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#### OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	ST 14664/19
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on rail passengers' rights and obligations – Alignment of recitals

Delegations will find, attached, the draft recitals to the regulation, as revised following the Land Transport Working Party on 11 December 2019. While the alignment of most recitals was agreed upon, there remain different views on certain details, notably recital 20a.

- (1) A number of amendments are to be made to Regulation (EC) No 1371/2007 of the European Parliament and of the Council<sup>1</sup>. In the interests of clarity, that Regulation should be recast.
- (2) In the framework of the common transport policy, it is important to safeguard users' rights for rail passengers and to improve the quality and effectiveness of rail passenger services in order to help increasing the share of rail transport in relation to other modes of transport.
- (3) Despite considerable progress made in protecting consumers in the Union, further improvements in protecting the rights of rail passengers are still to be made.
- (4) Since the rail passenger is the weaker party to the transport contract, passengers' rights in this respect should be safeguarded.
- (5) Granting the same rights to rail passengers taking international and domestic journeys ~~should~~ **seeks to** raise the level of consumer protection in the Union, ensure a level playing-field for railway undertakings and guarantee a uniform level of rights for passengers.
- (6) Urban, suburban and regional rail passenger services are different in character from long-distance services. Member States should therefore be allowed to exempt urban, suburban and regional rail passenger services, **as well as such cross-border services,** ~~which are not cross-border services~~ within the Union from certain provisions on passengers' rights.
- (7) It is an aim of this Regulation to improve rail passenger services within the Union. Therefore, Member States should be able to grant exemptions for services in regions where a significant part of the service is operated outside the Union, ~~provided that an adequate level of passenger rights is ensured on the part of such services provided on those Member States' territory, in accordance with their national law.~~

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<sup>1</sup> Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).

- (7a) Furthermore, to allow a smooth transition from the framework established pursuant to Regulation (EC) 1371/2007 to the one under this Regulation, earlier national exemptions should be phased out gradually to maintain necessary legal certainty and continuity.
- (8) ~~However,~~ The exemptions should not apply to the provisions of this Regulation that **relating to facilitate** the use of rail services by persons with disabilities or persons with reduced mobility **should be promptly phased out in certain domestic services which were earlier nationally exempted**. Furthermore, exemptions should not apply to the rights of those wishing to purchase tickets for travel by rail to do so without undue difficulty, to the provisions on railway undertakings' liability in respect of passengers and their luggage, to the requirement that railway undertakings be adequately insured, and to the requirement that they take adequate measures to ensure passengers' personal security in railway stations and on trains and to manage risk.
- (8a) **Where there are several station managers responsible for one station, the Member States should have the possibility to designate the body in charge for the responsibilities referred to in this Regulation.**
- (10) More detailed requirements regarding the provision of travel information are set out in the technical specifications for interoperability (TSIs) referred to in Commission Regulation (EU) No 454/2011<sup>2</sup>.

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<sup>2</sup> Commission Regulation (EU) No 454/2011 of 5 May 2011 on the technical specification for interoperability relating to the subsystem 'telematics applications for passenger services' of the trans-European rail system (OJ L 123, 12.5.2011, p.11).

- (11) Strengthening of the rights of rail passengers should build on the existing international law contained in Appendix A — Uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) to the 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 (1999 Protocol). However, it is desirable to extend the scope of this Regulation and protect not only international passengers but domestic passengers too. On 23 February 2013, the Union acceded to the COTIF.
- (12) **Member States should prohibit discrimination on the basis of the nationality of the passenger or the place of establishment of the railway undertaking, ticket vendor or tour operator within the Union. However, social tariffs should not be prohibited, provided that they are proportionate and independent of the nationality of the passenger concerned. Railway undertakings, ticket vendors and tour operators are free to determine their commercial practises, including special offers and promotion of certain sales channels. In the context of the sale of tickets for the transport of passengers, Member States should take all necessary measures to prohibit discrimination on the basis of nationality or residence, regardless whether the passenger concerned is present, permanently or on a temporary basis, in another Member State. Those measures should cover all covert forms of discrimination which, by the application of other criteria, such as residence, physical or digital location, may have the same effect. In light of the development of online platforms selling passenger transport tickets, Member States should pay special attention to ensuring that no discrimination occurs during the process of accessing online interfaces or purchasing tickets. However, transport schemes involving social tariffs should not be automatically precluded, provided that they are proportionate and independent of the nationality of the persons concerned.**

- (13) The increasing popularity of cycling across the Union has implications for overall mobility and tourism. An increase in the use of both railways and cycling in the modal split reduces the environmental impact of transport. Therefore, railway undertakings should facilitate the combination of cycling and train journeys as much as possible, in particular by allowing the carriage of bicycles on board trains.
- (13a) **The rights and obligations regarding carriage of bicycles on trains should apply to bicycles that can be readily ridden prior to and after the rail journey. Carriage of bicycles in packages and bags, where applicable, is covered by the provisions of this Regulation relating to luggage.**
- (13b) Users' rights to rail services include the receipt of information regarding the service both before and during the journey. Whenever possible, railway undertakings ~~and ticket vendors~~ should provide this information in advance and as soon as possible. **Ticket vendors should provide the relevant information prior to the journey.** That information should be provided in accessible formats for persons with disabilities or persons with reduced mobility.
- (13c) **The size of ticket vendors varies substantially from micro to large enterprises and some of them offer their services only off- or on-line. Thus the obligation to provide travel information to passengers should be proportional to the capacity of the ticket vendor.**
- (14) **Provided that through-tickets for services operated by the same railway undertaking do not require commercial agreements,** railway undertakings should **cooperate to** facilitate the transfer of rail passengers from one operator to another by the provision of through-tickets, ~~whenever possible~~.

- (14a-a) Passengers should be clearly informed whether tickets sold by a railway undertaking in a single commercial transaction constitute a through-ticket. Where passengers are not correctly informed, the railway undertaking should be liable as if those tickets were a through-ticket.**
- (14a) Through-tickets allow seamless journeys for passengers and thus reasonable efforts should be made to offer such tickets for domestic, international, urban, suburban and regional services, including also rail services exempted in this Regulation. For the calculation of the period of delay for compensations, for such rail services, delays occurred during the parts of the journey outside the scope of this Regulation should be possible to be excluded.**
- (14b) The offer of through-tickets should be promoted. However, correct information concerning the rail service is essential also when passengers buy tickets from a ticket vendor or a tour operator. Where the ticket vendors or the tour operators sell, as a bundle, separate tickets, they should clearly inform the passenger that those tickets do not offer the same level of protection as through-tickets. In case the tickets do not constitute a through-ticket and ticket vendors or tour operators fail to comply with this requirement, they should carry a proportionate liability, going beyond the reimbursement of the tickets.**

(15) In the light of the United Nations Convention on the Rights of Persons with Disabilities and in order to give persons with disabilities and persons with reduced mobility opportunities for rail travel comparable to those of other citizens, rules for non-discrimination and assistance during their journey should be established. Persons with disabilities and persons with reduced mobility, whether caused by disability, age or any other factor, have the same right as all other citizens to free movement and to non-discrimination. Inter alia, special attention should be given to the provision of information to persons with disabilities and persons with reduced mobility concerning the accessibility of rail services, access conditions of rolling stock and the facilities on board. In order to provide passengers with sensory impairment with the best information on delays, visual and audible systems should be used, as appropriate. Persons with disabilities ~~and persons with reduced mobility~~ should be enabled to buy tickets on board a train without extra charges **where there is no accessible means to buy a ticket prior to boarding the train. Furthermore, there should be a possibility to limit this right in circumstances relating to security or compulsory train reservation.** Staff should be adequately trained to respond to the needs of persons with disabilities and persons with reduced mobility, notably when providing assistance. To ensure equal travel conditions, such persons should be provided with assistance at stations and on board **or, in the absence of trained accompanying staff on board the train and at the station, all reasonable efforts should be taken to allow access to travel by train.** ~~at all times when trains operate and not only at certain times of the day.~~

**(15a) In order to facilitate access to rail services for persons with disabilities and persons with reduced mobility, Member States should have the possibility to require railway undertakings and station managers to set up national Single Points of Contact to coordinate information and assistance.**

- (16) Railway undertakings and station managers should take into account the needs of persons with disabilities and persons with reduced mobility, through compliance with the TSI for persons with reduced mobility. ~~In addition, in accordance with Union public procurement rules, in particular Directive 2014/24/EU of the European Parliament and of the Council<sup>3</sup>, all buildings and rolling stock should be made accessible through the progressive elimination of physical obstacles and functional hindrances when acquiring new material or carrying out construction or major renovation work.~~
- (17) It is desirable that this Regulation create a system of compensation for passengers in the case of delay, **including in cases where the delay is caused by a cancellation of a service or a missed connection.** ~~which is linked to the liability of the railway undertaking, on the same basis as the international system provided by the COTIF and in particular CIV Uniform Rules thereto relating to passengers' rights.~~ In the event of a delay of a passenger service, railway undertakings should provide passengers with compensation based on a percentage of the ticket price.
- (18) Railway undertakings should be obliged to be insured, or to **have adequate guarantees** ~~make equivalent arrangements~~, for their liability to rail passengers in the event of accident. ~~Where Member States set a maximum amount for compensatory damages in the event of death or personal injury to passengers, that amount should be at least equivalent to the amount set out in the CIV Uniform Rules.~~
- (19) Strengthened rights of compensation and assistance in the event of delay, missed connection or cancellation of a service should lead to greater incentives for the rail passenger market, to the benefit of passengers.
- (20) In the event of delay, passengers should be provided with continued or re-routed transport options under comparable transport conditions. The needs of persons with disabilities and persons with reduced mobility should be taken into account in such an event.

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<sup>3</sup> ~~Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).~~



- (20a) Without prejudice to applicable Union and national legislation, where a railway undertaking commissions another railway undertaking to provide re-routing services, the undertakings should agree on the modalities involved, including the arrangements regarding tickets for the re-routing service.**
- (21) However, a railway undertaking should not be obliged to pay compensation if it can prove that the delay was caused by ~~severe~~ **extreme** weather conditions or major natural disasters endangering the safe operation of the service. Any such event should have the character of an exceptional natural catastrophe, as distinct from normal seasonal weather conditions, such as autumnal storms or regularly occurring urban flooding ~~caused by tides or snowmelt~~. Furthermore, where the delays are caused by the passenger or by **certain acts by third parties**, the railway undertaking should not be obliged to compensate the delay. Railway undertakings should prove that they could neither foresee nor prevent the delay even if all reasonable measures had been taken, **including appropriate preventive maintenance of their rolling stock**. Strikes by the personnel of the railway undertaking, and action, or lack of that, by other railway operators using the same infrastructure, infrastructure manager or stations managers should not **relieve from the liability for delays**.
- (21b) Railway undertakings should be encouraged to simplify the procedure for passengers to apply for compensation or reimbursement. In particular, Member States should have the possibility to require that railway undertakings accept applications by certain means of communication, such as on web-sites or using mobile applications.**
- (22) In cooperation with infrastructure **and station** managers, railway undertakings, ~~station managers~~ should prepare contingency plans to minimise the impact of major disruptions by providing stranded passengers with adequate information and care.
- ~~(23) This Regulation should not restrict the rights of railway undertakings to seek compensation from any person, including third parties, in accordance with applicable national law.~~

- ~~(24) Where a Member State grants railway undertakings an exemption from the provisions of this Regulation, it should encourage railway undertakings, in consultation with organisations representing passengers, to put in place arrangements for compensation and assistance in the event of major disruption to a rail passenger service.~~
- (25) It is also desirable to relieve accident victims and their dependants of short-term financial concerns in the period immediately after an accident.
- (26) It is in the interests of rail passengers that adequate measures be taken, in agreement with public authorities, to ensure their personal security at stations as well as on board trains.
- (27) Rail passengers should be able to submit a complaint to any railway undertaking involved, **or the station manager of a large station,** regarding **their respective fields of responsibilities on** and the rights and obligations conferred by this Regulation, ~~and.~~ **Rail passengers should** be entitled to receive a response within a reasonable period of time.
- (27a) In the interest of efficient handling of complaints, railway undertakings and station managers should have the right to establish joint customer services and complaint handling mechanisms.**
- (27b) The provisions of this Regulation should not affect the rights of passengers to file a complaint to a national body or to seek legal redress under national procedures.**
- (28) Railway undertakings and station managers should define, make publicly available, manage and monitor service quality standards for rail passenger services.
- (29) To maintain a high level of consumer protection in rail transport, Member States should be required to designate national enforcement bodies to monitor closely and enforce this Regulation at national level. Those bodies should be able to take a variety of enforcement measures. Passengers should be able to complain to those bodies about alleged infringements of the Regulation. To ensure the satisfactory handling of such complaints, the bodies should also cooperate with each other.

- (29a) **Member States which have no railway system, and no immediate prospect of having one, would bear a disproportionate and pointless burden if they were subject to the enforcement obligations as regards railway undertakings, station managers and infrastructure managers provided for by this Regulation. Therefore, such Member States should be exempted from this obligation.**
- (30) Processing of personal data should be carried out in accordance with Union law on the protection of personal data, in particular with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>4</sup> .
- (31) Member States should lay down penalties applicable to infringements of this Regulation and ensure that these penalties are applied. The penalties, which might include the payment of compensation to the person in question, should be effective, proportionate and dissuasive.
- (32) Since the objectives of this Regulation, namely the development of the Union's railways and the introduction of passenger rights, cannot be sufficiently achieved by the Member States, and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

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<sup>4</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (33) In order to ensure a high level of passenger protection, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated on the Commission to amend ~~the Annexes I, II, and III~~ in respect of the CIV Uniform Rules, ~~the minimum information to be provided by railway undertakings and ticket vendors, on minimum service quality standards,~~ and to adjust **the amount of the advance payment in the event of death of a passenger in view of changes in the EU-wide Harmonised Index of Consumer Prices**, ~~in the light of inflation, the financial amounts referred to in the Regulation~~. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>5</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (34) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular Articles 21, 26, 38 and 47 concerning, respectively, the prohibition of any form of discrimination, the integration of persons with disabilities, a high level of consumer protection, and the right to an effective remedy and to a fair trial. The Member States' courts must apply this Regulation in a manner consistent with these rights and principles,

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<sup>5</sup> OJ L 123, 12.5.2016, p. 1.