



Proposal for the revision of Regulation No. 1371/2007 on rail passengers' rights and obligations

Position Paper from the European Consumer Centres France and Germany

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Introduction

The European Union (EU) protects all passengers across all transport modes. After the implementation of Regulation no. 261/2004 concerning the aviation sector, the entry into force of Regulation no. 1371/2007¹ in 2009 provided rail transportation with a set of common rules protecting the rights of passengers travelling by train through the EU.

The European Consumer Centres (ECC) France and Germany, as observers of the application of European legislation in the consumption sector, have witnessed the positive effects of the Regulation on the rights of rail passengers within a transnational context. However, ECC France and Germany have also witnessed the development of certain consumer issues within this same sector.

In the run-up to the revision of Regulation no. 1371/2007 by the European institutions, ECC France and Germany, with their strong background in handling transport-related disputes, assess the application of this Regulation, comment on the revised draft proposed by the European Commission on the 27th July 2017², and put forward some of their own recommendations.

¹ Regulation 1371/2007 of the European Union and of the Council of 23 October 2007 on rail passengers' rights and obligations

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0014:0041:en:PDF>

² Recast of Regulation 1371/20074 on rail passengers' rights and obligations

https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-548_en

I. Compensation and reimbursement in the event of cancellation or delay

1. Reminder of the current law

In *articles 16 and 17*, the Regulation anticipates that, in the event of an arrival delay of more than 60 minutes at the passenger's final destination, the passenger should be given the choice between:

- Continuation or re-routing at the earliest opportunity and under comparable transport conditions
- Full reimbursement of the cost of the ticket for those parts of the journey not made

If the passenger decides to continue their journey, he/she can claim compensation as follows:

- 25% of the cost of the ticket for a delay of 60 to 119 minutes
- 50% of the cost of the ticket for a delay of more than 120 minutes

The current Regulation **does not account for extraordinary circumstances or cases of *force majeure***, circumstances which would normally render the transportation company exempt from paying this compensation. This is largely what confirmed the Court of Justice of the European Union's judgement in the *ÖBB-Personenverkehr AG* case (C-509/2011)³.

2. Changes foreseen in the proposal for the revision of the Regulation

In their proposal for the revision, the European Commission wants to include an exemption clause for passenger compensation in the event of a delayed arrival at their destination (*with regards to no. 21 and new article 17 §8*)⁴:

"A railway undertaking shall not be obliged to pay compensation if it can prove that the delay was caused by severe weather conditions or major natural disasters endangering the safe operation of the service and could not have been foreseen or prevented even if all reasonable measures had been taken."

Views of the European Parliament, IMCO Committee:

- They propose removing the exemptions in the event of natural disasters, but suggest the establishment of an exclusion of liability in the event of **restrictions or interruptions to traffic set by the public authorities**⁵.
- They suggest the **reimbursement of the full cost of the ticket** in certain instances of delay.

Views of the European Parliament, TRAN Committee:

The TRAN Committee's report⁶ insists upon written proof from businesses and introduces a

³<http://curia.europa.eu/juris/document/document.jsf?text=&docid=142215&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=667598>

⁴ Proposal for a Regulation on rail passengers' rights and obligations (recast)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017PC0548&from=FR>

⁵ Draft Opinion IMCO 2017/0237(COD) - 01.03.2018 :

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-619.085%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

definition for extraordinary circumstances, while on the other hand expanding the instances for compensation payment exemptions to extraordinary cases in general.

3. ECCs France and Germany's recommendations

The establishment of compensation exemptions falls directly in line with other passenger transport regulations. The regulation concerning rail transportation is indeed the only one which does not currently provide an exclusion of liability clause for external events occurring beyond the transport company's control.

However, ECCs France and Germany believe that it is necessary to **define these exemptions as clearly as possible** in order to facilitate a unified application of the law within Member States without the need to keep resorting to the CJEU for interpretation, as is the case in the aviation sector for example⁷.

The "extraordinary circumstances" which exempt the company from issuing compensation payments in the event of cancellation or overbooking, are only subject to a brief definition in the Regulation no. 261/2004 which leaves a wide margin of discretion. As a result, the CJEU has been referred to many times to interpret situations that were deemed exceptional by the companies, but challenged by the passengers. These interpretations have helped to clarify situations in which a company is exempt from issuing compensation payments. Yet, even though the law states that it is the company's responsibility to prove that the incident was extraordinary, in reality, it frequently becomes the passenger's duty to provide arguments and evidence which dispute the company's refusal to offer compensation. Confronted with the company's consistent refusal to provide evidence, passengers are often forced to take the matter to court.

II. The scope of the Regulation and its exclusions

1. Reminder of the current law

Currently, *articles 2.5 and 2.6* of Regulation no. 1371/2007 provide for the possibility of a Member State to exempt their national rail passenger services from the European Regulation. Member States are allowed to grant this exemption for a maximum period of 5 years with the option to renew it twice.

Another dispensation, which has no time limit, also exists for urban, suburban and regional rail passenger services (in France for example, this would involve the TER, metro and Transiliens).

⁶ Report of TRAN Committee A8-0340/2018_ 18.10.2018

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2018-0340+0+DOC+PDF+V0//EN&language=EN>

⁷ Position paper on the project of recast of the regulation 261/2004 on air passengers' rights (FR) :

https://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/publications/prises-de-position/Prise_de_position-Fevrier2014.pdf

2. Changes foreseen in the proposal for the revision of the Regulation

The proposal for the revision puts forward a *new article 2* which states that **exemptions for applying the regulation will no longer be possible** concerning:

- National long-distance traffic as well as urban, suburban, and regional transnational traffic,
- Traffic leaving from or travelling to a non-EU State, unless a significant part of the journey is made outside of the European Union and the rights of the passengers are guaranteed by the State granting the exemption.

3. ECCs France and Germany's opinion

In order to promote market competition and guarantee a common minimum level of protection concerning the rights of passengers in the European Union, it seems crucial that the Regulation is enforced for all national long-distance journeys and transnational transportation. Since the Regulation on rail passengers' rights and obligations has been in place for nearly 10 years, the **existence of different rights based on whether the journey is national or transnational is no longer justified.**

III. The role of supervisory authorities

1. Reminder of the current law

Regulation no. 1371/2007, in *article 30*, provides for each Member State to designate a body "responsible for the enforcement of this Regulation." This body should meet the following conditions:

- The body is **independent from all businesses** involved in the commercial operation of rail transportation (ticket offices, transport, infrastructure management).
- The body must be able to **receive individual complaints from those passengers** wishing to report an infringement of Regulation no. 1371/2007.
- The designated bodies of each country **must cooperate** and exchange information on their work in order to coordinate their decision-making principles.

2. Changes foreseen in the proposal for the revision of the Regulation

In *article 32 et seq.* of the proposal for the revision of the Regulation, the European Commission stipulates the missions of the designated national bodies for monitoring the application of the Regulation, as well as the methods for handling complaints submitted by consumers against businesses in the sector.

Examples:

- It is the duty of businesses in the sector to provide information and documents that are required by the control body,
- It is the duty of the body to publish an annual report,
- These bodies have an obligation to inform consumers about their rights and to guide them towards possible out-of-court remedies for individual redress,
- A maximum delay of 3 to 6 months is allowed for the processing of passenger complaints,
- The competent body is the one of the country which issued the commercial license to the undertaking in question, unless the passenger's interests would be better served otherwise.

Views of the European Parliament, TRAN Committee:

The TRAN Committee proposes increased visibility regarding the roles and actions of the national enforcement bodies (NEB), notably through the **publication of an annual activity report**, an **obligation for the NEBs of different EU Member States to cooperate with each other**, and a **maximum delay of 3 months for responding to consumers** (6 months in specific cases) with an **obligation to provide consumers with information about the various out-of-court dispute resolution bodies that exist** as well.

3. ECCs France and Germany's opinion

Given their experience, notably with the control bodies responsible for applying the regulation in the aviation sector, ECCs France and Germany believe that it is imperative to outline in detail the role and rights of these control bodies, regardless of the sector of intervention. A simple notification request from a control body does not at all guarantee the methods of implementation, coordination with other actors in the sector, or the effectiveness of their actions. Therefore, ECCs France and Germany very much welcome any proposed revision that will complete and detail the missions of these bodies, the methods of their intervention and their obligation to share information regarding the measures they are eventually taking. **ECCs France and Germany continues to pay close attention to the clarification, harmonization and legibility of the supervisory authorities' role and missions for consumers, and of their cooperation with those organizations responsible for providing amicable and personalized assistance to consumers⁸.**

⁸ Position paper on the project of recast of the regulation 261/2004 on air passengers' rights (FR) : https://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/publications/prises-de-position/Prise_de_position_Fevier2014.pdf

ECC-net Air passenger rights Report : Do consumers get the compensation they are entitled to and at what costs?

https://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/publications/etudes_et_rapports/APR-report_2015-12-02.pdf

IV. Guaranteeing access to rail travel for persons with reduced mobility

1. Reminder of the current law

Regulation no. 1371/2007 already includes a set of measures that strive to ensure access to trains for persons with reduced mobility and facilitate their journey (*Chapter V*).

2. Changes foreseen in the proposal for the revision of the Regulation

In its draft revision, the European Commission foresees some measures to improve the accessibility of rail travel for persons with disabilities or reduced mobility, including:

- Simplification of purchasing tickets on board the train (*new article 10.5*),
- Clarification of the “assistance” that is offered to persons with disabilities or reduced mobility (*new article 23*),
- Introduction of compulsory staff training for all personnel to help them deal with persons with disabilities or reduced mobility (*article 26*).

Views of the European Parliament, TRAN Committee:

In terms of assistance for persons with disabilities or reduced mobility, the TRAN Committee’s report makes reference to qualified personnel for accommodating and assisting these persons, without rendering this training mandatory for all personnel. The report also introduces the status of “certified” animals (in other words, animals which are authorized to assist persons with disabilities or reduced mobility).

3. ECCs France and Germany’s opinion

Assuming that the majority of the proposed improvements are feasible, training staff in the accompaniment of persons with disabilities or reduced mobility appears to be somewhat more difficult to implement. *Article 26* does indeed refer to persons suffering from mental and intellectual impairments. Without specific training however, it might be difficult, if not impossible, to offer them specialized assistance. **Emphasis should be placed on the appointment of specialized personnel in stations and on-board trains to guarantee assistance.**

V. Towards the increased and reinforced protection of rail passenger rights

1. The concept of a “missed connection”

Articles 15 and 16 of the draft revision introduce the definition of a **missed connection** which will now oblige railway undertakings to re-route or reimburse passengers when their missed connection arises due to an incident (delay or cancellation) that occurred in a prior part of the journey.

➔ **Example:** A consumer takes his first train, Bordeaux-Paris, and arrives at the station in Paris 30 minutes behind schedule, causing him to miss his connecting train to Brussels operated by a different railway undertaking. The whole journey corresponds to a single contract, a single purchase.

With this new clause, the passenger will be covered for re-routing until he reaches his final destination and will be compensated according to the overall delay in reaching Brussels, his final destination.

To date, when two separate railway undertakings are responsible for different parts of a single journey, passengers are often not covered for re-routing in the event of a missed connection, that the two railway undertakings do not recognize the contract as a single contract, and thus, that the calculated compensation only takes into account the section of the journey that was delayed rather than the total trip that was purchased. **Therefore, this new definition should put an end to the legal vagueness of Regulation no. 1371/2007 in terms of the “journey” that compensation must be provided for when transport delays or cancellations arise.** It should also cover the re-routing of passengers to their final destination.

2. Rules for travelers with travel passes or season tickets

Travelers using the train on a regular basis may experience recurring disruptions to their daily journeys, however, these disruptions often fall below the compensation threshold (minimum delay of 60 minutes) specified by the Regulation no. 1371/2007. In addition, since compensation is based on the price of the ticket, travel passes do not meet the conditions required for calculating compensation.

Therefore, the Commission has taken an interest in passengers with **travel passes**. The new *article 17* provides for **compensation in the event of an accumulation of delays within a given period**, providing partial reimbursements on the price of the travel pass. If travelers are subject to multiple delays of less than 60 minutes during the period that the travel pass is valid for, they can add up these delays to claim a certain amount of compensation in relation to the price of the travel pass.

Example: Passengers traveling on the Metz-Luxembourg line, largely used by cross-border commuters, could claim compensation if their regional shuttle is repeatedly delayed.

Foreseeing a system of compensation for travelers with travel passes or season tickets that takes into account the sometimes recurring nature of short delays (less than 60 minutes) is significant progress for rail passenger rights, and **has the potential to motivate rail companies to improve their day-to-day performance and punctuality.**

3. International ticket sales

The European Commission aims to develop **international ticket sales** (*new article 10*). Railway undertakings and ticket vendors are urged to offer as many through-tickets as possible, including those for international journeys and even if more than one railway undertaking is involved.

Promoting the purchase of international tickets or from other carriers follows the European Commission's desire to encourage the interoperability of railway companies throughout the European Union (ex: allow passengers to purchase a Paris-Sofia ticket from a single interlocutor even if the journey comprises several connections or railway companies).

However, ECCs France and Germany regret that this interoperability ends with railway carriers, even though it is becoming more and more common to find combined tickets that involve different modes of transport (ex: train + airplane or train + bus). In addition, the inclusion of the many different existing channels of distribution (carriers, but also **sales intermediaries and notably those online**) should provide the **opportunity to clearly define the carrier's responsibility if any problems arise**, such as a complaint with the carrier or difficulty issuing tickets.

VI. Other recommendations from ECCs France and Germany

Given their experience with handling disputes related to passenger rail transport, ECCs France and Germany propose to take advantage of the revision of Regulation no. 1371/2007 to frame certain practices.

- Supervise the sale of tickets combining different modes of transport

More and more carriers are relying on the rail networks that exist between certain cities to offer trains instead of flights, or buses instead of trains for particular parts of journeys. Therefore, during an online purchase, it is not uncommon for people to see offers for a Brussels-New York journey via Paris where the Brussels-Paris section is travelled by rail, or a journey to a city without a train station where the final leg is completed by bus. However, in the event of a delay, cancellation or connection disruption, each mode of transport is governed by a different set of rules. There is no regulation that considers the carriers' responsibility

and the passengers' rights for combined modes of transport, and yet these combined tickets are sold by a single carrier or provider.

It is therefore necessary to take advantage of the Regulation no. 1371/2007 to finally shape passenger rights within this context and to choose the regulation (and the competent NEB) that will prevail for the entirety of the journey, regardless of the transport combination.

Views of the European Parliament, TRAN Committee:

In its report, the TRAN Committee encourages intermodal transport (the combination of multiple modes of public transport within a single journey). Although the foreseen clauses provide for improvements in accessing information about these forms of transport and the purchase of tickets, there is no clause that anticipates the applicable provisions for calculating compensation in the event of a dispute concerning the different modes of transport within a single journey (railway, aviation, road, maritime, or inland waterways).

- Expand the use of electronic tickets to all train journeys

In today's digital world, the tickets for certain train lines in the EU, often for regional journeys, cannot be sold in an electronic format.

This can block ticket purchases from abroad and/or force the passenger to request the tickets to be sent to his/her home address (with the risk of receiving them late or not at all).

In order to develop access to rail transport and encourage this environmentally-friendly mode of transport, passengers should be able to access electronic or dematerialized tickets for their whole journey.

- Institutionalize the amicable handling of complaints

The effectiveness of the rules foreseen by the Regulation happens mainly through individual handling of complaints by either the rail provider or ticket vendor, as well as through the amicable remedies available to passengers.

Therefore, it is necessary to require rail companies to offer passengers accessible and easy-to-use tools to communicate their complaints, and to ensure that they get a response within a certain timeline. In return, a time-limit (from the date of their voyage) for submitting complaint can also be imposed on passengers.

The regulation should also clarify the complaint-handling procedure: preliminary referral of the carrier, help and information offered by consumer associations or the ECC-Net for cross-border complaints, and the use of mediation.

Cooperation between mediation organisations, consumer associations and the ECC-Net network, and the supervisory authorities in charge of the application of passenger rights should also be reinforced.

Views of the European Parliament, TRAN Committee:

In their report issued the 18th October 2018, the TRAN Committee proposes regulating the complaint-handling procedures of railway carriers, tickets vendors and other stakeholders as well as setting a 6-month referral time-limit for consumers and a 3-month response time-limit for

businesses. The TRAN Committee also recalls the use of alternative dispute resolution bodies (ADR) and their link with the national enforcement bodies (NEB).

The network comprised of 30 European Consumer Centres (ECC-Net) provides information and support to those consumers who are involved in cross-border complaints within the European Union, Iceland and Norway. This network could be an important relay for consumers wishing to access alternative dispute resolution bodies or the competent NEB in another Member State.

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