re-book at a later date at the passenger’s convenience (air, rail)\textsuperscript{178}.

Due to the specifics of the transport modes, continuation of travel is not foreseen by the Air and Waterborne Regulations. Continuation of travel – in the strict sense of this word, presupposes a disruption of an on-going service. An interruption of a flight or a trip on the water is atypical for air and waterborne transport. Therefore, for this kind of travel the Regulations refer specifically to re-routing rather than continuation of the travel. While broadly it still ensures that the passenger continues his/her journey, from a legal point of view these are distinct terms that are used to reflect the differences among the different transport modes.

Re-booking is a choice given to a passenger to travel at a later date and thus not at the earliest opportunity through continuation of travel or re-routing as explained above. While re-booking is explicitly foreseen only for air and rail travel, this option can also be offered to passengers in other transport modes. The Regulations set out the minimum requirements, therefore the carriers are free to offer passengers more beneficial options than provided by the law.

The right to be re-routed – similar to the right to renounce travelling explained above, is triggered by certain travel disruptions such as cancellations and denied boarding (air), delays at arrival destinations (rail), cancellations and delays in departure (waterborne, road). The time limits of delays differ across the transport modes. The shortest delay when passengers can choose to be re-routed is foreseen in rail travel as 60 minutes, followed by 90 minutes for waterborne transport and 120 minutes for road transport. Re-routing in case of delays is not foreseen as an option for air passengers.

While the different time limits across the transport modes for re-routing in case of delays seem to be justified, re-routing is not an option for air passengers facing delays. It is considered a major gap since the difference does not appear justified. Such decisions left to the carriers’ discretion may result in passengers not being guaranteed re-routing\textsuperscript{179}. Air passengers have the right to receive a refund and not to travel after a delay of five hours. Re-routing passengers on the airline’s own services involves obstacles such as a limited number of flights going to the specific destination, plus it is subject to availability of seats. Re-routing via other carriers or surface transport could be an additional cost to carriers\textsuperscript{180}. However, if all airlines would be obliged to re-route via their competitors, it is likely that the costs would be balanced. The proposal amending the Air Regulation suggests extending re-routing to situations when the passenger has missed a connecting flight as a result of delay or change of schedule.


\textsuperscript{179} Stakeholders have expressed different views on whether this inconsistency is justified. The air transport industry representatives argue that this difference is justified while other industry representatives and consumer protection organisations have expressed the opposite view.

\textsuperscript{180} Exploratory study on the application and possible revision of Regulation 261/2004 (European Commission, DG MOVE, 2012), p. 33.
Re-routing in all transport modes must be done under comparable conditions and at the earliest opportunity. The fact that re-routing should also be ensured at no additional cost is specifically emphasised for the protection of passengers travelling by water and bus. For the purposes of legal consistency, it might be useful to emphasise in all Regulations that re-routing is done free of charge. The inconsistency is assessed as minor as it does not severely affect passenger’s rights and because from desk research and limited stakeholders’ consultations no evidence could be identified to illustrate that it is an important concern in practice.

The concept of comparable conditions is not further explained in the law and not yet clarified by the CJEU. Therefore, in practice carriers often interpret it narrowly. Airlines tend to offer re-routing on their own services and thus not on other carriers or modes and rebook only in the same or lower class. Likewise in rail travel, many railway companies tend to re-route only on the same services (notably, not using the speed trains even if such options exists) and not via other transport modes. This issue might also arise in the context of waterborne and bus travel since the relevant Regulations also do not clarify whether or not other means of transportation are included under the right to re-routing. This concept is clarified in the proposal amending the Air Regulation. It states that, where passengers choose re-routing, they should have the right to be re-routed via another carrier or mode of transport. Such clarification would also benefit passengers of rail, waterborne and bus transport. The gap is considered as major because it affects the passenger’s right to be re-routed under conditions comparable to the ones (s)he initially agreed to by concluding the contract with the carrier.

The law explicitly states that re-routing should be done at the earliest opportunity. Together with the narrow interpretation of comparable conditions, explained above, some cases of re-routing will not be done when first possible (e.g. airlines tend to rebook in the same or lower class and railway companies avoid using their high-speed services – thus, not necessarily at the earliest opportunity). This gap, however, is considered of minor importance since it can potentially be solved by the clarification of what is understood under comparable conditions and by setting a certain timeframe in which the carrier should try to arrange re-routing on its own services. Then, if this would not work, the carrier would have to ensure reasonable and comparable alternative services. To this end, the proposal amending the Air Regulation suggests a time limit of 12 hours measured against the scheduled arrival time.

The obligation to offer the choice between reimbursement, re-routing and re-booking, where applicable, rests upon the carriers. The Air, Rail and Waterborne Regulations are silent on what happens if the carrier has failed to offer re-routing to passengers. Only the Bus Regulation states that if the offer for reimbursement or re-routing has not been made, the passenger is automatically entitled to compensation. According to the NEBs, air and rail passengers often complain that they were not offered the triple choice, but just

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182 Ibid.
183 The option for re-booking at a later stage is set out in the Air and Rail Regulations.
received a reimbursement of the ticket\textsuperscript{184}. The gap is therefore assessed as major due to the fact that evidence points to problems in practice.

Finally, none of the Regulations explicitly provide for the passenger’s right to claim reimbursement from the carrier when, due to the carrier’s failure, the passenger has been forced to arrange re-routing him/herself. While it would be contrary to the purpose of the Regulations to refuse such reimbursement, NEBs have reported instances when such reimbursement has not been provided\textsuperscript{185}. This gap is therefore considered as major.

Table 18: Gaps and inconsistencies identified with regard to the right to fulfilment of the transport contract in the case of disruption

<table>
<thead>
<tr>
<th>Issues</th>
<th>Gap</th>
<th>Inconsistency</th>
</tr>
</thead>
<tbody>
<tr>
<td>45. The Air Regulation does not foresee re-routing in case of long delays</td>
<td>Minor</td>
<td>$\checkmark$</td>
</tr>
<tr>
<td>46. None of the Regulations clarify the concept of comparable conditions</td>
<td>$\checkmark$</td>
<td>Minor</td>
</tr>
<tr>
<td>47. EU law does not clarify the notion at the earliest opportunity</td>
<td>$\checkmark$</td>
<td></td>
</tr>
<tr>
<td>48. The Air and Rail Regulations do not explicitly state that re-routing is done at no additional cost</td>
<td></td>
<td>$\checkmark$</td>
</tr>
<tr>
<td>49. The Air, Rail and Waterborne Regulations are silent on what happens if the carrier fails to offer re-routing, while the Bus Regulation in such situations obliges the carrier to compensate</td>
<td>$\checkmark$</td>
<td></td>
</tr>
<tr>
<td>50. None of the Regulations explicitly set out the right to claim reimbursement from the carrier when, due to the carrier’s failure, the passenger has been forced to arrange re-routing him/herself</td>
<td></td>
<td>$\checkmark$</td>
</tr>
</tbody>
</table>

To conclude, similar to the right to renounce travelling – analysed above, gaps and inconsistencies of a regulatory and practical nature have been identified also with regard to the right to fulfilment of the transport contract in the case of disruption. The rather vague, inconsistent or even left out elements of this right in the four Regulations (e.g. comparable conditions or no additional cost as well as the right to claim reimbursement for re-routing arranged by the passenger) have been proved to be barriers for passengers to exercise their right to fulfilment of the transport contract in the case of disruption.


\textsuperscript{185} See ECC-Net, \textit{Air Passenger Rights Report 2011}, October 2011, p. 35.
6. **Right to assistance**

Legislation for all modes establishes a minimum level of care to be provided in case of long delays (see table below). Stranded passengers have the right to be provided on the spot assistance at terminals, stations and/or on board while waiting for the beginning or the continuation of the delayed journey or for their re-routing.

**Table 19: Overview of the right to assistance in all four modes of transport**

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td><strong>When?</strong></td>
<td>Denied</td>
<td>Right to care for passengers after a delay of 2 to 4 hours depending on the flight distance</td>
<td>Where delay in the arrival at the final destination is cancelled or is expected to be 60 minutes</td>
<td>Where service is expected to be delayed or cancelled for more than 90 minutes</td>
<td>For a journey of more than 3 hours, in case of cancellation or delay in departure for more than 90 minutes</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>In case of tarmac delays exceeding one hour: free access to toilets, drinking water, adequate heating or cooling of the cabin, adequate medical attention if needed</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------</td>
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<td>------------------</td>
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<td>----------------</td>
</tr>
<tr>
<td><strong>How?</strong></td>
<td>Free of charge:</td>
<td>Clarified: In extraordinary circumstances cost of accommodation can be limited to EUR 100 per night and per passenger for max. 3 nights</td>
<td>Free of charge:</td>
<td>Free of charge:</td>
<td>Free of charge:</td>
</tr>
<tr>
<td></td>
<td>• Meals and refreshments, if available</td>
<td>• Accommodation, in cases where a stay of one or more nights becomes necessary where and when possible</td>
<td>• Meals and refreshments, if available</td>
<td>• Meals and refreshments, if available</td>
<td>• Meals and refreshments, if available</td>
</tr>
<tr>
<td></td>
<td>• Accommodation where a stay of one or more nights becomes necessary where and when possible</td>
<td>• Transport to accommodation</td>
<td>• Accommodation, in cases where a stay of one or more nights becomes necessary where and when possible</td>
<td>• Accommodation limited to EUR 80 per passenger and night, for max. 3 nights</td>
<td>• Accommodation limited to EUR 80 per passenger and night, for max. 3 nights</td>
</tr>
<tr>
<td></td>
<td>• 2 telephone calls, telex or fax messages, or e-mails</td>
<td>• Transport to accommodation</td>
<td>• Cost of accommodation limited to EUR 80 per passenger and night, for max. 3 nights</td>
<td>• Transport to accommodation</td>
<td>• Transport to accommodation</td>
</tr>
<tr>
<td><strong>Exceptions?</strong></td>
<td>No</td>
<td>No change</td>
<td>No</td>
<td>No</td>
<td>No change</td>
</tr>
<tr>
<td><strong>If not?</strong></td>
<td>---</td>
<td>No change</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
</tbody>
</table>
Legislation for all transport modes establishes a minimum level of care to be provided whenever travel disruptions occur. Currently, the provision of assistance is linked to the waiting time. Time thresholds vary from 60 minutes in rail travel to four hours in air travel. Also the assistance provided slightly varies from one mode of transport to another but usually includes the provision of meals, refreshments, accommodation and transportation to accommodation. Air passengers are also entitled to free communications (telephone calls or e-mails) as appropriate. Lastly, in providing such assistance, the air carrier must pay particular attention to the needs of persons with reduced mobility, as well as to the needs of unaccompanied children.186

The right to assistance is triggered when passengers’ travel plans are interrupted by transport related disruptions: delays, cancellations, denied boarding or overbooking. In case of certain disruptions (e.g. delays of at least five hours in air travel) passengers have the right to be re-routed or reimbursed. The law is not clear whether passengers who have opted for re-routing or reimbursement also have the right to assistance and, if so, under what conditions. Finally, it is also not clear if passengers who have missed connections due to prior delays or cancellations are entitled to care in the transfer points. Consequently, this is a major legislative gap because passengers in those situations are not guaranteed assistance. While it might be implicit, it is difficult for passengers to exercise any rights that are not clearly defined in the law in the first place.

Air travel tarmac delays, i.e. where the passengers are waiting on board the aircraft, are not explicitly covered by the Air Regulation. Passengers have complained about the lack of assistance during such delays. Most of the NEBs say that tarmac delays are rare. During 2007-10, approximately 0.01% of EU flights were delayed on the tarmac by 2 hours or longer, – equivalent to 874 flights per year.187 However, some NEBs and consumer associations have highlighted cases where passengers have been poorly treated during tarmac delays. Therefore, clarification of this matter in the revised Air Regulation is widely supported by different stakeholders.

The provision of meals and refreshment is more extensively covered under the Rail and Bus Regulations. In contrast, the Air and Waterborne Regulations do not mention that food and drinks should be made available both in terminals/stations and on board. Considering that evidence points to problems in practice (i.e. assistance is not always provided leaving passengers with no other option but to pay for their own food, drinks and accommodation)188, this inconsistency is considered major.

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188  According to the ECC-Net, assistance for air passengers affected by long delays or cancellation is often not provided. In addition, a survey carried out by the UK NEB in 2010 revealed that 60% of passengers who responded did not receive any assistance from the airline. A total of 81% of respondents stated that they were dissatisfied with the assistance they received, with 65% of them stating they were very dissatisfied. Civil Aviation Authority UK, Final Report: Aviation’s response to major disruption, 2010.
Moreover, the regulations for maritime and bus and coach transport provide that passengers are entitled to ‘snacks, meals or refreshments’. Interpreted strictly, passengers may be offered one or the other and the obligation to care can be considered fulfilled. This inconsistency is assessed as minor because from desk research and limited stakeholders’ consultations no evidence could be identified to illustrate that it is an important concern in practice – most likely because the Regulation is too recent.

Finally, the Rail, Waterborne and Bus Regulations are more flexible stating that assistance should be provided if available or can be reasonably supplied. This latter difference seems to be justified and therefore not considered as an inconsistency.

The modes of transport have different rules in place on exemptions and limitations (e.g. extraordinary circumstances) of the carrier’s responsibility to provide assistance. More than 40% of Member States have exempted their domestic train services, – which constitute more than 94% of passenger rail travel, from the right to assistance\(^\text{189}\). Notably, and similar to rail transport, Member States may exempt domestic bus and coach services from the application of the right to assistance until 28 February 2017. Exemptions until 17 December 2014 can also be applied under the Waterborne Regulation. However, the effect of such exemptions should not be significant since it concerns seagoing ships of less than 300 tons operating as domestic transport provided that the rights of passengers are adequately ensured under national law.

All forms of care are unconditional for air and rail transport and must also be provided in extraordinary circumstances\(^\text{190}\). In practice, some railway companies limit the maximum amount for accommodation, others do not provide the required refreshments and food on-board – claiming that this is too difficult to organise when delays occur between stations\(^\text{191}\). Rail delays often occur when the train is between stations, and thus refreshments will not be available unless supplies are available on the train. This contrasts with the air transport sector, where delays usually occur when the passengers are at the airport and therefore facilities are available\(^\text{192}\).

In case of maritime and bus transport, carriers are also exempt from providing accommodation in extraordinary circumstances\(^\text{193}\). The exemption in case of extraordinary circumstances may however leave passengers in difficult situations without any assistance. While specific differences might be justified due to the specific


characteristics of the individual transport modes, this inconsistency does not appear justified. The inconsistency is considered as major because passengers would require assistance no matter what the cause of the disruption is. Limiting the assistance to situations outside of extraordinary circumstances effectively deprives passengers of the right to assistance in a number of disruptions due to e.g. weather conditions.

The costs of accommodation can be limited to EUR 80 per passenger per night for a maximum of two to three nights respectively in maritime and bus transport. The proposal amending the Air Regulation suggests also applying a cap for accommodation in air travel. Thus, it is only in rail transport that the provision of assistance would remain unconditional. The limitation on price of the assistance (rather than unlimited) may be justified to prevent abuse from passengers when claiming reimbursement (e.g. cases of passengers staying at very expensive hotels or renting expensive cars while waiting for re-routing or re-booking have been reported). However, it is not clear whether limiting the assistance to a number of nights can be objectively justified.

In practice, the ECC-Net often receives complaints that passengers are not offered assistance or instead are asked to keep the invoices to apply for reimbursement afterwards. All four Regulations are silent on what happens if the carrier fails to provide assistance. To start with, the right to claim reimbursement afterwards is not explicitly mentioned in the law. While it would be contrary to the purpose of the Regulations to refuse such reimbursement, it is not clear what would such refund cover. For instance, air passengers’ expenses should be reasonable but there are no defined standards to evaluate if the claim is reasonable. Moreover, reimbursement in a cross-border context might involve not only inconvenience but also some costs. For this reason, passengers often decide not to claim reimbursement. Hence, this gap is assessed as major. In addition, a clearly defined right to claim reimbursement of expenses incurred by passengers when the carrier has failed to provide assistance would provide an extra incentive for the carriers to comply with EU law.

194 According to stakeholders, specific differences as regards the right to assistance might be justified due to the specific characteristics of the individual transport modes. However, this issue requires more extensive stakeholder consultation which is not allowed due to the time constraints to this study.

195 Consultation with airlines representative.

196 According to stakeholders, specific differences as regards the right to assistance might be justified due to the specific characteristics of the individual transport modes. However, this issue requires more extensive stakeholder consultation which is not allowed due to the time constraints to this study.
Table 20: Gaps and inconsistencies identified with regard to the right to assistance

<table>
<thead>
<tr>
<th>Issues</th>
<th>Gap</th>
<th>Inconsistency</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Minor</td>
<td>Major</td>
</tr>
<tr>
<td>51. Unclear whether and, if so, how the right to assistance applies in case of re-routing, reimbursement, missed connections (concerns all transport modes)</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>52. The Air and Waterborne Regulations do not clearly state that meals and drinks should be made available both in terminals/stations and on board. The Rail and Bus Regulations contain such provisions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>53. In contrast to Air and Rail Regulations, the formulation of the content of assistance ‘snacks, meals or refreshments’ is slightly more limited in the Waterborne and Bus Regulations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>54. Different exemptions for the provision of assistance are applicable across the four transport modes (e.g. extraordinary circumstances)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>55. None of the Regulations contain rules on what happens if the carrier fails to provide assistance (i.e. the right to claim reimbursement is not explicitly set out in the law)</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>

As explained above, the provision of the right to assistance slightly differs across the transport modes. Many differences seem to reflect the individual features of the transport modes (e.g. the flexibility given to rail, waterborne and bus carriers to provide assistance when and where it is possible). As for other differences, however, it is less clear if they are justified. It is not clear, for instance, why exemptions due to extraordinary circumstances are guaranteed only in the waterborne and bus sectors. Likewise, the capping of accommodation expenses is currently foreseen only for the waterborne and bus sectors. Furthermore, there are some grey areas with regard to this right. Such areas are the provision of assistance in case of re-routing, reimbursement, missed connections as well as the right to claim reimbursement of expenses if the carrier has failed to provide assistance. All of the issues to a lesser or larger extent give rise to disputes between passengers and carriers and therefore would benefit from clarification.

7. Right to compensation

The right to compensation in case of long delays reaching the arrival destination is part of the explicit minimum quality standards for all transport modes. Compensation is paid in a standardised manner to reduce the inconvenience suffered by passengers. The amount as well as conditions under which compensation is paid varies considerably across the specific transport modes (see table below).
### Table 21: Overview of the right to compensation in all four modes of transport

<table>
<thead>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>When?</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Long delays (3 hours)(^{197}), cancelled travel (causing delay of over 2 hours) or involuntary denied boarding</td>
<td></td>
<td>Clarification:</td>
<td>• In delays over 60 minutes where reimbursement not accepted</td>
<td>• When service is (or is expected to be) cancelled or delayed in departure for more than 90 minutes</td>
<td>• When service is cancelled or delayed in departure for more than 120 minutes, or it is overbooked</td>
</tr>
<tr>
<td>• No deadline for payment</td>
<td></td>
<td>• Compensation in delays of 5 to 12 hours depending on the flight distance</td>
<td>• Payment in 1 month from the request</td>
<td>• Payment in 1 month from the request</td>
<td>• Payment in 1 month from the request</td>
</tr>
<tr>
<td><strong>How?</strong></td>
<td>• Compensation of EUR 250, 400 or 600 depending on the flight distance</td>
<td>Change in the categories of flight distances for compensating delays</td>
<td>Compensation varies between 25% for short delays and 50% (50% of the ticket price for short/longer delays) depending on the journey's length</td>
<td>Compensation varies between 25% of ticket price for short delays and 50% (50% of the ticket price for longer delays) only if the delays (1-2 depending on the carrier) fail to offer reimbursement and re-routing</td>
<td>Passengers have the right to compensation in cases of exceptional circumstances</td>
</tr>
<tr>
<td><strong>Exceptions?</strong></td>
<td>• Extraordinary circumstances</td>
<td>Added: Definition and Annex with non-exhaustive list of extraordinary circumstances</td>
<td>• Passenger informed before buying the ticket</td>
<td>• Extraordinary circumstances</td>
<td>No</td>
</tr>
<tr>
<td>• Notification 2 weeks before</td>
<td></td>
<td>• Delays caused outside EU</td>
<td>• Passenger informed before buying ticket</td>
<td>• Weather conditions endangering safety</td>
<td></td>
</tr>
<tr>
<td>• No compensation under EUR 4</td>
<td></td>
<td>• No compensation under EUR 4</td>
<td>• Disruption is caused by the passenger</td>
<td>• Passenger informed before buying ticket</td>
<td></td>
</tr>
</tbody>
</table>

\(^{197}\) In the Sturgeon case (Joined Cases C-402/07 and C-432/07) the CJEU held that a long delay of at least three hours at arrival entitles passengers to compensation.

\(^{198}\) Time limits are specified in the Regulation.
From the ten core EU passenger rights, the differences among the four transport modes are most noticeable with regard to the right to compensation. Passengers travelling by air, rail, water and bus are entitled to compensation. However, the circumstances under which passengers have the right to receive compensation and the amounts to be paid are very different.

According to the current text of the Air Regulation, the right to compensation applies when the passenger is involuntarily denied boarding or his/her flight is cancelled but not in case of delays. According to the CJEU ruling in the Sturgeon case, compensation must also be paid also for delays of over three hours. The proposal for amending the Air Regulation suggests a delay of five hours. This generally aligns the rules across transport modes ensuring that passengers facing all types of travel disruptions (delays, cancellation, denied boarding) are entitled to compensation. Against this background, this inconsistency is considered as minor since it is rectified by the CJEU judgment and the revised Air Regulation.

Notably, in air travel compensation is not paid to volunteers giving up their seat in an overbooked flight. It can be argued, however, that they face the same inconvenience as passengers who are denied boarding against their will.

There are two additional preconditions to receive compensation in rail and bus transport: the passenger has not accepted reimbursement (rail) or he/she has not been offered the choice between reimbursement and re-routing (bus). These additional rules consequently lead to additional differences between the transport modes. While in air, maritime and road travel passengers may qualify for both reimbursement and compensation, rail passengers would only be compensated if they do not accept reimbursement and thus continue the journey. If a passenger chooses reimbursement because continuation of the journey no longer serves a purpose for his/her travel plans (e.g. missed business meeting), his/her inconvenience will not be compensated. It appears therefore that in this context rail passengers are not on an equal footing with the passengers of other modes. To conclude, the two additional preconditions for compensation in rail and road travel do not appear to be justified. For this reason, this is assessed as major legislative inconsistency.

The type and amount of compensation also differs between modes. Air passengers are entitled to a flat rate payment which depends on the flight distance. Furthermore, if the passenger is re-routed and arrives at the destination with a delay in the time limits prescribed by the Regulation, the amount of compensation is halved. In all other modes, compensation is a function of the ticket price. In rail transport, it depends on the length of delay (short vs long). In maritime transport, also the length of the journey is taken into account. In contrast, compensation to bus and coach passengers is a fixed amount – 50% of the ticket price, regardless of the total length of the delay or the journey, and only if

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199 Sturgeon case (Joined CJEU Cases C-402/07 and C-432/07).
200 Most stakeholders contacted consider that specific circumstances across the four transport modes under which the right to compensation is triggered might be justified due to the specific characteristics of the individual transport modes. However, for detailed assessment of all elements, more extensive stakeholder consultation is required.
they have not been offered re-routing. In other words, passengers who are offered re-routing, no matter the delay of their travel plans or the length of their journey, will not be entitled to compensation. This inconsistency can be considered as minor. Although it may bring confusion for passengers and is not justified, it does seem to severely affect passenger’s right to compensation201.

Significant differences among the transport sectors also exist with regard to exceptions to the right to compensation. This is a source of many passenger complaints submitted to the NEBs202. Extraordinary circumstances can be invoked in air and waterborne travel. In 2007, assessment of such claims for cancelled flights accounted for about 30% of all complaints submitted to the NEBs, taking up more than 70% of the resources of national authorities203. The Air Regulation does not clarify the notion. Despite the clarifications provided by the CJEU204, the term is still difficult to apply in practice205. However, the proposal amending the Regulation would include a definition of extraordinary circumstances in line with the CJEU’s decision in the case of C-549/07 Wallentin-Herman. For further legal certainty, the proposal also introduces a non-exhaustive list of circumstances to be regarded as extraordinary in the Annex to the Regulation. The Waterborne Regulation in its preamble explains what should be understood as extraordinary circumstances and as weather conditions endangering the safety of transport services. The latter is specifically emphasised as an exemption from the obligation to pay compensation to passengers travelling by water. It is noted that from the point of view of the passenger, it may be difficult to assess or verify if the cause of a disruption qualifies as an extraordinary circumstance or otherwise if the carrier does not communicate the cause of the disruption. The lack of clarity in the air transport as to what circumstances fall under extraordinary circumstances can be assessed as a major gap due to the high level of complaints it raised in practice.

Cases of extraordinary circumstances are not foreseen to apply to rail and road carriers in the context of compensation. This could partly be explained by the rather limited conditions under which compensation in these transport modes are paid in general. Furthermore, due to the availability of alternative transport for re-routing, rail and road passengers can be presumed to be less inconvenienced compared to passengers travelling by air and water. Nevertheless, stakeholders consider that there may be cases where the

201 Stakeholders have provided contradicting views. While some argue that air transport (flat rate compensation) is not comparable to any other mode (where compensation is a function of ticket price), other stakeholders consider oppose this argument and are in favour of uniform approach.


203 European Commission, Communication from the Commission to the European Parliament and the Council pursuant to Article 17 of Regulation (EC) No 261/2004 on the operation and the results of this Regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights COM(2007) 168 final, 4 April 2007.

204 See the CJEU’s decision in case C-549/07 Wallentin-Herman v Alitalia-Linee Aeree Italiane SpA.

205 ECC-Net, Revision of EU air passengers’ rights legislation position paper, undated.
principle of *force majeure* properly applies and this inequity among transport modes should be re-evaluated\(^{206}\). Since stakeholders express different views as to whether this difference may be justified, it is provisionally assessed as minor inconsistency\(^{207}\).

Since extraordinary circumstances or *force majeure* is a concept widely used in practice for the impossibility to perform the contract, rail carriers have used this exemption to reject passenger’s claims for compensation. The CJEU’s judgment in case C-509/11 ÖBB-Personenverkehr AG, however, rejected this approach since the Rail Regulation does not envisage any exceptions\(^{208}\). The Court also rejected the argument that the rules relating to *force majeure* set out for other modes of transport are applicable by analogy. The Court explained that different modes of transport are not interchangeable as regards the conditions of their use and the situation of undertakings operating in different transport sectors is not comparable.

There are other circumstances where air, rail and maritime carriers do not have to pay compensation to passengers. That is, when the passenger was informed 14 days in advance (air travel) or before buying the ticket (rail and water transport); the delay occurred outside the EU (rail travel); the disruption is caused by the passenger (water transport) and, finally, the ticket price is less than EUR six and four for rail and waterborne transport respectively. Thus, there are different grounds for relief from the obligation to pay compensation. However it would be useful to adopt a uniform approach, as far as possible, to ensure more convergence between the four Regulations.

When passengers have claimed their right to compensation by contacting the relevant carrier, all Regulations but for air travel set a clear time limit for the carrier to make the payment. The proposal for amending the Air Regulation does not clarify this issue. To facilitate the practical handling of claims for compensation, clear time limits for making the compensation payment should also be set out for the air carriers. This inconsistency is considered as minor because the desk research and the limited stakeholders’ consultation did not indicate significant problems for passengers to obtain timely compensation.

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\(^{207}\) Stakeholders have provided contradicting views. While all of them acknowledge that some exceptions will be specific to a single transport mode, and thus should be justified, it is also emphasized that passengers are often very confused why some delays are claimable and others are not.

\(^{208}\) The Uniform Rules, which are part of international law reproduced in the annex to the Rail Regulation, exempt the carrier from its obligation to pay compensation in cases of *force majeure* only in relation to the right of passengers to receive compensation for damage or loss resulting from the delay or cancellation of a train. See the CJEU Judgment in Case-C-509/11 ÖBB-Personenverkehr.
Table 22: Gaps and inconsistencies identified with regard to the right to compensation

<table>
<thead>
<tr>
<th>Issues</th>
<th>Gap</th>
<th>Inconsistency</th>
</tr>
</thead>
<tbody>
<tr>
<td>56. Different circumstances across the four transport modes under which the right to compensation is triggered (e.g. types of travel disruptions, length of delays and journeys)</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>57. Additional preconditions to receive compensation in rail and road travel (thus, only if passengers have not accepted reimbursement (rail) or have not been offered re-routing (road))</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>58. Different principles for the calculation of the compensation amount (flat rate payment (air) vs function of the ticket price (rail, water and road))</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>59. The lack of clarity in the air transport as to what circumstances fall under extraordinary circumstances</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>60. Different exceptions from the obligation to compensate (incl. exceptional circumstances)</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>61. The Air Regulation does not set a deadline for the compensation payment</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>

The right to compensation is a common source of many passenger complaints submitted to the NEBs. The regulation of compensation is complex and it differs among the transport sectors. While compensation can be claimed under similar travel disruptions (e.g. cancellations, delays), there are specific conditions (e.g. re-routing not offered in bus and coach transport) and exemptions (e.g. delay caused outside the EU for rail travel) that apply to the individual transport modes. Also the compensation amount is calculated based on different principles. The evaluation of whether all of these differences are justified or not due to the specificities of the individual transport mode is a complex and time consuming exercise. Not only the opinions provided by the stakeholders considerably differ (and thus more extensive consultation is required), it is also a matter of a more in-depth discussion of whether a uniform EU system for compensating passengers is useful and possible. Since the constraints of this study do not allow for full assessment of this issue, we recommend that additional research and extensive stakeholder consultations are carried out in the future.
8. **Right to carrier liability towards passengers and their baggage**

The right to carrier liability towards passengers and their baggage is part of the explicit minimum quality standards for all transport modes. General principles of liability and compensation for death, personal injury and damage to property apply relatively consistently across all transport modes though a range of conditions apply which vary across the specific transport modes (see table below).

**Table 23: Overview of the right to carrier’s liability in all four modes of transport**

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Liability for death and personal injury?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Extent of liability?</td>
<td>No financial limits for liability</td>
<td>175,000 SDR limit for damages covers those who the passenger had a legal duty towards.</td>
<td>Shipping incident: Liability up to 250,000 SDR unless incident caused by e.g. war, natural phenomenon or by an act/ omission of a third party.</td>
<td>Maximum limit established by national law not less than: 220,000 EUR per passenger</td>
</tr>
<tr>
<td></td>
<td>For damages to covers those who the passenger had a legal duty towards.</td>
<td></td>
<td>Liability up to 400,000 SDR unless no fault or neglect.</td>
<td>1200 EUR per item of luggage.</td>
</tr>
<tr>
<td></td>
<td>Non-fault</td>
<td>Non-fault</td>
<td>Liability up to 400,000 SDR unless no fault or neglect.</td>
<td>Compensation also covers those who the passenger had a legal duty towards.</td>
</tr>
<tr>
<td></td>
<td>Passenger fault</td>
<td>Third party fault where due diligence taken</td>
<td>Non-shipping: Up to 400,000 SDR, where passenger proves fault or neglect.</td>
<td>There is no limitation or exclusion criteria but it is stated that passengers shall, in accordance with national law, be entitled to compensation.</td>
</tr>
<tr>
<td></td>
<td>Exclusion of liability for:</td>
<td></td>
<td>Liability exclusion for sums above 250,000 SDR where prove no fault/ neglect.</td>
<td></td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Liability for damage to baggage</strong></td>
<td><strong>Carrier liability – Rail (1371/2007)</strong></td>
<td><strong>Carrier Liability – water (392/2009)</strong></td>
<td><strong>Bus (181/2011)</strong></td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Liability up to 1000 SDR.</td>
<td>Liability for luggage in case of injury or death to the passenger unless no fault of the carrier.</td>
<td>Liability up to 2250 SDR.</td>
<td>No exclusions mentioned.</td>
</tr>
<tr>
<td>For checked in baggage – liability even where no fault, otherwise death, liability for damage caused by fault of carrier only where loss or damage caused by non-fault of carrier at fault.</td>
<td>Non-shipping incidents: liability determined by national law but maximum amount shall not be less than EUR 1200 per item of luggage.</td>
<td>For vehicles – liability up to 12,000 SDR.</td>
<td>Compensation amounts for equipment for persons with disabilities equal to cost of replacement.</td>
</tr>
<tr>
<td>Limit of 1400 SDR per passenger</td>
<td>Liability up to 2250 SDR.</td>
<td>For registered luggage, liability up to 12,000 SDR.</td>
<td>For valuables which have been deposited with the carrier: 3,375 SDR.</td>
</tr>
<tr>
<td>For other non-cabin luggage – 3,375 SDR</td>
<td>For other non-cabin luggage – 3,375 SDR</td>
<td>For other non-cabin luggage – 3,375 SDR</td>
<td></td>
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</tbody>
</table>


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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Liability for damages due to delays</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Possible</td>
</tr>
<tr>
<td>Liability unless all reasonable measures taken to avoid damage.</td>
<td>Damages payable for accommodation and for cost of notifying persons expecting the passenger</td>
<td>Damages payable for accommodation and for cost of notifying persons expecting the passenger</td>
<td>No limit where damage caused intentionally or by recklessness.</td>
<td>Whilst damages for delays are not specifically required, the Regulation indicates that it does not preclude passengers from seeking damages in accordance with national law before national courts in respect of loss resulting from cancellation or delay of regular services.</td>
</tr>
<tr>
<td>Compensation limited to 1000 SDR for damages to baggage and 4150 SDR for other damages.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No limit where damage caused intentionally or by recklessness.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advance payments</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Applicable to Community carriers (those licensed in EU).</td>
<td>Maximum payment date – 15 days after identification of persons to be compensated.</td>
<td>Maximum payment date – 15 days after identification of persons to be compensated.</td>
<td>Advance payment is not foreseen.</td>
<td>For shipping incident</td>
</tr>
<tr>
<td>Maximum payment date – 15 days after identification of persons to be compensated.</td>
<td>Maximum payment date – 15 days after identification of persons to be compensated.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Objective: meet immediate economic needs.</td>
<td>Objective: meet immediate economic needs.</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No recognition of liability.</td>
<td>No recognition of liability.</td>
<td>No recognition of liability.</td>
<td>Accommodation cost may be limited to EUR 80 per night up to 2 nights.</td>
<td>No recognition of liability.</td>
</tr>
</tbody>
</table>

**Time limits**

- Complaint required for injury: Passenger to inform the carrier before or when disembarking within 7 days.
- Where delays in service within 21 days.
- Time runs when baggage is at disposal of passenger.
- Court claims to be apparent – in which brought within 3 day limit after acceptance of luggage without immediately indicating damage: within 15 days from date of re-delivery.
- For luggage: acceptance of luggage without immediately indicating damage extinguishes a claim, with some exceptions (e.g. damage not apparent – in which case 3 day limit after accepting the luggage).
- Non-apparent damage: within 15 days from date of disembarkation or re-delivery.
- Time bar after period of 2 years from date of disembarkation, where death occurs.
- Period of limitation of actions for injury or death to a passenger, 3 years after disembarkation.
- Persons entitled: 3 years after the death of the passenger up to maximum of 5 years after the accident.
- Period of limitation for performance of the service is 3 years from date of arrival of aircraft (or its scheduled arrival).

Across all forms of transport, legislation imposes a liability on carriers for the death or personal injury of passengers and for loss or damage to their luggage.
With respect to loss or damage due to delays, the situation is highly variable. For air and rail liability exists both for damage to baggage and for other damages. For bus transport, liability is not precluded by the Regulation but only exists where it is established by national law. Finally there is no liability established with respect to waterborne transport.

This situation creates a major inconsistency as passengers do not have the same protection across all forms of transport. No information was found indicating or justifying why bus and water modes take a different approach.

Variations also exist between the different legislation with respect to the maximum levels of compensation awardable, rules which may reduce or exclude liability and specifications as to what compensation may cover etc. Some of these differences appear to occur where rules are established indirectly through the recognition and application of existing International Conventions rather than specifically by EU legislation.

Furthermore, although not reflected in this study, legislation on the different modes of transport contain varying levels of detail on obligations. For example, legislation may cover insurance obligations of carriers (e.g. compulsory for air transport), payment of supplementary sums for certain luggage, provision of information on rights relating to compensation for loss or damage etc. Within the remit of this study, only the major elements of liability rules have been examined.

Compensation limits
With respect to compensation limits for personal injury or death, most modes provide amounts in Special Drawing Rates which is the currency of the International Monetary Fund. As of 10 July 2014, 1 SDR was the equivalent of EUR 1.34215.

As such compensation limits vary from no limits (air – where fault is shown) up to around EUR 450,000 in the case of water transport where the carrier is to some extent at fault or negligent. The lowest maximum limit is on rail transport at around EUR 200,000. There does not appear to be objective reasons for the differentiation in limits beyond negotiations occurring at different times and in different fora. The one objective reason for differences may be where certain legislation indicates what the compensation may be payable for. It could be argued that these differences indicate that a different value is placed on human life depending on the mode of transport. It could be considered that the difference in levels is significant given that the maximum amount payable in air transport is more than double that paid in rail transport. As such these inconsistencies are considered as major.

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215 Rate taken from XE(XDR-IMF Special Drawing Rights).
In air travel, baggage delay is by far the most frequently occurring issue, followed by damage or theft – with loss rarely occurring\(^{216}\). With respect to compensation for damage to luggage, limits vary from around EUR 1300 (Air) to around EUR 3800 (water) for ‘normal’ luggage and up to around EUR 13,600 for vehicles (water). These limits are affected by whether the luggage was in the control of the carrier i.e. checked in/registered, or if it has remained in the hands of the passenger.

Whilst some inconsistencies appear objectively justified due to the nature of the ‘luggage’ being covered e.g. vehicles, there does not appear to be an identifiable justification for differences in limits for ‘ordinary’ luggage. These differences are not significant in absolute terms but it is notable that the limit on water transport is almost three times higher than on air transport. Such a difference could arguably be considered a major inconsistency but due to a lack of information on the extent to which this is causing a problem, we suggest to classify this as a minor problem at this stage.

The Montreal Convention (air) defines quite short limits for claims about delay or damage to baggage: there is a seven day time limit from receipt of claims regarding damage to baggage, and a 21 day limit for delay. Claims about loss of baggage fall under the general two year limitation period for claims in the Convention. In waterborne transport, the passenger shall give written notice to the carrier for the loss or damage before or at the time of disembarkation or its delivery and the claim is barred after two years\(^{217}\). In rail, the limitation period is one or two years depending on the intent to cause loss or damage\(^{218}\). In bus transport, claims must be submitted within three months\(^{219}\).

Consumer organisations point out that the deadlines for complaints about damaged or delayed baggage are very short in air transport, which may result in having passengers not able to claim compensation in time\(^{220}\). The extent of this issue is however unknown.

The differences in the time limitations to claim are assessed as minor due to a lack of information on the extent to which this is causing a problem.

**Liability for damages due to delays**

In relation to compensation for damages due to delays, this is either based on covering the reasonable costs of accommodation and notifying persons the passenger was supposed to meet (rail), based on a maximum of around EUR 1300 for damages to baggage and EUR 4700 for other damages (air), is based on national law (bus) or is not provided for (water).

\(^{216}\) **Evaluation of Regulation 261/2004 on the application and enforcement of the Regulation on air passengers’ rights in the EU Member States** (European Commission, DG Energy and Transport, 2010), p. 142.


\(^{218}\) Article 60 of Annex 1 of the Rail Regulation (EC) 1371/2007.

\(^{219}\) Article 27 of the Bus Regulation (EU) 181/2011.

\(^{220}\) **Exploratory study on the application and possible revision of Regulation 261/2004** (European Commission, DG MOVE, 2012), p. 17.
It is considered to be a major gap, that with respect to water, no liability and compensation exists and that with respect to bus, this may or may not exist depending on national law. Moreover, the limited damages for rail transport will not cover the wide range of damages that could be experienced due to delays. It is therefore not considered as extensive as damages provided for in air transport. Overall, there is both differential treatment between modes of transport as well as between Member States.

What damage is covered?
It is worth noting that with respect to both rail and bus passengers, compensation may also be awarded to cover the maintenance of dependants. This is not, however, required for air and water transport. This is considered to be a major gap as this may result in dependents not receiving any compensation in the event that their carer is killed when travelling by air or water.

Limitations and exclusion of liability
For the most part, liability may be limited or excluded where the carrier can show that it was not at fault or that it did everything in its power to prevent the particular incident arising. Thus for higher compensation amounts, to limit its liability, the carrier must usually demonstrate that it was not at fault or was not negligent (air and water). Such a limitation is possible with respect to rail for all compensation amounts whilst for bus transport there is no specific mention of a limitation but rules are left to national law.

Notably air transport legislation creates strict liability, with no possibility of exclusion or limitation with respect to damages below approximately EUR 113,000 (100,000 SDR). This regime has been established given the particular context of international air travel and was put in place through the Montreal Convention to resolve particular problems identified in that industry.

With respect to the other modes of transport, limitations may exist but this depends on each form of transport. Thus for bus operators, based on national law they may not be able to limit liability or there may be a range of reasons for limitation. This could result in an uneven playing field between bus operators in different Member States. At the same time, rail operators can limit liability for any compensation amount whilst air and water operators can only do so for higher amounts. It is unclear what the justifications are for such a wide variance in approach and these should at the least be considered minor inconsistencies though this appears to have the ability to affect the competitiveness of some carriers. This in part would depend on how insurance coverage and premiums are affected.

Advance Payment
Air, rail and water transport modes have identical provisions on advance payment, with the exception of the minimum amount to be paid. As such, carriers must provide advance payment to passengers for their immediate economic needs but such payment does not constitute admission of liability. Payment must be made at most 15 days after identifying the person to be paid. Rail and water modes indicate the minimum payment is EUR 21,000 whilst air uses SDR currency requiring a minimum 16,000 SDR (approximately EUR 18,000).
On the other hand, advance payments are not required for bus travel. Immediate practical needs, must however be catered for. This can be through provision of e.g. food, medical assistance and accommodation.

Differences relating to amounts of payment can be considered as minor inconsistencies which mostly arise due to compliance with existing international conventions. However, the fact that damages are not available for bus travel and given the amount of loss this could amount to (Between EUR 18 and 21 000 for other modes) this could be considered as a major gap.

**Time limits**

Time limitations exist with respect to submitting a complaint to the carrier and with respect to bringing a court claim. This means that not only must passengers inform the carrier of the damage within a certain period but they must also subsequently bring a claim within a certain period.

With respect to complaints, time limits relating to ‘damages to baggage’, range from immediately, or before disembarkation, and where damage is apparent (rail and water), to seven days for air travel and three months for bus travel. Where the damage is not apparent, the complaint must be submitted within three days of receiving the luggage (rail) or 15 days for waterborne travel.

In relation to time bars to bringing a court claim, these range from two years from the time the transport arrived at its destination (air) or two years from disembarkation (water), to three years from the day after the accident (rail). No limitations are prescribed under the Bus Regulation leaving this to national law.

In addition, both rail and water modes indicate limits where a person has died after an accident – these being three years and two years respectively after the person dies with a maximum limit running from disembarkation of five years (rail) and three years (water).

It can be seen that inconsistencies exist in time limits. Such differences can be confusing to consumers but are not significant in terms of time difference. As such they are assessed as minor inconsistencies.
Table 24: Gaps and inconsistencies identified with regard to the right to ‘carrier liability’

<table>
<thead>
<tr>
<th>Issues</th>
<th>Gap</th>
<th>Inconsistency</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Minor</td>
<td>Major</td>
</tr>
<tr>
<td>62. With respect to loss or damage due to delays, the liability rules highly vary from one mode to the other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>63. Differences relating to compensation for personal injury or death</td>
<td></td>
<td></td>
</tr>
<tr>
<td>64. Differences relating to compensation for damages to luggage and in time limitation to claim damages</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>65. In the waterborne Regulation, there is no liability for damages due to delays and compensation exists, with respect to bus transport, this may or may not exist depending on national law</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>66. In air and water transport no requirement exists for compensation to cover the maintenance of dependants</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>67. Differences across the modes of transport on how liability may be limited or excluded</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>68. Advance payments are not required in bus transport</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>69. Different time limitations for submitting a complaint to the carrier and for bringing a court claim across the modes of transport</td>
<td>✓</td>
<td></td>
</tr>
</tbody>
</table>

Across the four modes of transport, legislation imposes liability on carriers for the death or personal injury of passengers and for loss or damage to their luggage. However, the scope of the protection varies from a mode to another. This situation creates several inconsistencies and gaps as passengers do not have the same protection across all forms of transport. Whilst some inconsistencies and gap appear objectively justified due to the nature of the mode or situation, several differences do not appear to be justified.

9. **Right to a quick and accessible system of complaint handling**

When passengers of all modes are dissatisfied with a carrier's application of their rights, they have the right to complain first to the carrier and, if still dissatisfied, to the relevant NEB. To effectively resolve issues raised by passengers, the complaint handling process should be quick and accessible.
Table 25: Overview of the right to a quick and accessible complaint handling system in all four modes of transport

<table>
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</tr>
</thead>
<tbody>
<tr>
<td>System required?</td>
<td>Not explicitly</td>
<td>Not explicitly</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Added: Passengers should be informed on complaint handling processes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accessibility defined?</td>
<td>No</td>
<td>Added: Passengers can submit claims and complaints, including via electronic means of transmission</td>
<td>Requirement to make contact details both for the carriers and NEBs known</td>
<td>The carriers have to set up accessible systems</td>
<td>No</td>
</tr>
<tr>
<td>Common EU complaint form?</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Deadline for passengers?</td>
<td>No</td>
<td>Added:</td>
<td>No</td>
<td>Complaints to the carrier: the carrier; within 2 months of the service of the service</td>
<td>Compl</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Complaint to the carrier: 3 months from the flight date (performed or scheduled)</td>
<td></td>
<td>aint to the carrier; the carrier: within 3 months of the service of the service (performed or scheduled)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Complaint to NEBs: at the earliest 2 months after a complaint submitted to the carrier</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

221 The EU complaint form is not a legislative requirement but of importance to mention since it makes it easier for passengers to complain.
The ability of individuals to complain about the violation of their rights brings real meaning to the rights laid down in EU law. The Regulations for all transport modes therefore presuppose that a complaint handling system is put in place\(^\text{222}\). There are two main complaint procedures available to passengers, i.e. bringing a complaint before the carriers and the relevant NEBs.

Passengers are recommended to first contact the carriers and, in case of no reply or if dissatisfied, to forward the complaint to the appropriate NEB\(^\text{223}\). The law, however, is not clear on how these two complaint review procedures coexist. The Air and Rail Regulations are silent on this issue. For maritime and road transport the choice is left to Member States. Namely, they can decide that a passenger as a first step is obliged to submit the complaint to the carrier and as a second step – to the NEB. This gap is considered as minor because national legislation should regulate how both systems coexist.


\(^{223}\) See, for instance, the European Commission, (Your passenger rights when travelling by air).
Issues may, however, arise from the lack of harmonised approach and the lack of passengers’ awareness of the national rules, especially in cross-border situations. With regard to the role of NEBs in individual complaint handling, none of the Regulations go into detail. This can be very confusing to passengers since they are not aware that in general NEBs cannot take decisions that will be binding on the carrier due to national legal and administrative traditions. Only in a small number of Member States have a wider consumer protection role which allows them to consider individual claims. In the majority of Member States, however, NEBs only focus on the enforcement of the Regulations and provide advice, often – to go to court or use out of court procedures to obtain individual redress. This gap is therefore assessed as major as it is important that passengers know what assistance, if at all, can be expected from a NEB, especially if the NEB is not competent to handle individual disputes. Furthermore, to avoid that identical incidents are dealt with differently depending on where they happened, it would be useful consider some level of harmonisation as regards the role of NEBs and the process before them for handling of passenger complaints.

One of the issues identified with regard to passenger complaints is that the carrier complaint handling systems in place are not easily accessible. Passengers often do not know how, when and through which channels to complain (online, e-mail, telephone, post, etc.) While all Regulations – except for air travel, foresee that carriers must set up, or have in place, complaint-handling mechanisms, there are hardly any requirements with the most details being reflected in the Waterborne Regulation. In its recitals the Regulation states that passengers should be able to exercise their rights by means of appropriate and accessible complaint procedures. While the meaning of appropriate is not clear, accessibility would entail adequate information provided to passengers about the relevant procedures and contact details, and clear time limits within which a complaint has to be filed, reviewed and replied to. None of the Regulations contains all of these requirements but just some of them. In accordance with the Rail Regulation, procedures for the submission of complaints must be explained to passengers. For other modes, this requirement stems from the general obligation to inform passengers of their rights. The way this is done is generally left to the carriers’ discretion. Notably, the proposal amending the Air Regulation suggests that air carriers should inform passengers, at the time of reservation, about their claim and complaint handling procedures, and provide electronic means to submit complaints.

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224 Confirmed through stakeholder consultation.
225 Stakeholders consulted noted that there are different types of complaints, which are handled differently: e.g. a complaint about delay including a monetary claim would need to be individually assessed and handled, while a complaint about accessibility matter where no monetary claim is involved does not need to be reviewed by a dispute board.
227 Article 29 of the Rail Regulation (EC) No 1371/2007; Annex II of the Regulation specifies the minimum information to be provided by railway companies and/or by ticket vendors.
The NEB contact details have to be provided to passengers in all four modes of transport. The Rail Regulation further clarifies that this information should be displayed at the stations and on the trains or in port terminals and on board ships. In the Air Regulation, the NEB’s contact details and information on rights must be provided in writing; however such a requirement is limited to the events of denied boarding and cancellation.

The carriers’ complaint-handling procedures vary considerably. Some carriers give generic contact details on their websites. Others have complex complaint-handling systems in place. In both situations, passengers may be discouraged to complain due to the time it takes to follow through the process. To use their rights, it is essential that passengers are informed of complaint procedures and the carriers’ and NEBs’ contact details—especially in travel disruptions. Furthermore, if passengers do not complain, carriers have less incentive to automatically ensure full compliance with passenger rights. Therefore, these inconsistencies are considered major.

From the passenger’s perspective, an efficient and transparent complaint handling process involves clear time limits within which a complaint has to be filed, reviewed and responded to. Experience has shown that passengers repeatedly complain about the carriers’ and NEBs’ complaint handling performance. Since the Air Regulation did not fix any time limits and the voluntary agreements encouraged by the Commission in 2007 were not widely respected, the EU legislators have established some compulsory time limits in subsequent legislation (rail, waterborne and road transport) as explained further in the text.

Limitations for the submission of claims to the carriers are currently clarified for passengers who travel by water and road, i.e. within two and three months of the service performed or as scheduled respectively. No such limitation periods are established for air and rail passengers. However, the revised Air Regulation suggests limitation periods for complaints to be submitted to both the carrier and NEBs. Complaints to airlines would have to be submitted within three months from the service performed or as scheduled and to the NEB—two months after the complaint has been submitted to the carrier. This inconsistency is assessed minor as it does not have a direct adverse effect on passengers’ rights. That is, passengers of all transport modes would have a reasonable period of time to submit their claims. Indirectly, however, the unjustified differences

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across the transport modes\footnote{Stakeholders consulted agreed that no reason justified the inconsistency.} exacerbate legal uncertainty and add further complexity to complaint handling procedures which is already a common source of passenger confusion.

Deadlines for complaint handling by the carriers are set out for all modes except air transport. Undisclosed time limits for responding to complaints may undermine the process of complaint investigation and the subsequent granting of compensation to the passenger\footnote{Information from stakeholder consultation.}. This is a clear \textit{inconsistency assessed as major} as it adversely affects the passenger’s right to a quick and accessible complaint handling system. For this right to be complied with, carriers should provide their response within a reasonable time, which should contain, when appropriate, also information on the ongoing process and when to expect the final response\footnote{Stakeholders consulted considered the inconsistency significant, affecting legal certainty.}.

In rail, waterborne and bus and coach transport the carriers are required to respond to a complaint within one month\footnote{Article 27 of the Rail Regulation (EC) No 1371/2007; Article 24 of the Waterborne Regulation (EU) No 1177/2010 and Article 27 of the Bus Regulation (EU) No 181/2011.}. According to the Rail Regulation’s text, it should preferably be the final reply. For waterborne and road transport the formulation is more flexible. The law generally requires confirmation of the receipt to be sent within one month with final response to be provided within two or three months respectively. Likewise the different limitation periods for passengers to submit their claims analysed above, the \textit{inconsistency} in the time limits set for the carriers is also not justified and considered as \textit{minor}. While it decreases the legal certainty across the transport modes, it nevertheless does not have an adverse overall effect on the protection of passenger rights.

None of the Regulations currently set out deadlines for the NEBs to respond to passenger complaints. Passengers travelling by sea and inland waterways are entitled to receive a substantiated reply from the NEB within a reasonable period of time\footnote{Article 25 of the Waterborne Regulation (EU) No 1177/2010.}. However, the concept of \textit{reasonable period of time} is not explained. The proposal for amending the Air Regulation suggests going further. It would require the NEBs to confirm receipt within seven days of receiving the complaint and to provide a final reply in not longer than three months from the receipt of the complaint. Some studies, however, express doubts as to whether it is practical to define time limits within which NEBs must respond to passengers since the approaches to complaint handling employed by NEBs across the EU vary significantly since they are strongly related to the national legal systems\footnote{Report of the study \textit{Evaluation of Regulation 1371/2007 by Steer Davies Gleave on the application and enforcement in the Member States of the Regulation on rail passengers’ rights and obligations} (European Commission, DG MOVE, 2012), p. 145 and stakeholders consultation.}.

With regard to the time taken for complaint handling, the process in general has been criticized as somewhat slow. In practice, most NEBs need several months to resolve complaints. In the air sector, the voluntary NEB-NEB agreement states that regular cases
should be completed in 3-4 months, more complex cases in 6 months and, where legal action is required, it may take even longer. This timeframe might be applicable also to other modes.

The reasons for the lengthy complaint handling process often relate to:

- The complexity of the cases and difficulty in interpreting key aspects of the Regulations;
- Limited resources and staff to deal with complaints (e.g. some NEBs deal not only with passenger rights, but with all consumer complaints in general);
- Lack of necessary expertise (NEBs often need to ask for external assistance to evaluate the circumstances of the case, e.g. from the Civil Aviation Organisations concerning complaints in the air sector);
- Necessity to ask for the carrier’s opinion (their explanation of the situation, technical documentation, etc.);
- Necessity to go back to the passenger to clarify circumstances or ask for supporting documents;
- Time needed for translation of documents if the NEBs and any of the parties involved do not have a common language that could be used for communication;
- Time needed in cross-border cases to forward the complaint to the competent NEB in another Member State;
- Lack of deadlines for NEBs set by the Regulations which means that the NEBs are more flexible in prioritising their time.

This gap in terms of lack of deadline is therefore assessed as major. Different deadlines for the NEBs to respond to passenger claims across the EU can adversely affect passengers’ rights to a quick and accessible complaint handling system. Therefore, from the point of view of improving protection of EU passengers’ rights, a harmonised EU approach would be preferable.

Against this background, in order to ensure a better complaint handling system, the role of the NEBs could be more precisely defined and clearly distinguished from the enforcement function. Furthermore, the practical handling of claims could potentially be regulated by similar rules across all the transport modes.

The assessment of the legislative provision of the right to a quick and accessible system of complaint handling as well as its practical implementation allows us to conclude that there are considerable gaps and inconsistencies with regard to this right. The most important issue is that the role of NEBs in individual complaint handling is not clarified in any of the Regulations. While some flexibility must be allowed for the Member States to establish complaint handling systems in line with their legal and administrative traditions, it also needs to be in balance with the needs of passengers to understand what

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239 The possible reasons for lengthy proceedings have been validated through stakeholder consultation.
240 Stakeholders consulted tended to agree that the gap is not justified. It is noted that national legislation may impose deadlines, nevertheless harmonised rules in this matter is preferable.
result they can expect from NEBs when turning to them in their Member State or across borders. Currently, passengers are often confused and unaware of the fact that most NEBs cannot take decisions that are binding on the carrier and cannot enforce the passenger’s individual claim.

Table 26: Gaps and inconsistencies identified with regard to the right to a quick and accessible system of complaint handling

<table>
<thead>
<tr>
<th>Issues</th>
<th>Gap</th>
<th>Inconsistency</th>
</tr>
</thead>
<tbody>
<tr>
<td>70. Unclear rules on the co-existence of the complaint procedures</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>71. Unclear role of NEBs with regard to the individual complaint</td>
<td></td>
<td></td>
</tr>
<tr>
<td>72. Ambiguous requirements for the complaint handling process that</td>
<td></td>
<td></td>
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<tr>
<td>also differ across the modes (concerns all Regulations)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>73. Differences across the regulations, on the types of information</td>
<td></td>
<td></td>
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<tr>
<td>provided on complaint procedures, e.g. how and when.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>74. No limitation period is set for air and rail passengers to submit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>their complaints</td>
<td></td>
<td></td>
</tr>
<tr>
<td>75. No deadline is set for the air carriers to reply to passenger</td>
<td></td>
<td></td>
</tr>
<tr>
<td>claims</td>
<td></td>
<td></td>
</tr>
<tr>
<td>76. Different time limits apply to rail, maritime and road carriers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>to respond to complaints from passengers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>77. No deadlines are set for the NEBs to respond to passenger</td>
<td></td>
<td></td>
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<tr>
<td>complaints (concerns all Regulations)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

10. Right to full application and effective enforcement of EU law

Passengers of all transport modes have the right to full application and effective enforcement of EU law. Safeguarding effective enforcement of rights is principally an obligation of Member States. Therefore, all Member States have to designate national enforcement authorities (NEBs) and introduce effective, proportionate and dissuasive sanctions into national law. Enforcement is an essential component in passengers’ rights protection as sanctions imposed by the NEBs may provide incentive for the carriers to comply with the regulations ensuring EU passenger rights. This right, while related to the right to a quick and accessible complaint handling system, differ in that NEBs in their enforcement capacity do not solve individual complaints, nor do they grant any compensation. Instead, they act against the carriers when they violate the EU passenger rights legislation. Nevertheless, the NEBs heavily rely on passengers’ complaints in order to learn about any such violations committed by the carriers.
Table 27: Overview of the right to full application and effective enforcement of EU law in all four modes of transport

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Designed authority?</td>
<td>Yes</td>
<td>No change</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Independence?</td>
<td>No</td>
<td>No change</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Competence in all passenger rights?</td>
<td>All but the right to carrier liability towards passengers and their baggage</td>
<td>Clarified: NEBs should also monitor and enforce the right to carrier liability towards passengers and their baggage</td>
<td>Yes</td>
<td>All but the right to carrier liability towards passengers and their baggage</td>
<td>Yes</td>
</tr>
<tr>
<td>Competence in cross-border issues?</td>
<td>Departures from airports within the MS and arrivals into such airports from third countries on Community-licensed carriers</td>
<td>No change</td>
<td>Not clarified</td>
<td>Passenger services and cruises from situated in the ports situated in MS and from a third country to such points</td>
<td>Regular services from points situated in the MS and from a third country to such ports</td>
</tr>
<tr>
<td>Cooperation?</td>
<td>Indirectly through the CPC Regulation&lt;sup&gt;241&lt;/sup&gt;</td>
<td>Added: Enhanced cooperation proposed between national NEBs, across Member State NEBs, as well as regards the Commission</td>
<td>Yes, but not according to the CPC Regulation</td>
<td>Yes – also according to the CPC Regulation</td>
<td>Yes – also according to the CPC Regulation</td>
</tr>
<tr>
<td>Sanctions?</td>
<td>Yes - effective, proportionate and dissuasive</td>
<td>No change</td>
<td>Yes - effective, proportionate and dissuasive</td>
<td>Yes - effective, proportionate and dissuasive</td>
<td>Yes - effective, proportionate and dissuasive</td>
</tr>
</tbody>
</table>

Passengers across the EU have been afforded legal rights and they need ways to ensure that these rights are enforced. Law enforcement in the EU is a shared responsibility of the European Commission and the Member States. Yet, the enforcement authorities in the Member States play the most important role in ensuring passengers’ access to public and private enforcement mechanisms. The provision of mechanisms for private redress is not specific to the Regulations on passenger rights. In this regard, a Directive\(^ {242}\) was adopted in 2013 whereby Member States have to introduce effective, impartial and transparent ADR entities for all kinds of consumer disputes – including passenger rights, by July 2015.

For public enforcement of passenger rights, EU legislation obliges Member States to designate one or more bodies\(^ {243}\). Since Member States have different legal systems in place, the law does not specify how the enforcement mechanism should work. Instead, Member States are given the freedom to decide on the structure and powers of NEBs. They can create laws and institutions as they see fit, provided that passenger rights are protected. It is undisputed, however, that the level of protection currently offered to passengers is not sufficient. To the contrary, inefficiency and non-uniformity of enforcement across Europe is one of the main reasons for incompliance with EU passenger rights\(^ {244}\).

Ineffective enforcement of laws establishing EU passenger rights is a very complex problem to tackle. National authorities are responsible for enforcement, but their powers and organisation depend on the country’s legal and administrative traditions. Effectiveness also depends on other national factors such as the availability of human and financial resources. Without considering fundamental changes in the current enforcement system, there is little the EU can do to overcome such national-level barriers. Some legislative changes at EU level could potentially improve the enforcement and protection of EU passenger rights. Among other things, the NEB role and competence as well as the requirements for national and cross-border cooperation could be clarified. Finally, a link between the NEBs and ADRs can be established through the four Regulations (e.g. enhanced coordination, the obligation of carriers to adhere to ADRs) which would also contribute to more consistent and effective enforcement.

The EU law is rather vague on the NEBs role in enforcement of passenger rights. It does not specify what exactly enforcement entails (e.g. monitoring activities and sanctioning policies) and does not clearly distinguish it from the handling of passenger complaints. Member States are required to take measures to ensure compliance with the Regulations but there is no indication as to what such measures should be. With regard to sanctions,

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the current “effective, proportionate and dissuasive” criterion does not seem to be sufficient since sanctions vary considerably between Member States and they are, in general, applied too rarely to provide meaningful effects. The current tools to improve enforcement of passenger rights also seem to deliver limited results. The voluntary agreements of the NEB Network – whereby some matters on enforcement are addressed, are not always complied with (e.g. deadlines to handle cases, interpretation and enforcement of extraordinary circumstances). Additionally, the vague Regulations also limit the Commission’s options to act against the Member States. To improve the enforcement of passenger rights across the EU, it might be useful to specify in more detail the role of NEBs in enforcement. This gap therefore is considered as major since the various degrees of enforcement among the Member States and the lack of meaningful effects of the NEBs’ sanctions adversely affect the compliance with passengers’ rights across Europe.

The competence of NEBs is a common source of confusion to passengers. It concerns both the competence to enforce all EU passenger rights and to enforce them in cross-border cases. Generally, NEBs enforce the rights that are established under the relevant Regulations. Thus, where the rights stem from international instruments not clearly integrated in the text of the Regulations, i.e. carriers’ liability towards passengers and their baggage, these are not enforced (e.g. the NEBs cannot sanction carriers for incompliance with liability rules). Notably, this relates to air and waterborne transport but not to rail and road transport. The revised Air Regulation, however, proposes giving the NEBs competence to monitor and enforce the right to air carrier liability. The differences in NEB competences across the transport modes are assessed as major legal inconsistency. The fact that some passengers’ rights in certain transport modes are unenforceable (e.g. carrier’s liability) may lead to difficulties for passengers to claim their rights since no authority has to ensure that carriers comply with these rights.

With regard to the NEB competence in cross-border issues, the rules are neither particularly clear. Departures from airports, ports, bus stops within Member States and arrivals into such points from third countries determine the NEBs’ competence for air, waterborne and bus and coach transport. The Rail Regulation, however, does not have any indication as to the competency of NEBs in case of cross-border incidents. Since clarifying the responsible authority can be a time consuming matter which can cause serious inconvenience and detriment to the passenger concerned, this issue is considered as major inconsistency.

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245 For instance, in the years 2010-2012, NEBs were reluctant to sanction infringing air-carriers. Sanctions were applied only in little more than 1% of cases. See European Commission, “Member States still need to strengthen enforcement of air passenger rights, says Commission report,” Press Release, 15 May 2014.


247 Stakeholders consulted tended to agree that the gap is not justified and that common rules on the role of NEBs and sanctioning policies would be preferable.

Currently, the Regulations do not contain any specific rules on how national and cross-border cooperation between NEBs should be carried out. Enhanced cooperation mechanism is only envisaged in the proposal revising the Air Regulation. Close cooperation between NEBs, however, is very important to facilitate uniform application and enforcement of passenger rights across the EU. In fact, the lack of uniformity is one of the main practical obstacles for the full protection of passenger rights and it relates both to cooperation at national level where more than one NEB is responsible for enforcement of passenger rights as well as between NEBs across borders.

With regard to cross-border cooperation, the Waterborne and Bus Regulations state that enforcement should be based on the CPC Regulation. It enables public authorities to cooperate in consumer matters through a common IT tool, information sharing and mutual investigative and enforcement assistance. It has not yet been evaluated how relevant the CPC network is to enforcement of passenger rights and whether NEBs often make use of it. With regard to air passenger rights, for instance, the CPC network is not used much. One of the reasons is that NEBs are empowered to take enforcement measures against both national and non-national operators working on their territory. Regardless of this, consideration must be given to the inclusion of all passenger rights in the scope of the CPC Regulation in case there would be the need to use this network. The Rail Regulation and other relevant provisions on passenger rights – e.g. the price transparency of airfares and the rights of persons with disabilities or reduced mobility are not within the scope of the CPC Regulation at the moment.

Due to the lack of clarity on the issue of cooperation both at national and cross-border level, including what concerns the use of tools established under the CPC Regulation, this issue is assessed as a major gap. The assessment is based on the fact that legal uncertainty and such practical consequences as non-uniform application and enforcement of passenger rights in the EU significantly decrease the level of protection guaranteed to passengers under the EU legislation.

249 European Consumer Summit 2013, (Towards a more efficient enforcement of EU Consumer Rights: Discussion paper).
Table 28: Gaps and inconsistencies identified with regard the right to full application and effective enforcement of EU law

<table>
<thead>
<tr>
<th>Issues</th>
<th>Gap</th>
<th>Inconsistency</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Minor</td>
<td>Major</td>
</tr>
<tr>
<td>78. None of the Regulations clearly state the role of the NEBs with regard to enforcement (e.g. monitoring activities and sanctioning policies)</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>79. No independence requirement for NEBs under the Air Regulation, incl. Regulation (EC) No 1107/2006 regarding PRMs</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>80. Different competencies of NEBs across the four transport modes (e.g. the rules on carrier liability currently can be enforced only by NEBs under the Rail and Bus Regulations)</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>81. Undefined cross-border competence of NEBs under the Rail Regulation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>82. Unclear requirements of the NEBs’ national and cross-border cooperation mechanisms (concerns all Regulations) as well as the scope of the CPC Regulation leaving out rail passenger rights legislation as well as other relevant rights (e.g. airfare price transparency and rights of PMRs)</td>
<td>✓</td>
<td></td>
</tr>
</tbody>
</table>

To conclude, the assessment of both criteria reveals significant gaps and inconsistencies with regard to the right to full application and effective enforcement of EU law. The EU law across the four modes does not specify how the national enforcement mechanisms should work. On the one hand, the broadly formulated enforcement provisions give the Member States flexibility considering the different national circumstances. On the other hand, this vague expression of what the national enforcement mechanisms should include leads to divergences and inefficiencies in the application and enforcement of passenger rights in practice. Additional studies are needed to assess the most appropriate options to ensure a better application and enforcement of passenger rights in Europe.

3.5.- Intermodal transport

Intermodality refers to the capacity to combine different modes of transport or different legs of the same mode of transport in a door-to-door transport journey, in an integrated and flexible way. Such a system allows passengers to seamlessly interchange between transport modes in a single journey253.

Intermodal transport lies at the top of the EU policy agenda since 2001. Intermodality is considered a tool to bring economic and environmental benefits to society254. In its 2001

Transport White Paper255, the European Commission described integrated ticketing, baggage handling and continuity of journeys as a priority for EU passengers’ transport policy256.

### 3.5.1 Intermodal transport schemes

Intermodality may imply a system of integrated information and integrated fares, booking and ticketing, as follows257:

<table>
<thead>
<tr>
<th>Integrated information</th>
<th>Passengers receive detailed information from the moment they leave their home to the moment they get to their destination.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fare integration</td>
<td>A single price is paid for the entire journey and for all modes of transport involved in it.</td>
</tr>
<tr>
<td>Booking integration</td>
<td>Passengers use a standardised and common procedure for booking</td>
</tr>
<tr>
<td>Ticketing integration</td>
<td>A single ticket is valid for all modes and operators should issue one ticket for the entire journey.</td>
</tr>
<tr>
<td>Interoperable journey planning</td>
<td>Passengers plan their journey in a transparent and easy way.</td>
</tr>
</tbody>
</table>

An integrated door-to-door information system would contribute to developing efficient long-distance passenger intermodal travel. Such systems are more advanced at the local and urban transport level. Currently, there is no European integrated intermodal system of information. Integrated passenger information schemes in Europe vary according to different transport companies – especially with regard to long-distance and cross-border European travels. For example, information on international rail transport may be available through different company information services. However, such information is not sufficient for the traveller to plan a door-to-door cross-border seamless journey258.

The promotion and development of integrated ticketing systems between transport service providers is fundamental to achieve seamless mobility259. However, the current level of ticketing, booking and fare integration varies – depending on the different transport companies. The feasibility of integrated booking, ticketing and fares depends on the existing transport systems of different modes. Air carriers, national railways, and regional and urban public transport operators, have different fare policies and models

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that are often based on elements, e.g. time zones and distance. Coordinating the movements of passengers on a door-to-door journey within a system of integrated transport is not straightforward.

Intermodal long-distance travel involving cross-border connections are not common in Europe. This is mostly the result of a lack of fare integration, difficulties in planning interchanges on a network, difficulties in setting up common platforms for common ticket reservations and distribution systems, which are slow to move towards a full intermodality system\textsuperscript{260}. There are, however, a few private intermodal initiatives – strongly supported by the EU\textsuperscript{261}, specifically regarding the air and rail sectors, or the ferry and rail sectors\textsuperscript{262}.

Intermodality schemes may differ according to the different levels of integration of the services provided. The protection of passengers’ rights varies proportionally to the integration of such services. It is common to refer to intermodality when, e.g.:

1. Two tickets scenario (scenario 1): a passenger buys separate tickets for two or more modes of transport within one journey to reach a certain destination;

2. Agency or tour operator scenario (scenario 2): a passenger buys a ticket for a journey through an agency or tour operator which will separately book two or more modes of transport;

3. Integrated ticketing (scenario 3.1 and 3.b): a passenger buys a single ticket with one mode operator which allows him/her to use two or more modes of transport to reach a certain destination in one single journey.

\textit{Scenario 1 - Two tickets scenario}

In the first scenario, if a passenger buys separate tickets for two or more modes of transport within one journey, no integration in the information and in the provision of services is foreseen. The passenger autonomously plans his journey, (s)he autonomously gathers information from different operators and (s)he reserves and purchases single tickets using different distribution systems. Since each transport mode ticket is bought separately, liability in case of disruption or an incident will be limited to the single journey bought on the ticket.

\begin{tabular}{|l|}
\hline
\textbf{Scenario 1:}  \\
Nick lives in London and wishes to travel to Brussels for a one day meeting. He planned to get to the airport by train early in the morning, to fly to Brussels, to attend the meeting and to get back to London with the evening train. He bought individual tickets from the different transport mode operators.  \\
\hline
\end{tabular}

\textsuperscript{260} Ibid.  \\
\textsuperscript{261} Ibid.  \\
Scenario 1:
However, that morning the train which had to take him to the airport was delayed by two hours. Due to such a delay, he missed his flight to Brussels, consequently missing the meeting and, of course, he could not use the train ticket to come back to London in the evening.

In this case, depending on the transport contract and national laws, the railway company would most likely not compensate Nick for the lost plane ticket or for the damage caused by missing the meeting in Brussels. Nick is therefore only entitled to compensation or reimbursement of his train ticket.

The fragmentation in the service provided is, in this case, reflected in the fragmentation of passengers’ rights protection. In fact, each single operator will only be responsible for the service it provides and will not be liable for the fact that, e.g. a disruption in the provision of its service may affect the use of another transport service belonging to the same or to a different mode of transport263.

Scenario 2 - Agency or tour operator scenario

A similar situation can be expected with regard to the second scenario. In fact, when a passenger buys a ticket for a journey involving different transport modes through a travel agency or tour operator, the travel agency or tour operator will separately book two or more tickets for two or more modes of transport. As explained above, in this case, each carrier will be responsible for the service it provided. – No EU legislation exists that states that the travel agency is responsible for providing information on the passenger’s responsibility to ensure connection between different carriers.

The travel agency may also book an integrated ticket that allows the passenger to use two or more modes of transport. This third scenario will be described in Scenario 3 below.

Scenario 3 - Integrated ticketing

The level of integration in the services provided is higher when a passenger buys a single ticket with one mode operator which allows him/her to use two or more modes of transport to reach a certain destination in one single journey. Such a level of integration is also reflected in a higher level of integration in the protection of his/her passenger rights. In fact, one mode operator may for example take full responsibility in case of disruption – including the part of the journey carried out by other modes of transport.

263 Article 32 of the COTIF Convention states that the carrier is not liable when a missed connection is due to unavoidable circumstance not connected to the normal operation of the rail company.
**Scenario 3.a:**

Anna needed to go from Milan to Stuttgart. She flew from Milan to Frankfurt with Lufthansa and she travelled by train from the station in Frankfurt airport to Stuttgart. She booked and purchased a single ticket covering the entire journey from Milan to Stuttgart through the system ‘AIRail’ on the Lufthansa website. She had all of the information she needed to plan her journey, including the train schedule, from the Lufthansa website.

This is an example of intermodality including all elements mentioned in Section 3.1.3, i.e. fare integration, booking integration, ticketing integration, interoperable journey planning.

‘AIRail’ is an intermodal transportation system that involves Deutsche Lufthansa and Deutsche Bahn (DB). The booking and ticketing function through an integrated system via Lufthansa’s website that provides customers with all of the information needed to plan their journey. When booking and purchasing their ‘AIRail’ products, passengers get one ticket covering their entire journey. Moreover, fares are integrated – meaning that the total price that passengers pay when booking their journey is the sum of the price of each leg of their trip.

With regard to the protection of passenger rights, in this case, the rail itinerary is considered part of the air travel (Lufthansa in fact rents part of the train) and is booked via the airline’s website, Lufthansa is responsible for the whole journey planned through ‘AIRail’. Lufthansa is therefore responsible for providing assistance to customers in the case of disruptions e.g. rerouting, rebooking, or overnight accommodation, according to EU legislation in the air transport sector.

As mentioned above, the concept of intermodality changes according to the level of integration of services provided and it covers all modes of transport including maritime-rail transport.

**Scenario 3.b:**

Bart lives in Gothenborg and wishes to go to Berlin. One option is to travel from Gothenborg to Kiel using a Stena Line ferry. In Kiel, he can then take a DB train to Berlin. He reserved both tickets on the ferry website. The ferry website also provided him with information on how to buy and receive the rail tickets. The ferry company sent him the ferry ticket and a voucher (to be shown together with the ferry ticket) for the trip by train.

In this case, the level of integration of the service is more limited than in the Lufthansa-DB example. In fact, only a system of integrated information and integrated booking is available.

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265 Ibid.
266 Ibid.
267 Information gathered through stakeholder consultation.
Passengers can use a system of integrated booking through the Stena Line website. On the website, they can find information on the rail ticket system. They can also book both the ticket for the ferry and the ticket for the train on the same website. However, ticketing is not integrated. In fact, the passenger needs to reserve and buy two different tickets. The travel document for the train will be a voucher that can give access to the rail transport only if shown together with the ferry ticket\textsuperscript{269}.

With regard to the protection of passengers’ rights, in this case, compensation for delays is only due for the trip performed by train and according to the rules provided in the Rail Regulation. If a delay of the train causes a missed connection with the ferry, rebooking may be allowed free of charge. When a delay of the ferry causes a missed connection with the train, DB allows the passenger to take the next train free-of-charge. However, rebooking for the ferry or for the train free-of-charge depends on the type of ticket bought, e.g. an economic ticket or a flexible ticket. When the delays are such that an overnight stay is necessary, there is no right to assistance by the ferry or railway company\textsuperscript{270}. Stena Line acts only as a ticket vendor for the train company.

### 3.5.2 Passengers’ rights in case of inter-modality

There is currently no specific set of rights applying to passengers travelling in intermodal schemes. The existing passenger rights laid in the four modes of transport will therefore apply – which set of passenger rights (air, rail, waterborne or bus) will depend on the type of intermodal scheme. This means that a set of passenger rights belonging to a specific mode of transport may apply to the leg of the journey performed by the same mode of transport (e.g. passenger rights set in the Rail Regulation will apply to the portion of the journey travelled by train). However, a set of passenger rights belonging to a specific mode of transport may also apply to the whole journey (e.g. air passenger rights apply to both the leg of the journey carried out by air and to the leg of the journey carried out by train). Based on the intermodal scenarios referred to in Section 3.5.1, this section provides an overview of passengers’ rights when travelling in intermodal schemes.

As explained in Section 3.5.1, there can be various types of intermodal schemes depending on the degree of integration of the scheme in place.

\textsuperscript{269} Ibid.
\textsuperscript{270} Ibid.
<table>
<thead>
<tr>
<th>Scenarios</th>
<th>Sub-scenarios</th>
<th>Passenger rights</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Separate tickets</td>
<td></td>
<td>Passenger rights under one mode of transport will apply to the leg of the journey carried out by the corresponding mode of transport.</td>
<td>The Air Regulations will apply to the leg of the journey by plane and the Rail Regulation will apply to the leg of the journey by train.</td>
</tr>
<tr>
<td>2. Agency or tour operator</td>
<td></td>
<td>Passenger rights under one mode of transport will apply to the leg of the journey carried out by the corresponding mode of transport.</td>
<td>The Air Regulations will apply to the leg of the journey by plane and the Rail Regulation will apply to the leg of the journey by train.</td>
</tr>
<tr>
<td>3. Integrated ticketing</td>
<td>a. Partial integration</td>
<td>Passenger rights under one mode of transport will apply to the leg of the journey carried out through the same mode of transport.</td>
<td>Only booking and information is integrated. The Air Regulations will apply to the leg of the journey by plane and the Rail Regulation will apply to the leg of the journey by train.</td>
</tr>
<tr>
<td></td>
<td>b. Full integration (as it currently exists)</td>
<td>Passenger rights under one mode of transport will apply to all legs of the whole journey no matter the mode of transport.</td>
<td>An air company rents a train coach for the air passengers using its services. Air passenger rights apply to the leg of the journey carried out by plane and to the leg of the journey carried out by train.</td>
</tr>
</tbody>
</table>

The table shows how, in some cases, different sets of existing rules apply to different legs of the journey, in other cases one set of existing rules apply to all legs. As a result, the protection of passengers’ rights varies proportionally to the level of integration of the services provided.

For scenarios 1, 2 and 3a, two or more sets of passenger rights may apply along the intermodal journey as passenger rights under one mode of transport apply to the corresponding leg of the journey.

Aside from enhanced quality of service, convenience and time saving (see Section 4.3.6), intermodal transport has the potential to enhance the effectiveness of passenger rights by facilitating re-routing and re-booking at the earliest possibility during transport disruption. In this situation, the carriers are better positioned to ensure the right to assistance and to the fulfilment of the contract (re-booking and re-routing). Due to ticketing integration, one of the carriers can use the intermodal system to offer the earliest possible assistance.

271 A passenger buys separate tickets for two or more modes of transport within one journey to reach a certain destination.
272 A passenger buys a ticket for a journey through an agency or tour operator which will separately book two or more modes of transport.
273 A passenger buys a single ticket with one mode operator which allows him/her to use two or more modes of transports to reach a certain destination in one single journey.
transport service in a situation where delays in one mode led to a missed connection. It can help reduce the time during which passengers must receive assistance and therefore reduce inconvenience for passengers and costs for industry\textsuperscript{274}.

On the other hand, passengers’ protection may suffer in intermodal travel. The exercise of passengers’ rights may become more complex for the following reasons:

− The passenger may not be aware that different passenger rights (or the same) apply to different legs of the journey;
− The passenger may not receive information about the rights applying to all legs of the journey;
− Different complaint procedures may apply, as well as different limitation periods to complain;
− PRMs may have to follow two different sets of prior notification procedures to obtain assistance to access the transport; there is an additional risk of lack of coordination in the assistance to be provided during the connection;
− Different rights to assistance, compensation and fulfilment of the contract.

Because the current EU legislation in the transport sector contains gaps and inconsistencies across the transport modes, within an intermodal journey, passengers’ protection will differ from one leg to another. The lack of certainty on which rights apply to the different legs of the intermodal journey might increase the risk of confusion of passengers as to what are their rights. The risk of confusion and potential violation of rights would be particularly acute in case of disruption in one of the journey leg and between connections. This, in turn, may impede their ability to exercise their rights.

Since it is difficult to assess the extent to which this is problematic in practice, the issue is assessed at this stage as \textit{minor}. As intermodal transport becomes frequently used and integrated, it may also become more problematic.

The fragmentation of the information provided in intermodal transport affects passengers’ ability to make fully informed choices and exercise their rights\textsuperscript{275}. There is a need to improve the quality and transparency of information about passenger rights in all transport, including intermodal transport. Overall, the rights of passengers in intermodal transport would benefit clarification and a coherent EU intermodal passenger rights policy\textsuperscript{276}.

Indeed, there is a lack of understanding as to what passenger rights apply in intermodal travel, in particular integrated intermodal travel and at connecting points (which of the carriers will be liable for providing care and assistance). For example, passengers would first need to be aware if more than one carrier is responsible for the whole intermodal

\textsuperscript{275} European Commission Staff Working Documents, \textit{Towards a roadmap for delivering EU-wide multimodal travel information, planning and ticketing services}, SWD(2014) 194 final, 13 June 2014.
\textsuperscript{276} The European Forum of intermodal passenger travel, \textit{Intermodal passenger transport in Europe: Passenger intermodality from A to Z}, undated, Recommendation 5, p. 35.
journey, i.e. scenario 3b, full integrated services, only. Passengers would also need to know what kind of protection is granted to them and according to what mode of legislation.

In addition, problems resulting from the inadequacy of applying one mode of legislation to the legs of the journey carried out by a different mode of transport might also arise. For example, air transport rules on assistance in case of disruption may not be adequate to the needs of passengers travelling in the rail leg of the journey. The tables below provide some examples on how the differences of legislation between the modes of transport affect passengers. Both examples relate to different rules on assistance in case of delays or cancellation.

Example 1:

| Assistance in rail transport has to be provided in case of delay in the arrival of more than 60 minutes while in the maritime transport it has to be provided in case the service is delayed in departure for more than 90 minutes. |

<table>
<thead>
<tr>
<th>Practical situation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>John uses an intermodal transport system involving a journey by ferry and a journey by train. John’s ferry arrives at the harbour on time and he gets on a train. However, during the train journey he is informed that he will get to his destination with an 80 minutes delay. In case the rail transport legislation is applied, John would receive assistance (e.g. refreshments, meals). However, if the maritime transport legislation applies to this intermodal scheme and, as there was no delay in departure for more than 90 minutes, John does not have right to receive assistance. He will have to pay himself for meals and refreshments.</td>
</tr>
</tbody>
</table>

Example 2:

| In the field of road transport, accommodation must be provided to passengers for a maximum of two nights, while in the field of maritime transport accommodation must be provided to passengers for a maximum of three nights. |

<table>
<thead>
<tr>
<th>Practical situation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sarah uses an intermodal transport scheme involving a journey by bus and a journey by ferry. She arrives by bus on time to the harbour. There she learns that the ferry trip is cancelled and that the next ferry for her destination is available in three days. If the maritime transport legislation applies, Sarah would be provided free accommodation until the next ferry trip is available. However, if the road transport legislation applies to this intermodal scheme, Sarah will only receive free accommodation for two nights and she will have to pay herself the accommodation for the third night.</td>
</tr>
</tbody>
</table>

Ideally, one single set of rules, or adapted rules, would apply to the whole journey, no matter whether or not the journey is composed of different legs of different modes of transport. This set of rules would take into account the necessary differences among modes of transport in the protection of passengers’ rights. The application of such a set of rules would facilitate passengers to understand which rights apply, the scope of such rights, and to which operator to claim the enforcement of those rights. Adapted or
specific rules are essential in the event of disruption at connecting points in an intermodal journey\textsuperscript{277}. Since the issues of inadequacy, and differences in the level of protection depending on the intermodal scheme, are key to guarantee the rights of passengers in intermodal transport, the lack of adapted or specific rules is considered to be a major issue.

Considering the above, the following issues have been identified with regard to intermodal transport schemes:

Table 29: Issues identified related to intermodal transport

<table>
<thead>
<tr>
<th>Issues</th>
<th>Minor</th>
<th>Major</th>
</tr>
</thead>
<tbody>
<tr>
<td>83. Risk of confusion and lack of passenger awareness as to which rights apply to the different legs of the intermodal journey</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>84. Inadequacy of a transport mode legislation applying to journeys on another mode of transport</td>
<td></td>
<td>√</td>
</tr>
</tbody>
</table>

In conclusion, the issue of various levels of protection in passenger rights, and issues related to the unclear and non-transparent information currently available to passengers under EU legislation, have the potential to become more problematic in case of intermodal transport. Overall, intermodal transport would benefit from rules adapted rules to fit the specificities of passenger rights, when travelling with different transport modes within one journey.

### 3.6. International law on passenger rights

This section briefly gives an overview of the main international law instruments on passenger rights and the rights guaranteed therein. International rules are established for air, rail and waterborne passenger transport but not for the carriage of passengers by bus and coach.

Passenger rights in Europe are governed by both EU and international law. As confirmed by the EU Court of Justice (CJEU), the EU and international legal systems are separate and autonomous and deal with different matters\textsuperscript{278}. EU rules provide for direct and collective protection of passengers to address inconveniences in a standardised and immediate manner, e.g. minimum care and assistance, and fixed-rate standard form financial compensation. In contrast, international rules, as transposed into EU law, provide an individual right for the passenger to claim damages from the carrier in case of

\textsuperscript{277} European Commission, A European vision for Passengers: Communication on Passenger Rights in all transport modes, COM(2011) 898 final, p.15.

\textsuperscript{278} See CJEU judgments in air travel: C-344/04 IATA; C-549/07 Wallentin-Hermann v Alitalia-Linee Aeree Italiane Spa; Joined Cases C-402/07 Sturgeon e.a. and C-432/07 Böck and Lepuschitz. Rail travel: C-509/11 ÖBB-Personenverkehr AG.
death and injury, and of mishandled luggage\textsuperscript{279}. Disputes concerning damages are decided by the courts and ADR bodies where possible.

In the event of accidents, Regulation (EC) No 889/2002 on air carrier liability implements the relevant provisions of the 1999 Montreal Convention\textsuperscript{280} – establishing rules on the international carriage of passengers and their luggage. It provides, inter alia, for unlimited liability in the event of death or injury of passengers, liability limits in the event of delay, advanced payments to meet immediate needs, and the possibility to bring a law suit before the courts in the passenger’s place of residence. Most of these provisions are incorporated in Regulation (EC) No 889/2002 to harmonise liability limits and legal defences in relation to European carriers\textsuperscript{281}.

The Rail Regulation also refers to international conventions with regard to liability of railway undertakings in respect of passengers and their luggage\textsuperscript{282}. The Uniform Rules contained in the 1980 Convention concerning International Carriage by Rail (COTIF)\textsuperscript{283} govern the carrier’s liability in the event of death or injury of a passenger, train service cancellation, late running of trains or missed connections as well as damages to hand luggage, animals, registered luggage, and vehicles. The Regulation incorporates the Uniform Rules in Annex I to the Regulation where it defines the liability limits.

The liability of carriers of passengers by sea, in the event of accidents, is set out in Regulation (EC) No 392/2009. This Regulation incorporates the Athens Convention concerning the liability regime relative to passengers and their luggage in the event of accidents\textsuperscript{284}. The Convention establishes the carrier’s liability in case of death or injury of passengers, the loss or damage to luggage and their vehicles, and sets liability limits\textsuperscript{285}. In addition to the rules provided by the Athens Convention, the Regulation lays down supplementary requirements such as advance payment in case of death or personal injury of passengers, compensation for mobility equipment of people with disabilities and an information obligation for carriers\textsuperscript{286}.

There are no international instruments regulating bus and coach transport, thus passenger rights and liability provisions are instated through national and EU legislation.

\textsuperscript{280} International Civil Aviation Organization, Convention for the Unification of Certain Rules for International Carriage by Air of 28.05.1999.
\textsuperscript{283} Convention Concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention concerning International Carriage by Rail of 3 June 1999.
\textsuperscript{284} Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the Protocol of 2002 and IMO Reservation and Guidelines for Implementation of the Athens Convention adopted by the Legal Committee of the IMO on 19 October 2006.
\textsuperscript{285} Article 3 of the Athens Convention.
\textsuperscript{286} Articles 4, 6 and 7 of the Regulation (EC) No 392/2009.
3.7. - Conclusions of the legal analysis

The detailed legal analysis carried out in this section shows that the 10 core passenger rights are guaranteed under EU law in the four modes of transports. Although the 10 core passenger rights are secured in all four modes of transports, the extent of the protection varies greatly from mode-to-mode. For example, the Air and Waterborne Regulations do not clearly state that meals and drinks should be made available both in terminals/stations and on board, while the Rail and Bus Regulations guarantees such assistance. In addition, gaps exist in all modes of transports, where an issue is not explicitly regulated by EU regulations, or when the legal provision is there but it is not applied in practice. For example, none of the Regulations explicitly set out the right to claim reimbursement from the carrier when, due to the carrier’s failure, the passenger has been forced to arrange re-routing by him/herself.

Overall 84 gaps and inconsistencies were identified across the four modes of transports, of which 42 are inconsistencies and 40 are gaps, as well as 2 issues related to intermodal transport. Some of these gaps and inconsistencies related to gaps within one mode, or all modes, of transport, or inconsistencies in comparison with the other modes of transports.

A difference in legislation between the four modes of transport could be justified due to the specificity of a mode of transport. However, where a difference is not justified, the gap or inconsistency across the four modes of transport creates discrepancies in protection. As a result, passengers travelling in one mode of transport receive more protection (regarding a specific right or aspects of a right) than when travelling in another mode of transport. For example, the Air, Rail and Waterborne Regulations do not contain any guarantee on what happens if the carrier fails to offer re-routing, while the Bus Regulation in such situations obliges the carrier to compensate.

Under the legal review made above, we could not identify objective justification for the 84 gaps and inconsistencies identified. We can therefore conclude that there is inequality of protection between the different modes of transport.

The 10 rights are affected by the gaps and inconsistencies across the four modes of transport. We can consider that the most problematic rights affected by those gaps and inconsistencies are the right to information, the right to assistance, the right to compensation and the right to full application and effective enforcement.

In order for passengers to exercise their rights, they need to be aware of their rights. This is recognised as one of the greatest obstacles to the full implementation of passenger rights. For example, the claim rate – percentage of passengers actually claiming what they are entitled to – is low because of the lack of awareness of passengers about their rights. It is notable that we have identified the most gaps and inconsistencies (18) in relation to this particular right.

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The right to compensation is a common source of many passenger complaints submitted to the NEBs. The fact that the regulation of compensation is complex and it differs among the transport sectors contributes in this right being particularly problematic. For example, it has given rise to many court cases, i.e. on the notion of extraordinary circumstances upon which carriers base their refusal to compensate.

The right to assistance is another right which gives rise to a lot of complaints from passengers who were not offered assistance or instead were asked to keep the invoices to apply for reimbursement afterwards. In addition, many of the gaps and inconsistencies identified for this right are considered as major. An example of a major issue is the limitation of the provision of assistance to situations outside of extraordinary circumstances. Passengers would require assistance – no matter what the cause of the disruption is. Limiting the assistance to certain situations effectively deprives passengers of the right to assistance in a number of disruptions due to e.g. weather conditions.

Another particularly problematic right is the right to full application and effective enforcement. Passenger rights are effective only if operators and carriers apply them. Enforcement is key to ensure that passenger rights are guaranteed in practice. The enforcement authorities in the Member States (NEBs) play the most important role in ensuring passenger access to public and private enforcement mechanisms. However, none of the Regulations clearly state the role of the NEBs with regard to enforcement. This vagueness, of what the national enforcement mechanisms should include, leads to divergences and inefficiencies in the application and enforcement of passenger rights in practice. Additionally, enforcement is often considered weak with sanctions being rarely issued. When issued, such sanctions have penalties that are too low to be deterrents.

While passengers’ rights are guaranteed in the EU legislation – albeit with various degrees of protection across the four modes of transport, their practical implementation reveals problems for all of the rights. The fact that the transport sector is regularly the number one source of cross-border complaints gives an indication that many issues exist,
in practice, and that the full implementation of passenger rights is yet to become a reality. It is therefore essential to secure the right to a quick and accessible system of complaint handling, and the right to full application and effective enforcement – both rights being crucial to support the full implementation of passengers’ rights. As it stands, both rights deserve further attention from the EU legislator.

On the specific case of intermodal travel, we found that different sets of passenger rights apply to different legs of the journey (e.g. air passenger rights apply to the flight and rail passenger rights apply to train journey), in other cases one set of existing rules apply to all legs (e.g. air passenger rights apply to the air and rail legs of the journey). Where one set of passenger rights apply to the whole journey, there is a risk of inadequacy of having a transport mode legislation applying to journeys on another mode of transport. Because of the differences in the existing EU legislation in the transport sector, within an intermodal journey, passengers’ protection will differ from one leg to another. This situation creates confusion for passengers and there is a higher risk that passengers are not fully informed on all the aspects of their journey and rights.

If the objective of the European institutions is to facilitate intermodal travel, the EU legislator should consider developing specific rules for the application of passenger rights in case of intermodal travel, taking into account the different types of intermodal travel available. However, a first step in improving passenger rights in intermodal travel would be to resolve the many gaps and inconsistencies of existing passenger rights across the modes of transport.

The following section examines the costs to the EU of not taking any action. In other words, it examines the costs on EU society and economy of the current state of passenger rights.
4. Cost of non-EU action

This section aims to provide a comprehensive qualitative and quantitative analysis of the status quo scenario, i.e. the existing legal framework on passenger rights. Based on the previous section (step 2 of our methodology), this section will examine the costs and societal burdens of the absence of an EU-consolidated legislative instrument. In other words, it will assess what are the costs and burdens of the most significant gaps and inconsistencies in the EU legislation as identified in Section 3.

The section will first give an overview of the six areas highlighted in the European Parliament’s Bach Report291 as most significant problem areas (Section 4.1). These areas provide the structure for the economic assessment of the status quo scenario. The methodology for the economic assessment of the status quo scenario will then be explained in details (Section 4.2). The section will follow with the qualitative and quantitative assessment of the most significant gaps and inconsistencies in the EU passenger rights (Section 4.3). The section will conclude with a summary of the findings (Section 4.4).

4.1 - Six cost-affected areas

As mentioned above, in order to assess how the gaps and inconsistencies manifest or affect passengers and other stakeholders on the ground, the status quo scenario will be examined against the six areas highlighted in the European Parliament’s Bach Report292 as most significant problem areas: 1) Transparency; 2) Quality of service; 3) Information; 4) Liability; 5) Enforcement; 6) Intermodality. Together with the ten core rights, these areas form a core of safeguards across all transport modes.

With the aim to ensure clarity and consistency, a description is provided below regarding the scope of each area for the purpose of this report. Each area is defined in relation to the core passenger rights. While each area relates directly or indirectly to all the 10 passenger rights, the most relevant rights have been selected under each area, with the exception of the area of transparency, which in fact is affected by all the 10 rights.

1) Transparency: Broadly, this area relates to the need to have clearly established rules across the four modes of transport.

Currently, the passenger regulation is scattered through various pieces of legislation which are transport mode specific. The legislation is often complex and highly fragmented, e.g. there are three Regulations laying down air passenger rights and international rules are integrated in the Rail Regulation. This complexity thereby causes difficulties to passengers to understand and enforce their rights.

292 Ibid.
In addition, the scope of the rights differs from one mode to another, which adds another layer of complexity and therefore lessens legal transparency - e.g. the right to compensation for long delays is triggered after different period of time according to the mode of transport ranging from 60 minutes to two hours.

A specific aspect of transparency concerns transparency in pricing. During the purchasing process, the headline price should correspond exactly to the final price the passenger will be asked to pay. As a result, the headline price should include all applicable taxes, charges, surcharges and fees paid for all optional and non-optional services included in the ticket. Transparency in price aims to prevent situations where extra costs (e.g. a charge for payment by credit card) are added just before a purchase is finalised.

(4) Quality of service: This area covers, within the scope of this report, selected quality of service aspects. First of all, it relates to the accessibility of the transport infrastructure - in particular for persons with disabilities and reduced mobility, and the assistance provided to them to ensure that they can board the transport service for which they hold a ticket (right 2). Secondly, it also relates to the punctuality and cancellation of services and thus the assistance provided to all passengers in case of travel disruption, e.g. the provision of refreshments, meals and accommodation in case of long delays or rerouting (right 6). Finally, the area of quality of service also relates to the provision of services to all passengers on an equal basis, guaranteeing their right to non-discrimination (right 1). It entails that carrier cannot refuse a reservation, purchase or to issue a ticket on the ground of disability or tariff difference based on the passenger’s nationality. Performance in complaint handling, which also relates to quality of service, is also described under the area of enforcement.

(5) Information: The lack of information to passengers is one of the main reasons why passengers have difficulties in exercising their rights. Passengers have the right to receive comprehensive and timely information (right 3) about their travel and their rights. More specifically, passengers should receive pre-journey information (e.g. the price, the general contract conditions, and the time schedule) and the information during the journey (e.g. on-board services, delays). Passengers should also receive information on their rights in particular in case of disruption. Passengers with disabilities or reduced mobility should receive such information in an accessible format. In addition, they need to receive specific information on accessibility of the transport infrastructure (e.g. of the train platform and the train itself) and of assistance available for boarding and on board of the transport vehicle.
(6) **Liability:** Within the scope of this study, the area of liability should be understood as including the substantive legal and contractual requirements falling on transport companies and transport infrastructure managers - the failure of which triggers their liability.

When concluding a transport contract with the passenger, the transport company is bound to provide the transport service to the passenger, i.e. right 5. As a result, in case of disruption, the passenger should be offered rebooking and re-routing at the earliest convenience, as well as assistance, such as meals and accommodation, i.e. right 6, while waiting for the new travel arrangements. The passenger should also be offered the option to renounce travelling and be reimbursed for long delays, cancellation, denied boarding or overbooking, i.e. right 4.

Under the transport contract, the carrier also is liable for the passengers’ baggage - carrier liability, e.g. individual damages suffered due to delays and cancellations, passenger injuries and baggage, i.e. right 8. The company’s inability to fulfil the transport contract, e.g. by cancellation or long delays, engages its liability. In this case, the passenger has the option to claim compensation from the carrier, i.e. right 7. The carrier’s liability is, however, not engaged in cases where travel cancellation or delays are the result of ‘extraordinary circumstances’ e.g. regarding air, road and waterborne transport.

(7) **Enforcement:** Within the scope of this study, the area of enforcement relates to a private redress mechanism - the complaint handling procedure set up by the transport companies and NEBs, i.e. right 9, and to effective enforcement of EU legislation by the NEBs, i.e. right 10.

In a case where the carrier’s liability is engaged under the Regulations, or when the passengers’ rights are not respected, passengers have the ability to complain first to the carrier. If the carrier’s response to the complaint is unsatisfactory, the passengers can turn to the NEBs for alleged infringements of their rights. However, the NEBs are not competent to decide on compensation and their decisions are not binding on the carrier. Lastly, a passenger may turn to the national courts for a judicial procedure.

For public enforcement of passenger rights, EU Member States must designate an NEB to be in-charge of the monitoring of compliance with EU legislation and of sanctioning in cases of non-compliance. Each Member State is given the freedom to decide on the structure and powers of the national NEB. This results in different approaches being taken by Member States across the EU.

Overall, enforcement can be considered as the most problematic of the six selected areas. This is because it concerns the 10 core EU passenger rights and across all of the transport modes, ineffective complaint handling and enforcement across Europe are seen as the main reasons for the lack of compliance with the EU passenger rights.
(8) **Intermodality**: This area refers to the capacity to combine different modes of transport or different legs of the same mode of transport in a door-to-door transport journey in an integrated and flexible way. In such a system, passengers can seamlessly interchange between transport modes in a single journey – depending on the degree of integration of the transport modes.

The protection of passengers’ rights varies proportionally to the level of integration of such services. Intermodal schemes usually allow a passenger to buy a single ticket with one mode operator, that allows him/her to use two or more modes of transports to reach a certain destination in a single journey, i.e. integrated ticketing, as opposed to the passenger or an agency, buying separate tickets for two or more modes of transport for one journey to reach a certain destination. Intermodality schemes may vary in their level of integration, e.g. some may offer luggage handling and some may not – meaning the passenger will need to check in his/her luggage separately for each mode of transport.

Under the existing and integrated intermodal scheme (integrated ticketing), passengers will benefit from passenger rights under the single mode of transport. For example, in the case of the Airail system (see Section 3.5), where the flight ticket includes the rail ticket, air passenger rights apply. The carriers are better positioned to ensure the right to assistance and to the fulfilment of the contract, e.g. re-booking and re-routing, in case of disruption, since the tickets are integrated and the carrier can use the intermodal system to offer the earliest alternative transport service in a situation where delays in one mode may lead to a missed connection.

The fact that only one set of rights apply, prevents the passengers from confusing which rights apply, the scope of their rights, and to which operator to turn in order to claim the enforcement of those rights. This is particularly relevant for rights 4, 5, 6, 7 and 8. However, this can also give rise to problems resulting from the inadequacy of applying air passenger rights to, e.g. the train leg of the same journey.

In order to examine how the ten broad passenger rights may be achieved or improved, the following table shows the rights that are the most relevant to each of the six areas where the common passenger rights code or instrument may lead to benefits for passengers and other stakeholders.

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Table 30: the six areas and the relevant passenger rights

<table>
<thead>
<tr>
<th>Areas highlighted in Bach Report</th>
<th>The most relevant EU Passenger Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Transparency</td>
<td>(1-10) Relates to all EU Passenger Rights</td>
</tr>
<tr>
<td>(2) Quality service</td>
<td>(1) Right to non-discrimination</td>
</tr>
<tr>
<td></td>
<td>(2) Right to mobility</td>
</tr>
<tr>
<td></td>
<td>(6) Right to assistance</td>
</tr>
<tr>
<td>(3) Information</td>
<td>(3) Right to information</td>
</tr>
<tr>
<td>(4) Liability</td>
<td>(4) Right to renounce travelling</td>
</tr>
<tr>
<td></td>
<td>(5) Right to fulfilment of the transport contract</td>
</tr>
<tr>
<td></td>
<td>(6) Right to assistance</td>
</tr>
<tr>
<td></td>
<td>(7) Right to compensation</td>
</tr>
<tr>
<td></td>
<td>(8) Right to carrier liability towards passengers and their baggage</td>
</tr>
<tr>
<td>(5) Enforcement</td>
<td>(9) Right to a quick and accessible system of complaint handling</td>
</tr>
<tr>
<td></td>
<td>(10) Right to full application and effective enforcement of EU law</td>
</tr>
<tr>
<td>(6) Passenger intermodality</td>
<td>(4) Right to renounce travelling</td>
</tr>
<tr>
<td></td>
<td>(5) Right to fulfilment of the transport contract</td>
</tr>
<tr>
<td></td>
<td>(6) Right to assistance</td>
</tr>
<tr>
<td></td>
<td>(7) Right to compensation</td>
</tr>
<tr>
<td></td>
<td>(8) Right to carrier liability towards passengers and their baggage</td>
</tr>
</tbody>
</table>

The following section will examine each area and assess the qualitative and quantitative costs of the current state of EU passenger rights. In particular, the economic and social impacts of the legal gaps and inconsistencies reflected under each area will be examined in a quantitative and/or qualitative manner.

4.2 - Identifying the costs - methodology

As explained in Section 2, passengers and businesses face various issues and obstacles due to the gaps and inconsistencies which currently exist in the transport regulations and its practical implementation. These issues can be seen as burdens and can only partly be partly expressed in terms of monetary costs. Cost examples include:

- legal costs and the costs of time spent during the process of complaint handling and litigations;
- costs of time lost because of lack of transparency;
- costs related to lack of assistance to the passengers;
- costs of non-optimal intermodal connections.
Wider economic costs may arise due to lost business opportunities and a lower demand for services due to their inadequate quality and/or accessibility. Other non-monetised costs include the burden of emotional stress to the passengers resulting from problems in the implementation of passenger rights.

The lack of systematic and comparable data – particularly acute in some of the Bach Report’s areas, makes quantitative analysis in monetary terms challenging. Where such quantitative assessment was not feasible, a qualitative assessment is carried out based on the scope of burden on society that the gap or inconsistency in the EU passenger rights represent.

Overall, for the purpose of this study, 73 issues (gaps and inconsistencies in the EU passenger rights) have been examined. In this section, the issues that have a higher impact in terms of burden on society and economic costs have been selected or the gaps and inconsistencies have been compiled under a main issue where they have similar impact. The issues will be examined in quantitative terms – for four out of the six areas – and in qualitative terms, using scenarios and ranking – in all six areas.

The quantitative cost assessment focuses among others on the lack of sufficient or unclear information about various aspects of travel including passengers’ rights, which manifests in prolonged and less efficient complaint handling procedures. Such costs relate specifically to the area of enforcement. It must be noted, however, that the cost components refer in fact to more than one area of passengers’ rights as identified in the Bach Report since complaints relate to various issues of violation of passengers’ rights which are described in more detail in Section 3.2.3. The passengers complain the most often in cases where transport disruptions occur – typically claiming for reimbursement or compensation and complaining about inadequate assistance of the carriers in such circumstances. Such complaints would often be triggered by insufficient transparency on passengers’ rights and lack of adequate information about these rights and procedures. Therefore, the costs of inefficient enforcement procedures analysed in the area of enforcement also refer to areas of transparency, information, the quality of service and liability.

The area of intermodality is looked at differently in our assessment. While a certain (expectedly low) percentage of complaints can be related to problems with intermodal connections, our focus in this area lies on the assessment of positive aspects of intermodality, mostly manifesting as time saving benefits. The lack of more wide-spread intermodal connections can be quantitatively assessed.

It should be noted that financial compensation in cases of liability due to cancellations, delays and baggage, is not quantified in the cost assessment, as this can be seen as a transfer of value from one group of stakeholders (transport carriers) to another (passengers). Our study aims at the assessment of net social costs related to the gaps and the potential options to address them. Transfers between different stakeholders do not comprise CoNE. Box 1 below provides a more detailed methodological note on cost elements and CoNE.
Box 3: Methodological note on cost elements and CoNE

<table>
<thead>
<tr>
<th>Transfers vs net benefits for the society</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The issue of compensation:</strong> Higher/lower compensation benefits for passengers mean at the same time higher/lower costs for the transport companies. Hence, from the point of view of the whole society, this can be seen as a neutral money transfer rather than a net social benefit. For the purposes of the study it is therefore not relevant to estimate changes in monetary compensation paid to the passengers as a result of the expected changes in rules on compensation due to possible future codification of passengers’ rights.</td>
</tr>
</tbody>
</table>

| Cost of time lost in complaint proceedings: | Contrary to the value of compensation, the value of time which could be saved to the passengers due to a decreased need for court and ADR litigations and shorter complaint handling procedures as well as the time saved thanks to better intermodal connections and better transparency during ticket purchasing transactions can be seen as a net benefit for society. Passengers could use this time in other valuable activities such as work or leisure. The value of time of the national enforcement bodies and the carriers’ staff which could potentially be saved with more efficient procedures and clearer rules can also be seen as a net benefit since this is not a productive time but time which is lost in the state-of-play situation due to the inefficiencies. |

**CoNE**

**Costs of non-Europe:** CoNE is a mirror image of the potential benefits which would arise due to addressing the existing gaps. In our study the quantitative analysis of CoNE focuses on several elements: 1) monetisation of the legal costs and costs of time that is lost due to inefficient enforcement procedures resulting from the existing gaps in definition and application of the passengers’ rights, 2) monetisation of time lost due to gaps in transparency regarding ticket sales, 3) assessment of costs related to gaps regarding minimum level of assistance to passengers in case of disruption and 4) monetisation of the costs of time resulting from lack of more widespread use of intermodal connections.

The estimates can be seen as a conservative approximation of CoNE in the area of passengers’ rights since it is not feasible to express all the burden elements in monetary terms. Quantitative estimates are supported with qualitative assessment of the identified burdens and gaps.

Quantitative estimates involve creating scenarios based on a number of assumptions which are to the highest possible extent, based on the available data found through desk research and/or validation of the contacted stakeholders. Due to the lack of sufficient data – especially from the road and waterborne sectors, development of such scenarios was not feasible for all areas and burdens. Therefore, many areas contain mostly qualitative assessment in the form of descriptions of the elements of CoNE which manifest as burdens, problems and inconveniences that are impossible to express in monetary terms. These are described, per area, and include examples and case studies.

294 An extensive analysis of various compensation options in the area of air transport is provided in Impact Assessment of a proposed regulation amending Regulation (EC) No 261/2004 (EC 2013).
At the end of each section, a ranking system in the form of a table will classify the magnitude of the impacts that are likely to arise due to the most relevant gaps and inconsistencies identified in the previous chapter. The impact analyses relate to the socio-economic consequences for various stakeholders (passengers, carriers and society as a whole) and for the economy as a whole, whether direct or indirect. The ranking system allows us to present the results of the qualitative assessment. The ranking consists of three levels of gradation:

- **Weak**: if the socio-economic consequences deriving from gaps and inconsistencies appear to be minimal.
- **Moderate**: if the socio-economic consequences deriving from gaps and inconsistencies appear to moderate.
- **Strong**: if the socio-economic consequences deriving from gaps and inconsistencies appear to strong.

The basis for ranking varies by area since the burdens are of very different nature and scales. Therefore, the impacts cannot be aggregated and no standard rules for the ranking can be applied. For example, in some cases, ranking may refer to the number of affected passengers whereas in other cases, ranking may refer to the severity or nature of the impact. For this reason, specific underlying drivers are provided for each gap and inconsistency.

The ranking refers to the consulted stakeholders opinions. The results have been validated with our senior experts.

An example of the ranking table that will be inserted at the end of each section is presented below.

<table>
<thead>
<tr>
<th>Gap/inconsistency</th>
<th>Impacts related to the gap/inconsistency</th>
<th>Stakeholders affected</th>
<th>Assessment (weak/moderate/strong)</th>
<th>Justification</th>
<th>Overall assessment of the gap/inconsistency</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

The quantitative assessments presented in some of the areas have been made on the basis of calculation spreadsheets developed in Excel. The results of these calculations should be treated with caution, as they constitute only a rough estimate based on fragmentary data.
4.3 - Qualitative and quantitative assessment per area

As explained above, this section will assess quantitatively and qualitatively the impact of the existing EU passenger rights and, more specifically, the gaps and inconsistencies of the passenger rights across the four modes of transports (air, rail, waterborne and road). This section is divided by area of passengers’ rights (transparency, quality of service, information, liability, enforcement and intermodality). While this division into areas provides a clear structure to assess the qualitative (burden) and quantitative (costs) impact, many aspects of passenger rights and their related costs or burden on society relate often to more than one area. In this case, clear reference and explanation will be provided.

In each area, an overview of the burden on society and costs will be described. Specific references to the gaps and inconsistencies identified in Section 3 will be made. In the end of each section, key findings will be presented.

4.3.1 Transparency

Key findings:

- Transparency in legislation requires clear and precise wording; coherent legislation and the correct provision of information on the content of the legislation
- Transparency is crucial for passengers’ rights awareness. Passengers should be able to understand their rights in order to be able to claim their correct application
- Price transparency remains problematic in the air sector, although some requirements exist
- Absence of requirements on pricing information and transparency in the Rail, Bus and Waterborne Regulations
- Lack of precise requirements on price transparency in the Rail Regulation
- Absence of requirements on price transparency in the Waterborne and Bus Regulation

This section discusses what transparency in legislation means and the potential issues resulting from the lack of transparency. This will be assessed in a qualitative manner. In addition, the section looks at the specific aspect of price transparency while purchasing transport tickets. A scenario will illustrate the issue and clear references will be made to legal gaps and inconsistencies. Price transparency will be assessed in a qualitative and quantitative manner.

Transparency has been recognised as a general principle of law by the CJEU295, and as a fundamental element of democracy and legitimacy. Transparency plays a role at the legislative level and policy-making, including at the administrative and procedural level in terms of openness of administrative and judicial decisions296. Transparency of the

legislation ensures coherence, consistency, fairness, equal treatment and non-discrimination in its application.

To achieve transparency, the EU legislation should meet with the following criteria:

1. clarity and understandability;
2. coherence and consistency;
3. information and accessibility.

First, the legislation should be drafted in a clear and precise manner using terminology that is simple and understandable. Clear terminology is essential to guarantee legal certainty so that no doubt could be cast on the meaning of the terms and their scopes. Ambiguous legal wording opens the door to various interpretations, discrepancies in implementing the legislation and increases the risk of non-compliance.

Secondly, the legislation should be coherent and consistent. Consolidation and codification are often linked to greater transparency as they allow for consistency and coherence. The EU has at various occasions codified practices and CJEU case-law in coherent texts to ensuring greater transparency.

Lastly, transparency entails that constituents are aware of the legislation and their rights in order to be able to claim for their rights. The dissemination of and access to information is essential to reach such an aspect of transparency. This is usually done through notification or publication. However, simply publishing to the Official Journal of the European Union is most likely not sufficient to ensure awareness of passenger’s rights by the general public. Tools such as awareness campaigns or websites dedicated in explaining passenger rights in all of the EU languages may more effectively ensure transparency towards EU citizens. In addition, information on passenger’s rights must be provided at the stage of booking or purchasing a transport ticket in an accessible format. The aspect of information is further developed in the Section 4.3.3 dedicated to the area of information.

Overall, transparency entails that citizens and stakeholders are informed (or have access) of the laws applying to them and that they can understand the legislation in order to ensure its correct application and claim their rights. The CJCEU Attorney General argued that “both the principle of transparency and legal certainty must be respected by the

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297 Ibid at p. 220. CJEU Case C-110/03 Belgium v. Commission, [2005] ECR I-2801, point 44.
299 The European Commission dedicates a website to inform passengers on their rights.
legislature as sources of Community law, and a failure to do so would, under Article 230 EC constitute an infringement.\(^{300}\)

Within the scope of this study, the area of transparency is associated with the need to have clearly established rules regarding travel, unambiguous passenger’s rights and coherent all-related arrangements across all transport modes. The lack of such clear rules may lead to disinformation, confusion and the loss of time spent on looking for optimal solutions or in filing complaints that are ultimately inadmissible as a result of the lack of understanding of the rights. Some of these burdens manifest through complaints and the enforcement procedure – therefore, the quantitative cost assessment in the section related to enforcement apply partly to the area of transparency.\(^{301}\) In addition, in each area, inconsistencies are identified as a result of the lack of transparency (e.g. ambiguous terminology, lack of coherence). For example, the Rail, Waterborne and Bus Regulations state that passengers must be provided with adequate information on their travel. However, no definition of ‘adequate information’ is given.

Another aspect of transparency relates to information on prices during the purchasing process and procedures surrounding the purchasing process. Information on the price is an important part of the passengers’ decision-process in planning their trips.

Consumer surveys have revealed problems with regard to ticket price transparency. The issues relate more specifically to transparency on the full price of airline tickets and on what is included in the service. According to a study on price transparency,\(^{302}\) 17% of airlines and travel agents do not comply with the requirement to indicate prices inclusive of all unavoidable and foreseeable taxes, fees and charges from the first stage of the booking process and in their advertising.

The EU legislation establishes requirements to ensure that transparent information on air fares and air rates is provided by carriers during the purchasing process (including online purchase).\(^{303}\) In particular, it regulates the information that must be provided in the final price, optional charges and supplements, which must be on an ‘opt in’ basis. Although optional price and supplements must be on an ‘opt in’ basis, air carriers sometimes use an ‘opt-out’ system. In such an opt-out system, the price proposed includes supplements for services that were not requested by the passenger and that the passenger clearly needs to refuse if he/she does not want to purchase them.


\(^{301}\) It is impossible to estimate to what extent gaps in transparency are covered within the enforcement-related cost estimates. Lack of transparency is one of the factors which on the one hand may trigger complaints and on the other hand – makes the enforcement procedures inefficient due to the necessity of deciding on a case-by-case basis about the judgement on a case instead of having a clear guideline.

\(^{302}\) Price transparency provisions in Regulation 1008/2008 and other relevant EU legal texts (European Commission, DG MOVE, January 2012).

Box 4: Example of price transparency issue where the carrier uses an opt-out system

Tomasz wished to fly from Warsaw to Brussels using a low cost airline carrier. After selecting the airports of take-off and arrival on the computer screen, he got a very attractive price offer of 75.40 PLN (less than €20) for one-way travel. When he clicked on the ‘continue’ button, he got the following picture offering him travel insurance.

He did not want to pay for travel insurance but he was not able to find and select the option ‘Don’t insure me’ on the screen. The price of 75.40 PLN, which appeared on the first screen, automatically increased to 150.40 PLN. Costs of luggage had to be added separately. In addition, this price would increase further upon selection of a credit card rather than a debit card as a means of payment. Tomasz spent about half an hour before being successful in booking the ticket without additional travel insurance and with a possibility of taking one large suitcase in addition to hand luggage.

The case shows how the lack of correct application of the EU legislation on ticket pricing and displaying of information leads to loss of time and confusion.

Quantitative assessment

According to Eurostat, in 2012, 827 million passengers travelled by air in the EU27. A DG Move study on transparency reveals that about 17% of airlines and travel agents do not comply with the requirement to indicate prices inclusive of all unavoidable costs from the first stage of the booking process and in their advertising. Assuming that the percentage of passengers having problems with booking their flights is proportionate to

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the number of airlines and travel agents failing to comply with the requirements related
to transparent pricing and noting that the vast majority of passengers buy return tickets,
it can be estimated that the problem relates to about 413.5 million purchasing transactions
annually\textsuperscript{306}.

It can be assumed that the deficiencies in transparency lead to passengers wasting about
15 minutes trying to figure out the final ticket price for possible comparison with other
travel offers. Following this logic, and using the estimate of the value of an hour of
passengers’ time, we can estimate the aggregate value of passengers’ time lost due to
gaps in transparency during the process of purchasing tickets being equal to
approximately \texteuro 130 million annually.

Despite the economic crisis, the number of passengers using European airports continues
to increase. Eurostat figures show a 4\% increase in passenger numbers in 2010, and IATA
recently projected that European air passenger numbers would increase by 4.7\% per year
until 2014\textsuperscript{307}. This would suggest that if the percentage of airlines using non-transparent
pricing procedures remains more or less the same, the costs are likely to increase over
time thus the quantitative estimate may be seen as conservative.

Research carried out in 2012 in the rail transport sector showed that consumers wished to
have clear pricing offers. More than 50\% of the respondents said they experienced
difficulties in finding the cheapest option during the booking process. In particular, they
found it difficult to compare prices within a rail company (e.g., peak vs. off-peak travel)\textsuperscript{308}. According to the research, the consumers surveyed were of the opinion that
train companies should increase price transparency, notably by using a price alert system
with better ticket offers via e-mail (76\% of respondents) or phone (55\% respondents)\textsuperscript{309}.
The lack of price transparency may negatively affect transport companies. In fact,
passengers might feel discouraged by opaque prices and this could motivate them to look
for systems providing clearer pricing. As a result, operators and intermediaries that are
able to communicate a clear pricing policy would dominate over other competitors\textsuperscript{310}.

Conversely, the opaque pricing lures passengers into believing that the carrier offers
better pricing while, in the end the carrier’s offer may not be significantly cheaper than
any others – due to all of the additional options and fees (for services which may be
offered free of charge by competitors). In this sense, the practice of opaque pricing can be
considered as an unfair commercial practice. Indeed, under the Directive on Unfair
Commercial Practices, a commercial practice must be regarded as misleading if it

\textsuperscript{306} It can be noted that in case of so-called cheap airlines where the transparency problem tends to
occur more often, single-way tickets are often purchased. On the other hand, in many cases the
purchasing transaction relates to more than one passenger. The assumption of using 50\%
of the estimated number of passengers accommodates both observations.

\textsuperscript{307} See Exploratory study on the application and possible revision of Regulation 261/2004
(European Commission, DG MOVE, July 2012) p. 179.

\textsuperscript{308} Accenture, Rail consumers want a one-stop booking platform, price transparency, and a better offering
for customization, 2012.

\textsuperscript{309} Ibid.

\textsuperscript{310} Ibid.
contains information likely to deceive the average consumer, even if the information is factually correct and that it causes, or is likely to cause, him/her to take a transactional decision that he/she would not have taken otherwise. Two of the elements of unfair practice include ‘the price or the manner in which the price is calculated, and the existence of a specific price advantage’311.

According to a study carried out in Europe in 2003, concerns were raised about pricing information in maritime transport services. Such concerns stemmed from difficulties in gathering this information or making bookings via the Internet312. The Waterborne Regulation of 2010 does not contain specific reference to price transparency. It may thus be concluded that such concerns remain.

It may also be assumed that the same concerns apply to the field of road transport - the Bus Regulation does not provide price transparency requirements. However, due to the lack of information on the practical implementation of the Bus Regulation, such an assumption is not yet confirmed in practice.


312 OPTEM, European Consumers and services of general interest, 2003.
### Table 31: Qualitative ranking of the impact of the lack of price transparency

<table>
<thead>
<tr>
<th>Gap/inconsistency</th>
<th>Impacts</th>
<th>Stakeholders affected</th>
<th>Assessment</th>
<th>Justification</th>
<th>Overall assessment of the gap/inconsistency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of transparency of air carriers regarding final price with respect to inclusion of various charges and services</td>
<td>Loss of time Confusion Annoyance Stress</td>
<td>Passengers</td>
<td>Moderate</td>
<td>The absence of clear rules on price transparency increase risks of lack of transparency from carriers. The lack of transparent price affects passengers in terms of loss of time, confusion, stress and annoyance. The confusion on price lead passengers to buy a ticket with a certain carrier based on an advertised price which is lower than the actual final price. Stress and annoyance will result from not understanding what services the price advertised exactly cover. The aggregated loss of time might be substantial. Aggregated loss of time in ticket purchasing procedures for air passengers due to the gap is estimated at around €130 million annually.</td>
<td>The impact is considered moderate for passengers due to the loss of time and annoyance. The impact is considered moderate on carriers and EU economy as it is assumed that the lack of price transparency has rather a limited impact on choice of the carrier, but the risk of unfair competition being high, overall the impact is moderate.</td>
</tr>
<tr>
<td>Absence of requirements on price transparency in the Waterborne and Bus Regulation</td>
<td>Impact on choice between airlines Distorted price competition Wider economic impacts</td>
<td>Carriers EU society EU economy</td>
<td>Moderate</td>
<td>On the one hand, the lack of transparent price information (e.g. the final price does not correspond to the price indicated during the booking procedure), affect passengers’ choice. The passenger may be motivated to choose for other carriers which offer clearer pricing. On the other hand, the price still remains the most important factor for selecting the carrier. Therefore, the passenger will choose another airline with clearer pricing only if the price is in a similar range. The passenger may however keep up with the lack of transparency if the final price remains significantly lower than other carriers. The lack of transparency affects consumer choice (passengers may not realise that in the end carrier not significantly cheaper than other due to all additional options) and it can be considered as such as an unfair commercial practice, which highly affects consumer economic interests and indirectly affects legitimate competitor businesses.</td>
<td></td>
</tr>
</tbody>
</table>
4.3.2 Quality of service

Key findings:

− Quality of service is assessed via three elements: accessibility for and assistance of passengers with disabilities or reduced mobility (PRMs), non-discrimination based on any ground, and assistance to all passengers in cases of disruption.
− Accessibility requirements for the transport sector are limited or non-existent under EU legislation.
− The lack of accessibility is not only problematic for equal access to transport by PRMs, but it also affects 20% of the EU population as it limits the capacity of an ageing population to travel. It therefore represents a significant burden in terms of loss of customers.
− Non-discrimination is the core value of the EU. Non-discrimination in access to transport is limited to few grounds of protection – i.e. nationality, residence and persons with disabilities or reduced mobility – and it pertains to certain specific situations, e.g. offering of rates, and issuing a ticket and boarding.
− In case of travel disruption, stranded passengers have the right to be provided with a minimum level of care (i.e. meals, accommodation).
− Issues of compliance and high levels of dissatisfaction have been reported.

Quality of service can be understood as to how companies meet customer’s needs while being economically competitive. While quality of service can be measured through various performance variables (e.g. customer satisfaction, number of incidents), for the purpose of this report the assessment of costs and burdens focuses on three elements:

− accessibility for and assistance of passengers with disabilities or reduced mobility (PRMs);
− non-discrimination;
− the assistance to all passengers in case of disruption.

The burdens identified will be described qualitatively, with some quantitative assessment.

As in other areas, some of the burdens described below will generate a number of complaints and trigger enforcement procedures. Those burdens manifesting through complaints and the enforcement procedure are partly covered with the quantitative cost assessment in Section 4.2.5 on enforcement.\footnote{313  It is impossible to estimate to what extent gaps in quality of service are covered within the enforcement-related cost estimates. Gaps in the quality of service on the one hand may trigger complaints and on the other hand – if provisions on quality of service are not properly defined or enforced - the enforcement procedures may be rendered inefficient due to the necessity of deciding on a case-by-case basis about the judgement on a case instead of having a clear guideline.}
Accessibility and assistance to passengers with disabilities or reduced mobility

While there is no exact data on the number of persons with disabilities in Europe, estimates range from 10 to 15% of the population in Europe – thus, could concern up to 80 million Europeans314. This figure is expected to increase as the population grows older - considering the ageing of the ‘baby boomers’. Accessible transportation is essential for persons with disabilities or reduced mobility to enjoy their rights on equal basis. It is not only a right laid down in the CRPD (Article 9), it is an important condition to their participation in society. Currently, many transport services and their infrastructures remain partly or fully inaccessible to PRMs. Only 37% of Europeans report “high” or “good” satisfaction levels with all aspects of accessibility. Satisfaction is highest in the UK (61%), Ireland (56%) and France (52%). The below-average satisfaction rates are found in Germany, Italy and Central- and South-Eastern Europe315.

Fully accessible transport not only allows persons with disabilities to travel within Europe, but it is expected to benefit a wider range of passengers, e.g. pregnant women, families travelling with small children, passengers with luggage or passengers with temporary impairments. The Commission estimated that given the correlation between disability and ageing, over 20% of the EU population would benefit from improvements in the accessibility of goods and services316. It can be further argued that a transport system that is accessible to PRMs is also more accessible to everyone else.

While there is not enough data to estimate the actual costs of transport inaccessible to PRMs, inaccessibility strongly curbs the ability of a significant numbers of Europeans to travel within and outside their countries. While this can affect a variety of economic sectors, one of the most affected sectors would be tourism. There is a clear loss of economic opportunities in the tourism sector as persons with disabilities would not consider or be able to travel in various cities or regions of Europe due, at least in part, to the inaccessibility of parts of its transport services.

314 The European Disability Forum, (Facts and figures about disability) and UNDP, A review of international best practice in accessible public transportation for persons with disabilities, June 2010.
316 European Commission, Roadmap for an European Accessibility Act, June 2011, p.3. Higher benefit rates have been reported: EDF estimates that 40 % of the European population’s mobility is impaired at any given time which would suggest much greater benefits deriving from adjustments. A Swiss study cites that 80 % of the population would benefit from accessibility standards. See Altan, L., et al, Implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, European Parliament, 2014, p.145.
Box 5: Scenario impact on tourism

<table>
<thead>
<tr>
<th>Scenario: Tourism and passengers with disabilities or reduced mobility</th>
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</thead>
<tbody>
<tr>
<td>John is a US citizen with cerebral palsy which leaves his body easily tired and requires him to use an electric wheelchair to move around. He wishes to travel to various European cities over the summer with a friend.</td>
</tr>
<tr>
<td>When arriving at their first destination, he encountered some difficulties in travelling from the airport to their hotel. From the airport, they were supposed to get on an accessible bus. Once there, they were told that the bus company needed a day’s notice to accommodate an electric wheelchair. Instead, they took an accessible taxi, which was more expensive.</td>
</tr>
<tr>
<td>At their second destination, the wheelchair arrived broken at the airport. After waiting for a few hours at the airport to report the damage, they went to their hotel. No replacement wheelchair was provided. For the following 2 days, John and his friend called the airline to obtain a solution for the broken wheelchair – without success. On the third day, they decided to get the wheelchair repaired at their own costs.</td>
</tr>
<tr>
<td>John was dismayed with this negative experience and published an article in a newspaper and on social media, dissuading PRMs from travelling to Europe.</td>
</tr>
</tbody>
</table>

Accessibility is mentioned in the rail, road and waterborne transport modes – albeit specific requirements in terms of accessibility exist only in the Rail Regulation. This does not mean that they are no accessibility requirements applicable in the other sectors, or more extensive ones in the rail sector. Indeed, the EU legislation requires Member States to take measures to ensure that buses and passenger ships are accessible, although what those measures must be are not specified in the case of passenger ships or the bus transport accessibility requirements concerning new buses. In addition, many Member States have regulated this within their national laws.

Whilst generally complying with those accessibility requirements, many transport services and infrastructures remain partly, or fully, inaccessible. This is partly due to the fact that many accessibility requirements apply to new vehicles or infrastructures rather than existing ones and that they lack detailed requirements. For instance, many ports are not fully accessible and accessibility of railways stations and services remains challenging in many countries.

The inaccessibility of transport services and terminal infrastructures has clear economic impact on transport companies in terms of a lower demand by PRMs which would lead to decreased revenues compared to the situation with fully accessible means of transport. Taking the example of bus transport, it is reported that regular bus services are mostly

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318 19% of Europeans do not use the train because of accessibility issues. European Commission, “Eurobarometer: half of all Europeans are satisfied with their railways, but more needs to be done to improve the service offer”, Press Release, 16 December 2013.
used by retired persons and young people, while the coach is used for holidays or day trips mainly by older persons. Research studies reported that 5.7% of people aged 65 and over use a coach for their holiday compared to 2.1% of people aged under 65 years. Overall, 13% of people aged over 70 travel with coaches. This trend seems to be increasing. As a result, PRMs represent an important part of bus and coaches customers. However, in a UK study, about a third of the PRMs surveyed ranked bus stations as poorly designed and 33% of them found long distance buses and coaches difficult to use. While this study dates from 2002, it is difficult to say if much progress has been done since then in terms of accessibility, which would lead to better results.

The social benefit of fully accessible transportation can be significant, considering the number of people who can benefit from full accessibility, i.e. around 20 percent of the EU population. Inversely, the absence of clear and uniform accessibility standards in EU regulations and the lack of enforcement of the existing standards can represent a great burden for society in general. Accessible transport is needed to serve the EU ageing population.

On the other hand, the costs to provide fully accessible services will be significant and therefore require strong political support. It has, however, been estimated that in the long term the investment will yield benefits in terms of the time saved, better enjoyment of facilities and increased consumers. In addition, Member States could also adapt accessibility requirements to their national situations and establish priority targets. For instance, by requirement full accessibility of main hubs and terminals and partial accessibility of little-used transport facilities, e.g. stations with < 20 passengers per day, can be prohibitively expensive to make 100% accessible.

Assistance is part of the quality of service provided to PRMs and a prerequisite to ensure full accessibility of PRMs on an equal basis with others. The assistance must be provided to allow PRMs to take the transport for which they hold a ticket. The assistance consists of support to PRMs in order to board and disembark the transport service (e.g. with the provision of lifts, wheelchairs or other appropriate assistance needed), as well as assistance on board the transport service, e.g. to access the toilet, and including the handling of mobility equipment.

Such assistance entails a cost for the carriers and terminal operators as they are required to provide the assistance free-of-charge (rail, bus and waterborne), or without additional cost (air). While the Rail, Bus and Waterborne Regulations are silent on if / how

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320 As comparison, 38% PRMs surveyed considered rail transport the most difficult to use, while 72% considered air transport easy to use. MORI, *Attitudes of Disabled People to Public Transport*, 2001-2002, p.20 and p. 60.

321 A study estimated that the costs (mostly premises adjustments) and benefits of ensuring accessible good and services accessed by the public would most likely cancel-out over approximately a 30-year implementation period. See Altan, L., et al, *Implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*, European Parliament, 2014, p.199.
operators can recover these costs, Regulation 1107/2006 in the air sector specifically states that airport operators may levy a specific charge on all airport users to fund this assistance. The charge must be reasonable and transparent and established through consultation with airports users.

Since operators are able to recover the costs of the assistance coupled with the benefits of having more PMRs access transport, the requirement to provide PRMs assistance can be considered more as a benefit than a burden to carriers and infrastructure (terminals/stations/airports) operators.

In 2012, around 2% of air passengers declared having a disability or impairment. Of those passengers, 60% requested assistance. Around 92% of the PRMs who requested assistance were satisfied. Requests for assistance are likely to increase in the future as “the number of PRMs is growing more than twice as fast as the overall number of passengers.” Nevertheless, the provision of assistance to PRMs remains problematic in the four modes of transport.

As explained in Section 3, in the air sector, there are inconsistencies in the way that the Air Regulation has led to situations where passengers face different requirements and limitations by airports and airlines. In 2013, mobility assistance, and insufficient or inappropriate equipment and facilities at airports and on-board aircrafts ranked as the most frequent grounds for complaints.

In the rail sector, while assistance is usually provided, problems remain. In 2013, research carried out in the UK revealed that only 79% of people with disabilities were assisted on and off the train by staff, 5% were helped by passengers and 15% did not receive any help at all.

One of the issues that can arise from the provision of the assistance is loss or damage of mobility equipment when handling such equipment. In case the PMR’s wheelchair is damaged and not functioning, the passenger would need a replacement wheelchair for continuing his/her journey or simply move around the infrastructure. However, only the Waterborne and Road Regulations foresee that carriers or operators must provide a

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322 Article 8 of the Regulation (EC) No 1107/2006 on the rights of disabled persons and persons with reduced mobility when travelling by air.
325 Ibid.
temporary replacement. In the case of Air and rail passengers, to date, many may be left to bear the costs of replacements or repairs of the damaged mobility equipment.\textsuperscript{327} Overall, situations such as those described above, e.g. issues with assistance or inaccessibility, inevitably create emotional burdens for the passengers. Negative experiences of PMRs related to travelling may discourage them from travelling again, which may lead to a loss of revenue for transport companies - taking into consideration the increasing ageing population and the increasing number of PRMs. Indeed, a survey reported that when asked unprompted about their concerns, PMRs would first mention transport issues.\textsuperscript{328} This shows the importance of transport as an everyday concern of PRMs. The effects of the issues described above cannot easily be quantified in monetary terms. However, such effects negatively impact PRMs and contribute to their social exclusion. It also has impact on the whole of society where social inclusion is considered to be an important element of democracy and where all passengers benefit from full accessibility (which includes assistance).

\textit{Non-discrimination}

Equal treatment and non-discrimination constitutes some of the fundamental values of the European Union. The right to non-discrimination is effectively guaranteed by the Charter of Fundamental Rights of the European Union\textsuperscript{329} in addition to being recognised in the national laws and Constitutions of Member States.

Several benefits can be identified for businesses to establish and implement non-discriminatory policies, including:

- better market focus, which provides an understanding of the needs of customers - particularly relevant for the PRMs and ageing population;
- increased competitiveness resulting from a better understanding of its customers’ needs, which can lead to improved and tailored service; Such offerings can bring competitive advantage by appealing to specific groups of passengers (e.g. elderly persons with reduced mobility);
- enhanced reputation;
- reduced vulnerability to legal actions - since direct or indirect discriminatory practice constitute a strong ground for legal action under many national laws.\textsuperscript{330}

\textsuperscript{327} See as example the story of this traveller in electric wheelchair whose wheelchair arrived broken at the Brussels airport, Davenport, R., \textit{"Travelling with a disability in Europe"}, The Washington Post, 25 July 2013.


\textsuperscript{329} Article 2 of the Treaty on the European Union. Article 21 of the Charter states: “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited”.

For the most part, non-discrimination policies are inexpensive as they aim at addressing prejudice-based discrimination, which has low-cost implications for the providers. This is particularly the case for discrimination on the grounds of nationality or residence. Non-discrimination on the ground of disability will entail some significant costs to public services providers in terms of the investments needed to achieve accessibility (as mentioned above) and to provide adequate assistance.

As mentioned in Section 3, with respect to transport, the right to non-discrimination is guaranteed at the EU level but only under limited grounds of protection, i.e. nationality, residence and persons with disabilities or reduced mobility – and it pertains to certain specific situations – such as the offering of rates, issuing a ticket and boarding. The protection offered by EU legislation in the four modes of transport is thus limited and problematic as a result of gaps and inconsistencies in the legislation – see more in Section 2.3.4.

Most violations of the right to non-discrimination in access to transport are reported with regard to people with disabilities or reduced mobility. In many instances passengers do suffer unjustified refusal, e.g. related to comfort issues such as use of toilets - rather than safety, or restrictions on reservations or boarding. Discrimination cases based on race or ethnicity have also been reported.

It can be concluded that the current EU legislation does not provide support for strong protection from discrimination in the transport sector. Aside from the impact on providers, weak legal protection from discrimination also has a strong impact on society in general. Indeed, improved EU antidiscrimination legislation would lead to a fairer and more economically-effective European society. Discrimination results in excluding groups of individuals from society -including economic markets. In addition, gaps in anti-discrimination law “will send the message that the fundamental right not to be discriminated against is acceptable in some areas (outside the field of employment law) and ultimately this might reinforce discriminatory practices”. Lastly, fundamental rights as core EU values, entail that a minimum baseline must be drawn to ensure respect of such rights and that competitive advantages or costs should not serve as excuse for lack of compliance.

Right to assistance in case of disruption

The manner a carrier responses to disruption is a key aspect of the quality of the services they provide. As explained in section 3, the EU legislation establishes for all modes a minimum level of care to be provided in case of long delays. Stranded passengers have the right to be provided a minimum level of care, e.g. refreshment, meals,

332 European Commission, Passenger rights: what passengers with reduced mobility need to know when travelling by air, MEMO/12/422, 14 June 2012.
accommodation, immediately, on the spot at terminals, stations and/or on board while waiting for the beginning or the continuation of the delayed journey or for their rerouting. According to the EEC-Net, assistance for air passengers affected by long delays or cancellation is not often provided. Passengers then have no other option but to pay for their own food, drinks and hotels because the airline does not provide this assistance automatically. Furthermore, many consumers are not aware that they can claim for reimbursement of these expenses upon presentation of invoices.

Poor quality of service can create emotional stress which is difficult to assess in the quantitative analysis due to methodological problems. Nevertheless, emotional stress is proven to have a negative impact on human health and thus contribute to loss of productivity, increased health expenditures, shorter life expectancy and a lower quality of life.

Box 6: Example relating to emotional stress in case of lack of assistance and information

**Case example**

**Stress in case of medical emergency**

A plane directed to Paris that took off from Rabat, in Morocco, was forced to land in Madrid because of a medical emergency. After being faced with a 24-hour delay, and left without assistance, passengers launched a revolt and stole from the drinks trolley. It was too late for the flight to land in Paris because of night restrictions and by the time it took off again the plane could only stop in Nantes instead. Passengers were put on a bus to their destination the next day.

In such a scenario, with high-quality of assistance and information, the passenger’s emotional stresses would be considerably reduced – despite the level of the disruption and delay.

Source: *Daily Mail*, 22 February 2014

A survey carried out by the UK NEB (Civic Aviation Authority) reveals that of the 744 air passengers surveyed on the assistance obtained during major disruptions, 448 (60%) stated that they did not receive any assistance from the airline, 81% of respondents stated that they were dissatisfied with the assistance they received, and 65% stated that they were very dissatisfied. Only 10% of survey respondents received vouchers for food or accommodation. One of the reasons for such high levels of non-compliance may be found in the lack of clarity in the Air Regulation, which does not specify that food and

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drinks should be made available both in the airport and on board. This is also the case for the Waterborne Regulation.

The air sector is not the only mode of transport where there is a lack of assistance in case of disruption. More than 40% of Member States have exempted their domestic train services from the right to assistance, which means that more than 94% of rail passengers are exempted from the right to assistance. When they do provide assistance, some railway companies limit the maximum amount for accommodation, others do not provide the required refreshments and food – on-board - claiming that this is too difficult to organise when delays occur between stations.\textsuperscript{336}

The lack of clarity, inconsistencies and gaps in the EU Regulations contribute to the non-compliance of carriers and operators. For example, the regulations are unclear as to whether the right to assistance applies in a case of re-routing, reimbursement or missed connections. Such legal uncertainties can easily be used as an argument for not providing assistance in such situations. The unfortunate formulation of the content of assistance ‘snacks, meals or refreshments’ in the Waterborne and Bus Regulations means that technically, carrier and operators could choose to provide either a refreshment or a snack or a meal, while, depending on the circumstances, a meal and a refreshment may be more appropriate. Overall, there are no rules on what happens if the carrier fails to provide assistance (i.e. the right to claim reimbursement), which further facilitates non-compliance. Considering these issues compiled with the fact that many passengers are unaware of their rights, fertile grounds exist for a lack or unsatisfactory assistance in case of disruption.

**Quantitative assessment**

Assistance to passengers during disruptions in the form of, for example, meals, refreshments, vouchers and payment for accommodation, constitutes a direct benefit to the travelling passenger while, at the same time, it constitutes a cost for the carrier. Thus, assistance can be seen as a transfer from the carriers to the passengers and thus not constituting a net social benefit. On the other hand, however, the carriers must factor such costs in their budget estimates when the existing EU regulations require such consistent assistance for all transport modes. In addition, assistance can be viewed as a standard for decent quality of service. In our view, the lack of any assistance in case of major disruptions can be classified as an external cost, i.e. the social cost that is imposed by the carriers on the passengers while, in principle, this cost should be borne by the carriers. The magnitude of this cost burden can be approximated by referring to the minimum assistance which in cases of disruptions should be granted to the passengers.

While information across all sectors about the negligence of this requirement by the carriers is not available, the survey carried by the UK Civic Aviation Authority can be

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used to produce a rough estimate of this burden in the air sector. The survey reveals that of the 744 air passengers surveyed on the assistance obtained during major disruptions, 448 (60\%) stated that they did not receive any assistance from the airline. Only 10\% of survey respondents received vouchers for food or accommodation\textsuperscript{337}.

According to the Commission Staff Working document on complaint handling and enforcement, 1.23\% of passengers on all flights were entitled to care and assistance\textsuperscript{338}. If the results of the above-mentioned survey from the UK are assumed to be representative for all of the passengers experiencing disruption, the number of passengers entitled but not receiving care and assistance from the carriers can roughly be estimated. According to Eurostat, in 2012, 827 million passengers travelled by air in the EU\textsuperscript{27}\textsuperscript{339}. Applying the percentage of passengers entitled to care and assistance (1.23\%), we get a rough estimate of the number of the EU passengers entitled to care and assistance due to various disruptions being at the level of 10.17 million annually. Next, using the results of the survey mentioned above we can assume that 60\% of this volume of passengers (i.e. about 6 million) did not receive any assistance while it should have been provided. Lastly, in order to present a minimum monetary estimate of this gap, we assume that the value of minimum assistance that would be needed in case of disruption equals €3 per person. This is a very conservative estimate with the cost being equal more or less to a cost of a cup of tea, coffee or cold refreshment. Based on this scenario, the cost of gaps in assistance can be approximated with a value of about €\textbf{18.3 million annually}.\footnote{Civil Aviation Authority UK, \textit{Final Report: Aviation’s response to major disruption}, 2010.}

It can be noted that, in many cases, especially cases of cancellations and longer delays, the passengers would need much more costly assistance in the form of vouchers for meals and/or accommodation. However, in the absence of more detailed data it is impossible to produce more tailor-made estimates. Moreover, as mentioned above, the goal here is to estimate a minimum level of assistance which should be factored in the carriers’ budget and where the lack of it can be seen as a social cost. Finally, these estimates do not include monetisation of emotional burden which, in situations of travel disruptions, tends to be severe.

There could also be some less significant indirect benefits to local services such as shops, snack bars, restaurants and hotels as carriers provide the required assistance to the passengers. These effects are not expected to be significant; monetising them goes beyond the scope of this study.

\textsuperscript{337} Civil Aviation Authority UK, \textit{Final Report: Aviation’s response to major disruption}, 2010.
\textsuperscript{339} Eurostat, ”\textit{Air passenger transport in the EU27}”, Press Release, 5 November 2013.
Table 32: Qualitative ranking of the impact of the gaps and inconsistencies in quality of services

<table>
<thead>
<tr>
<th>Gap/inconsistency</th>
<th>Impacts</th>
<th>Stakeholders affected</th>
<th>Assessment</th>
<th>Justification</th>
<th>Overall assessment of the gap/inconsistency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limited accessibility requirements in the air, road and waterborne legislation and limited accessibility requirement in the rail sector</td>
<td>Insufficient accessibility of transport facilities</td>
<td>Passengers</td>
<td>Strong</td>
<td>The lack of accessibility is not only problematic for equal access to transport by PRMs but it also affects 20% of the EU population. It limits the capacity of an ageing population to travel. An accessible transport system to PRMs is also accessible to an ageing population, passengers with children and luggage; therefore to everyone.</td>
<td>The impact on society is major as it affects about 20% of the population. The impact on the carriers is moderate as a certain number of PRMs will not travel, albeit their assistance entails a cost. Wider economic impacts are major since it relates to a large portion of the society.</td>
</tr>
<tr>
<td></td>
<td>Less demand for transport</td>
<td>Carriers</td>
<td>Moderate</td>
<td>Some PRMs may choose not to travel with public transport which would mean loss of customers. On the other hand, a certain number of PRMs require assistance while travelling, generating extra staffing costs.</td>
<td></td>
</tr>
<tr>
<td>Gaps and inconsistencies related to the right to mobility aside from accessibility (e.g. requirement to provide temporary replacement of the mobility equipment in case of loss or damages or no toll-free phone numbers to request assistance)</td>
<td>Financial loss Annoyance Stress</td>
<td>Passengers</td>
<td>Weak</td>
<td>The gap in the legislation is significant. However, in practice, it is difficult to estimate the exact scope of those issues. The number of cases of lost and damaged mobility equipment received by NEBs is overall not high. While the lack of compliance with the obligation to provide assistance free of charge or at no additional cost implies a cost on the PRMs, overall the burden on society is relatively minor.</td>
<td>The legal gap is major, but since in practice it is not significantly problematic, the overall impact is considered weak.</td>
</tr>
<tr>
<td>None of the regulations include the grounds of sex, racial or ethnic origin, religion or belief, age or sexual orientation and the Rail Regulation does not foresee the right to non-discrimination based on nationality and residence.</td>
<td>Emotional burden</td>
<td>Passengers</td>
<td>Moderate</td>
<td>Discrimination entails a strong emotional burden on passengers who are refused similar opportunities based on certain characteristics.</td>
<td>Overall, the impact is moderate since on the one hand it concerns a core value of the EU and it has an impact the society as a whole. On the other hand, however, the evidence of discrimination in the</td>
</tr>
<tr>
<td></td>
<td>Lack of clear statement of fundamental values</td>
<td>EU society</td>
<td>Strong</td>
<td>Considering that non-discrimination is a core value of the EU, the impact on society can be considered as significant. Improved EU antidiscrimination legislation would lead to a fairer and more economically effective European society.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>EU economy</td>
<td>Weak</td>
<td>There is a correlation between strong anti-discrimination legislation</td>
<td></td>
</tr>
</tbody>
</table>
In practice, it does seem that discrimination cases in the transport sector occur frequently. Most cases of the reported violation of the right to non-discrimination are related to PRMs; some based on racial or ethnic origins (see Section 3.4.2). Passenger transport is scarce.

| Inconsistencies relating to the protection against discrimination – PRMs not guaranteed the purchase of a ticket at no additional cost or required to be accompanied. Exception based on safety reasons not sufficiently strictly applied. | Lack of clear rules | Confusion | Denied access to transport for PRMs | Passengers | Weak | As a result of the inconsistencies, carriers can refuse access to transport to PRMs or ask them to be accompanied where the PRM need to pay for the accompanied person’s ticket. The inconsistency can be considered as minor, as it concerns only a few cases. Good practices or better legislation could help avoid such situation if applied consistently in all modes of transports. | Overall the impact is assessed as moderate since from the point of view of the EU society it may be seen as a significant whereas in practice, the number of discrimination cases is reported is low. |
| Lack of clear statement of fundamental values | EU society | Strong | Refusal to board a PRM can be considered as a significant social burden as a refusal which is not duly justified on safety reasons contributes to discrimination and fails to uphold strong EU values. | |
| Unclear wordings: i.e. unclear whether the right to assistance applies in case of re-routing, reimbursement, missed connections; unclear formulation of the content of assistance (Waterborne and Bus); unclear whether it should be made available both in terminals/stations and on board (Air and Waterborne) | Lack of clear rules | Cases of lack of assistance | Loss of time | Financial costs | Confusion | Annoyance | Stress | Passengers | Strong | Considering the level of consumer dissatisfaction (up to 81%), this can be assessed a major burden. While the assistance entails a cost on carriers, the costs for passengers of lack of even basic assistance have been conservatively assessed at the level of €18.3 million annually. The passengers in addition lose time while looking for other connections and waiting for them, in case of lack of re-routing and reimbursement they bear the costs of purchasing new tickets; in case of rebooking for another day they have to travel again to the airports/stations. | The overall impact is considered moderate. While it affects strongly passengers and the quality of services provided, indirect economic effects can be expected to be weak. |
| Wider economic impacts | EU economy | Weak | Passengers’ dissatisfaction may potentially lead to lower demand for travel or switch to other modes of carriers or transport. However this effect is expected to be weak. | |
| No rules on what happens if the carrier fails to provide assistance (i.e. the right to claim reimbursement). | Lack of clear rules | Lack of incentive for the carriers | No compliance | Passengers | Moderate | Carriers have little incentive to increase the quality of their services in case of disruption due to lack of sanction and limited effects on long-term travel demand. If clear rules and sanctions were defined for carriers in case of failing to provide assistance, the carriers would have a stronger incentive to provide assistance. | Overall, the impact is moderate. This gap can be seen as an important factor which feeds into the above gap. |
4.3.3 Information

Key findings:

• Usually travelers know that when buying any travel ticket they were agreeing to stipulate a contract with the transport company. However, a minority of them know the rights and obligations arising from that contract.
• In the field of air transport in 2009, about 60% of the respondents were not informed about their contractual rights and obligations as passengers.
• Passengers’ rights to information must always be guaranteed, especially in case of disruption. However, studies showed that passengers in all four modes of transport were not always satisfied with the information received.
• Passengers with disabilities or reduced mobility should receive any information about the travel in an accessible format. In addition, they need to receive specific information on accessibility of the transport infrastructure and of assistance available for boarding and on board of the transport vehicle.
• Passengers with disabilities or with reduced mobility would be more motivated to use public transport services if it were easier to get the relevant information.

This area concerns the right to information which relates to all transport modes and it is a key precondition to passengers’ decision making and ability to exercise their rights.

For the purpose of this report the assessment of costs and burdens with regard to the right to information focuses on pre-journey information, information to be provided at the various stages of travel, and importantly, in case of disruption. Such assessment will also take into consideration specific information that need to be provided to passengers with disabilities or reduced mobility (PRMs). The cost and the burdens of the specific information to be provided with regard to price were described in the area of transparency (Section 4.3.1). Most of the burdens will be described qualitatively, with some quantitative assessment. As in other areas, some of the burdens described below will generate a number of complaints and trigger enforcement procedures. Those burdens manifesting through complaints and the enforcement procedure are partly covered with the quantitative cost assessment in the Section 4.3.5 on enforcement340.

Pre-journey information

Pre-journey information relates to e.g. passengers’ rights, general contract conditions and time schedule. According to some industry stakeholders, the right to information is, probably, the most effectively implemented EU passengers’ right. A survey carried out in 2009...

340 It is impossible to estimate to what extent gaps in quality of service are covered within the enforcement-related cost estimates. Gaps in the quality of service on the one hand may trigger complaints and on the other hand - if provisions on quality of service are not properly defined or enforced - the enforcement procedures may be rendered inefficient due to the necessity of deciding on a case-by-case basis about the judgement on a case instead of having a clear guideline.
2005 showed that the majority of European citizens interviewed knew that when buying any travel ticket they were agreeing to a contract with the transport company. However, only 35% of them knew their rights and obligations arising from that contract 341.

In the field of air transport, in 2009, about 60% of the respondents were not informed about their contractual rights and obligations as passengers 342. In the rail sector, a UK study reports that 75% of rail passengers are unaware of their rights to a refund or compensation in case of delay or cancellation 343. Regarding travel information, only 68% of the respondents of a survey that was carried out in 2013 were satisfied with the information about train timetables 344.

In the field of maritime transport, a study, carried out in 2003, showed that in some Member States there was concern regarding the ease of gathering basic information such as departure times, the time at which to report for embarkation, and the length of the crossing/journey 345.

Information at the various stages of the travel and in case of disruption

Passenger’s right to information must always be guaranteed, especially in case of disruption. A survey carried out in Europe in 2005 described passengers satisfaction with the treatment received from the company when things do not go as scheduled. It can be assumed that the general treatment received also included the provision of information in case of disruption. The survey showed that only 47% of citizens were satisfied with such treatment in the field of maritime transport and 46% was satisfied with it in the field of road transport 346.

Although the Air Regulation provides specific rules on compensation and assistance in case of denied boarding, and if the flight was cancelled or delayed, 71% of the respondents of a survey carried out in 2009 were unaware of the their rights as air passengers 347.

With regard to the rail sector, a survey carried out in 2013 showed that only 47% of the respondents were satisfied with the information provided during the journey, particularly in case of delay 348. The NEBs also confirm that violation of the right to

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341 European Commission, Eurobarometer, Passengers’ Rights, 2005.
343 UK Office of Rail Regulation, Regulator’s study shows three quarters of rail passengers unaware of compensation and refunds rights, 21 February 2014.
345 OPTEM, European Consumers and services of general interest, 2003.
346 European Commission, Eurobarometer, Passengers’ Rights, 2005.
information is a common source of complaints especially in the case of denied boarding or cancelled flights.\textsuperscript{349}

From these data it can be assumed that the provision of relevant information, especially in case of disruption, to the general public (including people who do not travel often) might increase passengers’ rights awareness and might motivate people to travel as they feel reassured about the protection of their rights to assistance and compensation. The strongest benefit of the provision of information on passengers’ rights would be that informed passengers are then able to exercise their rights. The increased transparency on passengers’ rights and increased awareness would most likely lead to increased compliance of the transport carriers with EU passenger rights. While it may lead in a first phase to an increase in complaints and provisions of compensation, such increase can constitute sufficient economic incentive to ensure compliance and better risk management of disruption – falling outside of extraordinary circumstances, see section 4.3.4. The long term effects could benefit passengers and society by supporting improved the quality of service and efficiency of transport services overall.

\textit{Information specifically addressed to people with disability}

Under EU legislation, passengers with disabilities, or reduced mobility, have the right to receive information about their travel in an accessible format. In addition, PRMs need to receive specific information on the accessibility of the transport infrastructure (e.g. of the train platform and the train itself), of the assistance available for boarding and on board of the transport vehicle in order to access the transport service.

According to a survey carried out in the UK, 13\% of the PRMs interviewed found difficult to obtain information on travel services, 39\% felt they received adequate information during journeys and 48\% felt they did not.\textsuperscript{350} Respondents were more likely to use new technology to access information about air, rail and maritime transport. However, concerns arose with regard to the use of the internet by visually-impaired people. They need to have a screen reader or a screen magnifier but many cannot afford such support due to their high cost.\textsuperscript{351}

With regard to rail transport, the survey showed that people with a disability in rural areas (29\%) use information at the railway station more than other groups (23\%).\textsuperscript{352} However, EU legislation states that in unstaffed stations easily accessible information must be displayed regarding the nearest staffed stations and the assistance available to PRMs. If it is assumed that unstaffed stations are more likely to be present in rural areas, it could also be assumed that 29\% of the PRMs, expecting to find the information and assistance needed at the stations, would be reluctant to travel, especially if the only

\begin{thebibliography}{9}
\bibitem{349} Evaluation of Regulation 261/2004 on the application and enforcement of the Regulation on air passengers’ rights in the EU Member States (European Commission, DG Energy and Transport, 2010), p. 36.
\bibitem{350} DPTAC, \textit{Attitudes of Disabled People to Public Transport - Research Study Conducted for Disabled Persons Transport Advisory Committee, November 2001-January 2002}.
\bibitem{351} Ibid.
\bibitem{352} Ibid.
\end{thebibliography}
information available is on how to find staff that can provide them with the assistance and the information for their travel need.

It is essential for PRMs to have complete information on the accessibility of the transport infrastructure in order to plan their journey without being surprised by an inaccessible infrastructure at the arrival or connection station. In practice, this remains a concern. For example, carriers often omit or provide insufficient information on the accessibility of the arrival station, the maximum size and weight of wheelchairs and on appropriate onboard facilities\textsuperscript{353}. Indeed, 39\% of the MPRs interviewed affirmed that they would be more motivated to use public transport services if it were easier to get the relevant information\textsuperscript{354}.

The CoNe related to information gaps related to information on passengers rights have partly been accounted for in the calculations presented in the section on enforcement\textsuperscript{355}. It is difficult to estimate the actual costs of the lack of accessible information as a result of the lack of data on this issue. However, as explained in Section 4.2.2, if around 80 million Europeans find it difficult to get the relevant travel information this may affect several economic sectors, especially the tourism sector. The discomforts described above may also create emotional burden for the passengers related to annoyances and wasted time looking for information which is not readily given. In addition, a number of PRMs may be discouraged from (leisure) travelling and this may lead to an economic loss for transport companies or they may choose another mode of transport which is potentially costlier for the PRM (such as accessibility taxi or car service). The effects of the issues described above cannot easily be quantified in monetary terms due to the lack of relevant data and methodological constraints. However, their negative impact has a strong effect on social exclusion and therefore has impact on EU democratic values.


\textsuperscript{355} Insufficient information related to different aspects of travel contributes to longer than necessary complaint handling procedures, i.e. inefficiency in the enforcement area. Similar as in case of other areas analysed before, it is impossible to assess to what extent information gaps are accounted for in the quantitative analysis of inefficiencies in the enforcement process.
### Table 33: Qualitative ranking of the impact of the gaps and inconsistencies in information

<table>
<thead>
<tr>
<th>Gap/inconsistency</th>
<th>Impacts</th>
<th>Stakeholders affected</th>
<th>Assessment</th>
<th>Justification</th>
<th>Overall assessment of the gap/inconsistency</th>
</tr>
</thead>
</table>
| **Gaps and inconsistencies on information on passengers’ rights** | Inability to exercise their rights  
Higher risks of rights violation | Passengers | Strong | If the information on passengers’ rights is not provided in a clear way, most passengers will not be aware of them and will not exercise their rights and claim for compensation or ask for the provision of assistance they are entitled to. In practice, this appears to be problematic. It is therefore assessed as strong. | The impact is considered moderate for the EU society due to lack of incentive for the carriers to improve their services and strong for passengers as it affect the exercise of their rights. |
|                                               | Lack of compliance and incentive | EU society | Moderate | If passengers do not claim for their rights, carriers have little incentive to comply with the legislation and to improve their services, including the assistance provided in case of delay or cancellation. |                                                                                           |
| **Gaps and inconsistencies on information on transport services – passengers must be given adequate information on the travel service but no definition of adequate information is provided (rail, waterborne, bus); no guarantee to receive information on alternative connections in case of delay (rail).** | Loss of time  
Confusion  
Annoyance  
Stress | Passengers | Weak | Opaque information makes it difficult for passengers to take an informed decision about their travel. Passengers might lose time in obtaining information on their travel and suffer stress and annoyance. The lack of information may also lead to less optimal travel decisions. Due to a lack of information on the extent to which this is causing a problem, we suggest to classify this as weak. | The impact is considered weak for passengers and for EU economy. While opaque information leads to loss of time, annoyance and less optimal travel decision, the extent of the problems in practice is unknown and expected to be minor. |
|                                               | Wider economic and society impacts | EU economy  
EU society | Weak | Adequate provision of relevant information might contribute to a higher level of comfort and feeling of security and ultimately motivate people to travel more. Passengers with information on alternative connections are able to make better travel decision. The lack of such information may lead to loss of time in finding the appropriate information and loss of time in not being able to take the earliest possible travel connection. It can be assumed that some passengers demotivated by lack of adequate information may give up their (leisure) travel plans or opt for alternative travel modes, which may be less environmentally-friendly. |                                                                                           |
| Gaps and inconsistencies on information for PRMs – no requirement to have the information in accessible format (rail); no requirement that persons needing assistance must receive confirmation of assistance by any available means (air, rail and bus); no requirement that information on access conditions to be made available physically or through internet and in accessible format on request of the PRM (rail, air). | Loss of time | Passengers | Strong | PRMs lose time looking for information in a format accessible. Passengers get confused and endured annoyances because of the lack of certainty on whether they can access transport, of what kind of assistance is provided and whether they will be able to receive such assistance. Passengers without adequate information are not able to make better travel decision. |
| Lack of consideration for the needs of PRMs | EU society | Weak | This burden affects a fundamental right for PRMs and may ultimately lead to social exclusion and affect the EU democratic asset of society values. Adequate provision of relevant information might contribute to a higher level of comfort and feeling of security and ultimately motivate people to travel more. It can be assumed that some passengers demotivated by lack of adequate information may give up their (leisure) travel plans or opt for alternative travel modes, which may be less environmentally-friendly. |

The impact is considered major for passengers and weak for EU society as the extent of the problems in practice is unknown.
4.3.4 Liability

Key findings:

- Delays and cancellations affect many passengers and represent a high costs for carriers and the economy.
- Travel disruptions (e.g. delays and/or cancellation) result in emotional stress and loss of time for passengers.
- Overbooking is a frequent practice and results in cases of denied boarding. Passengers in such cases require specific protection and assistance.
- Compensation is considered a transfer of value from one group of stakeholders (transport carriers) to another (passengers).
- Compensation resulting from delays and cancellation represents a financial burden on carriers (up to 294 million annually in the air sector alone).
- Delays and cancellations represent a burden on passengers in terms of time loss and emotional stress.
- Lost, damaged or delayed luggage affects 7 million air passengers annually, however no evidence has been found that the legal gaps and inconsistencies are largely problematic in practice.

When concluding a transport contract with the passenger, the transport company has substantive legal and contractual requirements towards the passenger and his/her baggage. If the carrier is unable to provide the transport service and to perform all its legal and contractual obligations (e.g. due to disruption or overbooking), the carrier is held liable. The passenger should be offered the right to renounce travelling, the right to the fulfilment of the transport contract, the right to assistance, the right to compensation and the right to carrier’s liability (see more details in Section 3.4). Since the right to assistance has been analysed under Section 4.3.2, it will not be further discussed in this section.

Re-routing, rebooking or renouncing to travel

There are no publicly available statistics on denied boarding, delays and cancellations for European carriers across the four transport modes. However, complaints before the NEBs, as well as studies and surveys, indicate that a considerable number of passengers are affected by travel disruptions, especially when travelling by air and rail.\(^{356}\)

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\(^{356}\) In air travel, for instance, in 2010-2011, 2% of passengers surveyed in Denmark were affected by denied boarding; 20% - by delays; 10% - by cancellations. In 2008, from the complaints received the NEBs, 57% related to cancellations, 33% to delays and 10% to denied boarding. Less than 1% related to downgrading. Source: *Evaluation of Regulation 261/2004 on the application and enforcement of the Regulation on air passengers' rights in the EU Member States* (European Commission, DG Energy and Transport, 2010), p. 46.
According to a study, in air transport, around 23% of total flight departures were delayed and 3% cancelled. Delays or congestion at an airport may have knock-on effects throughout the whole airline’s network, which further impact carriers and passengers. While some delays are outside of the control of transport carriers, e.g. weather-related delays, a certain numbers of delays can be prevented. In the air sector, a study showed that approximately 10% of delays are caused by maintenance problems, such as the lack of or breakdown of maintenance equipment, lack of spares or detection of a quality problem.

Travel disruptions (e.g. delays and/or cancellations) result in emotional stress and loss of time for passengers stranded or waiting for the newly scheduled travel services. In addition, passengers may suffer some additional loss, such as the loss of vacation time due to delays and cancellation. In 2010, approximately 10 million air passengers were affected by delays of more than 120 minutes in the EU – a large number of affected passengers.

Delays have been shown to impact severely on transport companies’ profitability in terms of crew costs, maintenance, fuel and emission charges, in addition to assistance to passengers. Based on data from one major European carrier it has been modelled that, in air transport, for each minute of delay, the carrier incurs costs, i.e. the longer the delay, the higher the costs. Delays between 1 and 15 minutes can cost between 2 and 49 euros a minute, while between 31 and 45 minutes of delay may cost between 8 and 202 euros a minute, depending on the type of aircraft and scenario. In the US, in 2006 costs resulting from delays in air transport were estimated to about $4.8 billion in direct operating costs. No data has been identified on overall annual costs incurred by carriers in relation to delays in the EU and in other modes of transports. It can be noted here that according to the methodology adopted in the report, the bulk of these costs (re-routing, compensation and care) cannot be treated as an element of CoNE since they are seen as a transfer from the carrier to the passenger.

Some of those delays (and therefore costs for carriers) may be prevented through careful delay management – especially in relation to maintenance, aircraft rotation and ground handling. Strong EU passenger rights may act as an additional economic incentive for transport companies to manage and prevent delays – since passenger rights in case of delays represent an economic burden for carriers. It is noted that the number of air passengers delayed and exercising their right to re-routing, rebooking and renouncement

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358 Other causes of delays include air traffic control capacity, ground handling such as passengers and baggage or aircraft or crew rotation. M2p Consulting, Optimized Flight Operations Delay Management, 2007 AGIFORS Operations Conference, 2007.
361 Ibid at p.16.
363 Ibid.
of travel (reimbursement) is estimated to be between 9 and 16 million passengers per year.\textsuperscript{364}

Overbooking is a frequent practice of carriers – better known in air transport, but also in other modes of transport. It is a practice that ensures maximum use of the vehicle. For every flight, there are a numbers of passengers who do not show up at check-in or boarding, and overbooking ensures that no seat goes empty and no revenue is lost. However, since the calculation for overbooking is done through computer software, there is a margin of error which leaves a number of passengers denied boarding due to overbooking. It is not entirely clear how many passengers are affected. Partial data shows that, in air transport, denied boarding affects approximately 0.04\% of the passengers carried\textsuperscript{365}. While it does not represent a critical number, passengers denied boarding require specific protection and care. Similarly, for passengers who suffer cancellations and delays, denied boarding will lead to loss of time and emotional stress for the passengers ‘bumped out’ of their reserved seat.

In situations of travel disruption, passengers often complain that they were not offered the triple choice between re-routing, rebooking and reimbursement, but just received a reimbursement of the ticket\textsuperscript{366}. At times of major travel disruption, the risk of passengers not being fully assisted, or offered the triple choice, can be higher. Such was the case during the volcanic ash cloud incident paralysing the European airspace in 2010, where almost half (47\%) of the air passengers surveyed did not receive the reimbursement and/or assistance they were entitled to\textsuperscript{367}.

Carriers may lack the economic incentive to fully comply with EU regulation as a result of a lack of clear rules on what happens if the carrier, for example, fails to offer re-routing at the earliest opportunity (air, rail, waterborne). Similarly, there are no rules guaranteeing passengers the right to reimbursement in case the passenger arranges re-routing him/herself. In addition, due to legal gaps, inconsistencies and the lack of clarity of the EU Regulations, passengers may not be re-routed or rebooked in comparable conditions as the ones they are entitled to and/or at the earliest opportunity.

Such gaps and inconsistencies may lead to further time loss for the passenger who may not be re-routed at the earliest opportunity, or financial loss for the passenger where no reimbursement is guaranteed in case the passenger is forced to arrange re-routing him/herself.

\textsuperscript{364} Exploratory study on the application and possible revision of Regulation 261/2004 (European Commission, DG MOVE, 2012), p. 137.
\textsuperscript{365} Exploratory study on the application and possible revision of Regulation 261/2004 (European Commission, DG MOVE, 2012), p. 141.
\textsuperscript{367} ECC-Net, Air Passenger Rights Report 2011, 2011, p. 27.
Compensation

As mentioned above, financial compensation in case of delays or liability is not quantified, as this is considered a transfer of value from one group of stakeholders (transport carriers) to another (passengers). However this subsection will briefly assess, qualitatively, the issues related to compensation in case of long delays.

Passengers have a right to compensation in case of long delays at arrival. Taking again the example of air transport where data is available, as mentioned above, delays affect a high number of air passengers. However, only a certain number of them can claim compensation for long delays. It is estimated that around 9 to 16 million delayed passengers per year are eligible for compensation. The costs for the carriers have been estimated in a range from €199 million to €294 million annually. The costs are ultimately borne by passengers through higher fares.

Under the current legislation, the economic burden on carriers' could gradually increase as the transport market grows, and if the proportion of passengers claiming compensation increases. The current claim rate is around 10%. This rate may increase as passengers' awareness of their rights increase and therefore the costs on carriers would increase accordingly.

In air transport, the current legal basis for a compensation claim is found in the CJEU judgements and the Regulation. They provide for the conditions under which passengers can and cannot claim compensation. For example, the exemption to the requirement to grant compensation to passengers in case of ‘exceptional circumstances’ in air travel has persistently been a source of disputes between passengers, carriers and the NEBs. In 2007, assessment of such claims for cancelled flights accounted for about 30% of all complaints submitted to the NEBs, taking up more than 70% of the resources of national authorities. Despite the clarifications provided by the CJEU, the term is still difficult to apply in practice and lead to further legal challenges.

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368 Exploratory study on the application and possible revision of Regulation 261/2004 (European Commission, DG MOVE, 2012), p. 137.
369 This has been illustrated by airline data that only 5 to 10% of passengers who were entitled to financial compensation actually claimed it. See European Commission, Impact Assessment accompanying the document Proposal for a regulation amending Regulation (EC) No 261/2004 on air passenger rights and Regulation (EC) No 2027/97 on air carrier liability, p. 15.
370 CJEU Sturgeon case (Joined Cases C-402/07 and C-432/07) and case C-549/07 Wallentin-Herman v Alitalia-Linee Aeree Italiane SpA.
372 See the CJEU’s decision in case C-549/07 Wallentin-Herman v Alitalia-Linee Aeree Italiane SpA.
373 ECC-Net, Revision of EU air passengers’ rights legislation - European Consumer Centres Network position paper, undated.
Future CJEU decisions might clarify the inconsistencies and gaps in the Regulation, but this process is slow and the case-law may not address all issues or create new ones. A clearer definition would benefit passengers and carriers by clarifying the requirements of the Regulation (reducing disputes over the interpretation of the Regulation) and improving passenger protection. The proposal to modify the Air Regulation, as it currently stands, clarifies the notion of extraordinary circumstances providing on non-exhaustive list of circumstances falling within such circumstances. The proposal also chose to decrease the number of passengers able to claim for compensation for delays of five hours or more.

It has been proposed to change the compensation from a fixed amount (as currently applicable) to compensation as a function of the ticket price. While this approach could reduce the costs of carriers significantly, it is argued that it may not be an appropriate amount in relation to the inconvenience suffered by passengers. In addition, it would reduce economic incentives to reduce delays.

**Liability**

Across all forms of transport, the EU legislation imposes liability on carriers for the death or personal injury of passengers and for loss or damage to their luggage.

In air travel, baggage delay is a frequently occurring issue, followed by damage or theft – with loss rarely occurring. In 2010, 0.003% of baggage was lost, 0.672% of baggage was delayed and 0.161% of baggage was damaged. It affects approximately 7 million air passengers annually. The EU legislation contains difference in the amount of compensation offered for delayed or lost baggage. No evidence was identified of the differences being problematic; therefore the differences are not assessed qualitatively.

Similarly, no sufficient information was identified within the scope of this study on the impact of the gaps and inconsistencies related to personal injuries and death damage claims to enable a qualitative assessment.

376 Ibid.
<table>
<thead>
<tr>
<th>Gap/inconsistency</th>
<th>Impacts</th>
<th>Stakeholders affected</th>
<th>Assessment</th>
<th>Justification</th>
<th>Overall assessment of the gap/inconsistency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal gaps and inconsistencies on the right to the fulfilment of the transport contract</td>
<td>Time loss Emotional stress Financial loss</td>
<td>Passengers</td>
<td>Strong</td>
<td>Passengers suffer time loss, stress and potentially financial loss if they re-route by themselves. Considering the high numbers of passengers affected by delays, cancellation and denied boarding and the rights are not always guaranteed, the impact is considered as strong on passengers.</td>
<td>The impact on passengers is strong and the impact on the economy weak. Overall impact is therefore moderate.</td>
</tr>
<tr>
<td></td>
<td>Lack of economic incentive to reduce delays</td>
<td>EU economy</td>
<td>Weak</td>
<td>The delays represent a heavy cost on carriers (various costs), passenger (time loss) and the economy as a whole. The gaps and inconsistencies contribute to a weak economic incentive to comply with the legislation and to reduce manageable delays. Due to the lack of data and estimate of the influence of gaps and inconsistencies, the impact is considered weak.</td>
<td></td>
</tr>
<tr>
<td>Legal gaps and inconsistencies on the right to renounce travelling</td>
<td>Time loss Emotional stress Financial loss</td>
<td>Passengers</td>
<td>Moderate</td>
<td>Passengers suffer from time loss, stress and in some cases financial loss from having to renounce travelling and the lack of guarantee of reimbursement. This is considered moderate largely due to the lack of data to assess the extent of the issue in practice.</td>
<td>The overall impact is moderate.</td>
</tr>
<tr>
<td>Legal gaps and inconsistencies on the right to compensation</td>
<td>Time loss</td>
<td>Passengers</td>
<td>Strong</td>
<td>Considering the relatively high numbers of passengers affected by delays, the gaps and inconsistencies in the legislation affect significantly passengers.</td>
<td>The overall impact is strong.</td>
</tr>
<tr>
<td>Legal gaps and inconsistencies on the right to carrier’s liability</td>
<td>Time loss Financial loss of lost or damaged luggage</td>
<td>Passengers</td>
<td>Weak</td>
<td>Luggage lost, damaged or delayed affects 7 million passengers annually in the air sector alone, however no evidences have been found that the legal gaps and inconsistencies are largely problematic in practice, the impact is assessed as weak.</td>
<td>The overall impact is weak.</td>
</tr>
</tbody>
</table>
4.3.5 Enforcement

Key findings:

- Complaint handling and enforcement are essential for the protection and exercise of passenger rights;
- Inefficiencies in the process of complaint handling and enforcement due to gaps in various areas affect passengers in terms of loss of time, confusion and exercise of their rights and has some wider economic impacts;
- Weak complaint handling and enforcement decreases economic incentive to comply with the legislation.

This subsection provides the qualitative and quantitative analysis of costs and burdens pertaining to enforcement and compliance with EU passenger rights. Enforcement is a very wide and multifaceted topic. Therefore, for the purpose of this study, the analysis will focus on three main enforcement elements: the enforcement area covers complaint handling, i.e. procedures set up by the transport companies and NEBs; public enforcement, i.e. effective enforcement of EU legislation by the NEBs; out-of-court and court proceedings to which passengers may turn regardless of whether or not they have first contacted the carrier and NEBs.

After explaining in details the scope of this analysis, the section looks at each of the three elements in separate subsections. In particular, it provides a qualitative assessment of the impact of lengthy and complex complaint handling procedures and the existing gaps and inconsistencies. Finally, a quantitative assessment of the gaps and inconsistencies in the area of enforcement is provided, in particular in relation to the time lost due to complex and inefficient complaint handling procedures.

Scoping analysis of cost assessment in the enforcement area

Ineffective enforcement is a key problem in passengers’ rights protection. Passengers facing travel disruptions often do not enjoy the rights to which they are entitled to. Complaint filing can be time consuming and complicated and it may also involve financial costs. Furthermore, passengers have low confidence that their legitimate claims will be met. For all of these reasons, passengers are less encouraged to claim their rights. For example, in the air sector, it is estimated that only between 5 and 10% of passengers entitled to compensation actually claim it. The fewer passengers that complain; the less incentive the carriers have to automatically ensure full compliance. In addition, the

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380 Ibid., p.16.
NEBs often use their enforcement powers as a reaction to complaints. Thus, if passengers do not turn to the NEBs, violations of their rights remain unaddressed (e.g. carriers not warned or sanctioned).

The scenario explained above is a vicious cycle resulting in a lower level of protection of passengers’ rights than guaranteed under EU law. It must be reminded that EU passenger rights often go beyond anything provided for in national laws and, if complied with, are of great benefit to all EU citizens and especially persons with reduced mobility travelling in Europe (see above under the area of quality of service). To improve the effectiveness and application of EU passenger rights, passengers’ trust must be regained through improvements in enforcement mechanisms and their efficacy.

There is a wide range of factors contributing to the lack of effective enforcement of EU passenger rights. Some of them relate to the quality of the EU law and its practical implementation such as the gaps and inconsistencies identified in Section 3. Others factors, however, go well beyond the inherent problems of EU law and concern, for instance, national matters such as Member States’ legal and administrative traditions or even frictions in domestic politics. In addition, the NEBs do not interpret the EU legislation consistently across the EU, as a result of a lack of coordination. The divergences in the Member States’ enforcement systems in particular - such as sanctions, enforcement powers and availability of financial resources, have a direct effect on the quality of enforcement. For instance, the sanctions imposed by NEBs fall short from providing an economic incentive for carriers to comply\textsuperscript{381}.

All the factors explained above have a cumulative negative effect on the enforcement of passenger rights. The legal uncertainty and diversities among Member States’ makes the enforcement less effective and consequently increases costs for all stakeholders involved - i.e. passengers, carriers and NEBs. In order to assess the impact of this issue, this study focuses on the most important elements in the area of enforcement, that is, complaint handling, public enforcement and court and out-of-court procedures. This focus also corresponds to two core passengers’ rights, i.e. the right to a quick and accessible system of complaint handling and the right to full application and effective enforcement of EU law. The assessment has been made on the basis of the reference materials and stakeholder consultations and the gaps and inconsistencies identified in Section 3. Where relevant, reference will be also made to other barriers to the effective use of EU passenger rights.

**Quick and accessible system of complaint handling**

A quick and easily accessible complaints handling system (organised by carriers) is a precondition to effective resolution of disputes between passengers and carriers. This equally relates to complaint handling by NEBs, which also serves a broader function of detecting and sanctioning passengers’ rights violations. In addition, out-of-court and court procedures, including small claim procedures, are available under EU and national law. Lengthy, complex and inaccessible complaint handling systems increase costs to all stakeholders involved.

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\textsuperscript{381} Ibid., p. 15.
While setting up an efficient complaint handling entails costs for transport companies, not doing so can turn out to be costlier. First, disruption or failure in service quality costs companies money and reputation. Research reports that it is more costly – up to five times more, to replace a dissatisfied customer than to retain an existing one.\textsuperscript{382} The impact of dissatisfied customers can be larger than just the customers who suffer the failure of services, since passengers can share their dis-satisfaction on a wider scale (e.g. on various online social media platforms), doing further harm to the company’s reputation.

Some research indicates that customers who complained with the company and had a positive experience (i.e. their complaint was handling swiftly, they receive a satisfactory solution and were treated professionally) are more likely to remain loyal in the long term and recommend the company to their peers. Overall, research shows that a good complaint handling system may result in improved financial performance\textsuperscript{383}. It is therefore for the benefit of companies to have easy-to-access and efficient complaint handling systems – especially considering that only between 5 to 10\% of dissatisfied passengers actually complain, leaving up to 90\% of non-complaining dissatisfied passengers with no redress and potentially eager to switch transport companies.

There is no up-to-date information on the number of complaints received by carriers and NEBs across the four transport modes and the time associated with complaint handling. The Regulations establish different reporting obligations. Some require the carriers to report annually on the number and categories of received and processed complaints (rail), while others do not (air). In waterborne and road transport only NEBs are obliged to submit complaint statistics, i.e. for the first time by 1 June 2015\textsuperscript{384}. Therefore, only sporadic data on complaint handling is available. Still, it clearly shows that effective enforcement of passenger rights first and foremost depends on well-defined carrier complaint-handling procedure.

In 2008, air carriers received approximately 300,000 complaints and around 28,000 complaints were submitted to the NEBs\textsuperscript{385}. Thus, authorities receive just a small fraction of complaints submitted to carriers. Besides, according to airlines, not all passengers who are entitled to claim their rights actually do\textsuperscript{386}. This is attributed to low passenger awareness and, importantly, to complaint-handling complexity. In other transport

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{382} George, M., and Lennar, L., \textit{Complaint handling:Principles and Best Practice}, April 2007, p. 36.
\item\textsuperscript{383} Ibid.
\item\textsuperscript{384} Articles 26 and 29 of the Waterborne and Road Regulations requires the NEBs to publish a report on their activity by 1 June 2015 and every 2 years thereafter containing in particular a description of actions taken in order to implement the provisions of the Regulation, details of sanctions applied and statistics on complaints and sanctions applied.
\item\textsuperscript{385} Evaluation of Regulation 261/2004 on the application and enforcement of the Regulation on air passengers’ rights in the EU Member States (European Commission, DG Energy and Transport, 2010), p. 29.
\item\textsuperscript{386} This has been illustrated by airline data that only 5 to 10\% of passengers who were entitled to financial compensation actually claimed it. See European Commission, \textit{Impact Assessment Accompanying the document Proposal for a regulation amending Regulation (EC) No 261/2004 on air passenger rights and Regulation (EC) No 2027/97 on air carrier liability, SWD(2013) 62 final, 13 March 2013, p. 15.
\end{itemize}
\end{footnotesize}
modes, this process is slowly gaining momentum. The NEBs for rail passenger rights in 2011 received some 2500–3500 complaints concerning the EU passenger rights. This is less than 10% of the yearly complaints made by air passengers. Regarding waterborne and bus and coach transport, there is no data available yet. However, stakeholders testify that the number is relatively small.

Several issues hinder complaint handling access and therefore affect passengers’ ability to exercise their rights. Currently, the complaint handling of carriers varies considerably. Some carriers give generic contact details on their websites. Others have complex complaint-handling systems in place. In both situations, passengers may be discouraged from complaining because of the time it might take to follow the process through. Once the complaint is submitted, the carrier may not respond within a reasonable time or answer without sufficient details and information on the next steps.

A problem of more significance is that passengers are confused about the NEBs role and powers in handling of complaints. The Regulations do not go into detail in this regard and passengers are usually not aware that NEBs generally cannot take decisions binding on the carrier. Only a small number of NEBs have a wider consumer protection role which allows them to assist passengers in their individual claims. Most NEBs focus on the enforcement of the Regulations and provide advice to passengers, e.g. to go to court or use out-of-court procedures to obtain individual redress. Thus, there is a missing link between complaint-handling (and enforcement) and actual redress. The fact that NEBs are only of limited help to passengers obviously has negative consequences. Passengers not only spend time on contacting the NEB hoping for their claims to be met, but they might become discouraged to seek any further redress for the above reasons.

In practice, the use of languages is another key problem cited by the NEBs, consumer organisations and carriers. The number of languages in which complaints can be submitted both to the carriers and NEBs is rather limited. Usually, complaint handling is done in the national language and also in English. Not always, however, is this the case. For instance, in Poland, a complaint on violation of rail passenger rights is only legally valid if it is submitted in Polish, and in France, although the NEB can accept complaints in English, by law it has to reply in French.
Box 7: Case example of language problems in Poland

Case example

According to the statistics from the website of the Polish Ministry of Sport and Transport, the number of foreigners visiting Poland in 2013 amounted to 72,310. The breakdown of this number according to transport mode used upon arrival to Poland is not available. However a report for the Malopolska region indicates that in this region around 9% of foreign tourists travelled to Poland by train. Assuming that this percentage is representative for the whole country, it can be estimated that in 2013 approximately 6,500 tourists travelled to Poland by train. According to the statistics of the Polish Railway Transport Office (UTK), the number of passengers travelling by trains in Poland in 2013 amounted to about 270,000. Thus, it can be estimated that foreign passengers amount to 2.5% of all train passengers.

Statistics related to the number of complaints in the rail sector filed by foreign tourists are not available. Yet, the data on complaints obtained directly from PKP Intercity can be used for illustration. As estimated earlier in this section, the number of complaints from the rail passengers in Poland could be about 82,600. Assuming the number of complaints from foreigners being proportionate to their share in the total number of passengers (2.5%) then up to 2,065 complaints in Poland could be filed annually by foreigners to the rail carriers. These are complaints where language problems are likely to occur.

Assuming that the text of a complaint does not exceed a standard page and that the translation rate amounts to €5 per page, we can estimate the direct annual costs of lack of the possibility to file complaints in other languages (e.g. in English) in Poland can reach up to €10,325. While these monetised costs do not seem large, they do not include other factors such as the passengers’ time, energy as well as the related emotional distress. What is more, many passengers will not even try to complain because of the complexity of situation where the communication is limited to a language the person does not master.

In conclusion, the direct costs linked to filing a complaint in a language one does not master might not be significant, however the broader consequences are detrimental to the protection of passenger rights.

With regard to the time taken for complaint handling, the process in general has been criticized as somewhat slow. Deadlines for complaint-handling are set out for carriers in all modes except for air transport, but they differ - which can be rather confusing for passengers. In addition, air passengers may wait a long time before obtaining a response to their complaints from airlines.

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392 Office of Rail Transport (Passenger Rights).
393 Based on data from a few translation companies offering English to Polish translations found on internet.
No deadlines are set for the NEBs. In practice, most NEBs need several months to resolve complaints. Lengthy complaint handling process often relate to the complexity of the cases, limited resources, the need to go back to the passenger for supporting documents or information, translation and lack of clear deadline.\(^{394}\)

To conclude, while unclear legal requirements are partly responsible for the issues related to complaint-handling; many problems stem in its application. Thus, we can estimate that only around 30\(\%\).\(^{395}\) of barriers stem from gaps and inconsistencies identified in the regulatory framework explained in Section 3.

**Full application and effective enforcement of EU law**

Passengers have the right to count on a proper application and effective enforcement of EU passenger rights. The Regulations in the four transport modes require Member States to designate NEBs to ensure passenger rights protection. On paper, the enforcement system would allow effective application of EU law by sanctioning infringements and receiving passenger’s complaints. The setting up of NEBs is a relative success in terms of ensuring receiving and handling complaints. Data indicates that sanctions are rarely used for compliance. For the air sector alone, a total of 56,753 complaints were received by the NEBs in 2012. Between 2\(\%\) and 8\(\%\) of the cases led to sanctions.\(^{396}\)

In order to ensure economic efficiency, a balance must be sought between the costs of complying with the law and benefits gained from compliance. If the costs are much greater than the benefits, companies have little incentives to comply. For example, in the air sector, the right to unlimited financial compensation in case of delays or cancellation under “regular circumstances” gave rise to many issues of compliance (in particular in light of the event of the volcano cloud of ashes blocking the European air space for one week in 2010).\(^{397}\)

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394 The possible reasons for lengthy proceedings have been validated through stakeholder consultation.

395 To be validated by senior experts.

396 56,478 were based on Regulation 261/2004, 2\(\%\) of which led to sanction and 275 were based on Regulation 1107/2006, 8\(\%\) of which led to sanctions. European Commission Staff Working Document, Complaint handling and enforcement by Member States of the Air Passenger Rights Regulations, SWD(2014) 156 final, 7 May 2014.

Clearer EU legal rules and enforcement have an important role to play in bringing incentive to comply. In addition, the impact of inefficient enforcement on social welfare can be important, i.e. some companies’ lack of economic incentives to invest in better quality of service has an impact not only on consumer satisfaction (with risks of increased costs to replace dissatisfied consumers) but also on social welfare where a minimum core of rights need to be guaranteed to ensure a minimal level of social welfare. While some companies may want to invest in greater quality of service in order to gain a competitive advantage over other companies, fundamental rights as core EU values, entail that a minimum baseline must be drawn in ensuring the compliance and respect of such rights. Towards such an effort, enforcement procedures should provide an incentive to comply with strong sanctions where appropriate. The current system of enforcement is not able to play this role due to its ineffectiveness.

The enforcement systems put in place under EU law suffer from various issues. Overall, the enforcement procedure is not sufficiently effective and passenger rights are not applied in a uniform manner. This situation not only reduces the protection of passenger rights, but it also endangers the level-playing field between the carriers.

There are two underlying causes for the issues mentioned above. Firstly, the Member States either fail to establish an enforcement system or the enforcement system is not fully operational. An enforcement system is not established when a Member State has not designated a NEB and it is not fully operational when a Member State fails to set up rules for sanctioning violations. In this regard, the Commission has already initiated several infringement proceedings against Member States.

In relation to the lack of effective enforcement, it is important to emphasise that many Member States have opted for exemptions under the Rail and Road Regulations. For example, two of the largest Member States, France and the UK, have exempted all domestic train services of most of the Rail Regulation provisions. The overall estimation is that 37% of rail services in Europe have the maximum possible exemptions, and 27% have partial exemptions. A key reason for these exemptions appears to be to limit the cost of implementation of the Regulations. However, Member States are not required to provide reasons for exemptions. In any case, all exemptions justified or not considerably limit the positive impact of the Regulations on EU passenger rights.

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399 The Commission has initiated proceedings against Italy before the CJEU for not establishing an official and authorised body for the application of the Rail Regulation and not setting up rules to sanction violations of rail passenger rights legislation. Reasoned opinions have been sent to Austria and Portugal for failing to set up a sanctioning system according to the Road Regulation. In addition, Austria has not designated a NEB to handle passenger complaints by the deadline on 1 March 2013. There are also delays in designating NEBs for the enforcement of the Waterborne Regulation.
Secondly, when the enforcement system is in place, does not allow for adequate and sufficiently effective complaint-handling and sanctioning. Among other reasons, the EU regulatory framework does not have clear rules on the NEB role and competence, as well as requirements for national and cross-border cooperation in enforcement of EU passenger rights. Therefore, the enforcement policy varies in terms of effectiveness across Member States. In the absence of credible and dissuasive enforcement policies, the carriers are not encouraged to grant passengers their rights automatically and thus passengers benefit less from their rights under EU law.

Where enforcement systems are in place, there are a wide range of other obstacles that render passenger’s rights less effective. The main problem is that these Regulations are not applied and enforced uniformly across all Member States. This is either due to differences in interpretation, lack of resources or legal constraints. To start with, these Regulations contain unclear or problematic terms and different NEBs rule in different ways on equivalent complaints. The legal uncertainties and grey areas, which – as illustrated in Section 3, concerns to a greater or lesser extent all EU passenger rights, can potentially be addressed through EU legislative action. Then, the NEBs have different powers assigned to them (general complaint handling vs assistance to individual passengers in resolving their complaints) and there are significant differences between the maximum sanctions that can be imposed under national law. Where sanctions are imposed (around 2% of the cases), time consuming legal and administrative procedures make it difficult in collecting them. All of the issues mentioned above are heavy barriers hindering effective passenger rights protection in the EU.

Generally, NEBs enforce the rights that are established under the relevant Regulations. Thus, where the rights stem from international instruments, not clearly integrated in the text of the Regulations, i.e. carriers’ liability towards passengers and their baggage, these are not enforced by the NEBs. This relates to air and waterborne transport but not to rail and road transport – creating confusion for passengers and leaving an important area of passengers rights unprotected.

Currently, no formal coordination procedure exists between the NEBs. EU law encourages cooperation but there are no specific rules on how the cooperation should be carried out. The informal coordination via the NEB network has its limits and, at least in the air sector, the limits have already been reached. Effective cooperation among these authorities, however, is essential to ensure that passenger rights are equally enforced across the Member States to create a level playing field for businesses and to secure a higher level passenger protection. Therefore, this is a significant gap in the EU law on passenger rights.

While the provision of mechanisms for private redress is not specific to the four Regulations, it is important to highlight that passengers have the possibility to enforce

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their rights in courts and through out-of-court proceedings where available. The
complexity of the Regulations and difficulty in interpreting key passenger rights leads to
frequent disputes between passengers and carriers and thus to potential court cases. No
EU-wide or national statistics indicate how often passengers resort to court proceedings.
Yet, considering that such proceedings can be lengthy and costly, the number is likely to
be very limited. Passengers would normally resort to this means of redress if they think
that the monetary value of the claim is worth the challenge. We estimate that the number
of such cases would be around 1% of the total number of cases.

In some countries, passengers can use alternative dispute resolution (ADR) mechanisms
and simplified court procedures for small claims. In practice, however, these procedures
have important weaknesses and are not used much. Traders are often not obliged to
participate in ADR, or that ADR decisions are not binding. National small claims
procedures tend to be arbitrary, time consuming and difficult403. Notably, consumers are
not aware of these procedures. In 2012, only 3% of survey respondents claimed to have
used national small claims procedures and even less, i.e. 1%, are said to have used the
European Small Claims Procedure. In total, just 19% of respondents were aware of the
simplified procedure for small claims in their country and 12% knew about the European
Small Claims Procedure404. Considering the very limited use of these procedures for the
cost analysis of out-of-court procedures, and simplified court procedures for small
claims, are disregarded.

Quantitative cost assessment of the gaps and inconsistencies identified in the area of enforcement

The gaps and inconsistencies in the area of enforcement, as well as those described in the
preceding sections relating to the other areas (transparency, quality of service,
information and liability) have several implications, including:

(1) Increased number of complaints compared to the situation if the gaps would be
non-existent (see an example in Box 6 below).

(2) On the other hand, because of gaps in information about complaint procedures
existing in some countries/carriers and inefficiencies, the number of complaints
is lower than expected in the situation where this information would be sufficient
(see an example in Box 7 below).

(3) Complex and lengthy complaint handling procedures. Due to the gaps related for
example to lack of precise definitions or lack of consistent enforcement of some
rules (e.g. on the right to assistance in case of disruptions), especially the process
of determining if there was an infringement on passengers’ rights is long and
complicated.

(4) Emotional burden and stress due to confusion and disinformation.

403 Exploratory study on the application and possible revision of Regulation 261/2004 (European
404 Special Eurobarometer 395.
Box 8: Case example relating to complaints – increased number of complaints due to gaps and inconsistencies

Case example

Martin, a student living in Vienna, wanted to fly to London on 30 December in order to spend New Year’s Eve with his girlfriend who lives in England. However, due to heavy snowfall the airport in Vienna was closed for two days (30 and 31 December). As a consequence, Martin could not make his trip. The airlines offered him rebooking to another flight, a few days later, but the flight no longer served any purpose in relation to his original travel. In addition to requesting reimbursement of the ticket, Martin also filed a claim to obtain compensation for the purchased ticket. When the carrier rejected his complaint, he turned to the NEB. The authority assessed that he was not eligible for compensation because the flight was cancelled due to extraordinary circumstances, i.e. the snow storm, which could not have been avoided even if all reasonable measures had been taken. As a result of the lack of clear information on eligibility criteria for compensation, Martin, the carrier and the NEB have lost time dealing with these complaints.

Box 9: Case example– less complaints due to the gaps and inconsistencies

Case example

Anna, travelling from The Hague to Brussels on business faced a delay of over two hours due to technical problems with the rails between Dordrecht and Roosendaal. She finally arrived in Brussels after spending three hours in an overcrowded bus which was provided by the railway carrier in Dordrecht but she missed her business meeting. She thought about claiming compensation for the delay, however, nobody informed her of the way and procedures of doing this and she was not sure if her case would qualify. No such information was given on her ticket and the carrier’s staff directing people to the bus in Dordrecht did not mention such possibilities either. Thus, finally, she decided not to file any claim, fearing that the procedure might be long and she might not get any compensation anyway.

It can be noted that the first two burdens (both illustrated with examples) work exactly in the opposite directions. On the one hand, the gaps and inconsistencies in the regulatory framework and its implementation contribute to increased number of complaints. On the other hand, the number of complaints is artificially low because of lack of sufficient information on when and how to file a complaint. For simplicity reasons, we assume that both effects counterbalance each other.

The quantitative assessment of costs performed below focuses on the third identified element: long complaint handling procedures. The assessment is carried out in two steps: first, estimating the costs of time currently spent in complaint handling procedures and, secondly, estimating the CoNE related to time which could be saved if the identified gaps and inconsistencies were non-existent.
a. Estimating costs of time currently spent in complaint handling procedures

The estimates of CoNE which arise as a result of the current complaint handling procedures and court proceedings in the status quo situation builds on three measurable elements: 1) passengers’ time lost because of complaint handling procedures; 2) administrative costs for the businesses and the NEBs due to complaint handling procedures and 3) costs related to court litigations. The methodological assumptions for the estimation of these elements include:

(1) The value of time lost is usually measured as the monetary value of leisure time. Since studies indicate that the value of leisure time is positively related to income, it can be reasonably guessed that some fraction of the wage is representing the value of leisure time for an individual. While the valuation of time is not an exact science, common convention in the economic literature until recently has been to use one third of the wage rate as the value of leisure time. Recent empirical research on this subject indicates, however, that this approach would lead to underestimation and that, instead, the levels between 50% and 75% of the wage rate can be used as a more accurate estimate. In our study, 50% of the wage rate is used for valuation of passengers’ time lost. For approximation, Eurostat data on hourly wage rates is used (see Annex III).

(2) The rate of administrative costs per hour is measured using the EU’s Standard Cost Model (SCM) in cases where data is available. The EU’s Standard Cost Model (SCM) involves working with data on the average earnings of persons providing legal support or undertaking administrative tasks as full-time equivalent earnings (FTE).

(3) The cost of an hour of court litigations is also approximated using the EU’s Standard Cost Model.

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405 Hanley et al., Introduction to Environmental Economics (Oxford University Press, New York, 2013) pp. 76. According to UK Department for Transport, the value of time varies considerably from person to person and depends upon the purpose of the journey, but can generally be divided into two sets of valuations: working time and non-working time. This division is appropriate because the value of working time (i.e. time spent travelling in the course of work) is calculated differently from the value of non-working time (i.e. time spent travelling outside work). See Annex III for reference. Since we are not able to differentiate the working time and non-working time due to lack of data, we follow the standard approach of economic literature i.e. 1/3 of the wage as the value of leisure time for the cost assessment.

406 As do Amoako-Tuffour and Martinez-Espineira 2008; Hellerstein, 1993; Englin and Cameron, 1996; Bin et al., 2005.

407 Fezzi, Bateman and Ferrini (2014) write: ‘Our results indicate that 3/4 of the wage rate provides a reasonable approximation of the average value of travel time for recreation trips, while the commonly implemented assumption of 1/3 of the wage rate generates downward biased results’. Wolff (2014) reports: ‘Consistent with the range of the prior literature, we find a value of time of about 50% of the wage rate’.

Most complaints are filed directly to the carriers\textsuperscript{409}. While the information on exact procedures followed by the carriers is not available, it is assumed that the procedure looks similar to the one described for the NEBs. Thus, the same reasoning is applied to the complaint handling process within a transport company.

Figure 1 below presents a simplified scheme of a complaint-handling procedure for filing a complaint with the transport company (the carrier). Figure 2, below, presents a simplified scheme of a complaint-handling procedure for filing a complaint at the NEB. At each stage, in brackets, we assume a certain amount of time\textsuperscript{410} is needed for implementing the type of actions described.

On average, the time taken for filing and handling a complaint at the transport company is estimated at 15 hours for the carrier’s staff and two hours of the passengers’ time. The time taken for filing complaints at NEBs is estimated to be equal, on average, to 25 hours of NEB’s staff work and four hours of passenger’s time\textsuperscript{411}. The difference between the carrier’s procedure and the NEBs procedure in terms of time spent is justified due the greater complexity of NEBs procedures. Filing complaints before NEBs can be quite complex (with various forms to fill and documents to submit), while before a carrier, an email or call is often sufficient.

**Figure 1: Simplified example of complaint handling process before carriers**

- The carrier receives complaint (2 hours of the passenger’s time)
- Check if information is sufficient to rule on the complaint (2 hours of the carrier’s staff work)
- Determine whether or not not there has been an infringement (10 hours of the carrier’s staff work)
- If YES - provide redress to the passenger (3 hours of the carrier’s staff work)
- If NO – Contact the passenger for further information (0.5 hour of the carrier’s staff; not included in estimations)
- If NO – Communicate to the passenger that the case is closed (0.5 hour of the carrier’s staff; not included in estimations)


\textsuperscript{409} See, for instance, Evaluation of Regulation 261/2004 on the application and enforcement of the Regulation on air passengers’ rights in the EU Member States (European Commission, DG Energy and Transport, 2010), p. 29.

\textsuperscript{410} The estimates have been validated by the stakeholders consulted.

\textsuperscript{411} Such estimate has been validated by the stakeholders consulted. It is an EU average as it varies from individuals and MS to MS.
Finally, if the passengers are dissatisfied with the response of the carrier and the NEB, they can turn to the national courts. It would concern a small percentage of complaints due to the high complexity of judicial proceedings and the costs it entails (e.g. courts and lawyer fees). The statistics on the number of such cases is not available. We do not have national or EU data on the number of cases going to court regarding all of the transport modes.

A UK law firm, specialised in supporting air passenger claims, and consulted for this study, have initiated court proceedings for around 4600 cases in the last year which represents 0.01% of cases on the UK population (using Eurostat data). This percentage would represent a fraction of the total national cases as it relates to data from one law firm (albeit a leading one in the sector). This partial data could in principle, be

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**Figure 2: Simplified example of complaint handling process before the NEBs**

1. **NEB receives complaint (4 hours of the passenger’s time)**
2. Record the complaint and check whether or not the passenger has complained first to the carrier (1 hour of the NEB’s staff work)
   - If NO – The NEB contacts the carrier at its own initiative or informs the passenger to complain first to the carrier (0.5 hour of the NEB’s staff; not included in estimations)
   - If NO – Contact the passenger and/or carrier for further information (0.5 hour of the NEB’s staff; not included in estimations)
3. Check if the information is sufficient to decide on the complaint (2 hours of the NEB’s staff work)
   - If NO – Communicate to the passenger that the case is closed (0.5 hour of the NEB’s staff; not included in estimations)
4. Determine whether or not there has been an infringement (10 hours of the NEB’s staff work)
   - If NO – Communicate to the passenger that the case is closed (0.5 hour of the NEB’s staff; not included in estimations)
   - If YES – Instruct the carrier to provide redress to the passenger (2 hours of the NEB’s staff work)
   - In some countries, check whether or not the carrier actually does so (not estimated)
5. Consider sanctions, particularly if the carrier fails to rectify the violation or repeat it (1 day of the NEB’s staff work)
6. If not, the passenger can claim his/her rights through courts or ADRs (4 days of a lawyer’s work and 2 days of the passenger’s time)

*Source: Adapted from Steer Davies Gleave, Evaluation of Regulation 1371/2007, Final Report, July 2012, also SDG (2012)*
extrapolated to an EU average. However, litigation may be more frequently used in some countries than in others – depending, among others reasons, whether ADR mechanisms are more or less accessible and used or litigations more or less complex and cost effective. This percentage aggregated to the whole EU28, using the assumption of equal share of complaints number to the population number (based on Eurostat)\(^{412}\), results in 36,403 judicial cases initiated in the air transport. This represents approximately 10% of the complaints before carriers and NEBs. Since these estimates are based on partial data, they must be read with caution.

It can be assumed that it concerns about 10% of total number cases (submitted beforehand to the NEBs and the carriers).

For these cases, it can be assumed that resolving them involves four days of a lawyer’s work and two days of the passenger’s time – as an EU average.

For valuing an hour of passenger’s time the value of \(€7.38\) is used. This value is a population-weighted average of half of an hourly wage rate in the EU (see Annex III for more details). Whereas, for valuing an hour of work of both the NEB’s and the carriers’ staff, €14 of hourly wage is adopted (based on the assumed €25,000 annual salary) of an administrator\(^ {413}\). The cost of an hour of court litigation is approximated to an average hourly rate for lawyers of €150, using the EU’s Standard Cost Model\(^ {414}\).

The calculations of time currently spent in the complaint-handling procedures is performed first for the air travel sector and followed by the rail, waterborne and road transport sectors. We assume that the duration of the complaint-handling procedures in all sectors, in terms of the total time spent per case, both by the passengers and the staff of NEBs and carriers is, on average, the same.

**Air sector**

Information on the time taken to handle complaints is available in some Member States, which provides a rough estimation applicable across the EU. In 2012, the NEBs received 56,478 complaints related to the regulation 261/2004 establishing common rules of compensation and assistance in the air sector and 275 complaints related to the regulation 1107/2006 on rights of PRM\(^ {415}\). The annual number of complaints filed directly to air

\(^{412}\) It is however difficult to extrapolate this partial data to an EU average as litigation may be more or less used in some countries than others (depending, among others reasons, whether ADR mechanisms are more or less accessible and used or litigations more or less complex or cost effective).

\(^{413}\) Bozeat, N., (GHK), *The perspective of having a European Code on Private International Law*, 2013, pp.44.

\(^{414}\) *Ibid*, pp. 33.

carriers can be estimated at the level of approximately 1 million annually\(^{416}\). Not all of the complaints, however, relate to the EU rules on compensation and assistance. According to the evaluation of Regulation 261/2004, the percentage of complaints related to this regulation amounted to about 30\%\(^{417}\).

Table 30 below presents the aggregated value of time which is currently spent during the complaint-handling process in the air travel sector – in relation to both regulations mentioned above, and based on the assumptions on duration of the complaint-handling procedure and costs of time described above.

### Table 35: Estimated value of time currently spent in complaint handling procedures in the air sector

<table>
<thead>
<tr>
<th>Value of time taken during the complaint handling process (carriers)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours of passengers' time</td>
<td>2</td>
</tr>
<tr>
<td>Hours of staff time (carriers)</td>
<td>15</td>
</tr>
<tr>
<td>Total annual number of complaints</td>
<td>300,000</td>
</tr>
<tr>
<td>Value of passengers' time taken</td>
<td>€ 4,425,258</td>
</tr>
<tr>
<td>Value of staff time taken</td>
<td>€ 63,000,000.00</td>
</tr>
<tr>
<td>Total value of time taken</td>
<td>€ 67,425,258</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Value of time taken during the complaint handling process (NEBs)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours of passengers' time</td>
<td>4</td>
</tr>
<tr>
<td>Hours of staff time (NEBs)</td>
<td>25</td>
</tr>
<tr>
<td>Total annual number of complaints</td>
<td>56,478</td>
</tr>
<tr>
<td>Value of passengers' time taken</td>
<td>€ 1,674,311</td>
</tr>
<tr>
<td>Value of staff time taken</td>
<td>€ 19,863,550</td>
</tr>
<tr>
<td>Total value of time taken</td>
<td>€ 21,537,861</td>
</tr>
<tr>
<td>Total value of time taken (NEBs and carriers)</td>
<td>€ 88,963,120</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Value of time taken during the complaint handling process (court)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours of lawyers' work time</td>
<td>32</td>
</tr>
<tr>
<td>Hours of passengers' time</td>
<td>16</td>
</tr>
<tr>
<td>Estimated number of cases with court proceedings (10% of all cases)</td>
<td>36,389</td>
</tr>
<tr>
<td>Value of passengers' time taken</td>
<td>€ 4,294,129</td>
</tr>
<tr>
<td>Value of lawyers' hours of work</td>
<td>€ 174,666,268</td>
</tr>
<tr>
<td>Total value of time taken in courts</td>
<td>€ 178,960,398</td>
</tr>
<tr>
<td>Grand total</td>
<td>€ 267,923,518</td>
</tr>
</tbody>
</table>

According to this scenario, the value of time, including the passengers' time and the costs of work time of the NEB's and carriers’ staff that is taken during the complaint handling process in the air sector has been estimated at the level of approximately €89 million annually. The value of time that is taken for court proceedings, including the passengers’ time and the costs of work of lawyers, has been estimated at the level of approximately €179 million. Thus, the total value of time taken for enforcement has been estimated to equal approximately €268 million annually.

\(^{416}\) Evaluation of Regulation 261/2004, (European Commission, DG Energy and Transport, 2010) pp. 29. This volume relates to 2008; in the absence of more recent data it is assumed that the volume is more or less stable.

\(^{417}\) Ibid.
**Rail sector**

The NEBs for rail passenger rights in 2011 received some 2500–3500 complaints related to the Regulation 1371/2007 on rights of passengers travelling by rail. Total number of complaints amounted to about 15,000\textsuperscript{418}. Thus the complaints relating to the EU Regulation constitute about 20% of all complaints. In the absence of data relating to the number of complaints received directly by all rail carriers in the EU, an extrapolation has been made using statistics obtained directly from PKP Intercity in Poland. In 2013, PKP Intercity received in total 10,744 complaints\textsuperscript{419}. The share of PKP Intercity in the passenger train transport in Poland amounts to approximately 13% (UTK\textsuperscript{420}). Extrapolating this number to the whole Polish market it can be estimated that the total annual number of complaints from rail passengers in Poland could be at the level of about 82,600. This volume has been aggregated to the whole EU using the assumption of equal share of complaints number to the population number (based on Eurostat) – in this way we get an estimate of the total number of complaints filed directly to the carriers in the rail sector at the level of approximately 1 million complaints. Out of this amount, only 20% is included in the calculations below to reflect the share of complaints relating to the EU Regulation (assumed to be the same as in case of complaints to the NEBs). In this sector, it is assumed that the number of complaints which are filed in courts amounts to 1% of the total number of complaints\textsuperscript{421}.

Table 36 below shows the results of the calculations applied for the rail sector under the above explained assumptions. The same value of an hour of passengers’ time as in the air sector is used for valuation, i.e. €7.38.

**Table 36: Estimated value of time currently spent in the complaint handling process in the rail sector**

<table>
<thead>
<tr>
<th>Value of time taken during the complaint handling process (carriers)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours of passengers’ time</td>
<td>2</td>
</tr>
<tr>
<td>Hours of staff time (carriers)</td>
<td>15</td>
</tr>
<tr>
<td>Total number of complaints</td>
<td>200,000</td>
</tr>
<tr>
<td>Value of passengers’ time taken</td>
<td>€ 2,950,172</td>
</tr>
<tr>
<td>Value of staff time taken</td>
<td>€ 42,000,000</td>
</tr>
<tr>
<td>Total value of time taken</td>
<td>€ 44,950,172</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Value of time taken during the complaint handling process (NEBs)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours of passengers’ time</td>
<td>4</td>
</tr>
<tr>
<td>Hours of staff time (NEBs)</td>
<td>25</td>
</tr>
<tr>
<td>Total number of complaints in 2008</td>
<td>3,000</td>
</tr>
<tr>
<td>Value of passengers’ time taken</td>
<td>€ 88,505</td>
</tr>
<tr>
<td>Value of staff time taken</td>
<td>€ 1,050,000.00</td>
</tr>
<tr>
<td>Total value of time taken</td>
<td>1,138,505</td>
</tr>
<tr>
<td><strong>Total value of time taken (NEBs and carriers)</strong></td>
<td>€ 46,088,677</td>
</tr>
</tbody>
</table>

\textsuperscript{418} Evaluation of Regulation 1371/2007 (European Commission, DG MOVE, 2012), pp. 49

\textsuperscript{419} Based on direct information from this stakeholder.

\textsuperscript{420} Data from the website of the Polish Rail Transport Office (\textit{Urząd Transportu Kolejowego}) (Passenger Rights).

\textsuperscript{421} In absence of data on this issue, a conservative assumption is taken, reflecting the views of the stakeholders that the percentage of cases ending up in court litigations is very small.
The value of time, including the passengers’ time and the costs of work time of the NEB’s and carriers’ staff that is taken during the complaint handling process in the rail sector has been estimated to be equal approximately €46 million annually. The value of time that is taken for court proceedings, including the passengers’ time and the costs of work of lawyers, has been estimated at the level of approximately €10 million. Thus, the total value of time taken for enforcement in this sector has been estimated to equal approximately €56 million annually.

**Value of time taken during the complaint handling process (court)**

<table>
<thead>
<tr>
<th>Hours of lawyers’ work time</th>
<th>32</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours of passengers’ time</td>
<td>16</td>
</tr>
<tr>
<td>Estimated number of cases with court proceedings (1% of all cases)</td>
<td>2,030</td>
</tr>
<tr>
<td>Value of passengers’ time taken</td>
<td>€ 239,554</td>
</tr>
<tr>
<td>Value of lawyers’ hours of work</td>
<td>€ 9,744,000</td>
</tr>
<tr>
<td>Total value of time taken</td>
<td>€ 9,983,554</td>
</tr>
<tr>
<td>Grand total</td>
<td>€ 56,072,231</td>
</tr>
</tbody>
</table>

Waterborne transport sector

Statistics on the number of complaints in the waterborne transport sector are not available, however some estimates relating to the maritime passenger transport can be made based on the EC Impact Assessment of the proposed Regulations in this sector\(^{422}\). In this document it is expected that the annual number of complaints in this sector with respect to the regulation 1177/2010 to be handled by the NEBs will be in the range between 10,507 and 13,490 for all EU member states\(^{423}\). Since the number of complaints filed to the carriers is not known, in order to get an estimate it is assumed that the proportion of the complaints filed to the NEBs to the number of complaints filed to the carriers is the same as in the air sector. Following this logic, the number of complaints filed directly to the carriers can be estimated at 63,734. As for the road sector, only 25% of these complaints are assumed to be related to EU Regulation and therefore, only this percentage of the total estimated volume is included in the calculations. This should be a conservative estimate since the number of complaints from inland waterway transport is not included due to lack of data. Similarly, as in the case of the rail sector, the number of complaints ending up in court litigations has been assumed at the level of 1%.

\(^{422}\) UK Department of Transport, *Impact Assessment Maritime Passenger Rights Regulations*, 2012.; for the calculation a simple average of this range is taken.

\(^{423}\) *Ibid*, pp. 13. For the calculations, an average of this range is taken.
Table 37 below shows the results of the calculations applied for the waterborne transport sector under the above explained assumptions.

Table 37: Estimated value of time currently spent in the complaint handling process in the waterborne sector

<table>
<thead>
<tr>
<th>Value of time taken during the complaint handling process (carriers)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours of passengers' time</td>
<td>2</td>
</tr>
<tr>
<td>Hours of staff time (carriers)</td>
<td>15</td>
</tr>
<tr>
<td>Total number of complaints</td>
<td>63,425</td>
</tr>
<tr>
<td>Value of passengers' time taken</td>
<td>€ 935,573</td>
</tr>
<tr>
<td>Value of staff time taken</td>
<td>€ 13,319,250</td>
</tr>
<tr>
<td>Total value of time taken</td>
<td>€ 14,324,271</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Value of time taken during the complaint handling process (NEBs)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours of passengers' time</td>
<td>4</td>
</tr>
<tr>
<td>Hours of staff time (NEBs)</td>
<td>25</td>
</tr>
<tr>
<td>Total annual number of complaints</td>
<td>11,999</td>
</tr>
<tr>
<td>Value of passengers' time taken</td>
<td>€ 353,991</td>
</tr>
<tr>
<td>Value of staff time taken</td>
<td>€ 4,199,650</td>
</tr>
<tr>
<td>Total value of time taken</td>
<td>€ 4,553,641</td>
</tr>
</tbody>
</table>

| Total value of time taken (NEBs and carriers)                   | € 18,887,913 |

<table>
<thead>
<tr>
<th>Value of time taken during the complaint handling process (court)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours of lawyers' work time</td>
<td>32</td>
</tr>
<tr>
<td>Hours of passengers' time</td>
<td>16</td>
</tr>
<tr>
<td>Estimated number of cases with court proceedings (1% of all cases)</td>
<td>634</td>
</tr>
<tr>
<td>Value of passengers' time taken</td>
<td>€ 74,816</td>
</tr>
<tr>
<td>Value of lawyers' hours of work</td>
<td>€ 3,043,200</td>
</tr>
<tr>
<td>Total value of time taken</td>
<td>€ 3,118,016</td>
</tr>
</tbody>
</table>

Grand total                                                      | € 21,926,481 |

The value of time, including the passengers’ time and the costs of work time of the NEB’s and carriers’ staff that is taken during the complaint handling process in the maritime passengers transport sector has been estimated at the level of approximately €19 million annually. The value of the time that is taken for court proceedings, including the passengers’ time and the costs of lawyers, has been estimated to be equal to approximately €3 million. Thus, the total value of time taken for enforcement in this sector has been estimated to be equal to approximately €22 million annually.

Bus and coach sector

The annual volume of international bus and coach passengers is estimated to amount to 72.8 million passengers. Statistics on complaints received in this sector are not available. In order to estimate the number of complaints in this sector, we assume the share of complaining passengers to be the same as in the rail sector. This assumption leads to an estimation of complaints being at the level of 22,271 annually across Europe. This is a conservative estimate since due to the lack of more detailed data only

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international trips are included. In addition, the number of complaints from this sector to the NEBs has been disregarded\textsuperscript{425}. Furthermore, only 25% of this estimated number of complaints is included in the calculations to reflect the observation that in other transport sectors for which data is available, only 20%-30% share of complaints relates to the EU regulations (25% is the average between the shares for the air and the rail sector)\textsuperscript{426}. Calculations summarised in Table 33 below concerning the value of time needed to handle the complaints follow the same logic as calculations performed for the previously analysed sectors.

Table 38: Estimated value of time currently spent in the complaint handling process in the bus and coach sector

<table>
<thead>
<tr>
<th>Value of time taken during the complaint handling process (carriers)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours of passengers’ time</td>
</tr>
<tr>
<td>Hours of staff time (carriers)</td>
</tr>
<tr>
<td>Total number of complaints</td>
</tr>
<tr>
<td>Value of passengers’ time taken</td>
</tr>
<tr>
<td>Value of staff time taken</td>
</tr>
<tr>
<td>Total value of time taken</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Value of time taken during the complaint handling process (court)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours of lawyers’ work time</td>
</tr>
<tr>
<td>Hours of passengers’ time</td>
</tr>
<tr>
<td>Estimated number of cases with court proceedings (1% of all cases)</td>
</tr>
<tr>
<td>Value of passengers’ time taken</td>
</tr>
<tr>
<td>Value of lawyers’ hours of work</td>
</tr>
<tr>
<td>Total value of time taken</td>
</tr>
<tr>
<td><strong>Grand total</strong></td>
</tr>
</tbody>
</table>

The value of time, including the passengers’ time and the costs of work time of the carriers’ staff that is taken during the complaint handling process in the bus and coach sector has been estimated at the level of approximately €1.2 million annually. The value of time that is taken for court proceedings, including the passengers’ time and the costs of work of lawyers, has been estimated in this sector to equal to approximately €0.3 million. Thus, the total value of time taken for enforcement in this sector equals roughly €1.5 million annually.

**Summary for all the sectors**

Total value of time needed in the state-of-play situation for complaint-handling in all the sectors has been estimated at the level of €347 million annually.

\textsuperscript{425} According to the contacted stakeholders (NEBs) the number of complaints relating to this sector is very low.

\textsuperscript{426} It is unknown how much of the “international travel” by bus and coach concern bus travel of more than 250 km and therefore fall under the Regulation, as well as the extent of the exemption made by Member States. However, it is likely that more than 25% would fall under the Regulation. Due to the unknown factor, the conservative 25% will be kept.
b. Estimating CoNE related to inefficient enforcement procedures

The identified gaps in passenger rights, their interpretation and definition and complex procedures for complaint-handling increase the duration of the enforcement process and therefore result in inefficiency and loss of time. Our estimate of the time which is wasted due to the inefficiencies resulting from legal gaps as identified in Section 3 is around 20% of the total time needed in the current state of play situation to handle the complaints. Based on this assumption and on the estimate of the value of time currently needed for complaint-handling procedures, as performed in the preceding section, the CoNE due to the existing gaps can be estimated at the level of €69 million annually.

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427 This has been validated with the stakeholders. It should be noted, however, that according to one stakeholder (PKP Intercity) some flexibility in interpretation of the regulations (thus, lack of rigid rules in some areas) may be beneficial for efficiency. Increased transparency regarding some aspects, however, for example better definition of carriers’ liability in case of extraordinary circumstances would definitely lead to efficiency improvements.
Table 39: Qualitative ranking of the impact of the gaps and inconsistencies in enforcement

<table>
<thead>
<tr>
<th>Gap/inconsistency</th>
<th>Impacts</th>
<th>Stakeholders affected</th>
<th>Assessment</th>
<th>Justification</th>
<th>Overall assessment of the gap/inconsistency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclear role of the NEBs with regard to the individual complaint handling (concerns all transport modes).</td>
<td>Confusion, Loss of time</td>
<td>Passengers, Carriers</td>
<td>Strong</td>
<td>Many passengers are not aware of the existence of NEBs or do not fully understand their role and competence in protecting passenger rights. Therefore, only a small fraction of passengers turn to the NEBs about potential violations of their rights. From those who complain, many are confused about what results to expect. The NEB will usually examine the complaint, give their opinion and advice but will not redress the individual claim, e.g. by granting compensation. To have their individual claim met, the passenger will have to start other (sometimes complex) procedures and thus spend more of their time, energy and money to protect their interests. Overall, this results in legal uncertainty and frustration not only for passengers but also for carriers who, as a party to the dispute, are also involved in the complaint handling procedures.</td>
<td>Overall, the impact on passengers and society is strong as the lack of clarity in NEBs' role affect the ability of passengers to claim their rights and provides insufficient incentive for carriers to comply fully with EU passenger rights.</td>
</tr>
<tr>
<td>Wider society impacts</td>
<td>EU society</td>
<td>Strong</td>
<td>It is important that passengers, businesses and enforcement bodies have a clear understanding of the NEB powers. It would enhance passenger confidence in claiming their rights, dis incentive businesses to violate passenger rights and, finally, increase the effectiveness of complaint handling nationally and across the EU.</td>
<td>Overall assessment of the gap/inconsistency</td>
<td></td>
</tr>
<tr>
<td>Gap/inconsistency</td>
<td>Impacts</td>
<td>Stakeholders affected</td>
<td>Assessment</td>
<td>Justification</td>
<td>Overall assessment of the gap/inconsistency</td>
</tr>
<tr>
<td>-------------------</td>
<td>------------------------------</td>
<td>-----------------------</td>
<td>------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>Different time limits set for the carriers to respond to complaints from rail, maritime and road passengers and no deadline for airlines.</td>
<td>Confusion Stress</td>
<td>Passengers</td>
<td>Weak</td>
<td>Rules regarding deadlines require the carriers to take a timely action in response to passenger claims. Such rules are established for almost all of the transport modes except air. Uniform deadlines, however, would enhance legal certainty and further encourage passengers to claim their rights since they would know that regardless of the transport mode when they would be entitled to receive a response from the carrier.</td>
<td>Weak</td>
</tr>
<tr>
<td>No deadlines for the NEBs to respond to passenger complaints</td>
<td>Cases of prolonged waiting time for response</td>
<td>Passengers Carriers</td>
<td>Moderate</td>
<td>As with the time limits for carriers to respond to passenger complaints (see above) clear deadlines are also important to ensure timely response to passengers from the NEBs. Time-consuming complaint handling procedures in general dissuade passengers from lodging complaints. A standard deadline set at EU level would therefore encourage passengers to claim their rights through decreasing passenger frustration and clarifying their expectations. This would increase legal certainty also for carriers who, as a party to the dispute, are involved in the complaint handling procedures. Since none of the Regulations set any deadlines for the NEBs, the overall impact on the protection of passenger rights appears to be moderate.</td>
<td>Moderate</td>
</tr>
</tbody>
</table>
### Codification of Passenger Rights

<table>
<thead>
<tr>
<th>Gap/inconsistency</th>
<th>Impacts</th>
<th>Stakeholders affected</th>
<th>Assessment</th>
<th>Justification</th>
<th>Overall assessment of the gap/inconsistency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclear role of the NEBs with regard to enforcement (concerns all Regulations)</td>
<td>Confusion Loss of time Distorted competition</td>
<td>Passengers, Carriers</td>
<td>Strong</td>
<td>Likewise complaint handling, it is important that passengers and carriers have a clear understanding of the NEBs role in enforcing passenger rights. Since the role of NEBs is not explicitly defined in the Regulations, it varies greatly across Member States. Due to this, passengers are less confident in claiming their rights. In addition, EU carriers may face an uneven playing field. Namely, carriers from countries where the NEBs have broader enforcement powers (e.g. pro-active enforcement, higher sanctions) may have a disadvantage compared to carriers that from countries where the NEBs powers are more limited. It also has a wider effect on the protection on passenger rights since in countries with less powerful NEBs the carriers will be less encouraged to automatically grant passengers their rights generally leading to more potential disputes between passengers and transport service providers.</td>
<td>Overall, the impact on passenger and society is strong as the lack of clarity in NEBs’ role and the difference in enforcement across countries provides insufficient incentive for carriers to comply fully with EU passenger rights. It affects passengers’ ability to claim their rights.</td>
</tr>
<tr>
<td>Different and unclear competencies of NEBs across the four transport modes (e.g. the rules on carrier liability currently can be enforced only by NEBs under the Rail and Bus Regulations)</td>
<td>Wider society impacts</td>
<td>EU society</td>
<td>Strong</td>
<td>The lack of clear and strong enforcement role for NEB gives insufficient incentive for businesses to fully comply with passenger rights. It decreases effectiveness of enforcement nationally and across the EU.</td>
<td></td>
</tr>
<tr>
<td>Gap/inconsistency</td>
<td>Impacts</td>
<td>Stakeholders affected</td>
<td>Assessment</td>
<td>Justification</td>
<td>Overall assessment of the gap/inconsistency</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------</td>
<td>--------------------------</td>
<td>-----------------------</td>
<td>------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>Unclear requirements of NEB cooperation (concerns all Regulations)</td>
<td>Confusion</td>
<td>Passengers</td>
<td>Strong</td>
<td>The unclear requirements of NEB cooperation leads to time consuming and less efficient dealing with cross-border cases. Conflicts between passengers and transport providers are often of cross-border nature. The NEB competent to deal with it will often be of a Member State other than that of the passenger’s place of residence. Therefore, timely and effective response to passengers’ complaints requires close cooperation between NEBs. Currently, there are no specific rules on cooperation. Cooperation, among other things, involves the identification of the competent NEB and effective information exchange and dealing with other matters such as the language and translation issues. Thus, unclear rules on cooperation procedures may lead to confusion between NEBs based in different countries – cases, for instance, may be sent back and forth, resulting in loss of time for all stakeholders involved.</td>
<td>This burden in considered as major as consultation with stakeholders showed that lack of cooperation among NEBs is one of the main reasons for ineffective enforcement of the Regulations.</td>
</tr>
<tr>
<td>Inefficiencies in the process of complaint handling due to gaps in various areas</td>
<td>Loss of time</td>
<td>Passengers</td>
<td>Strong</td>
<td>Inefficiencies in complaint handling procedures in all transport modes have been assessed quantitatively to equal approximately <strong>€69 million annually</strong>. This is the value of time lost related to passengers, carriers’ and NEBs’ staff.</td>
<td>Overall, the impact of inefficiencies in complaint handling procedures is assessed as moderate as a result of the burden of stress, confusion and annoyance and loss of time.</td>
</tr>
<tr>
<td></td>
<td>Confusion</td>
<td>Carriers</td>
<td>Strong</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Annoyance</td>
<td>Passengers</td>
<td>Strong</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Wider economic impacts</td>
<td>EU economy</td>
<td>Weak</td>
<td>Inefficiencies in the complaint handling procedure have broader economic effects since time lost could be used in other activities, contributing to generating income and further economic growth. This effect on the economy would not be expected to be strong because the number of people affected is relatively low.</td>
<td></td>
</tr>
</tbody>
</table>
4.3.6 Intermodality

Key findings:

- Intermodal travel presents many benefits for passengers and the EU economy (e.g. time gained between connections; better quality of service in case of disruption);
- The presence of high-speed train connections in airports provides high values for passengers and the EU economy in terms of time saved;
- Integrated ticketing generates time savings for passengers;
- The lack of adapted or specific passenger rights in case of intermodal travel is problematic for passengers and the exercise of their rights.

As explained in section 3.5, passenger intermodality is high on the EU agenda and it is considered as a tool to bring economic and environmental benefits to society. Integrated ticketing, booking and journey planning allow time savings for the passengers spent otherwise on planning, booking and purchasing two separate trips and allows for seamless journey and swift connections. Integrated intermodal travel increases the quality of travel using different transport modes because it allows a wider range of travel options than using one single mode of transport. It also enables better planning in connecting between modes and improved travel information.

One of the main benefits in economic terms is time gained from better connection between transport modes. Integrated scheduling allows more optimal transport connections and therefore time savings between connections. Where integrated intermodal travel includes integrated baggage handling, there is a further increase in terms of the convenience and quality of the journey and further time savings during the procedures of baggage handling and check-in.

Another important benefit of integrated intermodal travel would be the quality of service offered in case of disruption. In such a case, integrated intermodal connections typically offer convenient, flexible access to the next possible connection free-of-charge. Carrier participants to an integrated intermodal scheme are able to offer faster re-booking and assistance in case the passenger is unable to connect to the other mode of transport (e.g. in case the first transport had delays). The quality of service offered is therefore increased. In addition, passengers using integrated intermodal connections also have decreased risk in losing the cost of a part of the transport ticket. Indeed, if the passenger books two separate tickets and misses a connection due to delays in the first leg of the journey, the second carrier is not responsible for the missed connection and therefore has no obligation to provide care and assistance. In integrated ticketing journey, the second carrier would typically provide assistance to the passengers due to the involvement of the carrier in the integrated intermodal scheme. In this way, the

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passengers’ risk of losing the next connection if one leg of the trip is disrupted, diminishes. This is an important factor in deciding to use intermodal connection instead of separate arrangements.

Some agreements between travel operators in Europe exist – mostly between air and rail sectors, which result in different products with varying degrees of seamlessness. The main features of these integrated intermodal products are summed up in box 8. It can be seen that the passengers benefit from transport integration in many ways.

**Box 8 Benefits of integrated intermodal schemes:**

<table>
<thead>
<tr>
<th>Main features of air-rail products</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Integrated ticketing</td>
</tr>
<tr>
<td>• Common online ticket distribution</td>
</tr>
<tr>
<td>• Integrated booking and information</td>
</tr>
<tr>
<td>• Baggage handling</td>
</tr>
<tr>
<td>• Schedule coordination</td>
</tr>
<tr>
<td>• End to end check-in</td>
</tr>
<tr>
<td>• ‘Airplane grade’ train on-board service</td>
</tr>
<tr>
<td>• Delay/connection assistance</td>
</tr>
<tr>
<td>• High number of possible destinations</td>
</tr>
<tr>
<td>• Booking flexibility</td>
</tr>
<tr>
<td>• Customer information (pre-travel, en-route)</td>
</tr>
</tbody>
</table>

The most important travel features involved in the choice of transport mode for air and rail passengers are **travel price** and **travel time**. Integrated ticketing, booking and journey planning allows **time savings** for the passengers spent otherwise on planning, booking and purchasing two separate trips.

Surveys carried out, i.e. DGAC (2009) and IATA (2003), rank lower time and lower ticket price as critical factors for using rail (high-speed connections, HS) as a complementary mode to air transport. These surveys asked passengers questions about what went wrong during their intermodal journey. Their replies were mostly related to transfer and connection issues and the associated time loss issues, e.g. delays and waiting times. Most of these could be reduced with the enhancement of intermodal integrated products.

Several other factors can be considered as important for the development of intermodal integrated services/products. These include:

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430 A number of successful air-rail intermodal products exist in Europe, which are the result of operator agreements – airlines and rail operators. For more information see: European Parliament, *Integrated Ticketing on Long-Distance Passenger Transport Services*, 2012.


- **Schedule coordination.** Compatibility/coordination of schedules is a factor of major importance for the development of air-rail intermodality. Integrated scheduling of different transport modes allows time savings for the passengers in terms of less time lost between connections.

- **End to end check-in and integrated baggage handling.** The best strategy for encouraging people to use public transport (e.g. rail transport) to access airports is based on the concept that both the check-in process (issuing of the boarding pass) and the luggage acceptance process are undertaken off-airport at the railway stations. Integrated baggage handling also increases the convenience and quality of the journey for the passengers and leads to time savings during the procedures of baggage handling and check-in, where the passenger would otherwise need to check-in and drop off the luggage twice.

- **Reliability, punctuality and assistance.** What happens in case of a missed connection if two operators are involved? This is one of the major concerns. Reliability and punctuality are extremely important when there is competition, which is mostly the case with intermodal products. Choosing to fly air-rail instead of air-air is not unusual when the interchange is a highly congested hub subject to regular delays. Evidence exists that high speed trains are on average more punctual than planes on the routes. In case of disruption, intermodal connections typically offer convenient, flexible access to the next possible connection free of charge. In this way, the passengers’ risk of losing the next connection if one leg of the trip is disrupted diminishes.

Measuring the costs and benefits of integrated intermodal products/services is a difficult task, mostly due to the lack of specific data and statistics on this topic at the European level. Our estimates of potential benefits of more widespread integrated intermodality (which can be considered to be equal to CoNE in this area) focus on time savings in air-rail intermodal connections. The calculations of these modes focuses on these aspects as the result of two factors: this type of connection is the most popular example of integrated intermodality, and, these modes are characterised by relatively good access to data.

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434  Airportwatch, *National Express East Coast trains are on average 21% more punctual than planes between Edinburgh and London*, 23 April 2008.
435  *Air and rail competition and complementarity* (European Commission, (DG TREN), August 2006), p. 23.
436  It can be noted that while intermodality is intensively promoted through various initiatives at the EU level, there are no specific EU regulations on intermodality. Therefore, CoNE in this area represent rather a policy gap than a legal gap.
**Quantitative assessment**

The quantitative assessment of CoNE in the area of intermodality is carried out based on the estimation of time savings which can potentially be achieved in the selected segments of intermodal travel. Travel time in an intermodal journey is a sum of many different aspects of the journey, each depending on the different features of the intermodal product offered. Figure 3 presents the main components of the overall travel time – taking the example of an air-rail connection. Table 35 provides an additional description of each component associated with its determining factors.

![Figure 3: Overall travel time components, air-rail connection](image)

Source: Duarte Costa, 2012

**Table 40: Components of passenger overall travel time in air-rail intermodality**

<table>
<thead>
<tr>
<th>Component</th>
<th>Determining factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access time</td>
<td>Rail station accessibility from main urban agglomerations</td>
</tr>
<tr>
<td></td>
<td>This factor is seen as an advantage of rail transport versus air transport – it is usually easier to reach a railway station as they are often in or nearer city centres.</td>
</tr>
<tr>
<td>Waiting time at the rail station</td>
<td>Baggage handling and check-in at the rail station</td>
</tr>
<tr>
<td></td>
<td>Waiting time at the rail station depends on how integrated the product is. Fully integrated intermodal schemes offer baggage handling and check-in at the rail station, which means passengers receive their boarding pass, go through customs, if needed, and check-in their baggage, which goes through security screening, at the rail station. In the case of integrated products, waiting time at the rail station should still be lower than for a flight, as entry railway stations generally need to manage fewer operations and users than airports. With integration, the waiting time at the rail station is higher and waiting time during transfer at the airport is reduced. It is to be expected that, with scheduled coordination, the waiting time at the airport is significantly reduced if check-in is transferred to entry rail station.</td>
</tr>
</tbody>
</table>

---

<table>
<thead>
<tr>
<th>Component</th>
<th>Determining factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Security</td>
<td>Security screening requirements for baggage and passengers impact check-in time.</td>
</tr>
<tr>
<td>Punctuality and reliability</td>
<td>Less complex integrated schemes have next to no waiting time, except when the question of train delays is accounted for.</td>
</tr>
<tr>
<td>Rail leg travel time</td>
<td><strong>Rail leg travel time</strong></td>
</tr>
<tr>
<td>Punctuality and reliability</td>
<td>Train delays impact the rail leg travel time and can lead to loss of connection.</td>
</tr>
<tr>
<td>Baggage handling</td>
<td>One of the factors that could impact the travel time is baggage handling – if a train journey has more than one entry rail station for integrated intermodal products, stops might need to be longer to allow for baggage loading (AEROAVE, 2011).</td>
</tr>
<tr>
<td>Transfers in the rail leg</td>
<td>It is also accepted that the rail trip should be direct, without transfers (Eichinger, 2007), due to the issues of travel time and, mostly, passenger convenience.</td>
</tr>
<tr>
<td>Transfer time from the airport railway station to the terminal</td>
<td><strong>Ease of transfer (physical)</strong></td>
</tr>
<tr>
<td></td>
<td>Infrastructure integration being a precondition of this study, physical ease of transfer factors related to transfer time translate into short walking time and length, with moving walkways when necessary. These are determined by interface design and management. The transfer time should be below 20 minutes at a good practice airport and below 5 minutes at a railway station.</td>
</tr>
<tr>
<td></td>
<td><strong>Ease of transfer (logical)</strong></td>
</tr>
<tr>
<td></td>
<td>The ease of transfer factors related to the transfer time translate into clear signposting along the path and also real time information from the beginning of the journey until the end in terminals, gates, and timetables. Personalised information services are recommended by some authors (AEROAVE, 2011).</td>
</tr>
<tr>
<td></td>
<td><strong>Baggage handling and check-in at rail station</strong></td>
</tr>
<tr>
<td></td>
<td>As mentioned earlier, less complex intermodal products do not offer baggage handling or check-in at rail station, so these operations need to be done during transfer time. Passengers need to carry their baggage from the airport railway station into the check-in facility, obtain their boarding passes, clear through security screening and possibly customs. If these services are offered at the rail-way station, transfer time is potentially reduced by a large amount – aside from security screening, none of the previous operations need to be carried out during this time, although some time needs to be allowed for the airport ground force baggage handling.</td>
</tr>
</tbody>
</table>

438 More details on this and other references given in the table can be accessed in Duarte Costa, J., *Factors of air-rail passenger intermodality*, October 2012.
<table>
<thead>
<tr>
<th>Component</th>
<th>Determining factors</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of operating services</strong></td>
<td>To minimise the waiting times at capacity restraint points, a sufficient number of operating check-in desks/ticket counters/info-points/security checks/passport controls must be provided. At good practice airports, the maximum waiting time should be below 5 minutes at peak hours. Therefore, an adequate number of working staff is needed during peak and off-peak times (KITE, 2009b).</td>
</tr>
<tr>
<td><strong>Security</strong></td>
<td>Security screening requirements for baggage and passengers impact check-in time.</td>
</tr>
<tr>
<td><strong>Schedule coordination</strong></td>
<td>This is a major factor of travel time, since it strongly determines the waiting time component of transfer time. While the level of waiting time at airports may be high, too long waiting time between connections adds to the overall journey time. Optimally, connecting times should not be too long for passengers. Schedule coordination between the train arrival and the flight departure must work at least as well as in an air/air solutions at hub airports for intermodal travel to be able to compete. For this to happen, cooperation between airlines and rail operators is fundamental.</td>
</tr>
<tr>
<td><strong>Air leg travel time</strong></td>
<td><strong>Air leg travel time</strong>&lt;br&gt;Chi and Crozet (2004) found that for longer air trips (intercontinental long-haul flights) passengers favour traveling a first leg by high-speed rail to the airport rather than by air. The rail leg time relative is smaller to air leg time in those cases and therefore more acceptable by the passenger. To illustrate this, recent data from the French civil aviation shows that an average flight time of intermodal passengers at Paris-CDG is about eight hours, whereas at Lyon it is only about three hours. The former is considered best practice in France, with over 4% intermodal passengers and a volume of 60,5 million passengers a year. The latter is considered a less successful intermodality project, with only 0,5% intermodal passengers and a volume of 7,8 million passengers a year.</td>
</tr>
<tr>
<td><strong>Punctuality and reliability</strong></td>
<td>Airplane delays impact the air leg travel time and can lead to loss of connection.</td>
</tr>
<tr>
<td><strong>Check-out time</strong></td>
<td><strong>Baggage handling</strong>&lt;br&gt;The check-out time depends on airport operations, baggage handling time being a major determinant.</td>
</tr>
<tr>
<td></td>
<td><strong>Ease of transfer (physical)</strong>&lt;br&gt;The ease of transfer also applies to airplane to egress mode transfer. Again, the interface design and management are critical factors as they determine the walking time.</td>
</tr>
<tr>
<td></td>
<td><strong>Ease of transfer (logical)</strong>&lt;br&gt;Again, the main factor is clear signposting along the path; only in this case towards specific egress mode terminals (buses, parking, taxis, for example).</td>
</tr>
<tr>
<td><strong>Egress time</strong></td>
<td><strong>Airport accessibility from main urban agglomerations</strong>&lt;br&gt;Airport access issues can translate into significant egress time. Road congestion is usually a problem around airports, but despite pressure to solve road access problems, with suburbs reaching into airport areas, noise and other environmental impacts have to be considered, as well as other space planning constraints. Road modes can therefore be strongly subject to delays. Funding for other modes is difficult to obtain, besides space planning constraints also apply.</td>
</tr>
</tbody>
</table>

Source: Duarte Costa (2012)
Data limitations do not allow the estimation of CoNE related to time savings in all travel segments. The quantitative assessment below relates to two elements:

- High-speed train (HST) connections with airports based on an example of London Heathrow airport.
- Integrated ticketing based on an example of the AIRail connection in Germany.

High-speed train connections with airports

HST connections with airports allow not only time savings for passengers but also substitution of domestic short range flights (which are often not profitable) by rail. The reuse of the scarce slots that were occupied by those domestic flights is often profitable for air carriers because of the possibility to schedule more long-range flights. This contributes to the financial feasibility of services if viewed on a network wide basis. However, the introduction of such services depends on the co-operation of many stakeholders including the railway operators, airport operators and the airlines. Empirical examples show that what is also needed is a will for innovation and customer orientation. The complexity of such initiatives should not be underestimated.\(^{439}\)

HST connections are accessible at several European airports. Table 36 below shows the list of available connections in 2012.

**Table 41: Existing high-speed train connections in Europe in 2012**

<table>
<thead>
<tr>
<th>Airport</th>
<th>High-speed trains available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amsterdam-Schiphol (AMS)</td>
<td>NS High Speed</td>
</tr>
<tr>
<td></td>
<td>Thalys</td>
</tr>
<tr>
<td>Brussels (BRU)</td>
<td>Thalys</td>
</tr>
<tr>
<td>Cologne/Bonn (CGN)</td>
<td>DB (ICE)</td>
</tr>
<tr>
<td>Copenhagen Kastrup (CPH)</td>
<td>SJ</td>
</tr>
<tr>
<td>Düsseldorf (DUS)</td>
<td>DB (ICE)</td>
</tr>
<tr>
<td></td>
<td>Thalys</td>
</tr>
<tr>
<td>Frankfurt (FRA)</td>
<td>DB (ICE)</td>
</tr>
<tr>
<td>Leipzig/Halle (LEJ)</td>
<td>DB (ICE)</td>
</tr>
<tr>
<td>Paris-CDG (CDG)</td>
<td>SNCF (TGV)</td>
</tr>
<tr>
<td>Lyon-Saint Exupéry (LYS)</td>
<td>SNCF (TGV)</td>
</tr>
</tbody>
</table>

Source: Duarte Costa (2012)

It can be seen that nine large airports in Europe are accessible through HST connections. This number represents 20% of large airports in Europe\(^{440}\). London Heathrow airport is one of the airports where HST is not available. Givoni and Banister (2006)\(^{441}\) provide an extensive analysis of potential benefits and constraints related to such connections for Heathrow.

HST station on a main line at Heathrow could offer direct services to many UK and some European cities. Table 37 below shows potential travel time advantage and capacity freed at Heathrow following substitution of short-range flights with HST connections\(^{442}\). The last three columns of the table provide estimates of an annual number of passengers potentially switching from air to rail and an aggregate annual value of time savings which can potentially be achieved due to establishing these HST connections.

<table>
<thead>
<tr>
<th>Destination</th>
<th>Aircraft journey (minutes)</th>
<th>HST journey (minutes)</th>
<th>HST time saving (minutes)</th>
<th>Annual number of aircraft two-way movements saved</th>
<th>Annual number of passengers switching to rail(^{443})</th>
<th>Aggregate annual time savings (hours)</th>
<th>Value of time saved(^{444})</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manchester</td>
<td>140</td>
<td>77</td>
<td>48</td>
<td>10920</td>
<td>1747200</td>
<td>1397760</td>
<td>€ 10,309,082</td>
</tr>
<tr>
<td>Leeds/Bradford</td>
<td>135</td>
<td>75</td>
<td>45</td>
<td>2912</td>
<td>465920</td>
<td>349440</td>
<td>€ 2,577,270</td>
</tr>
<tr>
<td>Brussels</td>
<td>150</td>
<td>96</td>
<td>39</td>
<td>9464</td>
<td>1514240</td>
<td>984256</td>
<td>€ 7,259,312</td>
</tr>
<tr>
<td>Newcastle</td>
<td>145</td>
<td>107</td>
<td>23</td>
<td>2912</td>
<td>465920</td>
<td>178602.7</td>
<td>€ 1,317,272</td>
</tr>
<tr>
<td>Paris</td>
<td>145</td>
<td>122</td>
<td>8</td>
<td>19656</td>
<td>3144960</td>
<td>419328</td>
<td>€ 3,092,725</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4193280</td>
<td>€ 21,462,936</td>
</tr>
</tbody>
</table>

Source: Givoni and Banister (2006) and own calculations

These estimates result in a total annual value of time saved by passengers at Heathrow due to potential HST connections of over €20 million. If we assume that with more widespread intermodality in Europe the number of airports with HST connections would increase from 9 to 15 (thus, from 20% of large airports to 33%) and that the time saving benefits due to these connections would be comparable to the ones calculated for Heathrow, we could estimate the CoNE in this area arising in this segment (high-speed connections with airports) to be equal to approximately €\text{129 million} annually.

\(^{440}\) Large airports are defined as airports belonging to the top 150 airports in the world by passengers’ numbers. There are 45 such airports in Europe (Duarte Costa, J., \textit{Factors of air-rail passenger intermodality}, October 2012.


\(^{443}\) The annual number of passengers switching to rail is calculated based on annual number of aircraft movements, assuming that the number of passengers per aircraft equals 80, which is 50% of the overall average number of passengers per flight (taking into account that short-haul flights typically involve less passengers per aircraft).

\(^{444}\) For time valuation the standard value of €7.98 per hour is used throughout the report.
Integrated ticketing

The case described below relates to the so-called AIRail in Germany\textsuperscript{445} and provides a quantitative assessment of another element of intermodality: integrated ticketing. AIRail offers unique service features, like integrated ticketing and baggage handling, which is so far one of the few such cases known in the air transport in Europe.

The benefits related to intermodality are measured here using an estimate of the time saved by buying one combined ticket for plane and rail travel instead of buying two separate tickets. In 2006, more than 170,000 passengers per year use the AIRail service\textsuperscript{446}. If that buying one ticket takes about 15 minutes (assumed), the annual time savings related to this service may be calculated (see Table 38).

Table 43: Value of time saved thanks to integrated ticketing: AIRail

| Number of passengers using the service | 170,000 people |
| Time saved per person | 0.25 hrs |
| Benefits for AIRail passengers\textsuperscript{447} | € 232,828 |

The calculations indicate that AIRail brings annual benefits related to the integrated ticketing at the level of approximately €233 thousand. The value of time saved could be even higher taking into account that in 2011 the numbers of passengers who travelled to and from Germany’s largest airport has increased of more than 20\% compared to the previous years. The AIRail services proved to be so successful that in addition to the existing flight connections, Lufthansa started operations on the route from Düsseldorf central station to Frankfurt Airport station from 1 July 2013\textsuperscript{448}. While data on costs of establishing such integrated services is not available, it seems that they prove to be financially viable to the German carriers, as otherwise they would not be continued.

Since similar integrated intermodal connections are not popular across Europe, the lack of arrangements like this one can be seen as another dimension of an ‘intermodality gap’. In order to give a rough quantitative estimate of this gap, it could be assumed that if intermodality was more common across Europe, at least one (more) service of a similar scale could be available in each of the EU countries\textsuperscript{449}. In this way we come up with a hypothetical aggregated value of CoNE for the EU in this area (see Table 39).

\textsuperscript{445} For more information: DB Bahn (DB Bahn).
\textsuperscript{446} Grimme, W., \textit{Air/Rail Intermodality: Recent Experiences from Germany}, 2006, Airlines Magazine, e-zine edition, Issue 34.
\textsuperscript{447} The value of an hour of time of the passengers equal to half of the hourly wage in Germany has been used for valuation of time.
\textsuperscript{448} Source: Lufthansa, “\textit{More than two million passengers since start New: service now includes Düsseldorf-Frankfurt route}”, Press Release, 2013.
\textsuperscript{449} In fact there are a few more services similar to AIRail available in the EU, as described in Maffii, S., et al., \textit{Integrated ticketing on long-distance passenger transport service}, 2012. Such cases are, however, far from common.
Table 44: Hypothetical value of time saved as a result of integrated ticketing in the EU

<table>
<thead>
<tr>
<th>Number of passengers using the service&lt;sup&gt;450&lt;/sup&gt;</th>
<th>4,760,000 people</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time saved per person</td>
<td>0.25 hrs</td>
</tr>
<tr>
<td>Benefits for EU passengers&lt;sup&gt;451&lt;/sup&gt;</td>
<td>€8,776,762</td>
</tr>
</tbody>
</table>

The estimates indicate that the CoNE in the area of intermodality due to lack of more wide-spread integrated ticketing could amount to approximately **€9 million annually**.

**Summary of the quantitative estimates**

The quantitative estimates of CoNE in the area of intermodality amount to approximately **€138 million** annually. These estimates relate only to two elements: high-speed rail connections to large airports and integrated ticketing. Due to the lack of relevant data, estimation of other elements of intermodality was not possible. It can be noted, however, that intermodality, especially integrated intermodal schemes, offers a range of other benefits including time savings during various stages of travel (not accounted for in our estimates) and increased comfort and quality of travel. Another benefit of fully integrated intermodal transport is an easy-to-use and free-of-charge rebooking or re-routing process in case of disruption, which is typically offered in integrated intermodal services. However, such a benefit is difficult to account as a CoNE, since providing free-of-charge rebooking simultaneously entails costs for the carriers.

On the other hand, in case the passenger missed a connection due to disruption in the first leg of the journey, and rebooking or re-routing is not an option under the intermodal scenario (i.e. services not integrated), there would be a clear loss for the passengers. Indeed, where the passenger bought two separate tickets for each leg of the journey, the liability of the carrier in the first leg would most likely be limited to the service it provided. Depending on the transport contract and national laws, the carrier would, most likely, not compensate the passenger for the lost journey leg. Any contestation before the courts may turn out costlier than the costs of the journey lost, discouraging passengers from claiming. Undisputedly, establishing clear liability schemes for intermodal arrangements with well-defined rules could lessen the burden of the enforcement procedures<sup>452</sup>.

In addition, the environmental benefits can be expected due to replacement of air travel with rail, which is typical for air-rail connections that so far provide the most prominent examples of intermodality. Last but not least, intermodality may contribute to higher attractiveness of travel in general, generating more demand for travel and more value added for the economy due to increased performance of various sectors including transport and tourism.

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<sup>450</sup> The number of passengers using AIRrail has been multiplied by 28, to accommodate the assumption that one (more) service of this type would be available in each EU country.

<sup>451</sup> The same value of an hour of time as in previous calculations has been used for valuation of time.

<sup>452</sup> See the quantitative estimates in the enforcement area; it can be assumed that these estimates cover also at least partly the aspect of improved enforcement due to increased intermodality.
Intermodality can be seen as one of the instruments to achieve the goals of the Single European Transport Area as postulated in the Commission’s White Paper of 2011, which states: “Better modal choices will result from greater integration of the modal networks: airports, ports, railway, metro and bus stations, should increasingly be linked and transformed into multimodal connection platforms for passengers. Online information and electronic booking and payment systems integrating all means of transport should facilitate multimodal travel. An appropriate set of passengers’ rights has to accompany the wider use of collective modes”\textsuperscript{453}.

It is obvious that the benefits of improved intermodal transport come at a price. To give an example, the completion of the TEN-T network, which will, among others, promote intermodality within the EU, requires about € 550 billion until 2020 – out of which some €215 billion will be allocated to the removal of the main bottlenecks\textsuperscript{454}. The identified and quantified benefits related to intermodality in the passengers’ travel sector cannot counterbalance these costs. The situation may be different considering the broader benefits of faster, seamless transport connections which contribute to fulfilling the EU policy objectives related to the Single Market and to achieving broader socio-economic benefits.


\textsuperscript{454} Ibid.
Table 45: Qualitative ranking of the impact of the issues in intermodality

<table>
<thead>
<tr>
<th>Gap/inconsistency</th>
<th>Impacts</th>
<th>Stakeholders affected</th>
<th>Assessment</th>
<th>Justification</th>
<th>Overall assessment of the gap/inconsistency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of more wide-spread intermodal connections within the EU(^{455})</td>
<td>Loss of time Costs (financial and time costs) for the passengers in situations of disruptions</td>
<td>Passengers</td>
<td>Strong</td>
<td>Thanks to intermodal travel, time can be saved in integrated booking procedures, journey planning, ticket purchase procedures, check-in procedures etc. In addition, in intermodal arrangements, the cooperating carriers typically provide smoother re-routing and re-booking procedures than without such arrangements, which results in lower costs and less time lost for the passengers who need to arrange new connections. The gap in relation to the lack of more widespread high-speed train connections with airports has been quantitatively assessed at the level of approximately €129 million. The loss of time of not having joint ticketing has been conservatively assessed to equal approximately €9 million annually.</td>
<td>The absence of widespread intermodal connections is assessed as strong because of the many benefits of intermodality and the high costs of the lack thereof. It is noted that many of these benefits cannot be quantified.</td>
</tr>
<tr>
<td>Wider economic impacts</td>
<td>EU economy Carriers</td>
<td>Moderate</td>
<td></td>
<td>More widespread intermodal transport may contribute to more efficiently functioning economy in general. Demand for transport might increase, since the passengers might find travelling more convenient and involving less risk of problems in case of disruptions.</td>
<td>This gap is important. However it is assessed as moderate since the extent of the increase transport demand is difficult to assessed.</td>
</tr>
</tbody>
</table>

\(^{455}\) It should be noted that this is not a legal gap but rather more broadly understood as a ‘policy gap’.
<table>
<thead>
<tr>
<th>Lack of adapted or specific rules for passengers in intermodal connections</th>
<th>Loss of time</th>
<th>Passengers</th>
<th>Moderate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confusion</td>
<td>Annoyance</td>
<td>The lack of adapted or specific passenger rights increase the risk of confusion and issues of information on what rights apply to which leg of the journey. Such issues affect passengers to exercise their rights.</td>
<td>Intermodal travel has positive impact on certain rights (facilitate re-routing in case of disruption) and negative impact due to the confusion. Therefore it is assessed as moderate.</td>
</tr>
</tbody>
</table>
4.3.7 Broader economic impacts

The monetised and non-monetised costs driven by problems with regard to passenger rights across Europe generally fall on passengers, carriers and NEBs. Nevertheless, gaps and inconsistencies relating to passengers’ rights, as described and assessed above, have also broader societal and economic consequences going beyond the six specific areas defined in the Bach Report.

Passengers’ dissatisfaction from travel experience may lead to less demand for travel. According to the European Consumer Centres Network (EEC-Net), the transport sector is regularly the number one source of cross-border complaints. In 2012, for instance, one third of complaints to the EEC-Net were related to transport – 22% of them to air transport456. In travel and tourism where transportation is of vital importance, more than half of all complaints relate to transport services.

Generally speaking, transport is a significant contributor to the economic growth. The turnover of the transport sector corresponds to approximately 5% of the EU GDP457. This indicates the importance of transport for the European economy. Passenger transport is closely linked to the development of the tourism sector being another significant contributor to creation of wealth and jobs. Transport has a positive impact on accessibility of different areas and on the mobility of people. Gaps, inconsistencies and violation of passengers’ rights might hamper the growth of passenger transport and all the positive economic effects related to this growth.

Passengers’ dissatisfaction with collective travel services such as airplanes and trains may result in relatively more passengers choosing individual travel means, i.e. personal cars. Again, this could have negative impact on the revenues of the collective travel services and on the tourism sector - especially international tourism, where collective means of transport are more often used. In addition, such a modal shift would have a negative impact on the environment due to more emissions of polluting substances including CO2.

The quantification of these broader economic effects goes beyond the scope of this study. They are however worth highlighting and taken into consideration, especially in the light of the EU policy objectives. The White Paper states that transport is fundamental to EU economy and society. Transport enables economic growth and job creation. The document includes a set of initiatives that will be promoted in the transport sector (see Box 9).

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Box 10: Policy objectives according to the White Paper

<table>
<thead>
<tr>
<th>White Paper proposed initiatives to promote the transport sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A single European Transport Area</td>
</tr>
<tr>
<td>• Promoting quality jobs and working conditions</td>
</tr>
<tr>
<td>• Secure transport</td>
</tr>
<tr>
<td>• Service quality and reliability</td>
</tr>
<tr>
<td>• A European Transport Research and Innovation Policy</td>
</tr>
<tr>
<td>• Promoting more sustainable behaviour</td>
</tr>
<tr>
<td>• Territorial cohesion and economic growth</td>
</tr>
</tbody>
</table>

These initiatives go beyond narrowly-defined transport services. Transport is an indispensable condition for the sound development of many economic sectors.

4.4 - Summary of the findings

As described above, the Costs of No EU action in the area of passenger rights cover many aspects, which have been assessed qualitatively and quantitatively. The quantifiable costs of no EU action reach an estimated level of €355 million annually with the following breakdown into the areas and modes (see Table 41):

Table 46: A summary of CoNe estimates according to areas and transport modes

<table>
<thead>
<tr>
<th>Area</th>
<th>Transport mode</th>
<th>Estimate (million euro)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transparency</td>
<td>Air</td>
<td>129.61</td>
</tr>
<tr>
<td>Assistance</td>
<td>Air</td>
<td>18.31</td>
</tr>
<tr>
<td>Enforcement</td>
<td>Air</td>
<td>53.58</td>
</tr>
<tr>
<td></td>
<td>Rail</td>
<td>11.21</td>
</tr>
<tr>
<td></td>
<td>Road</td>
<td>0.31</td>
</tr>
<tr>
<td></td>
<td>Waterborne</td>
<td>4.39</td>
</tr>
<tr>
<td>Total enforcement</td>
<td></td>
<td>69.4</td>
</tr>
<tr>
<td>Intermodality</td>
<td>Air-rail (HST airport connections)</td>
<td>128.78</td>
</tr>
<tr>
<td></td>
<td>Air-rail (integrated ticketing)</td>
<td>8.78</td>
</tr>
<tr>
<td>Total intermodality</td>
<td></td>
<td>137.55</td>
</tr>
<tr>
<td>TOTAL for all areas and modes</td>
<td></td>
<td>354.97</td>
</tr>
</tbody>
</table>

These estimates should be treated with caution due to the lack of detailed data, especially for some transport sectors (bus and waterborne transport). The estimates are mostly based on certain scenarios and sets of assumptions rather than on hard data. While all possible care has been taken to validate the assumptions through desk research and consultations with stakeholders and experts, some uncertainties still remain. One way to handle the uncertainties used throughout the research was to take a conservative approach to the calculations. Hence, the presented quantitative estimates can be seen as a lower bound of actual costs. If a less conservative approach is taken in the assumptions made for the quantitative assessment, the total estimate could reach twice the conservative estimate. Another reason to see these estimates as conservative is the fact that some cost categories, e.g. emotional costs or aspects such as the convenience and
quality of service, escape monetary estimates. Therefore, the qualitative assessment of burdens complements the quantitative assessment showing in a comprehensive way the variety of problems related to the gaps and inconsistencies in the passengers’ rights regulations. Should these gaps and inconsistencies be removed, EU society would have an opportunity to more fully enjoy the benefits of passengers’ rights.
5. Codification options

The EU has taken an important role in strengthening the fundamental rights of passengers and leading a European transport policy. The EU has a shared competence to act in areas related to passenger rights, including transport, trans-European networks, consumer protection, justice and internal markets458 (see Section 3.3).

The existing legislation on passenger rights in the four modes of transport has built strong protection for passengers travelling within the EU. Despite its success, many gaps and inconsistencies exist across the four modes of transport (as described in Section 3), which constitute barriers to their full implementation and to an innovative intermodal transport policy. The volume of cases before the CJEU since the adoption of the Air Regulation is an indication of the need to clarify fundamental aspects of passengers’ rights to ensure adequate implementation459.

As explained in Section 3.2, based on Article 91 and/or Article 100 TFEU, and Article 19 TFEU, the EU could take further action to harmonise and strengthen passenger rights across the different modes of transport.

5.1 - Objectives

EU legislation on passenger rights, as it stands, is fragmented across the four modes of transport in separate pieces of legislation. Within those modes, passenger rights are regulated by several instruments, sometimes focusing on certain issues, e.g. regulation on the rights of air passengers with reduced mobility. Most of these regulations have been negotiated and adopted at different times. Therefore, they adopted slightly different approaches, wording and terminology, resulting in gaps and inconsistencies across the four modes of transport. Another element adding to the complexity of the passenger rights legislation is that the content of the right is, in some cases, very detailed – specifying various conditions that are required to benefit the right and lay down exemptions. In addition to the regulation, the interpretation of the CJEU has added substantial content to those rights, which are not yet part of the regulations. As a result, the EU passenger rights are regulated in a very complex and non-harmonised manner.

From this, stems two major problems. First, passenger rights lack transparency in terms of the clarity of the legislation and the awareness of passengers of their rights. In the regulations, several concepts are used which would benefit further clarification, e.g. notions of extraordinary circumstance, adequate information. In addition, the differences

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458 Article 4 of the Treaty on the Functioning of the European Union.
459 In the first two years alone following the adoption of the Air Regulation No 261/2004, the CJEU had already reviewed eight cases related to the Regulation. The latest decision (C-452/13) was issued in September 2014 where the Court clarified the concept of "arrival time". See Jens Karsten, "Droit communautaire des passagers et droit privé européen", Revue Européenne de Droit de la Consommation, vol.4 2006, p. 258; BEUC The European Consumer Organisation, ‘Air Passenger Rights Factsheet’, September 2013. ECC-Net, ‘Revision of EU air passengers’ rights legislation-European Consumer Centres Network position paper’, (undated).
across the modes can bring confusion to passengers as to what are their rights when travelling under one mode or the other. Passenger rights are often presented in a misleading manner, thereby failing to clarify to which transport services it applies within each Member State – due to the scope of the regulations, e.g. in bus and coach transport, EU passenger rights apply only to bus travel of 250 km and above, and the exemptions exercised by Member States, e.g. more than 40% of Member States have exempted their domestic train services from the right to assistance.

Second, while difference in legislation across the four modes of transport may be justified due to the specificity of a mode of transport, no objective justification could be identified in the 84 gaps and inconsistencies analysed in section 3.4.2. This results in a situation where passengers in a mode may receive better protection regarding a particular right, or aspect of a right, than a passenger in another mode of transport. Therefore, there is inequality of protection between the different modes of transport. In addition, some Member States exempted some of their transport services from certain rights, and there is also an inequality of protection across Member States.

Aware of the fragmentation and inconsistencies (see Section 3) and their potential costs implications (see Section 4), the European Parliament contracted this study to examine the merits and the feasibility of establishing a single legislative instrument comprising of all provisions and principles on passenger rights in the form of a Code on Passenger Rights.

This section, therefore, looks at whether or not a single legislative instrument on passenger rights could enhance passenger rights by establishing core rights across all of the four modes of transport. Importantly, the codification option, and the form that such a code would take, must be able to achieve transparent and coherent passenger rights. When considering the form a code could take, we will examine whether such an instrument could resolve gaps and inconsistencies – in particular, in the six areas analysed in this report. We will also look at whether or not such legal instruments can establish the 10 core passenger rights as harmonised across the four transport modes. Addressing the gaps and inconsistencies and harmonising these rights would improve transparency and legal certainty by clarifying the rules. It could also simplify the current legislation and bring more coherence to the set of passenger rights while maintaining the particularity of each transport mode. Therefore when examining the different possible forms the code could take, we will analyse whether or not it can achieve the following:

- provide 10 core passengers rights that are harmonised across all four modes of transport – taking into account each mode’s specificities;
- enhance transparency;
- support better quality of service;
- facilitate the information;
- clarify the issues related to liability;
- strengthen enforcement;
- provide clear rules in case of intermodal travel.
5.2 - Defining possible options

The European Parliament has requested the merits and the feasibility of establishing a single legislative instrument in the form of a Code on Passenger Rights. We acknowledge, however, that other legislative or non-legislative options exist beyond codification, which could also partly achieve the objectives mentioned above. Such options could be recommendations, opinions or amendments to the existing regulations not aimed at codifying.

The codification is recognised as a tool to replace existing acts by a single act. Before looking at the possible legislative and non-legislative options for codification, it is important to clarify the notion of codification at the EU level.

5.2.1. Terminology

The process of codification at the EU level may have different meaning to what is understood at the national level. The Interinstitutional Agreement on Better Law-Making defines the process of ‘codification’ at European level as the “procedure whereby the acts to be codified are repealed and replaced by a single act containing no substantive change to those acts”.

The key of this definition is that, while all the acts and its amendments related to a subject are consolidated in one single legislative instrument, the EU codification process entails no substantive changes to the acts to be codified. In this understanding, any substantial changes in the legislation must be done through amendments of the legislative acts prior to the codification process.

Within the European understanding of codification, a consolidation of the legislation to be codified must be undertaken as a first step. The consolidation consists of the regrouping of the various parts of the legislation to be codified without the regrouping having any legal effect.

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There are two types of codification: vertical – where one original act and its amendments are incorporated into a single new act, and horizontal – where two or more original acts covering related subjects and the amendments to them, are incorporated into a single new act464.

The codification process can be initiated through a proposal of the Commission, which then follow the full legislative process through an accelerated process465.

5.2.2. Possible options of codification

The approach to codification and the form of the single legal instrument has an impact on the merits and feasibility of establishing a single EU passenger rights instrument. The passengers’ code needs to clearly state the rights (as in a charter) and also define how they will be implemented, and what would be the obligations imposed on certain operators or upon the passengers’ themselves. Before assessing the best option for establishing a single instrument on passenger rights, it is therefore a useful exercise to briefly examine the different options and forms that such a legal instrument may take. We will consider two main categories of instruments for codification: legislative and non-legislative options.

1. Legislative options

As mentioned above, the European Commission’s understanding of the codification process is limited – in that the process consists of regrouping the legislation to be codified without any substantial changes to the legislation. For the purpose of this study, two approaches to EU codification are suggested: the EU approach to codification (or simple codification), and a wider approach to codification (or recasting). Within the simple codification, two options can be considered: simple codification with prior or without prior amendments.

A. Simple codification with no prior amendments

Under the EU codification approach, the legislation to be codified would simply be consolidated into a single legislative instrument. The European Passenger Rights Code would consist of a consolidated version of all passenger rights legislation and could be classified according to the mode of transport.

Due to the fragmentation of passenger rights across various regulations – even within one mode of transport, such a consolidation would provide certain benefits. Mostly, it would allow having all of the passenger rights in one place, which can improve implementation and save time for passengers, carriers or legal professionals in finding the relevant information. However, since no substantial amendment would be made to the legislation, the gaps and inconsistencies identified in Section 3 would therefore not be addressed and would become even more apparent when regrouped under one

document. For example, the four transport modes will remain inconsistent in terms of which circumstances trigger the right to compensation (e.g. types of travel disruptions, length of delays and journeys). Important gaps would also remain. In particular, several terms and the scope of application would remain unclear. For example, how the right to assistance applies in case of re-routing, reimbursement, and missed connections in all transport modes.

Under the analysis made in Section 3, we identified 42 inconsistencies and 40 gaps, plus two issues in intermodal transport, for which no justification could be identified. The inability to make changes in the content of the rights reduces the benefit of such codification since, with such amount of inconsistencies and gaps, a consolidated text would remain complex and difficult to understand and implement.

Table 47: Merits of the stricter approach to codification with no prior amendments

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>The following criteria would be addressed partly or fully by the Code:</td>
<td>The Code under the strict understanding would not able to address all the</td>
</tr>
<tr>
<td>• Enhance transparency: regrouping the legislation would make it easier to</td>
<td>inconsistencies and gaps across the four modes; in particular the following</td>
</tr>
<tr>
<td>find and therefore more transparent</td>
<td>criteria will not be met either in part or fully:</td>
</tr>
<tr>
<td>• Facilitate information: consolidating the legislation in one code would</td>
<td>• Provide 10 core harmonised passenger rights across all four modes of</td>
</tr>
<tr>
<td>make it easier to find the information. It could also present the core</td>
<td>transport: such a code could present passenger rights under the 10 core</td>
</tr>
<tr>
<td>rights together in more transparent manner</td>
<td>rights although they would not be harmonised and substantial inconsistencies</td>
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<tr>
<td></td>
<td>would remain</td>
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<tr>
<td></td>
<td>• Enhance transparency: due to the complexity and inconsistencies in passenger</td>
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<tr>
<td></td>
<td>legislation, issues of transparency would remain if no substantial amendments</td>
</tr>
<tr>
<td></td>
<td>are made</td>
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<tr>
<td></td>
<td>• Support better quality of service: since no significant amendments are made,</td>
</tr>
<tr>
<td></td>
<td>the gaps and inconsistencies in the area of quality of service would remain.</td>
</tr>
<tr>
<td></td>
<td>• Facilitate the information: the inconsistencies will remain and likewise</td>
</tr>
<tr>
<td></td>
<td>any complexity issues if no significant amendments are made</td>
</tr>
<tr>
<td></td>
<td>• Clarify the issues related to liability: since no significant amendments</td>
</tr>
<tr>
<td></td>
<td>are made, the gaps and inconsistencies in the area of liability would remain.</td>
</tr>
<tr>
<td></td>
<td>• Strengthen enforcement: since no significant amendments are made, the gaps</td>
</tr>
<tr>
<td></td>
<td>and inconsistencies in the area of enforcement would remain</td>
</tr>
<tr>
<td></td>
<td>• Provide clear rules in case of intermodal travel: since no significant</td>
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<tr>
<td></td>
<td>amendments are made, such a code would not provide rules on intermodality.</td>
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<tr>
<td></td>
<td>Costs/benefits:</td>
</tr>
<tr>
<td></td>
<td>The costs of the simple codification process are expected to be low since</td>
</tr>
<tr>
<td></td>
<td>there would be no requirements on Member States to change their laws or take</td>
</tr>
<tr>
<td></td>
<td>implementation measures. The only costs envisaged are administrative – for the</td>
</tr>
<tr>
<td></td>
<td>European institutions to rewrite and adopt the regulation. In terms of benefits,</td>
</tr>
<tr>
<td></td>
<td>since only the areas of information and transparency will be partially</td>
</tr>
<tr>
<td></td>
<td>addressed by the codification, such an approach to codification is not</td>
</tr>
<tr>
<td></td>
<td>expected to provide many benefits because no significant amendments are made</td>
</tr>
<tr>
<td></td>
<td>to the legislation.</td>
</tr>
</tbody>
</table>

Costs/benefits:

The costs of the simple codification process are expected to be low since there would be no requirements on Member States to change their laws or take implementation measures. The only costs envisaged are administrative – for the European institutions to rewrite and adopt the regulation. In terms of benefits, since only the areas of information and transparency will be partially addressed by the codification, such an approach to codification is not expected to provide many benefits because no significant amendments are made to the legislation.
B. Simple code with prior amendments

As shown above, an important disadvantage of the simple EU codification approach is the fact that no substantial amendments take place in the process of codification. However, to reap the benefits of a Code, it is evident that substantial amendments would be preferred in order to address the gaps and inconsistencies and enhance passenger rights protection. For example, amendments clarifying the requirements of complaint handlings, the role of NEBs in such procedures, deadlines and time limits to process complaints would increase the effectiveness, and coherence of the right to a quick accessible system of complaint-handling across the four modes of transport.

Therefore, we could envisage that substantial amendments to each regulation to be codified would be made prior to the codification process, meaning that each existing regulation would be amended before consolidating into one Act. With this approach, the Code would not only bring further transparency, but also provide more harmonised core passenger rights, with the possibility to retain specific requirements adapted to each particular mode of transport. For example, what is considered as “extraordinary circumstances”, exempting carriers of certain obligations, could be clarified in accordance to the specificities of each mode of transport.

This process would be long and complex – the revision of each regulation would need to follow the full legislative procedure. Each revision would entail a full negotiation and legislative process which would not be a simultaneous process. Therefore, it could take several years before all of the regulations are amended since each regulation will be revised by following a separate process, and there is a risk that, despite the amendments made in the regulations, inconsistencies and gaps will remain. The existing regulations on passenger rights have all been adopted at different points in time – which led to different terminology and approaches, resulting in the inconsistencies and gaps. A simple codification with prior amendments could therefore lead to similar results. To avoid further inconsistencies, the process of amendments of all the regulations would need to be closely coordinated.

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466 Such process would be similar to the suggested “framework Code”. A framework Code provides the possibility of gradually adding new legislation to the Code corresponding to an area (in this case, a transport mode). Initially, only the legislation amended to deal with the gaps (e.g. the proposed Air Regulation) would become part of the Code. The remaining legislation would be merged later, when amended. See Nick Bozeat (GHK), The perspective of having a European Code on Private International Law, European Parliament, April 2013, p. 80.
Table 48: Merits of the stricter approach to codification

**Advantages**
The following criteria would be addressed partly or fully by the Code:

- Provide 10 core passenger rights more harmonised across all four modes of transport: such a code could present passenger rights under 10 harmonised core rights
- Enhance transparency: by regrouping the legislation and reducing some inconsistencies, the code could reduce the complexity of passenger rights
- Facilitate the information: consolidating the legislation in one code would make it easier to find information, thus prior amendments may reduce its complexity
- Support better quality of service: codification with amendments reducing gaps and inconsistencies would enhance the area of quality of service
- Facilitate the information: codification with amendments reducing gaps and inconsistencies would enhance the area of information
- Clarify the issues related to liability: codification with amendments reducing gaps and inconsistencies would enhance the area of liability where it is not regulated by international obligations
- Strengthen enforcement: codification with amendments reducing gaps and inconsistencies would enhance the area of enforcement
- Provide clear rules in case of intermodal travel: intermodal travel would require the adoption of specific rules. Therefore a separate new regulation may need to be adopted prior to codification

**Disadvantages**
The following criteria would not be addressed partly or fully by the Code:

- Enhance transparency: the risk of inconsistencies remain if the amendments process is not coordinated
- All of the six areas may be affected by the risk of inconsistencies due to the uncoordinated process of amending the various regulations

**Costs/benefits:**
The costs of the simple codification process, with prior amendments, could potentially be high since Member States may need to take implementing measures at each amendment process. Carriers may also have to bear the costs of higher protection of passenger rights, such as raising the level of compensation or additional assistance to be offered. However, as noted previously, it could also be the case that the costs on carriers may decrease for some aspects if another approach is taken – e.g. if compensation is provided as a function of the ticket price in all modes. In addition, such amendments would require a long and complex process where amendments to each regulation would need to be negotiated and go through the legislative process. If close coordination of the amendments is not undertaken, there is a high risk of further inconsistencies.

In terms of benefits, the amendments prior to the codification could address the gaps and inconsistencies in the six areas. However, it is likely to some gaps and inconsistencies would remain. At this stage, it is difficult to provide an exact estimate of the benefits.
C. Wider approach to codification or recasting

Since the strict approach to codification leads to limited benefits unless significant amendments are prior to the codification – which can be complex and long, we can envisage a wider understanding of codification. In a wider approach to codification, the codification would entail establishing a single legislative instrument comprising of the harmonised provisions of passenger rights where amendments are made to the content of the rights while establishing the new act. The difference to option B – on simple codification with prior amendment, is that the existing regulations are not amended and changes are only made to the substance in the preparation of the new act, while the existing regulations are repealed. In this sense, a wider approach to codification is akin to recasting. Recasting consists of bringing legislative instrument(s) and all of their amendments into a single new Act. Recasting involves new substantive changes made to the original legal provisions during the preparation of the recast text. The new Act passes through the full legislative process and repeals all of the Acts being recast467.

Since changes are made to the substance, such codification or recasting would enable having all passenger rights legislation in one single instrument while addressing most of the gaps and inconsistencies from the existing legislation. The Code would reach the objective of removing ambiguities and enhancing passenger protection. Under this approach to codification, passenger rights could be more harmonised and transparent. It is noted that some aspects of the rights rely on international conventions, which cannot be amended at the EU level, e.g. compensation levels for death or injury of air passengers are set by the Montreal Convention.

The result could potentially be similar to option B; however the process to achieve the results will be more efficient and effective. The process of a wider codification or recasting would be a complex task if it aims to address all of the gaps and inconsistencies in the existing legislation, and to provide specific rules for the application of passenger rights in case of intermodal travel. The Code would have the task to regroup core passenger rights applying across the four modes of transport while having a mode-specific approach for the implementation of certain rights and rules. It would also entail the negotiation of an entirely new act - repealing the previous ones, which will go through a full legislative process. Negotiating and adopting a new instrument bears the risk of opening ‘Pandora’s box’ where all of the established rights may be renegotiated – which could lead to their enhancement or even to water them down.

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Table 49: Merits of the wider approach to codification or recasting

<table>
<thead>
<tr>
<th><strong>Advantages</strong></th>
<th><strong>Disadvantages</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The following criteria would be addressed partly or fully by the Code:</td>
<td>The following criterion would not be fully addressed by the Code:</td>
</tr>
<tr>
<td>• Provide 10 core passenger rights more harmonised across all four modes of transport, while having some aspects of the rights tailored to the specificities of a transport mode</td>
<td>• Enhance transparency: even with harmonised rights, some level of complexity will remain due to the nature of the rights. In addition, some unjustified inconsistencies may remain as a result of the reliance of some aspects of passenger rights on international conventions.</td>
</tr>
<tr>
<td>• Enhance transparency: the harmonisation and the regrouping of rights in a single legislative instrument will greatly enhance transparency</td>
<td></td>
</tr>
<tr>
<td>• Support better quality of service: the harmonisation of rights is possible under such a Code</td>
<td></td>
</tr>
<tr>
<td>• Facilitate the information: the codification would make it easier for passengers and businesses to make informed choices</td>
<td></td>
</tr>
<tr>
<td>• Clarify the issues related to liability: some inconsistencies and gaps may be reduced where it is not regulated by international obligations</td>
<td></td>
</tr>
<tr>
<td>• Strengthen enforcement: the harmonisation of rights is possible under such a Code</td>
<td></td>
</tr>
<tr>
<td>• Provide clear rules in case of intermodal travel</td>
<td></td>
</tr>
</tbody>
</table>

**Costs/benefits:**
The costs of the wider codification or recasting process could be high. Member States may need to adopt implementing measures, although, compared to the simple codification with prior amendment, in a wider codification approach Member States would need to adapt their national laws or take implementing measures only once. Carriers may also bear the costs of higher protection of passenger rights, i.e. the level of compensation is raised. However, as noted previously, it could also be the case that the costs on carriers decreases for some aspects if another approach is taken – e.g. if compensation would be provided as a function of the ticket price in all modes. In addition, such amendments would require a complex process of negotiating an entirely new regulation, having to address many gaps and inconsistencies as well as clarify rules in case of intermodality. Compared to the simple codification with prior amendment, the wider approach to codification entails going through the legislative process only once.

In terms of benefits, the wider approach to codification could address many of the gaps and inconsistencies in the six areas. However, it is likely that some gaps and inconsistencies would remain. In addition, the Code could make it easier (and less expensive) for passengers and businesses to make informed choices. At this stage, it is thus difficult to provide an exact estimate of the full benefits without knowing the final result of such Code.
Legislative codification form: Regulation, Directive or Decision

Each of the above options can take the form of a regulation, a directive or decisions\(^\text{468}\). The choice of either form has an impact on the nature of the obligations, the implementation of the rights and the political feasibility of having the code adopted.

- **Regulation**
  A regulation contains provisions having general application. It is binding in its entirety and directly applicable in all Member States, as per article 288 TFEU.

Opting for a regulation seems an evident choice since the legislation on passenger rights across the four modes has been regulated through regulations. The regulations do not require transposition and may be applied directly into national legislation ensuring great harmonisation of implementation by all Member States, albeit they may need to be complemented by specific implementing measures. The potential disadvantage in opting for a regulation as a form for codification is that the standards of the harmonised provisions in the regulations tend to receive stronger opposition in the legislative process. There is a risk that the existing standards on passenger rights are re-discussed and watered down.

- **Directive**
  A directive is binding to the result to be achieved. Each Member State has the choice of form and method to achieve the results\(^\text{469}\).

The advantage of opting for a directive is that, generally speaking, political consensus on the adoption of a directive is easier to achieve since Member States have the flexibility to determine how they will achieve the objectives (passenger rights). However, a code in the form of a directive means that there is a risk of having 28 different approaches on how to achieve the full implementation of passenger rights, resulting in inconsistencies and inefficiencies. Since passenger rights legislation has a strong cross-border element, a directive is the least-preferred form to adopt a code of passenger rights.

- **Decision**
  A decision is an act adopted by the European institutions, which is binding in its entirety. It can either be of non-legislative nature where it is adopted unilaterally by an European institution, or of legislative nature where it follows ordinary or special legislative procedure. A decision which specifies those to whom it is addressed is binding only on them.

A decision has the benefit of being more easily adopted and no transposition is required since it is directly applicable. For example, the Council could adopt a decision where the core passenger rights are recognised in a single text. However, a decision would not be an adequate instrument to make substantial changes in the protection afforded to passengers.

\(^{468}\) Article 288 TFEU.
\(^{469}\) Article 288 TFEU.
2. Non-legislative option

Non-legislative options could also be envisaged for the consolidation and harmonisation of passenger rights. Non-legislative instruments provide the benefit of minimising the cost of implementation of the rights – as such instruments are non-binding. For the purpose of this study, the examination of non-legislative instruments will be limited to a Common Frame of Reference and a Charter, which provide the best format for non-legislative codification.

D. Common Frame of Reference (CFR)

The codification of passenger rights could take the form of a Common Frame of Reference. Such an approach has, in fact, been recommended by the European Parliament, according to which a CFR for passenger law would contain “principles, definitions and model rules for passenger legislation for all modes of transport, in order to form a basis for further consolidation of passenger law”[470]. In the words of the EP, the Passenger CFR would follow the model of the European contract law CFR.

The European contract law project aims were to elaborate the CFR to improve the coherence of the contract law acquis. To this end, the CFR is a handbook which contains common definitions of key concepts and legal terms, fundamental principles, and coherent model rules to support the revision of specific instruments (directives and regulations)[471]. Its purpose is not to establish rights but to clarify and bring coherence to existing legislation. It is often referred to as a toolbox for better law-making, upon which the Commission could rely on to improve the quality and coherence of existing and future legislation. The CFR toolbox could also be used by national legislators when transposing EU legislation into national legislation or draw on the CFR when enacting legislation on areas of law addressed by the CFR472.

In principle, the CFR could be a binding (if adopted by the Council and the EP), or non-binding instrument. In the context of the European contract law CFR, the Commission and the Council opted for a non-binding instrument473. If the EU would have opted for a binding CFR, it would only bind the EU institution in the exercise of its law-making

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tasks unless it adopts the CFR as a directive or regulation. It is, though, unlikely that a CFR would be adopted as a binding instrument.

Since the aim of the CFR is to support law-making, it would clarify concepts and clarify inconsistencies. However, such instruments would not provide directly enforceable rights for passengers since it aims only to clarify concepts rather than grant rights and the CFR is a non-binding instrument. In this sense, the CFR has a more limited scope than a Code or even a Charter – although it has the benefit to allow for a more flexible venue in which to clarify terms, inconsistencies and implementation issues. Such an instrument could clarify the core concepts of the 10 passenger rights and therefore enhance their transparency.

Table 50: Merits of the CFR

<table>
<thead>
<tr>
<th>Advantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>The following criteria would be addressed partly or fully by the CFR:</td>
</tr>
<tr>
<td>• Enhance transparency: clarifying legal terms, principles and concepts will bring greater transparency</td>
</tr>
<tr>
<td>• Facilitate the information: the CFR would make it easier for passengers and businesses to make informed choices.</td>
</tr>
<tr>
<td>• All of the six areas could benefit from the CFR in terms of improved clarity and consistency</td>
</tr>
<tr>
<td>• Provide clear rules in case of intermodal travel: the CFR could clarify the rules applicable to passengers in intermodal travel</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>The CFR is non-binding and only supports law-makers, therefore its role is limited, i.e. it cannot be used for court claims. In addition, the following criteria would not be addressed partly or fully by the CFR:</td>
</tr>
<tr>
<td>• Provide 10 core harmonised passenger rights across all four modes of transport: while the CFR could clarify the 10 core rights, it is unlikely to fully harmonise them. In addition, the rights would not be enforceable</td>
</tr>
<tr>
<td>• Support better quality of service: The CFR could reduce inconsistencies and gaps, but it will not be binding or enforceable</td>
</tr>
<tr>
<td>• Enhance transparency: It does not solve the fragmentation of passenger rights in the various regulations as the CFR would not replace the regulations but support the legislator in amending the regulations and ensuring coherence in terminology and principles across the amendments</td>
</tr>
<tr>
<td>• Facilitate the information: some aspects of information would require binding and enforceable rules to be clarified</td>
</tr>
<tr>
<td>• Clarify the issues related to liability: The CFR could reduce inconsistencies and gaps, but it will not be binding or enforceable</td>
</tr>
<tr>
<td>• Strengthen enforcement: The CFR could reduce inconsistencies and gaps, but it will not be binding or enforceable</td>
</tr>
</tbody>
</table>

Costs/benefits:
The costs of the wider codification process are expected to be low if the CFR is non-binding since it will not require implementation by Member States. A CFR may require a long and complex process of negotiating. For example, the drafting of the CFR on European contract law was initiated in 2004, but no CFR has been adopted yet.

In terms of benefits, the CFR could address many of the inconsistencies in the six areas. As a non-binding instrument, it will not provide enforceable rights. It could serve as an interpretative guideline for courts. In addition, the CFR could make it easier and less expensive for passengers and businesses to make informed choices. A CFR value-added would mostly arise from ensuring a consistent approach to any future amendments to the regulations. It is thus difficult to estimate the full benefits of a CFR.

E. Charter

The EP is of the opinion that the 10 core passenger rights across all transport modes form a solid basis for establishing a legally enforceable Charter of Passenger Rights.475

Most Charters are soft law, and are thus not legally-binding as in, e.g. the Community Charter of the Fundamental Social Rights of Workers.476 Initially, the European Charter on Fundamental Rights was signed in 2000 as a non-binding declaration.477 Later on, it was transformed into a binding instrument with entry into force with the Lisbon Treaty in 2009.478 The potential of the Charter of Passenger Rights to become legally binding is rather low as it does not carry the weight of a charter on fundamental rights.

The Charter could provide a good platform to include the 10 core passenger rights in a single instrument. The added-value of a Charter would be to increase transparency and to provide high visibility of passenger rights. It would facilitate the flow of information to passengers about their rights – who could more easily refer to a Charter rather than the current fragmented and complex sets of legislation. The Charter could also bring some level of harmonisation of these rights across all of the transport modes.

Charters usually provide a set of general fundamental rights and obligations. On the other hand, passenger rights as currently laid down in the existing regulations provide very detailed rights and obligations, which could be seen as an ‘ill-fit’ in a Charter. The detailed requirements would be left to the existing regulations or annexes. A Charter would therefore not provide a format for full consolidation of all of the regulations related to passenger rights. In addition, the Charter would need to coexist with binding regulations, without the possibility of amending them to ensure harmonisation and consistency.

478 Ibid.
A Charter would nevertheless require a complex and possibly long negotiating process. One could question the added value of a Charter if the benefits could be reached by the publication of informative leaflets or websites. To some extent, this has already been done by the European Commission. Current websites on passenger rights facilitate transparency and inform citizens on the content of passenger rights. However, they usually lack country-specific information on whether or not passenger rights apply to the transport services in their country. Indeed, the current EU passenger rights do not apply to all rail, bus, waterborne and air passenger transport services within the EU (e.g. in road transport, the EU legislation only applies to bus and coach travel of at least 250 km length), and Member States have exempted parts of the national transport services (e.g. more than 40% of Member States have exempted their domestic train services from the right to assistance). It is not clear whether a Charter could – or would be, the best option to clarify the scope of application of the rights, and the ability of Member States to exempt from them.

Table 51: Merits of a Charter

<table>
<thead>
<tr>
<th>Advantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>The following criteria would be addressed partly or fully by the Charter:</td>
</tr>
<tr>
<td>– Provide 10 core passenger rights across all four modes of transport: the Charter could clarify the 10 core rights existing across the four modes</td>
</tr>
<tr>
<td>– Enhance transparency: The Charter would clarify some terms and bring greater transparency and visibility to the rights</td>
</tr>
<tr>
<td>– Facilitate the information: codification would make it easier for passengers and businesses to make informed choices</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Charter is non-binding, therefore its role is limited (i.e. it cannot be enforced). In addition, the following criteria would not be addressed partly or fully by the Charter:</td>
</tr>
<tr>
<td>– Enhance transparency: the Charter would not solve the fragmentation of passenger rights across the different transport modes since it would exist alongside the regulations</td>
</tr>
<tr>
<td>– Support better quality of service: The Charter would not solve the substantial inconsistencies and gaps as it is non-binding</td>
</tr>
<tr>
<td>– Clarify the issues related to liability: The Charter would not solve the substantial inconsistencies and gaps as it is non-binding</td>
</tr>
<tr>
<td>– Strengthen enforcement: The Charter would not solve the substantial inconsistencies and gaps as it is non-binding</td>
</tr>
<tr>
<td>Provide clear rules in case of intermodal travel: the Charter could clarify the rules applicable to passengers in intermodal travels, however due to its non-binding nature it would not be enforceable</td>
</tr>
</tbody>
</table>

479 European Commission, Your passenger rights at hand.
Costs/benefits:
The costs of the wider codification process are expected to be low since the Charter is non-binding and will not require implementation by Member States. The negotiation of a Charter may be a long and complex process.

In terms of benefits, the Charter could address some of the inconsistencies in the six areas. As non-binding instruments, it will not provide enforceable rights. It could serve as interpretative guideline to the courts and it could be adopted under a treaty – albeit it is unlikely. In addition, the Charter could make it easier and less expensive for passengers and businesses to make informed choices. Due to its non-binding nature, it is difficult to estimate the full benefits of a Charter.

Non-legislative codification forms: Resolution, Communication, Guidelines, delegated act or implementing act

− Resolution
A resolution is a non-binding instrument indicating a political desire to act in a given area. For example, the European Parliament could endorse a draft Charter or CFR in a resolution, or encourage the Commission in a resolution to propose such a Charter or a CFR. A Charter or CFR would not take the form of a resolution.

− Communication
Communications are soft-law (non-binding) instruments primarily used by the Commission with a view to preparing further development of EU legislation and policy by stimulating inter-institutional dialogue. Communications complements adopted legislation by indicating how the EU institution will apply legal provisions. Communications also inform of EU actions and of the EU institution’s position on an issue.

The Commission has already made use of communication to provide its vision of the future of passenger rights, in which it laid down the 10 core passenger rights. It could envisage that another communication further details those core passenger rights in a manner similar to a Charter. A communication could also lay down a CFR to support future revision of passenger rights legislation.

− Guidelines
Guidelines are soft law instruments aimed at providing interpretation of legal provisions or how to implement them. Guidelines could therefore provide an overview of what the core existing passenger rights are as well as adding guidance as to how to interpret unclear terminology, competences of enforcement bodies or the scope of protection of the

rights. In fact, the Commission has already adopted guidelines on the application of Regulation (EC) No 1107/2006 on the rights of PRMs when travelling by air 481.

- **Ad-hoc non-legislative instruments**
  The Charter and the CFR could also take the form of an ad-hoc non-legislative instrument, which can then be endorsed or adopted by a non-legislative (e.g. resolution), or legislative (e.g. decision) instrument.

- **Delegated act**
  A delegated act is a non-legislative act that is binding in nature. Under Article 290 TFEU, the Commission can adopt a delegated act to supplement or amend non-essential elements of an act (such as a passenger right legislation). The Commission must however be delegated the power by the Council and/or the European Parliament. In addition, the objective, content scope and duration of the delegation must be defined. It means that the passenger rights legislation must include a provision delegating such power to the Commission.
  The Council and the European Parliament have the right to object to a delegated act presented by the Commission within a certain period of time.

We could envisage that the regulations laying down passenger rights in the four modes of transports are amended to include a provision delegating the power to the Commission to adopt a Charter that would put together the existing passenger rights. The Commission would not, however, be able to bring amendments to the essential elements of passenger rights, but it would be able to present the rights in a clearer and more accessible manner.

- **Implementing act**
  Similar to delegated acts, an implementing act is a non-legislative act that is legally binding. The implementing act aims to adopt measure needed to implement legislative acts such as the regulations on passenger rights.

The procedure for implementing an Act differs to the one of delegated acts. In an advisory procedure, the Commission must first present the implementing act to a Committee composed of representatives of the Member States for opinions – which the Commission is not legally bound to follow. In the examination procedure, the Committee must vote to approve the implementing act 482. In the case of passenger rights legislation, the advisory procedure would apply. In both cases, the Council and the EP have a right to scrutinise the draft implementing act if they believe the act exceeds the implementing powers.

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As for delegated acts, the Commission could present a Charter that would put together the existing passenger rights. It can be argued that such a Charter is essential for the effective implementation of passenger rights to bring further transparency, clarity and facilitate the information of passenger of their rights. The Commission would not be able to make amendments to the existing passenger rights, but it would be able to clarify any issues related to their implementation.

5.3 - Options for the codification of passenger rights

Due to the cross-border nature of transport, the EU is in a position to provide added-value in regulating the transport sector and passenger rights. In order to assess which form of codification offers the best added-value, we should look at whether or not the option of codification addresses the two main problems of the existing passenger rights framework: the lack of transparency and the inequality of passenger rights across the transport modes. In addition, the costs and benefits for passengers, carriers and the EU economy should be taken into account.

It is important to recognise that part of the issues highlighted in section 3.4 refers to a lack of full implementation or compliance with the existing regulations, e.g. in air transport, the exception based on safety reasons not strictly applied result in PRMs being refused access to transport, a lack of compliance with the requirements on price transparency has also been identified. Enforcement of the rights is also considered as weak due to the lack of clarity of the role of the NEBs, and because sanctions level are currently rather low. The lack of full compliance may be more problematic than the lack of consistency across the transport modes. In this sense, any revision or codification of passenger rights would need to focus on strengthening enforcement and securing compliance.

If transparency is the main goal of the European legislator, a Charter or simple codification without amendment (options A and E) seems to offer the best value-added option. Both codification options would allow the expression of passenger rights as they already exist in a form that may be more transparent and visible. Both options entail low costs since they do not require implementation at the Member State level.

Neither option allows to really address the issues of the existing legal framework, nor do they remove the inequalities existing between passengers across the modes. Under those options, the rights of passengers in intermodal travel would still need to be defined. In addition, Options A and E only partly improve the areas of transparency (i.e. by consolidating the 10 core rights together) and information (i.e. by facilitating the provision of information where all the rights can be found in one document). Neither option is expected to improve price transparency where the costs were estimated to €130 million annually or would it improve the lack of clarity in terms of legal terminology (i.e. terms such as what is considered “adequate information”) and legal inconsistencies. Therefore the impact on the costs would be very limited.
If addressing inequality between passengers is a priority for the European legislator, substantial amendments would need to be made in the existing passenger rights legislation. This could be done either by amending the current regulations (simple codification with prior amendments, option B) or adopting a new regulation replacing all of the existing ones (wider approach to codification or recasting, option C).

A European Passenger Rights Code under option B or C would bring about legislative clarity, legal certainty and reduce paperwork. Users would consult only one text. At the same time, codification would produce a text that is more transparent. Certain definitions of legal terms and statements relating to the scope of the various legal rules, which are currently repeated in every new legal instrument, would need to be only made once. This avoids both repetition and differences in wording - which may lead to disputes regarding interpretation. At the same time, differentiation, where it is desired by the European legislator (because of specificities in the transport modes), could be made clearer. The scope of application and possible exemptions could also be made much clearer with the creation of a code. Lastly, coherence of interpretation by NEBs across the EU could be facilitated and misunderstandings reduced. Overall, depending on the extent of the amendments made in the substance of the legislation, options B and C have the potential to improve the issues identified in all six areas and therefore to reduce their related costs, which was estimated to reach €355 million annually (see section 4.4).

Both options B and C would require a long and complex legislative effort, in particular for option B. A European Passenger Rights Code which combines all of the existing EU regulations and proposals, would involve very complex, and therefore time consuming, legislation. Member States may need to adopt additional implementing measures as a result of the amendments made to the different regulations or of the new recast instrument. Compared to simple codification with prior amendment (option B), the wider approach to codification or recasting (option C) would entail going through the legislative process only once, whereas in option B each regulation’s revision will require a separate legislative process.

Lastly, either option (B or C) may result in a European Passenger Rights Code that is complex and/or lengthy. Therefore it would not fully eliminate transparency issues and could make it more difficult to amend and further improve its effectiveness.

We could however envisage that option codification or C be supported by a CFR. As a first step, the EU could be to establish a CFR to facilitate the revision process and pave the way to a consistent and harmonised revision of passenger rights. A CFR could mitigate certain risks of inconsistencies related to an uncoordinated revision of the different regulations (in the case of simple codification with amendments). It would support the codification process and help reduce the complexity and time-consuming legislative work by clarifying terms, concepts and scope in advance of the codification.

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485 Ibid, p. 84.
work, while laying down fundamental principles and coherent model rules. Although a CFR would be a valuable support to the revision of passenger rights, establishing a CFR may, in itself, be a long and complex task further prolonging the consolidation of passenger rights.

It is noted that full harmonisation is unlikely to happen because some unjustified inconsistencies will remain as a result of the reliance of some aspects of passenger rights on international conventions. In addition, some differences in passenger rights may be best left due to the specificities of the transport modes.
6. Conclusions

In order to address the question of whether a Code of Passenger Rights would have an EU added value for passengers, businesses and other stakeholders, we analysed both the state of the current legal framework on passenger rights and the costs of this state of play. The result of the mapping of the state of play and analysis of the passenger rights guaranteed under the current EU legislation showed a total of 82 gaps and inconsistencies across the four modes of transport, as well as two issues in intermodal transport. Some of these gaps and inconsistencies related to gaps within one or all modes of transport or inconsistencies in comparison with the other modes of transports. Each of the 10 core passenger right is affected by those gaps and inconsistencies. The right to information being the one with the most gaps and inconsistencies identified. Of the 82 gaps and inconsistencies, 44 were assessed as minor, often due to the lack of data on the importance of their impacts in practice. 38 gaps and inconsistencies were considered major, either because the legal gap causes problems in practice, the legal provision is there but it is not applied in practice, or the inconsistencies render the protection offered to passengers less effective either in general or against the best protection guaranteed in other transport modes.

Our analysis reveals that a problematic aspect is the practical implementation of the rights. Some carriers do not always apply passenger rights or interpret too extensively exception, effectively depriving some passengers of their rights. The right to a quick and accessible system of complaint-handling and right to full application and effective enforcement both are established to support the full implementation of passengers’ rights. As it stands, both rights deserve further attention from the EU legislator.

Based on our research and stakeholder consultations, no objective justification, such as - the specificity of a transport mode, could be identified for the gaps and inconsistencies listed in section 3.4. Where differences between transport modes are not justified, the gap or inconsistency across the four modes of transport creates discrepancies in protection and, in fact, contributes to an inequity of protection between passengers travelling in different transport modes. In addition, due to the fact that some Member States exempted some of their transport services from certain rights (e.g. 40% of Member States exempted domestic train services), there is also an inequality of protection across Member States.

Passenger rights protection in intermodal travel varies proportionally to the level of integration of the services provided. In some cases, different sets of passenger rights apply to different legs of the journey, in other cases, one set of existing rules apply to all legs. Since many differences exist in the current EU legislation across the transport modes, within an intermodal journey, passengers’ protection will differ from one leg to another.

To achieve seamless intermodal travel, the EU legislator should consider developing specific rules for the application of passenger rights in case of intermodal travel, taking into account the different types of intermodal travel possible. A first step in improving
passenger rights in intermodal travel would be to resolve the unjustified gaps and inconsistencies of existing passenger rights across the modes of transport.

Building on the legal analysis, this report has examined the most significant costs and burdens related to the identified gaps and inconsistencies in the passengers’ regulations. Due to problems with data availability and methodological constraints, the quantitative assessment of costs related to the gaps and inconsistencies has been carried out for a set of the selected burdens. The scope of quantitative assessment covers, all areas of passenger rights either directly, like in the case of the areas of transparency and assistance, or indirectly (i.e. some of the costs in the areas of information and liability have been assessed jointly with the costs attributed to the area of enforcement). Therefore, the quantitative results should be understood as indicative of the costs gaps and inconsistencies can entail rather than a total amount of all the existing costs.

Altogether, the total estimated amount of CoNE for all the areas of passengers’ rights equals about €355 million annually, which should be treated as a lower limit estimate due to conservative approach we took when quantifying the costs. In addition, this number is not representative of all the burdens since many of them could not be assessed in monetary terms.

The highest costs have been estimated in the areas of intermodality and transparency – gaps and inconsistencies in each of these areas have been assessed to be worth more than a hundred million euro burden for the EU society annually. Gaps and inconsistencies in the area of enforcement have been assessed at the level of approximately 70 million euro annually, while deficiencies in the quality of service, related specifically to assistance, have been estimated to equal approximately 18 million euro annually.

The CoNE estimate in the area of passengers’ rights can be compared on the one hand with the CoNE calculated for establishing the Single European Transport Area of 2.5 billion euro per year486 and on the other hand with similar CoNE estimates relating to codification of law in other areas. An example of the latter is provided in the report on EU codification of Private International Law, where potential efficiency gain has been estimated at the level of 98 million euro per year487. Indeed, codification of passengers’ rights cannot be expected to provide benefits of the same order of magnitude as benefits expected to arise from integration of the whole EU transport system; on the other hand, these benefits are comparable (albeit notably higher) than the benefits calculated for alignment of laws related to citizens living in different Member States than the countries where they have been born.

486 Mapping the Cost of Non-Europe, 2014-19, EPRS, March 2014, p.36
487 Ibid, p. 44. Another study related to this topic estimated the cost to the citizens of problems with the acceptance of public documents at approximately 360 million euro per year (GHK, Cost of Non-Europe Report: Promoting the free movement of citizens by simplifying the acceptance of certain public documents in the EU, 2013).
In analysing the quantified costs, one should bear in mind the non-quantified impacts of gaps and inconsistencies in passenger rights on EU economy and society as a whole, which we have assessed qualitatively. Indeed, the qualitative assessment in the area of passengers’ rights shows a multitude of aspects which escape monetisation. In this part of the analysis, the most prominent burdens include stress, confusion and financial loss for the passengers suffering from lack of adequate information and assistance and wider social impacts related to, for example, missing clauses on non-discrimination and lack of clearly defined liability rules and sanctions for the carriers who do not implement the passengers’ rights properly. Within the qualitative assessment, the issue of accommodation of the needs of PRMs is of special importance.

Wider economic impacts, although not estimated in quantitative terms, underpin the need for codification of passengers’ rights further. Higher standards and better alignment of the passenger transport regulations across the Member States would contribute to higher satisfaction of the passengers, which would ultimately result in higher demand for services not only in the transport sector but also in related sectors of the economy such as tourism. Therefore, codification of passengers’ rights has a potential to benefit all the stakeholders involved, including the passengers, the carriers and the economy as a whole.

In terms of options for codification, the option of codification which could offer the best added-value is the one that can best address the two main problems of the existing passenger rights framework: the lack of transparency and the inequality of passenger rights across the transport modes, while taking into account the costs and benefits for passengers, carriers and the EU economy.

A Charter and a simple codification without prior amendments (options A and E) are options with low costs implication and have the potential to increase the transparency of passenger rights. However, neither option would solve the gaps and inconsistencies in passenger rights and, therefore, would not remove the inequities existing between passengers across the modes. In terms of CoNE, options A and E only partly improve the areas of transparency (i.e. by consolidating the 10 core rights) and information (i.e. by facilitating the provision of information where all the rights can be found in one document), without affecting the main costs in those two areas nor in the other four areas. Therefore, the impact of the EU action would be very limited and the impact passenger rights as well.

A simple codification with prior amendments (option B) and a wider approach to codification or recasting (option C) would on the other hand address inequity between passengers’ rights through substantial amendments to the existing passenger rights legislation. Depending on the extent of the amendments made, options B and C have the potential to improve substantially passenger rights in all six areas and therefore to reduce their related costs, which was estimated to reach €355 million annually.

Both options would however require a long and complex legislative effort and entail higher costs. In order to mediate the risks of further complexity and inconsistencies of the two later options – simple codification with amendments and wider approach to
codification or recasting, a first step could be to establish a CFR to facilitate a consistent and harmonised revision of passenger rights. In any of the cases, any option which aims to achieve meaningful consistency and, where appropriate, harmonisation of passenger rights would require a strong commitment from the EU institutions due to the complexity and potential length of the task.
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## Annex I – EU transport regulations in relation to passenger rights

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<thead>
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<th>PROTECTED RIGHT</th>
</tr>
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• Right to renounce travelling  
• Right to the fulfilment of the transport contract  
• Right to assistance  
• Right to compensation under certain circumstances  
• Right to full application and effective enforcement of EU law |
• Right to information |
| **RAIL TRANSPORT**                                                         |                                                                                 |
• Right to information  
• Right to renounce travelling  
• Right to fulfilment of the transport contract  
• Right to assistance  
• Right to compensation  
• Right to carrier liability  
• Right to complaint  
• Right to full application and effective enforcement of EU law |
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- Right to mobility  
- Right to information  
- Right to renounce travelling  
- Right to fulfilment of the transport contract  
- Right to assistance  
- Right to compensation  
- Right to complaint  
- Right to full application and effective enforcement of EU law |
- Right to carrier liability |
| **ROAD TRANSPORT**                                                        |                                                                                 |
- Right to mobility  
- Right to information  
- Right to renounce travelling  
- Right to the fulfilment of the transport contract  
- Right to assistance  
- Right to compensation  
- Right to complaint  
- Right to full application and effective enforcement of EU law |
### Annex II - Complaints in air travel sector by country

**Complaint handling by NEBs between 2007 and 2011 – overview**

<table>
<thead>
<tr>
<th>Year</th>
<th>Complaints received in total</th>
<th>Delay</th>
<th>Cancellation</th>
<th>Denied Boarding</th>
<th>Other</th>
<th>Number of cases closed</th>
<th>Number of cases engaged for sanctioning</th>
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<td>41 740</td>
<td>8 543</td>
<td>10 260</td>
<td>2 357</td>
<td>4 828</td>
<td>7 726</td>
<td>185</td>
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<tr>
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<td>39 277</td>
<td>9 414</td>
<td>10 369</td>
<td>2 670</td>
<td>9 295</td>
<td>9 448</td>
<td>308</td>
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<tr>
<td>2009</td>
<td>33 060</td>
<td>8 875</td>
<td>14 409</td>
<td>3 609</td>
<td>5 312</td>
<td>8 484</td>
<td>1 075</td>
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<tr>
<td>2010</td>
<td>80 832</td>
<td>15 426</td>
<td>47 731</td>
<td>2 902</td>
<td>10 433</td>
<td>na</td>
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*Source: EC (2013) Annex 5*

**Complaints received by NEBs in 2012**

<table>
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<th>State</th>
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<th>Long Delays</th>
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### Complaints received by NEBs in 2013

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<td>4,557</td>
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<td>2,475</td>
<td>2,025</td>
<td>291</td>
<td>2</td>
<td>0</td>
<td>4,793</td>
<td>Excludes 542 forwarded to other NEBs</td>
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<td>6</td>
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<td>Excludes 542 forwarded to other NEBs</td>
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<tr>
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<td>165</td>
<td>Some figures approximate. 4,400 forwarded to other NEBs</td>
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<td>32,206</td>
<td>Excludes 43 forwarded to other NEBs. Breakdown only covers complaints to KV.</td>
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## Cost of Non-Europe Report

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<th>State</th>
<th>Cancellations</th>
<th>Delays</th>
<th>Denied boarding</th>
<th>Down-grading</th>
<th>Other</th>
<th>Total</th>
<th>Notes</th>
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<td>208</td>
<td>11</td>
<td>211</td>
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<td>271</td>
<td>20</td>
<td>3,204</td>
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<td>0</td>
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<td>0</td>
<td>0</td>
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</tr>
<tr>
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<td></td>
<td></td>
<td></td>
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<td>2011 data</td>
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<tr>
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<td>11</td>
<td>0</td>
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<td>5</td>
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<td>0</td>
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</tr>
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<td>5</td>
<td>0</td>
<td>1</td>
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<td>1,518</td>
<td>568</td>
<td>0</td>
<td>2,878</td>
<td>6,934</td>
<td>Other includes complaints not relating to 261/2004</td>
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<tr>
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<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Slovak Republic</td>
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<td>0</td>
<td>4</td>
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<td>1</td>
<td>0</td>
<td>15</td>
<td>52</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>47,731</strong></td>
<td><strong>15,426</strong></td>
<td><strong>2,902</strong></td>
<td><strong>38</strong></td>
<td><strong>10,395</strong></td>
<td><strong>80,832</strong></td>
<td></td>
</tr>
<tr>
<td><strong>% increase</strong></td>
<td><strong>293%</strong></td>
<td><strong>124%</strong></td>
<td><strong>40%</strong></td>
<td><strong>36%</strong></td>
<td><strong>36%</strong></td>
<td><strong>191%</strong></td>
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</tbody>
</table>

### Annex III – Calculating The value of time in transport

#### Table 3

<table>
<thead>
<tr>
<th>country</th>
<th>hourly wage</th>
<th>1/2 of hourly wage</th>
<th>Population number</th>
<th>average value of an hour multiplied by population number</th>
</tr>
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<tbody>
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<td>Belgium</td>
<td>18.44</td>
<td>9.22</td>
<td>11161642</td>
<td>102892075</td>
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<tr>
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<td>28411851</td>
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<tr>
<td>Finland</td>
<td>19.85</td>
<td>9.93</td>
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<td>53862124</td>
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<td>France</td>
<td>16.94</td>
<td>8.47</td>
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<td>Germany</td>
<td>18.14</td>
<td>9.07</td>
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</tr>
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<td>Ireland</td>
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<td>11.21</td>
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<td>51466521</td>
</tr>
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<td>59685227</td>
<td>550200130</td>
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<tr>
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<td>1.94</td>
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<td>9.22</td>
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<td>154680225</td>
</tr>
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<td>5.55</td>
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<td>106884071</td>
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<td>5.85</td>
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<tr>
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<td>9.07</td>
<td>8451860</td>
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<td>Cyprus</td>
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<tr>
<td>Portugal</td>
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<tr>
<td>Romania</td>
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</tr>
<tr>
<td>Slovak Republic</td>
<td>5.19</td>
<td>2.60</td>
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<td>14048794</td>
</tr>
<tr>
<td>Slovenia</td>
<td>9.46</td>
<td>4.73</td>
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<td>9734359</td>
</tr>
<tr>
<td>Population number weighted average</td>
<td>7.38</td>
<td></td>
<td></td>
<td></td>
</tr>
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</table>
In transport economics, the value of time is defined as the opportunity cost of the time that a passenger spends on his/her journey. In essence, this makes it the amount that a passenger would be willing to pay in order to save time, or the amount they would accept as compensation for lost time.\(^4\)

Values of time are used to calculate the non-monetary costs incurred as part of a journey, so that the generalised cost of the journey (a combination of both monetary and non-monetary costs) can be calculated.

The value of time varies considerably from person to person and depends upon the purpose of the journey, but can generally be divided into two sets of valuations: working time and non-working time. This division is appropriate because the value of working time (i.e. time spent travelling for work/business purposes) is calculated differently from the value of non-working time (i.e. time spent travelling outside work).

The UK Department for Transport calculates average values of time for travel on various modes of transport so that these values can be used to appraise transport projects. The methodology used to estimate such values is briefly explained below and the average values updated to 2010 data are presented in the table below.

The value of working travel time

Businesses benefit from reduced travel times in a number of ways, including improved access to suppliers or customers, which increase productivity by lowering the cost or raising the quality of inputs and widening the market which a business can serve. Therefore, it follows that businesses should be willing to pay for quicker journeys and it is this willingness-to-pay which forms the basis of value of working travel time savings (i.e. there are many situations where business travellers choose to pay more for a quicker journey when a cheaper but slower alternative is available).

There are a range of approaches available and, while the techniques, assumptions and resulting values vary, all of the methods aim to estimate values that effectively proxy for willingness-to-pay. Revealed preference evidence is the most direct way to estimate willingness-to-pay, and is based on actual business traveller behaviour. However, it is difficult to collect revealed preference data of sufficient quality and quantity to estimate robust values and provide the detail needed to fully populate a framework of values.

The UK Government Department for Transport commissioned a review of the different methods, including a review of UK and international evidence on the values they produce. Alongside revealed preference evidence, this review considered stated preference evidence, collected from survey responses to realistic, hypothetical choices.

The Value of Non-Working Time

The majority of journeys do not take place during working hours, but in the traveller’s own time. Table 4 below also gives the values of time for commuting (travelling to and from the normal place of work).
work) and other (all other non-work trips, e.g. for leisure) journey purposes. People implicitly put value on their own time in that they will trade a cheaper, slower journey against a faster, more expensive one. The values of time in the table are based on research conducted by the Institute for Transport Studies (ITS) for the Department for Transport, reported in 2003. The values have been re-based with 2008-2010 National Travel Survey data and converted to 2010 values and prices by uplifting to reflect growth in the values with income and changes in prices.

Individual willingness to pay for travel time savings can vary considerably, depending of factors like income, journey purpose and urgency, and the comfort and attractiveness of the journey itself.

The non-working time is time spent outside work, which might include journeys to and from work and leisure journeys. Since this time is not valued in a market, it can only be estimated from revealed preference or stated preference analysis techniques, where the real or hypothetical choices of travellers between faster, more expensive modes and slower, cheaper modes can be examined.

For example, if a traveller has a choice between a coach which takes six hours and costs EUR 10, or a train which takes four hours and costs EUR 30, we can deduce that if the traveller chooses the train, their value of time is EUR 10 per hour or more (because they are willing to spend at least EUR 20 to save two hours' travel time).

Table 4 Values of time in public transport

| Values of Working (Employers' Business) Time by Mode (£ per hour, 2014 prices, 2010 values) |
|---------------------------------|-----------------|-----------------|-----------------|
| Mode                           | Resource Cost   | Perceived Cost  | Market Price    |
| Public service vehicle (PSV) passenger | 15.62 19.00 | 15.62 19.00 | 16.63 |
| Rail passenger                 | 26.86           | 26.86           | 31.96 |
| Underground passenger          | 22.08           | 22.08           | 26.28 |
| Average of all working persons | 22.75           | 22.75           | 27.07 |

| Values of Non-Working Time by Trip Purpose (£ per hour, 2010 prices, 2010 values) |
|---------------------------------|-----------------|-----------------|-----------------|
| Trip Purpose                    | Resource Cost   | Perceived Cost  | Market Price    |
| Commuting                       | 5.72            | 6.81            | 6.81 |
| Other                           | 5.08            | 6.04            | 6.04 |

493 Non-work time savings typically make up a large proportion of the benefits of transport changes. If values of time for appraisal of the impact of such changes are based on individual’s willingness to pay (behavioural values) which are related to income, hen investment decisions will be biased towards those measures which benefit travellers with higher incomes. For this reason the variability due to different income is controlled by the use of average values.
494 Businesses perceive travel costs in the fact cost unit of account. Therefore the perceived cost and the resource cost are the same for values of working time and these should be converted to the market price unit of account. Individual consumers perceive costs in the market price unit of account and therefore the perceived costs and the market price are the same for ‘commuting’ and ‘other’ purposes.
Annex IV – EU’s Standard Cost Model

Standard Cost Model (SCM)

Administrative burdens are calculated on the basis of the average cost of the required administrative activity (Price) multiplied by the total number of activities performed per year (Quantity).

The cost is generally estimated by multiplying a tariff (based on average labour cost per hour including overheads) and the time required per action. Other types of costs (outsourcing, equipment or supplies’ costs, etc.) are taken into account as appropriate.

The quantity is calculated as the frequency of required actions multiplied by the number of entities concerned.

The core equation of the SCM is \( \sum P \times Q \), where \( P \) (for Price) = Tariff \( \times \) Time and \( Q \) (for Quantity) = Number of businesses \( \times \) Frequency

Application

The SCM can be applied in different but equally valid ways. These differences often explain variation between EU baseline measurement and national baseline measurements. Factors that can lead to variation and that need to be taken into consideration when interpreting data include:

- **differences in scope.** EU baseline measurement focuses on the most burdensome information obligations. Some national baseline measurements:
  - measure all information obligations
  - cover only burdens imposed in the country by EU "directives" (and not "regulations")
  - cover not only businesses but also charities
  - do not consider consumer-information labelling obligations to be an information obligation.

- **use of different tariffs.** Hourly wages used in EU baseline measurement are taken from the harmonised ISCO tariff covering all 27 member states. National measurements use different tariffs.

- **differences in assumptions underlying the process.** The SCM is a method for estimating burdens. Different assumptions underlying these estimates can give rise to different results. One example is deciding what should be considered as "business-as-usual costs".

The purpose of the SCM methodology is to produce estimates that allow an order of magnitude of the burdens in different regulatory areas to be identified. Considering the level of detail and the number of parameters, it is not cost-efficient to seek statistically valid results rather than more general estimates.
Cost of Non-Europe Reports identify the possibilities for economic or other gains and/or the realisation of a ‘public good’ through common action at EU level in specific policy areas and sectors. This report analyses the costs for citizens and business of the absence of a consolidated framework for Passenger Rights as well as the feasibility and the merits of such a consolidation in a single legislative instrument.

Regulatory and practical gaps and inconsistencies in EU passenger legislation result in passengers not being equally protected across the various transport modes. The lack of a consolidated and consistent framework weakens the effective enforcement of Passenger Rights, affects the quality of service and creates barriers for seamless travel. The costs of these shortcomings for transport users and the whole society amount to at least 355 million euro annually.

Although requiring a complex legislative effort, the establishment of a single EU framework for passenger rights in the form of an EU Codex would present the highest added value in tackling the current problems. A Common Frame of Reference could be a first step to such consistent and harmonised revision of Passenger Rights.