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signed by Mr Jordi AYET PUIGARNAU, Director

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Subject: **REPORT FROM THE COMMISSION TO THE EUROPEAN
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**Report on the Application of Regulation (EC) No 1371/2007 of the
European Parliament and of the Council of 23 October 2007 on Rail
Passengers' Rights and Obligations**

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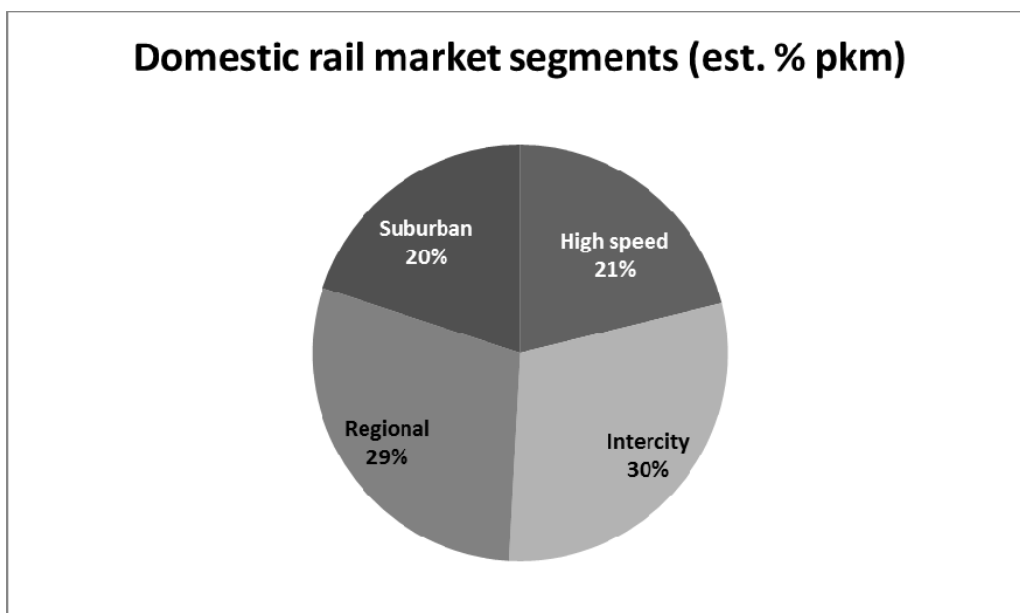
**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**Report on the Application of Regulation (EC) No 1371/2007 of the European Parliament
and of the Council of 23 October 2007 on Rail Passengers' Rights and Obligations**

1.3. The rail market

The implementation of the Regulation must be seen in the context of the overall evolution and functioning of the rail passenger market and in view of the policy objective set out in the White Paper of 2011⁶ to achieve a greater modal share for rail. In 2010, rail accounted for only 7% of inland passenger mobility in the EU. According to the 2012 Consumer Markets Scoreboard, consumers rated rail services poorly⁷.

The international rail market constitutes merely 6% of all traffic in the EU. The domestic rail market competes with other transport modes, notably air transport and cars.



Source: European Commission Impact Assessment SWD(2013)10 accompanying the 4th Railway package proposal on domestic market opening

To encourage innovation, efficiency and better value for money the Commission, in its 4th railway package⁸, is proposing to open the domestic passenger market to new entrants and services from December 2019 which will increase rail services.

⁵ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59) is being revised. A new proposal, COM(2013)512, was adopted on 9 July 2013.

⁶ COM(2011) 144 of 28/03/2011

⁷ http://ec.europa.eu/consumers/consumer_research/cms_en.htm

⁸ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail (COM(2013) 28 of 30/01/2013) and Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/34/EU of 21/11/2012 establishing a single European railway area (COM(2013) 29 of 30/01/2013)

2. ASSESSMENT OF COMPLIANCE

The report assesses compliance with the Regulation on the basis of the ten core passenger rights listed in the Communication on Passenger Rights on all modes of transport⁹: non-discrimination, assistance for persons with disabilities or reduced mobility, information, reimbursement, rerouting or rebooking, assistance in case of disruption, compensation, liability towards passengers and luggage, complaint handling, application and enforcement. It also identifies areas where improvement or clarification is needed and specifies the actions to be taken.

2.1. Right to Non-Discrimination in Access to Transport

2.1.1. *Based on nationality*

Article 18 of the Treaty on the Functioning of the European Union (TFEU) prohibits discrimination on grounds of nationality. Price discounts for fares based on nationality thus represent an infringement to EU law. Several railway undertakings offer discounts to certain groups of passengers (e.g. disabled passengers, seniors, children). None of these discounts openly discriminate on the grounds of nationality. Where they depend on residence and are therefore not available to persons from other Member States they can be considered as discriminatory.

2.1.2. *Based on disability and/or reduced mobility*

One of the objectives of the Regulation is to allow disabled persons and persons with reduced mobility equal opportunities for rail travel as other citizens. This core principle is in line with the EU's obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)¹⁰. Railway undertakings cannot refuse carriage or impose accompanying persons unless this is necessary to comply with non-discriminatory access rules (Article 19).

Refusals to accept reservations from disabled persons and persons with reduced mobility have been very rare. This was also acknowledged by disability organisations. When this happened, they were usually based on space limitations (e.g. limited wheelchair spaces). Railway undertakings seem to have actively tried to find alternatives where carriage was impossible. However in some cases wheelchair users had to purchase first class tickets, which is clearly discriminatory if these are not offered at a reduced fare.

2.2. Right to Mobility: Accessibility and Assistance for Passengers with Disabilities or Reduced Mobility

To allow all passengers equal access to transport, the Regulation places some obligations on railway undertakings, station managers, ticket vendors and tour operators.

Railway undertakings or ticket vendors must provide minimum pre-journey information as per Annex II (i. a. on accessibility, access conditions and availability of on-board facilities for disabled persons). Legislation on the technical

⁹ COM(2011) 898 of 19/12/2011. These rights are also referred to in the EP report on passenger rights in all transport modes (2012/2067 (INI))

¹⁰ Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Right of Persons with disabilities (OJ L 23, 27.1.2010, p.35).

interoperability specifications for telematics applications (TAP TSI)¹¹ specifies the information railway undertakings must provide on their websites. They generally comply with these requirements although to varying degrees and often omit information on the maximum size and weight of wheelchairs and on appropriate on-board facilities.

Under Articles 22 and 23 railway undertakings and station managers must provide free of charge assistance i. a. to embark and disembark and on-board.

Article 24(a) specifies that assistance needs must be notified 48 hours before travel. Many undertakings accept shorter deadlines, but some apply longer deadlines or only allow pre-notifications on working days. Methods for pre-notification are not always clear and sometimes come with a cost (e.g. through toll numbers).

In general, assistance is provided even where domestic services have been exempted from these articles. The Regulation obliges station managers to ensure assistance at stations. In practice, the (main national) railway undertaking usually provides assistance. In a future, fully liberalised environment the competent national authorities must act to prevent competence problems between competing railways and ensure provision of assistance.

The accessibility of infrastructure and rolling stock according to Article 21 which makes reference to the PRM TSI¹² varies significantly between Member States. Disability organisations consider inaccessible stations as main barriers to travel for persons with disabilities. International and new entrant services with newer and PRM TSI compliant rolling stock tend to be more accessible than domestic and incumbent services.

2.3. Right to information

2.3.1. Information for passengers before and during the journey

Under Article 8 railway undertakings and ticket vendors must provide at least the pre-journey information specified in Annex II to the Regulation (i.a. general contract conditions and information on fares and journeys).

Overall, conditions of carriage seem to be consistent with the Regulation, even if the Regulation is not specifically mentioned.

Most railway undertakings provide information during the journey (Article 8 and Annex II part 2), i. a. on on-board services, next stops and on disruptions through on-board staff, vocal announcements or screens. In its ruling of 22 November 2012 in case C-136/11, the EU Court of Justice clarified that real-time information on delays or cancellations of trains, which are main connecting services, must be given whichever railway undertaking operates them. The infrastructure manager must

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

¹² Commission Decision 2008/164/EC concerning the technical specification of interoperability relating to persons with reduced mobility in the trans-European conventional and high-speed rail system (OJ L 64, 7.3.2008, p. 72).

inform railway undertakings on connecting services operated by other undertakings¹³.

According to Article 10, railway undertakings shall make use of Computerised Information and Reservation System for Rail Transport (CIRSRT) and adapt their IT-systems to TAP TSI to allow them to exchange information.

2.3.2. *Ticket sales and reservations*

According to Article 9(1) railway undertakings must offer through tickets¹⁴ and reservations where available. There are no incentives to provide through tickets and practical or technological problems may restrict the offer of through tickets for journeys with a combination of tickets, i.e. non-reservation tickets, which can be used on all services, and integrated reservation tickets, which are only valid on a specified service. **As a result, the availability of through tickets is currently limited.**

In view of a future increase of rail services after market opening with more interconnectivity among domestic services but also between international and domestic services, efficient through ticketing and network synergies are crucial, notably where Member States decide not to set up integrated ticketing schemes.

2.4. **Right to renounce travelling and reimbursement**

In case of a delay on arrival of more than 60 minutes, passengers are entitled under Article 16 to choose between reimbursement of the full ticket price or rerouting either at the earliest opportunity or at a later date at the passengers' convenience. **Overall, railway undertakings comply with the requirement to provide reimbursement.**

2.5. **Right to the fulfilment of the transport contract in case of disruption**

In case of service disruption, the option of re-routing is not always offered. As in air transport, many railway undertakings tend to interpret restrictively the notion of "comparable transport conditions" in Article 16(b) and re-route only on their own services but not on other services (notably high-speed trains) or transport modes.

2.6. **Right to assistance**

Article 18 requires railway undertakings to provide assistance¹⁵ in case of delays of 60 minutes and more. More than 40 % of Member States have exempted their domestic services which constitute more than 94 % of passenger rail travel from this article.

Furthermore, some railway undertakings 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. **As a result, the implementation of the right to assistance could be improved, notably through pro-active enforcement activities from national authorities.**

¹³ Westbahn Management GmbH v ÖBB-Infrastruktur AG

¹⁴ As defined in Article 3(10)

¹⁵ Meals, refreshments, overnight accommodation

2.7. Right to compensation

Under Article 17 passengers may request compensation as a proportion of the ticket price in case of long delays or cancellations.

Most railway undertakings comply with this requirement. National legislation or carriers' customer policy may provide for even more generous compensation.

The Regulation is not entirely clear whether situations of 'force majeure' could exempt carriers from having to pay compensation (but not from other obligations e.g. provision of assistance). In case C-509/11¹⁶ pending at the EU Court of Justice, the Advocate General took the view that railway undertakings may not exclude their obligation to pay compensation in case of delay in arrival due to circumstances beyond their control. The decision from the Court is still outstanding.

2.8. Right to carrier liability towards passengers and their baggage

2.8.1. Liability for transport of passengers and luggage

Article 11 of the Regulation specifies that liability for passengers and luggage is regulated in the CIV¹⁷ uniform rules in Annex I to the Regulation. Carriers are liable for death or personal injury unless the accident was caused by extraordinary circumstances or if it was the passenger's or a third party's fault. In the last situation the carrier is liable but can recover the expenses advanced to passengers. Damages are to be determined in national law. The upper limit for compensation in the event of death or injury is set at 175 000 units of account (ca. €190 000)¹⁸. **Most railway undertakings stated liabilities for luggage which equalled or exceeded the limits defined in the Regulation.**

2.8.2. Liability coverage

Article 12 of the Regulation requires a railway undertaking to 'be adequately insured or to make equivalent arrangements for cover of its liabilities'. These requirements are not very specific, and the Regulation does not define "adequate" insurance. As a result, no minimum financial cover is specified. The Directive establishing a Single European Railway Area¹⁹, requires that "a railway undertaking shall be adequately insured or have adequate guarantees under market conditions for cover".

In order to be adequate, the level of coverage needed depends on the railways' potential liabilities. The actual level of liability, the scope of claims, and liability for injuries are defined in national law. Most Member States have national provisions defining this liability. Potential liability, and corresponding requirements for coverage, will also depend on the income level of the State concerned. Although a low level of coverage cannot qualify a railway undertaking per se as non-compliant, coverage cannot be considered adequate if compensations for even a small number of

¹⁶ ÖBB-Personenverkehr AG v Schienen-Control Kommission und Bundesministerin für Verkehr, Innovation und Technologie

¹⁷ Contract for International Carriage of Passengers and Luggage by Rail

¹⁸ Annex I, Article 30 (2)

¹⁹ Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a Single railway area (OJ L 343, 14.12.2012, p. 32)

passengers would exceed this level. This seems to be the case for very few railway undertakings only.

Most railway undertakings seem to have taken out insurance to cover their liabilities and appear to be adequately covered.

2.8.3. *Mobility equipment*

Article 25 prohibits railway undertakings to limit the compensation in case of damaged mobility equipment of disabled persons. Only very few railway undertakings do not comply with this requirement.

2.9. **Right to quick and accessible complaint handling**

2.9.1. *Complaint handling*

Under Article 27, railway undertakings must set up complaint handling mechanisms and advise passengers how they can be contacted. Passengers can complain to any competent railway undertaking (notably where several railways were used in one connected journey) and must receive a response within one to maximum three months. Railways' annual service quality report must contain complaint statistics.

Railway undertakings in general provide information on the complaint handling process. Most undertakings also respect the prescribed timeframe.

The support study estimates that in 2011, NEBs received approximately 2500 – 3500 complaints relating directly to the Regulation. – this is less than 10 % of the yearly complaints received by NEBs for air passenger rights.

2.9.2. *Service quality standards and reports*

Under Article 28 of the Regulation railway undertakings must define service quality standards covering at least the issues listed in Annex III to the Regulation. Annual reports on their service quality performance must be published on their own and on the European Railway Agency's (ERA) website.

The study found that, initially, railways' compliance with this requirement was poor. The Commission developed guidelines²⁰ to facilitate the publication of service quality reports and to help NEBs monitor compliance. The latest publications on ERA's website show that **the situation has considerably improved** since²¹.

2.10. **Right to full application and effective enforcement of EU law**

2.10.1. *Exemptions*

Under Article 2, Member States may partially exempt services from the application of the Regulation without having to justify this. Domestic rail services may be exempted for five years, renewable twice, urban, suburban and regional rail passenger services for a non-specified period. Journeys where a significant part is operated outside the EU may be excluded for a renewable period of five years. As a

²⁰ Guidelines on "Rail Service Quality Standards and Reports Publication Procedure and Contents" elaborated by the Commission and sent to NEBs in March 2012.

²¹ https://eradis.era.europa.eu/interop_docs/ruSQPreports/default.aspx

result, long-distance domestic services, which constitute half of the domestic rail market, can be exempted for up to 15 years.

Although **several Member States have opted for extensive exemptions**, these are often limited to regional and suburban services or to specific articles, notably Article 18 (2) on assistance and care in case of long delays, as undertakings perceive this article as rather onerous and as an additional burden.

Most of the Member States bordering a third country have granted exemptions for international rail services (Article 2(6)), where possible. This has offered to the nine EU Member States²², who are members of the Organisation for Cooperation between Railways (OSJD), the necessary respite to ensure that the future annex of the OSJD Convention²³ will provide similar standards of protection for international rail passengers.

2.10.2. *Implementation and Enforcement*

Article 30 requires Member States to designate an independent national body in charge of the enforcement of the Regulation (NEB). Whilst most Member States have done so, in some States the NEB is partially missing or not yet operational; others failed to endow the NEB with effective enforcement powers. Some NEBs do not seem to be sufficiently independent. Where the NEB is also the rail regulatory body under Directive 2012/34/EU (previously Directive 2001/14/EC), its independence was examined by the Commission. Where appropriate the Commission has initiated infringement proceedings for lack of independence.

Article 32 requires Member States to provide for **effective, proportionate and dissuasive sanctions** in case of non-compliance. Whilst **most Member States complied with this obligation** some have not introduced any sanctions or sanctions which only cover some articles. In some Member States only conditional or restorative sanctions can be imposed, which are less likely to induce compliance than punitive sanctions.

The level of sanction varies significantly and cannot be considered as dissuasive where it is below the cost of compliance. So far, very few sanctions were imposed. Therefore, it is too early to assess whether the sanctioning procedures are robust enough or whether there might be problems in collecting sanctions.

Despite the obligation in Article 31 to cooperate, there has been little contact between NEBs. Since only 6% of rail travel in the EU is international, the need for cooperation to resolve complaints was limited.

2.10.3. *Private redress, alternative dispute resolution and related national legal provisions*

Most Member States offer mechanisms for private redress, including alternative dispute resolution (ADR) and small claims procedures. These are either free of charge or at a very low cost for consumers. Where this is not possible, passengers need to start legal procedures through civil courts. These remain complex and are therefore likely to discourage passengers from pursuing their claims.

In several States national provisions to protect rail passengers on domestic services even exceed the requirements of the Regulation (e.g. through the licensing contracts

²² Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia

²³ This Annex, which regulates international rail carriage of passengers and luggage, is currently under discussion. Its scope overlaps with EU rail passenger rights rules.

for railway undertakings). The Regulation does not prevent this as long as there is no conflict with those provisions of the Regulation where no opt out is possible.

3. UNCLEAR OR PROBLEMATIC ISSUES IDENTIFIED WITH THE REGULATION

The preceding assessment shows that there are no major problems resulting in an impossibility to implement the Regulation. However, clarification of some terms and articles could further improve its application.

Some definitions are either missing (e.g. "missed connection") or unclear (e.g. "ticket vendor", "urban", "suburban" and "regional rail passenger services") or inconsistent with definitions in other relevant legislations. The concept of "force majeure" and conditions exempting undertakings from having to pay compensation also needs to be clarified.

As regards Article 5 on the carriage of bicycles, cyclists' representatives consider it too vague and that there is no incentive to favour bicycle carriage.

Some concerns have also been voiced regarding the consistency between the main text of the Regulation and its annexes, notably Annex I.

4. CONCLUSIONS

The overall application and enforcement of the Regulation is satisfactory under the current market situation, even if not all objectives of the Regulation have been reached (i.a. an increased rail market share²⁴). Further market opening as proposed in the 4th railway package will, however, require further efforts by railways and Member States to ensure appropriate passenger protection. In particular, equal and transparent access to pre-journey information, ticket availability and information about delays and cancellations and ticket integration play an important role in ensuring passengers can fully benefit from market opening. Consistent and active enforcement by NEBs is important to ensure a level playing field for railway undertakings.

According to NEBs and consumer organisations, the railway industry generally shows a positive approach towards implementation. **No deliberate, severe or systematic non-compliance has been detected.**

Despite the overall positive picture certain Member States and railway undertakings need to take additional efforts to improve application and enforcement.

A major issue inherent in the Regulation is that it allows Member States to exempt the majority of their railway services from most of its provisions.

The Commission considers the extensive use of exemptions as a serious obstacle to the fulfilment of the Regulation's objectives. The application of different regimes for domestic and intra-EU international services is not consistent with the wider policy objective of a single European Railway Area and creates barriers for operators who operate in several Member States. In this context, the Commission underlines that

²⁴ Recital (1)

only services can be (partially) exempted from the Regulation²⁵, whereas journeys, notably cross-border journeys, cannot, be exempted²⁶.

Furthermore, enforcement is lagging behind in some Member States. Either there is no fully-fledged NEB, or the NEB is not fully empowered or not sufficiently independent. Some Member States still need to define effective, appropriate and dissuasive sanctions.

Another issue of concern is the insufficient cover for liabilities in case of accidents in two Member States.

5. FOLLOW-UP ACTIONS

5.1. Commission Action

- The Commission is currently assessing the necessary actions for lack of NEB, lack of sufficient empowerment or lack of effective sanctions. Based on obvious cases or where NEBs treat railway undertakings differently, notably in more liberalised markets, the Commission will also act on cases where it considers an NEB as not sufficiently independent. As a first step, the Commission has launched ten pre-infringement procedures against Member States who do not seem to comply with these requirements or whose enforcement actions need to be enhanced on certain issues, mainly in the following main areas:
 - Failure of NEB to cover all articles of the Regulation and lack of effective sanctions
 - Insufficient cover for liabilities
 - Failure to comply with the obligation to pay an advance payment in case of death of a passenger
 - Failure to provide adequate information to passengers and lack of information on assistance and adequate pre-notification tools for persons with disabilities
 - Discrimination on various grounds
 - Lack of assistance and care in case of disruption
 - Failure to offer financial compensation or compensation for loss or damage of registered luggage or with regard to mobility equipment
 - Failure to re-route via other, comparable, transport means
 - Failure to publish service quality reports

²⁵ Article 2(1), (4) and (5)

²⁶ Except as regards Article 2(6) where both services and journeys can be exempted

- **In the short term**, the Commission, in cooperation with Member States, rail industry and stakeholders, will consider adopting interpretative guidelines to facilitate and improve the application of the Regulation and to promote best practices.
 - The Commission will encourage cooperation with other modes to improve seamless intermodal transport.
 - The Commission will liaise with the relevant stakeholders to move forward with regard to integrated travel planning and through ticketing.
- **In the medium term**, to strengthen the application of rail passenger rights legislation, the Commission envisages to review Regulation 1371/2007, taking into account the on-going revision of the Package Travel Directive, looking into the following areas:
 - Exemptions for domestic (long-distance) services in order to align with the 4th railway package;
 - "Force majeure": to align with obligations under passenger rights legislation for other transport modes and in view of the pending ruling of the European Court of Justice in Case C 509/11 the Commission will consider asserting that in such situations undertakings are not obliged to pay compensation ;
 - Clarification of unclear issues (e.g. regarding undertakings' coverage for passenger liability to ensure a level playing field for operators and legal certainty for passengers);
 - Application of the UNCRPD: proposal of appropriate amendments to the Regulation (e.g. definition of "disabled person or person with reduced mobility", Article 21 on accessibility or Annex III);
 - Awareness and assistance training for staff dealing with disabled persons to align with passenger rights legislation for other transport modes;
 - Display of notices at railway stations, at ticket vendors' premises and on-board trains informing passengers about their rights under the Regulation to align with passenger rights legislation for other transport modes.

5.2. Enforcement by Member States

- NEBs need to be more pro-active in enforcement, e.g. to carry out more inspections, notably in cases of non-compliance. Adequate resources must be ensured.
- NEBs must ensure that railway undertakings set up quality standards and publish service quality reports. NEBs can easily check compliance in these areas and can take action if necessary.
- As required under Article 31, NEBs need to cooperate better among each other, not only to resolve cross-border issues but also to exchange information and best practices.

- NEBs should actively raise passengers' awareness of their rights.
- The Commission will continue to organise regular meetings with NEBs to reach a mutual understanding on the practical aspects of the implementation of the Regulation and to enable the NEBs to share their experiences.

5.3. Other

- The Commission will carry out awareness raising measures and will invite NEBs, industry and other stakeholders to join the Commission in its efforts and/or to launch similar activities.