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European Union

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#### **DRAFT STATEMENT OF THE COUNCIL'S REASONS**

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Subject: Position of the Council at first reading with a view to the adoption of a  
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL on rail passengers' rights and obligations (recast)  
- Draft Statement of the Council's reasons

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## I. INTRODUCTION

1. On 27 September 2017, the European Commission adopted a proposal for a recast of the Regulation of the European Parliament and of the Council on rail passenger rights and obligations.
2. The main reasons for the Commission to present the recast were to address the perceived problems relating notably to *force majeure* situations, use of exemptions, rights of persons with disabilities and reduced mobility and availability of, and information on, so-called through-tickets.
3. The Council (Transport, Telecommunications and Energy) agreed on a general approach on 2 December 2019.
4. The European Parliament adopted its first reading position on 15 November 2018.
5. Between January and October 2020, negotiations took place between the European Parliament, the Council and the Commission with a view to reaching an agreement on the proposal. At the fourth trilogue on 1 October a provisional agreement was reached, which was endorsed by the Permanent Representatives Committee on 21 October 2020.
6. The European Parliament Committee on Transport and Tourism (TRAN) confirmed the political agreement on 29 October 2020.
7. In carrying out its work, the Council took account of the opinion of the European Economic and Social Committee of 18 January 2018. The European Committee of the Regions decided not to issue an opinion.
8. Taking this agreement into account and following legal and linguistic revision, the Agriculture and Fisheries Council on 25 January 2021 has been invited to adopt the Council's position at first reading, in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union.

## II. OBJECTIVE

9. The general objective of the proposal is to strengthen rail passenger rights by better protecting train travellers in case of delays, cancellations or discrimination and reduce the burden on railway undertakings in specific cases, in particular related to delays caused by external reasons and outside the control of the railway undertaking (*force majeure*).
10. Rail passengers should be fully protected no matter where they travel in the EU. The regulation sets out guarantees for adequate passenger information and significantly improves the rights of passengers with disabilities or reduced mobility (PRMs).
11. Based on the Commission proposal, the Council agrees to include new provisions in order to take into account new developments. The Council went beyond the Commission proposal by also agreeing on a revision of or adding provisions related to: equipment of rolling stock with bicycle spaces, re-routing, introducing an obligation related to through-tickets, the reduction of pre-notification times for PRMs and by further clarifying the complaint handling mechanism.

## III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

12. The compromise reflected in the Council position at first reading contains the following key elements.

### ***Force majeure***

13. The Council position adjusts the *force majeure* clause in view of ensuring a level-playing field and consistency compared to similar clauses for other transport modes. Originally, it was limited to extreme weather conditions and major natural disasters. Having regard to recent developments and in view of the COVID-19 outbreak, the Council position introduces "major public health risks" as extraordinary circumstances and also extends *force majeure* to other events like terrorist attacks or law enforcement measures.
14. In case of *force majeure*, the Council position states that operators would only be discharged of paying the compensation, whereas other reimbursements would still need to be made.

**b) *Use of exemptions***

15. The Council agrees that the new rules will enter into force after 24 months so as to allow operators and authorities to prepare for a smooth transition. As Member States still face different levels of development of rail infrastructure and services, the Council finds it important to allow specific exemptions to give Member States more time to implement specific aspects.
16. The Council position allows for a final extension of five years of the current derogations for domestic rail services for those Member States that have been making use of these derogations. Member States can also decide, under specific circumstances and for an undetermined period, to partly exempt cross-border regional, urban and suburban services. However, Member States cannot exempt the rights of PRMs, bicycle carriage and the provisions on through-tickets and re-routing from cross-border services.

**c) *Rights of persons with disabilities and reduced mobility***

17. The Council agrees to align the rights of PRMs in this regulation and ensure consistency with other legal instruments, in particular the European Accessibility Act (Directive 2019/882/EU on the accessibility requirements for products and services) and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Member States will no longer be able to exempt the provision of assistance and the compensation for damaged mobility equipment. Overall, the procedures for PRMs travelling by train have been simplified, clarified and have become less burdensome in order to ensure a better service for the PRMs.
18. Request for assistance in stations will only need to be sent at the latest 24 hours in advance of travelling, instead of the current 48 hours, and without additional costs; however, Member States may allow, until 30 June 2026, that this period is extended up to 36 hours. In case of no pre-notification but where trained staff is available in the station, assistance shall be provided in order to help board or alight the train. Where an accompanying person is required, this person shall be travelling free of charge and PRMs using an assistant dog shall be guaranteed that the animal can travel with them.

**d) *Equipment of rolling stock with bicycle spaces***

19. The Council agrees with the general principle that bringing bicycles on to the train should be possible. The overall objective is to have at least four places for bicycles in each train composition. Member States may decide to go beyond this number but in case there would be less than four spaces in a train composition, this should be justified by special circumstances. Only in specific and justified cases may a railway undertaking further restrict this right, in particular linked to capacity limits during peak hours or where the rolling stock is not adapted. The railway undertaking may, where appropriate, charge a reasonable fee.
20. When ordering new rolling stock or when performing a major upgrade of existing rolling stock, railway undertakings are obliged to ensure space for bicycles. The railway undertaking shall also publish information on the availability of these bicycle spaces. The specific procurement procedures for ensuring bicycle spaces in the rolling stock will benefit from a 48-month transition period.

**e) *Through-tickets***

21. The Council agrees with the obligation to offer through-tickets for services that are operated by a sole railway undertaking: for international and long-distance services as from the date of application and after five years also for regional services. This means that where such a journey is composed of different parts, the combination of all the parts shall be considered as one single ticket. Where a railway undertaking does not qualify as a sole undertaking, it shall make all reasonable efforts to offer through-tickets, including good cooperation between railway undertakings.
22. Where retailers bundle tickets at their own initiative and the passenger purchased the ticket in one commercial transaction and the passenger was not informed that this is not a through-ticket, the retailers will be subject to an increased liability in case of travel disruptions.

**f) *Right to self-rerouting***

23. The Council agrees to shorten the period to 100 minutes after which passengers are allowed to organise the re-routing themselves, if the railway undertaking does not communicate re-routing options to the passengers. The railway undertaking shall also ensure reimbursement of the costs of self-organised re-routing in cases of force majeure.

**g) *Real-time travel and traffic information***

24. The Council agrees that real-time traffic and travel information shall be made available to other service providers. By allowing better and easier access to traffic and travel information, new services can be offered which creates specific business opportunities and should make rail transport more attractive for existing and new customers. In specific cases, the Member State can grant an exemption of nine years to the infrastructure manager; however, the Member States need to re-assess the situation and the possibility to provide the information every two years.

**h) *Complaint handling***

25. The Council agrees to further clarifying the complaint handling procedure. The Commission will need to develop a template for requesting compensation and reimbursement and to ensure such forms are available in an accessible format for PRMs. Further, the cooperation between National Enforcement Bodies is improved, in particular through the introduction of the concept and the designation of a "lead body" for complex cases.

**i) *Non-discrimination clause***

26. The Council agrees to stipulate and clarify in a new article that any direct or indirect discrimination based on the passenger's nationality or the place of establishment of the railway undertaking, the ticket vendor or the tour operator within the Union is prohibited.

#### IV. CONCLUSION

27. The Council's position at first reading fully reflects the compromise reached in the negotiations between the Council and the European Parliament, facilitated by the Commission. This compromise is confirmed by the letter of the Chair of the European Parliament's TRAN Committee to the Chair of the Permanent Representatives Committee (30 October 2020). In this letter, the Chair of the TRAN Committee indicates that she will recommend to the members of her Committee, and subsequently to the plenary, that they accept the Council's position at first reading without amendments as Parliament's second reading, subject to verification by the lawyer-linguists of both institutions.
28. The Council therefore believes that its position at first reading represents a balanced result and that, once adopted, the recast Regulation will contribute to ensuring, on the one hand, the rights of passengers, in particular persons with disabilities and reduced mobility using rail services, and, on the other hand, to having the obligations clearly set out for rail operators and travel service providers.
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