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**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT**

*Accompanying the document*

**Proposal for a Regulation from the European Parliament and the Council**

**on rail passengers' rights and obligations**

**(recast)**

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# 1 WHAT IS THE PROBLEM AND WHY IS IT A PROBLEM?

## 1.1 Policy Context and Key Problems at Stake

### Policy Context

A Deeper and Fairer Internal Market where consumer interests and social policy are at the core of the single market is one of the ten policy priorities<sup>1</sup> of the Commission. The Commission adopted passenger rights legislation for all modes of transport (air, rail, waterborne and bus and coach) between 2004 and 2011. This legislation ensures minimum protection for passengers in the EU, including persons with reduced mobility, when the journey is not carried out as scheduled and provides for rules on liability in the event of accidents<sup>2</sup>. The Regulations establish ten basic core passenger rights: (1) non-discrimination in access to transport; (2) assistance at no additional cost for persons with disabilities or reduced mobility; (3) information before purchase and at the various stages of travel, notably in case of transport disruption; (4) right to renounce travelling when the trip is not carried out as planned by the carrier; (5) fulfilment of the transport contract in the event of transport disruption; (6) assistance in situations of long delay at departure or at connecting points; (7) financial compensation under certain circumstances; (8) carrier liability towards passengers and their baggage; (9) an effective system of complaint handling; and (10) full application and effective enforcement of EU law.

Regulation (EC) No 1371/2007 on rail passengers' rights and obligations<sup>3</sup> (the Regulation) is part of this comprehensive set of passenger rights legislation. It has been applicable since December 2009 and, as part of the "third railway package" of 2007, it aims to improve the attractiveness of rail passenger transport and its market functioning. It ensures a minimum level of protection for all rail passengers across the EU, including specific rights for persons with disabilities or reduced mobility<sup>4</sup> (PRMs) thus enhancing the social inclusion of PRMs. It also promotes a more level playing field for rail operators in the EU with regard to passenger protection. The Regulation establishes the liability of railway undertakings towards passengers (including PRMs) and their luggage while using rail services. This is the case, in particular, with regard to information, contracting, assistance and financial compensation to passengers in the event of long delay(s) or missed connection(s). It lays down provisions on service quality standards, the handling of complaints and general rules on enforcement. Under the Regulation, Member States have to designate national enforcement bodies (NEBs) who have to ensure that the rights of passengers are respected. Passengers may complain to these bodies about alleged infringements of the Regulation. NEBs have to cooperate and exchange information to coordinate their tasks across the EU. Member States also have to set up rules for effective, proportionate and dissuasive penalties for infringements of the Regulation.

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<sup>1</sup> A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change Political Guidelines for the next European Commission, Opening Statement in the European Parliament Plenary Session Strasbourg, 15 July 2014

<sup>2</sup> Air transport: Regulation (EC) No. 261/2004 and proposal COM (2013) 130 for its amendment, Regulation (EC) No. 889/2002 and Regulation (EC) No. 1107/2006; Rail transport: Regulation (EC) No. 1371/2007; Sea and inland waterway: Regulation (EU) No. 1177/2010; Bus and Coach transport: Regulation (EU) No. 181/2011.

<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0014:0041:EN:PDF>

<sup>4</sup> *PRM* is considered 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.

The Regulation builds on the existing system of 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). COTIF applies in Europe, the Maghreb and the Middle East.

A significant part of these CIV Uniform Rules is reproduced in Annex I to the Regulation. As a consequence, the Regulation extends the scope of this Convention, which makes reference only to international railway services, to domestic rail passengers' transport services. Basically, the general rules and passengers' rights and obligation which are contained in the CIV Uniform Rules (CIV UR) of the COTIF Convention and which form the object of such extension relate to the transport contract, conditions and liability for the transport of luggage and vehicles, liability in case of accidents, cancellations, delays and missed connections and relations between carriers. Annex I applies subject to the rules in main provisions of the Regulation.

The Regulation applies to all rail journeys and services throughout the EU provided by railway undertakings licensed under Directive 95/18/EC<sup>5</sup> (i.e. it does not apply to "light rail" such as trams or metros). Also journeys covered under the new directive on package travel and linked travel arrangements<sup>6</sup> are covered. However, the Regulation allows Member States to grant a number of exemptions from the application of most provisions of the Regulation to certain services<sup>7</sup>. Exemptions include temporary exemptions for long distance domestic services (for a period of up to 15 years, i.e. until 2024), unlimited exemptions for urban, suburban and regional services as well as exemptions for services of which a significant part, including at least one scheduled stop, is operated outside the EU. Member States have taken broad advantage of this possibility to grant exemptions, and currently only five apply the Regulation in full<sup>8</sup>. All other Member States have granted exemptions to a different extent to their domestic services which leads to a patchwork of application across the EU.

The Court of Justice of the European Union has so far been called upon three times to interpret the Regulation<sup>9</sup>. The ruling in Case C-509/11 of 2013, has created a certain confusion among stakeholders since, as a consequence, railway undertakings have to pay compensation to passengers also in the event of "force majeure", i.e. where they were not responsible for delays and could neither foresee nor prevent them. Before the ruling, all stakeholders and notably railway undertakings, Member States and the Commission had understood the Regulation as containing a "force majeure" clause, exempting railway undertakings from having to pay compensation when a delay of more than one hour was caused by a "force majeure" event and could not have been foreseen or prevented. The reference in Article 15 of the Regulation to the liability chapter in the CIV Uniform Rules in Annex I to the Regulation was thus understood to "import" the "force majeure" clause contained in Article 32 of the CIV into the Regulation, so that railway undertakings' liability to pay compensation would equally be covered by that clause.

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<sup>5</sup> OJ L143, 27.6.1995, p. 70, as replaced by Directive 2012/34/EC establishing a single European railway area L343, 14.12.2012, p.32, as amended by Directive 2016/2370 as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure, OJ L352 p. 1, 23.12.2016

<sup>6</sup> L326, 11.12.2015, p.1

<sup>7</sup> Article 2 (4), (5) and (6)

<sup>8</sup> Belgium, Denmark, Italy, Netherlands and Slovenia

<sup>9</sup> Cases C-509/11 (ÖBB), C-136/11 (Westbahn) and C-261/15 (NMBS - SNCB)

Recital 14 of the Regulation explicitly mentions that compensation for delays (Article 17) "is linked to the liability of a railway undertaking" on the basis of the CIV. This entails that imposing on railway undertakings the obligation to pay compensation (in addition to rerouting or reimbursement and assistance) would only apply in the event that the delay or cancellation cannot be attributed to those "circumstances not connected with the operation of the railway" mentioned in Article 32 of Annex I.

The Court came to the conclusion, that the provisions mentioned by Article 32 of Annex I are not of the same nature as those mentioned in Article 17 of the Regulation and that "nothing in Regulation No 1371/2007 provides that railway undertakings are exempt from the obligation to pay compensation laid down in Article 17(1) of that regulation where the delay is attributable to force majeure". Indeed Article 32 refers to "loss or damage" due to cancellation or delay. This notion differs from the "compensation" for delay offered by the Regulation in chapter IV, which the Court qualified as a "fixed rate standard form of compensation" for a contract not carried out as scheduled. The Court considered therefore that the rights to compensation under the regulation complement and go beyond those in the CIV and were thus deliberately not meant to be covered by the exemption in Article 32.

This distinguishes rail transport from air and waterborne transport, where carriers can be exempted from paying compensation under certain circumstances. In bus and coach transport, there is no obligation for operators to pay compensation in the event of delays at arrival, and carriers can even invoke a "force majeure" clause to be exempt from providing assistance (i.e. no accommodation has to be provided). It should be noted that there is currently no uniform harmonised definition of "force majeure" in the EU, and a variety of definitions exist across the EU (in both EU and national law). For the purpose of this impact assessment, we will therefore look at two different definitions of the concept of "force majeure" and what it encompasses. A detailed description of the issue and the impact of different definitions is presented further in the report (see section on the problem definition, definition of options and analysis of effects below).

Apart from the provisions of the Regulation, the UN Convention on the Rights of Persons with Disabilities<sup>10</sup> (UNCRPD) calls inter alia for the accessibility of transport services for persons with disabilities. Accessibility is at the heart of the UNCRPD to which the EU and the Member States<sup>11</sup> are parties. It requires them to take the necessary measures, including adopting legislation, to ensure accessibility and personal mobility. In line with Article 9 of the UNCRPD, accessibility in the context of transport means the prevention or removal of barriers so that persons with disabilities or reduced mobility may use the service and all related facilities, including information, on an equal basis with other users, i.e. independently and without having to rely on other persons. Apart from some accessible information, the Regulation does not contain detailed provisions on accessibility but refers to the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility (PRM TSI)<sup>12</sup>. The PRM TSI will ensure progressive accessibility of rail transport infrastructure and vehicles. The Commission has also recently proposed the

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<sup>10</sup> <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

<sup>11</sup> All Member States have signed the Convention and 27 have ratified it. Ireland is preparing for ratification.

<sup>12</sup> Regulation (EU) No 1300/2014 of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility; OJ L 356, 12.12.2014, p. 110

European Accessibility Act<sup>13</sup> (EAA) which contains accessibility provisions for transport services<sup>14</sup>. The EAA will complement and add to the provisions of the PRM TSI, which itself is currently being revised. The EAA proposal is currently being discussed in the Council and the European Parliament. Its impact on rail transport services will depend on the outcome of these discussions.

In August 2013, the European Commission adopted a Report<sup>15</sup> on the application of the Regulation which included the findings of an ex-post evaluation<sup>16</sup> study. In 2015, the Commission adopted a Report on exemptions<sup>17</sup> which identified the extensive use of exemptions as a major hindrance to the uniform application of the Regulation. To address the shortcomings identified, the European Commission launched an impact assessment process in February 2016<sup>18</sup> the results of which are presented in this report.

The application 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 2011<sup>19</sup> to achieve a greater modal share for rail. This objective is recalled in the recently adopted 4<sup>th</sup> railway package<sup>20</sup> which mentions the Regulation notably in connection with through ticketing and contingency planning. In 2010, rail accounted for only 7% of inland passenger mobility in the EU. According to the 2016 Consumer Markets Scoreboard, consumers rated rail services poorly<sup>21</sup> (even though the situation has been improving), and there is a wide divergence in how the market performs in different countries.

As regards developments on passenger rights in other transport modes, a proposal for a revision of the Regulation on air passenger rights has been tabled by the Commission in 2013. Negotiations in the Council are currently halted because of the Gibraltar issue between Spain and the UK. Further to the numerous rulings of the EU Court of Justice on air passenger rights, the Commission proposal aims at ensuring a fairer balance of interests between passenger rights and the economic burden on air carriers of these rights.

The international rail market constitutes merely 6% of all rail traffic in the EU. The domestic long-distance rail segment represents 48% of all rail traffic in the EU while regional traffic represents 27% and suburban traffic 19%. While there is a certain degree of competition between rail and other transport modes on certain specific routes and over certain distances, notably air transport and bus and coach transport, the data available

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<sup>13</sup> COM/2015/0615 final

<sup>14</sup> e.g. for websites, ticketing machines and check-in machines, information, mobile-device based services

<sup>15</sup> Report from the Commission to the European Parliament and the Council 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, COM/2013/0587 final

<sup>16</sup> 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; <http://ec.europa.eu/transport/themes/passengers/studies/doc/2012-07-evaluation-regulation-1371-2007.pdf>

<sup>17</sup> COM(2015)117

<sup>18</sup> Please refer to Annex 1 for further information

<sup>19</sup> COM(2011) 144 of 28/03/2011

<sup>20</sup> Directive (EU) 2016/2370, OJ L 352, 23.12.2016, p. 1

<sup>21</sup> [http://ec.europa.eu/consumers/consumer\\_evidence/consumer\\_scoreboards/12\\_edition/index\\_en.htm](http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/12_edition/index_en.htm) With a Market Performance Indicator of 76.2 (EU28 average, up 5.1 from two years earlier), the train services market ranks 24th among the 29 services markets surveyed. There are large differences in performance scores across countries, ranging from 89.6 in Lithuania to 62.6 in Bulgaria.

does not allow the conclusion that the issue of competition of rail with other modes is significant at a global level.<sup>22</sup>

### **Key problems at stake and their causes**

The ex-post evaluation and the Commission's own reports have shown that the Regulation has had an overall positive effect on increasing the protection of rail passengers. Railway undertakings have in general applied the Regulation relatively effectively. There was no systematic non-compliance or major ambiguities with any provision of the Regulation making it impossible for Member States or operators to comply.

However, the evaluation identified two major problem areas related to the application of the current Regulation, which affect the main stakeholders groups and which are analysed in this impact assessment. One problem area relates to passengers (including PRMs) and their rights, the other to the burden on railway undertakings:

1. Firstly, passengers cannot always fully enjoy their rights under the Regulation when using rail services. Most of the issues described under this problem area apply to all passengers. However, a number of issues concern mainly PRM passengers. Where relevant the report will address these elements separately.
2. The second major problem area concerns the burden on railway undertakings due to the inconsistent application of the Regulation. .

These two areas both relate to the current application of the Regulation and will constitute the **first main part** of this impact assessment.

Another important element which will be treated separately in this impact assessment report is linked to the fact that rail operators cannot be exempted from having to pay compensation even where delays were caused by "force majeure" and could not be foreseen or prevented. This problem could in principle be treated together with the issues concerning the burden on railway undertakings. However, the insufficient quantitative evidence as to the economic scale of this problem led us to separate this issue from the other issues in this impact assessment. Because of the high interest of the "force majeure" issue for Member States and stakeholders, the issue will be analysed nevertheless, although separately. Therefore, the report will be based on the following structure:

- i) Part I – problems related to the current application of the Regulation and
- ii) Part II – problems related to the issue of "force majeure"

(See problem diagram on Figure 1).

### **Part I – problems linked to the current application of the rail passenger rights legislation**

The analysis performed by the Commission in the preparation of this impact assessment identified a number of separate and independent issues. Moreover, a number of problem-drivers identified only have limited effects. Therefore, this impact assessment report applies a hierarchy to the problems (i.e. major and secondary problems) which is justified by their greater or lesser impact on stakeholders. The major problems are therefore related to:

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<sup>22</sup> See overview in Annex 5, Document A1

- Issues linked to the scope of the rail passenger rights legislation (Exemptions);
- PRM rights;
- Information provisions;
- Compensation and assistance to passengers in case of missed connections, delays or cancellations (notably the issue of through ticketing);
- Complaint handling and enforcement.

All of these problems mainly affect the rights of passengers using rail services.

There are a number of "secondary" issues with the Regulation, which, although they have a certain impact on stakeholders, are not directly linked to the abovementioned problems. They can be divided according to the main stakeholders affected.

As regards passengers they relate mainly to:

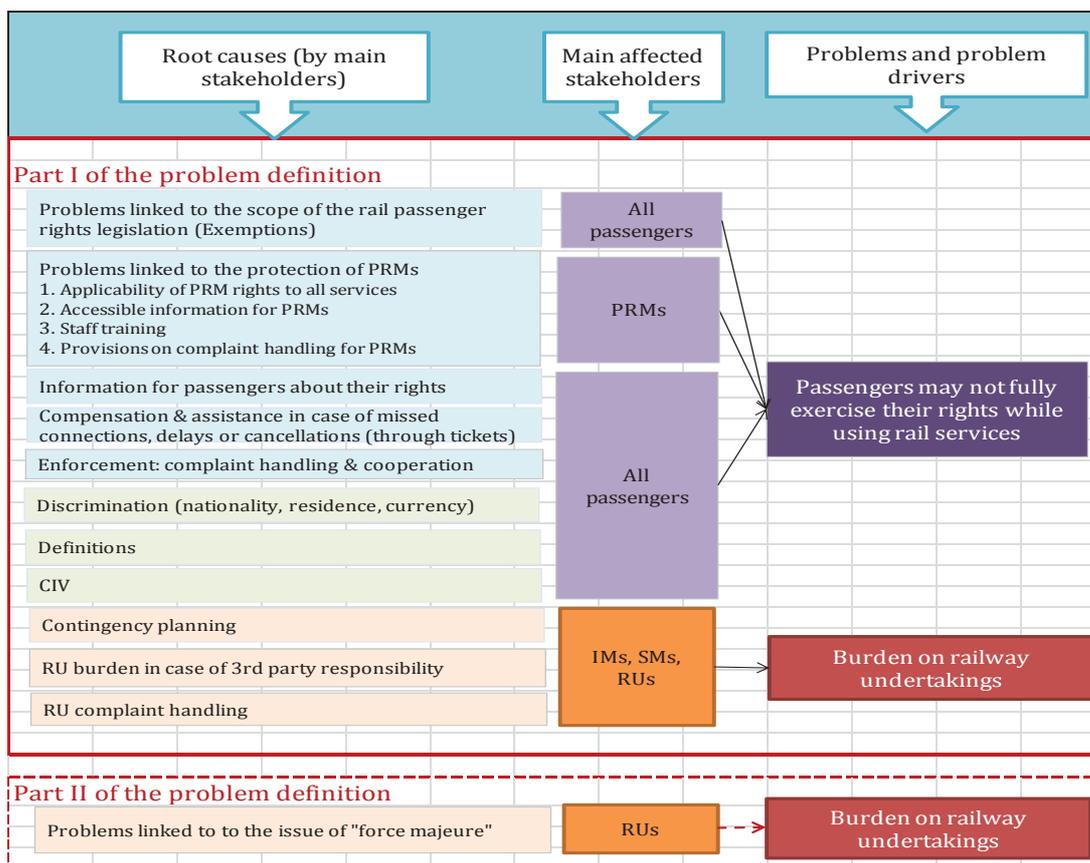
- Discrimination on the basis of nationality, residence or currency;
- Certain unclear definitions (e.g. missed connection, comparable transport conditions);
- Potential inconsistencies of the Regulation and the CIV UR reproduced in Annex I to the Regulation.

Secondary issues relating to the economic and administrative burden on rail companies concern:

- Railway undertakings' sole responsibilities in case of major disruptions;
- Long delay or cancellation caused by a third party;
- The fact that railway undertakings currently have to keep incident data for an unlimited period of time.

**Part II – The problems linked to the issue of "force majeure" are dealt with as a separate topic.**

**Figure 1: Problem definition diagram**



Source: compilation by DG MOVE

## 1.2 Description of the main problems linked to the current application of the rail passenger rights legislation (Part I)

### 1.2.1 Major issues with the regulation

*(Protection of all passengers (including PRMs) – see Figure I)*

#### 1.2.1.1 Problems linked to the scope of the rail passenger rights legislation (Exemptions)

The Regulation<sup>23</sup> allows Member States to exempt certain domestic rail services from the full application of its requirements. This possibility was granted, on the one hand, to allow Member States experiencing difficulties to apply the Regulation in full from the entry into force to adapt their domestic services progressively and, on the other hand, to take account of the specific character of urban, suburban and regional passenger services<sup>24</sup>. Only certain articles such as the availability of tickets, the liability of railway undertaking in respect of passengers and their luggage, the provisions on insurance, the responsibilities of railway undertakings and station managers to grant PRMs access to rail transport services and the information about the accessibility of the service to PRMs and the personal security of passengers<sup>25</sup> cannot be exempted and apply to all services<sup>26</sup>. However, Member States may exempt from all or part of the other provisions:

<sup>23</sup> Article 2 of the Regulation

<sup>24</sup> See also recitals 25 and 26

<sup>25</sup> Articles 9, 11, 12, 19, 20(1) and 26

- **long-distance national services** for a limited period of time (five years, renewable twice, i.e. for a maximum of 15 years, i.e. until 2024)<sup>27</sup>;
- **urban, suburban and regional services** for an unlimited period of time<sup>28</sup>;
- **particular services or journeys where a significant part of the service or journey is carried out outside the Union** for a maximum period of five years which can be renewed<sup>29</sup>. The Regulation does not specify how often this may be done.

Despite the initial purpose of exemptions to allow a progressive "phasing-in", Member States have made extensive use of exemptions<sup>30</sup> with the negative consequence that rail passengers travelling on domestic services cannot fully benefit from most of the provisions under the Regulation and may be insufficiently protected depending on where they travel. In theory this problem could potentially be mitigated if the Member States which grant exemptions had equivalent or more generous national provisions on compensation or assistance in place. However, as is shown in table A3 of Annex 5, only in the UK do exemptions for the compensation<sup>31</sup> not have a significant impact on passengers' rights, as franchise contractual commitments provide for more generous compensation than that of the Regulation. Therefore, a significant number of passengers' journeys (in terms of passenger km or pkm) are exempted, and thus an important number of passengers do not benefit from the rights under the Regulation.

For instance, for **domestic long distance services**, 11 Member States<sup>32</sup> apply exemptions for compensation, and the same 11 Member States apply exemptions related to one or more articles related to assistance<sup>33</sup>. **For urban, suburban and regional services**, 15 Member States<sup>34</sup> apply exemptions related to compensation, 12<sup>35</sup> apply exemptions to the right to information<sup>36</sup> and 16<sup>37</sup> to the right to meals and refreshments in the event of long delay<sup>38</sup>. For **services with third countries**, 8 Member States<sup>39</sup> apply exemptions related to compensation, 7<sup>40</sup> apply exemptions to the right to information and 8<sup>41</sup> to meals and refreshments. As a result 21,4% of pkm do not benefit from the provision related to the right to compensation, 17,1% of pkm do not benefit from the requirement to inform passengers in case of disruption and 44,6 % of pkm do not benefit from the right to meals and refreshments. In all these cases Member States do not have equivalent or more generous national provisions in place.

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<sup>26</sup> According to Article 2 of the Regulation

<sup>27</sup> According to Article 2(4) of the Regulation

<sup>28</sup> According to Article 2(5) of the Regulation

<sup>29</sup> According to Article 2(6) of the Regulation

<sup>30</sup> See also Table A12 in Annex 5 on exemptions granted by Member States

<sup>31</sup> Article 17 of the Regulation

<sup>32</sup> BG, HR, CZ, EE, EL, HU, LV, PT, RO, SK, UK

<sup>33</sup> Article 18

<sup>34</sup> AT, BG, HR, EE, EL, FI, FR, HU, LU, LV, PL, PT, RO, SE, SK, UK

<sup>35</sup> BG, FR, HU, HR, EL, HU, LU, LV, PL SE, SK, UK

<sup>36</sup> Article 18(1)

<sup>37</sup> BG, HR, DE, EE, EL, FI, FR, HU, LU, LV, PL, PT, RO, SE, SK, UK

<sup>38</sup> Article 18(2)(a)

<sup>39</sup> BG, HR, EE, EL, FI, LV, LT, RO

<sup>40</sup> BG, HR, FI, EL, LV, LT, RO

<sup>41</sup> BG, HR, FI, EL, HU, LV, LT, RO

The ex-post evaluation carried out by the external consultant found out that the extensive use of exemptions hindered the overall achievement of the main objective of the Regulation, i.e. the protection of rail passengers. Moreover, the Commission's Application Report (2013) notes that “[t]he 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.”

Indeed, extensive exemptions in regions where urban, suburban or regional services operate across borders also lead to legal uncertainty and lack of transparency for commuters. This is mainly the case in the border regions of Germany, France, Belgium and Luxemburg. If a train is delayed by more than 60 minutes, passengers always have to check national rules to see whether or not they are entitled to compensation or assistance, depending on the country in which they are travelling. This leads, combined with imperfect knowledge of their rights by passengers and divergences in the provision of information, to a low probability that passengers assert their rights to compensation.

While exemptions for urban, suburban and regional services can be granted, in principle, for an unlimited period of time, renewals for exemptions for long distance domestic services and services with third countries have to be made every 5 years. As regards long distance domestic services, renewals are limited to two (15 years in total from the entry into force of the Regulation). For services with third countries, the Regulation does not specify the number of renewals. Consultations with Member States in the course of this impact assessment reveal that there are no intentions to reduce the current exemption regimes. This conflicts with the objective of the Regulation to provide a high level of passenger protection.

Furthermore as emphasised in the EC Interpretative Guidelines<sup>42</sup>: *“temporary exemptions for long-distance services may be introduced with a view to allowing a period of ‘phasing-in’, in order to help railway undertakings that may have difficulties in implementing all of the provisions by the date of the Regulation’s entry into force.”* In connection with Recital 25 of the Regulation this indicates that exemptions for long distance services are not meant to be permanent and should only be used to overcome temporary difficulties to apply the Regulation in full. The same applies to services or journeys of which a significant part is carried out outside the EU. As Article 26 indicates a clear maximum period of five years (albeit renewable) granting exemptions should allow Member States to adapt their relations with third countries (e.g. to adjust their bilateral agreements) with the aim to apply the Regulation in full on the part carried out on the EU territory. The Regulation does not mention cross-border intra- EU services explicitly, but it openly refers to the domestic nature of services which can be exempted (apart from those with third countries, but there the Regulation would only apply on the services carried out on the EU territory). Conversely, where Member States exempt cross-border EU services which are suburban or regional services the rights of commuters in cross-border regions are significantly reduced, as is their legal certainty about which rights apply.

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<sup>42</sup> Interpretative Guidelines on Regulation (EC) N° 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations; OJ C 220, 4.7.2015, p. 1

### 1.2.1.2 Problems linked to the protection of passengers with disabilities or reduced mobility

Persons with disabilities or reduced mobility (PRM) have the same rights to use rail transport as other passengers. The Regulation provides for non-discriminatory access conditions for PRM passengers and imposes obligations on railway undertakings and station managers to enable PRM passengers to use rail services. However, various sources, including passenger complaints (see further sub-sections), show that PRMs may not always fully exercise their rights while using rail services. The main problematic areas are described below.

It is important to note though that several assumptions had to be made to assess the scale of these problems. Currently, there is no data available at European level on the amount of rail travel that PRMs undertake. However, according to the World Report on Disability<sup>43</sup> (2012), approximately 16.6% (1 in 6) of the EU population has some form of disability. Also, the impact assessment on PRM-TSI<sup>44</sup> estimates PRMs as 15.7% of the working age population. It results that if the overall travelling patterns of PRMs are similar to those of all citizens, around 67 billion pkm on a yearly basis could be associated to PRMs.

#### *A) Applicability of PRM rights to all services*

In addition to the general set of exemptions discussed above concerning all passengers, the Regulation allows Member States to exempt domestic services from the application of a number of provisions intended to PRMs to enable them to use transport as other passengers. This is possible simply because apart from the "right to transport" and certain information requirements, the articles containing these provisions are not among the list of mandatory provisions<sup>45</sup>. The rights enshrined in these articles concern notably the assistance in stations and on-board trains and the compensation for lost or damaged mobility equipment. The duration of these exemptions is linked to the general duration of exemptions granted by Member States and depends on the nature of the service (long distance; urban, suburban or regional; or service with a third country).

In some cases, exemptions do not impact the rights of PRMs as, prima facie, some national legislation appears to meet the standards of the Regulation. Table A3 in Annex 5 shows the proportion of PRM pkm that are exempted for each of the requirements<sup>46</sup>, as well as the proportion of services that are exempted and for which there are no equivalent domestic provisions. At present, services carrying between 12.8% and 30.1% of EU pkm are subject to exemptions, and do not meet the requirements related to PRM accessibility, assistance and compensation for mobility equipment<sup>47</sup>. By allowing Member States to exempt services from the application of these articles, the Regulation further reduces the rights of PRMs as well as their opportunities to use rail services. This is contrary to the objectives of the UNCPRD<sup>48</sup> as well as to the European Disability Strategy 2010-2020<sup>49</sup>.

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<sup>43</sup> World Health Organisation (WHO), (2012) World Report on Disability

<sup>44</sup> Impact assessment report – PRM TSI: revision and scope extension

<sup>45</sup> As per Article 2(3)

<sup>46</sup> As defined in Chapter V of the Regulation

<sup>47</sup> Articles 20(2), 21(2), 22, 23, 24(a), 24(b), 24(c), 24(d), 24(e) and 25

<sup>48</sup> <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

<sup>49</sup> COM(2010) 636 final

*B) Accessible information for PRMs (travel information and information about their rights as passengers)*

As regards travel information, railway undertakings and/or ticket vendors shall inform passengers pre-journey at least about general contract conditions, time schedules and conditions for the fastest trip and lowest fares, accessibility, access conditions and PRM facilities on board, conditions for bicycles, availability of seats, any activities likely to disrupt or delay services, on-board services, procedures for reclaiming lost luggage and for submitting complaints<sup>50</sup>. During the journey information must be provided at least about on-board services, next stations, delays, main connecting services and security and safety issues<sup>51</sup>. When providing this information, the Regulation requires that particular attention be paid "to the needs of people with auditory and/or visual impairments"<sup>52</sup>. While this provision ensures that journey information is accessible to at least a certain proportion of PRMs, other categories of persons with disabilities are not covered (such as persons with cognitive impairments or dementia), and these persons may not be adequately informed, in particular during their journey, at connection points or when the trip is not carried out as planned.

Moreover, no specific requirements exist regarding the accessibility to PRMs of the information to passengers about their rights and obligations under the Regulation (i.e. the rights to transport, assistance, compensation, complaint handling etc.)<sup>53</sup>. As a result, this information is often not accessible to persons with different kinds of disabilities who may thus not be adequately informed about their rights as passengers when travelling by rail. In the course of the consultations made for this Impact Assessment, the European Disability Forum (EDF) complained for instance about the lack of accessible information about passenger rights.

While general issues regarding passenger awareness (which also affect PRMs) will be discussed below in section 1.2.1.3., with regard to PRMs, there is an additional indicator for awareness, which is the number of requests for assistance<sup>54</sup> which PRMs may make to railway undertakings, station managers, ticket vendors or tour operators at least 48 hours before the journey<sup>55</sup>. Based on the assumption that the travelling patterns of PRMs are similar to those of all citizens, it was possible to calculate this figure for a number of Member States. The proportion of PRMs making rail journeys range from 0.02% in Slovakia to 0.67% in Spain. The proportions of journeys that include requests for assistance are low (in all cases much less than 1%). These low figures reflect the information provided by a Eurobarometer survey on passenger rights of 2014<sup>56</sup>. According to the survey results, only 3% of citizens in the EU have ever asked for assistance during a journey by train (national or international). Although these figures should be treated with care, as a PRMs decision to request assistance might depend on other factors, it can still provide an indication on the level of passengers' awareness (in particular in combination with information on overall levels of information provided in

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<sup>50</sup> Annex II, Part I

<sup>51</sup> Annex II, Part II

<sup>52</sup> Article 8 (3)

<sup>53</sup> Article 29

<sup>54</sup> We note that, when using this proxy in the analysis, it is necessary to assume that the travel patterns of PRM passengers are the same as for other passengers. We will keep a note of this assumption wherever it is used in the generation of results.

<sup>55</sup> Article 24

<sup>56</sup> Special Eurobarometer 420 (November 2014), [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_420\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_420_en.pdf)

section 1.2.1.3). This low awareness could also be due to the fact that the information about the right to assistance is not available in accessible formats.

### *C) Staff training*

The Regulation is not fully aligned with the UNCRPD<sup>57</sup> which requires States Parties to take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by facilitating the personal mobility of persons with disabilities.

The Regulation requires railway undertakings and station managers to provide assistance to PRMs, subject to pre-notification of 48 hours, at railway stations and on board trains. If no notification is made, railway undertakings and station managers have to "make reasonable efforts" to provide assistance so that the passenger can take the train.

EDF pointed out that assistance to PRM passengers was not always available in spite of pre-notifications and that it was not always appropriate to the needs of the person. Moreover, according to EDF, assistance is not always available at all times that trains run, as opposed to within a restricted time frame. While there is no specific reference in the Regulation to such a requirement, Article 24(a) states that "assistance shall be provided on condition that [notification is given] at least 48 hours before the assistance is needed". Even if EDF only provided anecdotal evidence, such situations can and will occur more often.

This means that rail travel for PRMs is not always as easy and smooth as it should be. In order to improve the provision of assistance and thus the travel experience of PRM passengers, the Interpretative Guidelines recommend that rail staff receive disability awareness training at regular intervals to provide effective and adequate assistance to PRMs. However, there is no obligation. As a consequence, where rail staff is not thoroughly trained, the assistance provided to PRMs might be inadequate or completely lacking, thus inhibiting a smooth travel experience. Trained staff at stations and on board, as required under passenger rights legislation for all other modes of transport, would be in a good position to provide proper assistance. This would help ensure that PRM passengers have the same opportunities to use rail services as other passengers.

### *D) Provisions on complaint handling for PRMs*

The evaluation report highlighted that missing rules for complaint handling by actors other than railway undertakings (e.g. station managers) may impede passengers' access to redress. The Regulation<sup>58</sup> requires station managers to provide assistance to PRMs on departure from, transit through or arrival at, a staffed railway station so that the person can board the departing service, or disembark from the arriving service. Despite this requirement, station managers have no obligations (similar to requirements on railway undertakings<sup>59</sup>), to handle complaints or to publish service quality reports. This was not a problem when most rail stations were owned by the railway undertakings, who handled the complaints about infringement of the Regulation by the stations.

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<sup>57</sup> Articles 9 and 20 of the UNCRPD refer to transport

<sup>58</sup> Article 22

<sup>59</sup> As defined in Article 27

However, nowadays, in a lot of Member States railway undertakings are separated from the station manager<sup>60</sup>. As pointed out inter alia by EDF, there is currently no process for PRMs to complain directly to the station manager (such as to airports in the air passenger rights legislation<sup>61</sup>). As railway undertakings do not usually handle complaints about problems at stations, PRM passengers currently have to address their complaints directly to the NEBs, which in turn have to contact the rail stations. Problems, which could be solved relatively easily directly between the stations and the passengers, have to go through an additional administrative layer. This prolongs the solution of problems and increases the work of national administrations.

### **1.2.1.3 Information for passengers about their rights and passenger awareness**

Railway undertakings, station managers and tour operators must inform rail passengers about their rights as passengers under the Regulation notably when the journey is not carried out as planned (rights to information, assistance, compensation etc.)<sup>62</sup>. Railway undertakings and ticket vendors must provide at least the minimum information specified in Annex II to the Regulation<sup>63</sup>. Pre-journey information relates to general conditions, time schedules, PRM accessibility, conditions for bicycles, complaint procedures etc. Information during the journey must cover at least on-board services, next stations, delays, main connecting services and security and safety issues (see also PRM section 1.2.1.2 on information above).

However, the level of passenger awareness and information provided is not always sufficient, which was highlighted in a Special Eurobarometer survey on passenger rights of 2014<sup>64</sup>. This Special Eurobarometer survey was conducted in a view to measure awareness of passenger rights in 28 Member States, distinguishing between different transport modes (air, rail, waterborne and long-distance coach). It was conducted at the EU level. Some 28050 respondents from different social and demographic groups were interviewed face-to-face at home in their mother tongue. The methodology used is that of the Eurobarometer surveys carried out by the Directorate - General for Communication.

According to this survey, 37% of all citizens do not believe that railway undertakings inform passengers well about their rights on international (cross-border) lines. The level of dissatisfaction is even higher (51%), when only passengers who used international rail transport are interviewed. It is also important to note that only 29% of all citizens agreed that railway undertakings inform them adequately about their rights. The fact that 11 % replied they did not know and 37% did not consider this question relevant could also indicate low passenger awareness.

Even though the replies in the open public consultation carried out in the course of the impact assessment represent a small sample size and cannot be taken as providing direct evidence, they support the findings of the Eurobarometer survey. The opinions of passengers and passenger/consumer associations point in the same direction with 79

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<sup>60</sup> ES, HR, IT, LV, LU, AT, PL, PT, SK, SE, UK, see Fifth report on monitoring developments of the rail market, SWD(2016) 427 final, 8.12.2016

<sup>61</sup> Regulation (EC) 1107/2006 on the rights of disabled persons and persons with disabilities when travelling by air, OJ L204, p. 1, 26.7.2006

<sup>62</sup> Article 29 to the Regulation

<sup>63</sup> Article 8 to the Regulation

<sup>64</sup> Special Eurobarometer 420 (November 2014), [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_420\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_420_en.pdf)

passengers (61%) and 13 passenger/consumer associations (87%) disagreeing (either slightly or strongly) with the assertion that passengers are well informed about their rights. On the other hand, all eleven railway undertakings and one infrastructure manager participating in the open public consultation responded uniformly by agreeing (slightly or strongly) that passengers are well informed of their rights.

The field research undertaken in the course of the impact assessment also supports the findings that passenger awareness would be insufficient. According to the case studies, the NEBs in Belgium, Finland, France, Latvia, Lithuania and the Netherlands did not believe that passengers were sufficiently aware of their rights under the Regulation. In contrast, the NEBs in Austria and Germany felt that passengers were well aware of their rights. The NEB in Germany (Eisenbahn-Bundesamt - EBA), which noted a steady increase of complaints, claimed that rail passengers' awareness of their rights according to the Regulation was high and growing over time, thanks to several information campaigns. However, according to the Special Eurobarometer survey on passenger rights of 2014, in Austria and Germany the proportion of citizens considering themselves as not well informed about their rights by railway undertakings is above the EU average (44% and 56% respectively)<sup>65</sup>. During the interviews in the case studies, the Austrian NEB explained this dichotomy by the assumption that due to their high level of awareness, passengers in Austria are more demanding on their rights vis-à-vis service providers.

Further indirect insights on the awareness level of rail passengers can be drawn from the assessment of the number and type of complaints in combination with the information from the annual activity reports of the EUROPE DIRECT Contact Centre (EDCC). EDCC is a service managed by the DG for Communication. It informs citizens and businesses on EU related matters, including on passenger rights. According to the cooperation agreements between the DG for Communication and the DG for Mobility and Transport, EDCC serves as first point of call and information for general passenger enquiries. EDCC informs in particular on the relevant rights of passengers to assistance and compensation and on the complaint procedures to follow. Therefore, even if the assessment of the number and type of complaints to EDCC may not provide a full picture about rail passengers' awareness, it still provides some indications on its level, especially when compared to air transport users.

According to the 2015 report<sup>66</sup>, from January to December, EDCC replied to 79 enquiries (or 0.18 per billion pkm) on rail passenger rights compared to 5,117 enquiries (or 8.46 per billion pkm) on air passenger rights. This important difference is also reflected in the activity reports for the previous years, i.e. 149 (0.35 per billion pkm) in 2014<sup>67</sup> compared to 6,588 (or 10.89 enquiries per billion pkm) and 151 (or 0.35 per billion pkm in 2013)<sup>69</sup> compared to 6,682 (or 11.04 per billion pkm). Indeed, this data should be treated with care, as the low level of complaints could also indicate better application compared to air passenger rights. In combination with the fact that according to the Special Eurobarometer survey on passenger rights only 37% of citizens disagree that air passengers were well-informed by the airline company (compared to 51% in relation to

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<sup>65</sup> Special Eurobarometer 420 (November 2014), p. 27

<sup>66</sup> [http://ec.europa.eu/dgs/communication/pdf/aar/europe-direct/europe-direct-2015-annual-report\\_en.pdf](http://ec.europa.eu/dgs/communication/pdf/aar/europe-direct/europe-direct-2015-annual-report_en.pdf)

<sup>67</sup> [http://ec.europa.eu/dgs/communication/pdf/aar/europe-direct/europe-direct-2014-annual-report\\_en.pdf](http://ec.europa.eu/dgs/communication/pdf/aar/europe-direct/europe-direct-2014-annual-report_en.pdf)

<sup>68</sup> EU Transport in figures, Statistical Pocketbook 2016

<sup>69</sup> [http://ec.europa.eu/dgs/communication/pdf/aar/europe-direct/europe-direct-2013-annual-report\\_en.pdf](http://ec.europa.eu/dgs/communication/pdf/aar/europe-direct/europe-direct-2013-annual-report_en.pdf)

the information provided by the railway undertakings) it could, however also indicate that rail passengers are less aware about their rights than air passengers.

Moreover, some anecdotal evidence from the field and desk research for a number of Member States could also provide some indications about the passengers' awareness level. According to the UK NEB<sup>70</sup>, 70-80% of passengers do not claim compensation when they are entitled to it. The Belgian NEB received only 80 passenger complaints in 2012 (both for international and national services)<sup>71</sup> which is a low figure given that around 40 000 international journeys per year are delayed by more than one hour. Indeed, these figures should be treated with care, as a passenger decision to file a complaint might depend on a number of other factors (e.g. the value of compensation might be judged low compared to the effort). However, the Polish NEB advised that the number of complaints increased by 42.7% from 2013 to 2014 following an awareness campaign relating to complaint handling. This could indicate a potential correlation between the awareness level and the number of filed complaints. Finally, in Germany 9.9 % of all complaints to the NEB relate to the provision of information about cancellations, delays, replacement services and changes of platform, and in Romania 21% of the requests were related to information provision including requests for clarifications on passengers' rights and the Regulation. This shows that passengers are clearly interested in receiving more information about their rights.

#### **1.2.1.4 Compensation and assistance to passengers in case of missed connections, delays or cancellations**

##### *A) Through tickets*

The Regulation provides that railway undertakings and ticket vendors must offer "through tickets" where available<sup>72</sup>. It defines a through ticket as "a ticket or tickets representing a transport contract for successive railway services operated by one or several railway undertakings"<sup>73</sup>. For example, this could mean a ticket or tickets for a journey from Brussels to Hamburg involving three different railway undertakings (SNCB, Thalys and DB) with three stops (Brussels-Liège, Liège-Cologne, Cologne-Hanover, Hanover-Hamburg).

However, various sources (passenger organisations such as the European Passenger Federation (EPF), citizens writing to the Commission and to EDCC) complain that the availability of through tickets is currently limited.

The field research carried out in the course of this impact assessment confirmed a limited availability of through tickets. This is because railway undertakings do not, as a rule, establish commercial agreements between each other to offer through tickets as they shun the responsibility to provide assistance and compensation in the event of a delay or missed connection during a combined journey. Moreover, with the liberalisation of the rail market as a result of the 4<sup>th</sup> railway package, the number of operators will increase, and there is therefore a risk that less and less through tickets will be offered.

For example, French SNCF claimed that through tickets between operators were only available exceptionally, and only where a relevant agreement exists between the railway

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<sup>70</sup> Office of Rail Regulation (ORR)

<sup>71</sup> Direction Entreprises publiques et Politique ferroviaires Annual Report 2012 para 3.2

<sup>72</sup> Article 9 of Regulation 1371/2007

<sup>73</sup> Article 3(10) of Regulation 1371/2007

undertakings concerned. In the Netherlands, through tickets for domestic travel are not offered as such, because passengers use a smart card (OV Chipkaart) to check in and out; for international journeys, Dutch Nederlandse Spoorwegen (NS) offers through tickets for some destinations, depending on the agreements between NS and other operators. Currently, no through tickets are available in Poland, but the Ministry for Infrastructure and Construction has set up a working group on this issue. In Romania, the state railway undertaking (CFR Călători) provides through tickets for its own services, while for international services, it provides tickets only where agreements with other operators are in place. CFR Călători does not sell tickets for services operated by competitors.

The Austrian NEB indicated that obligations under the Regulation had a negative impact on the availability of through tickets and that railway undertakings were reluctant to offer through tickets on international services. In the same vein, Belgian SNCB expressed concerns that too restrictive requirements in connection with compensation payments might be a disincentive for operators to offer through tickets. The boot is on the other foot: Selling tickets only for segments allows railway undertakings to by-pass the obligations related to compensation for delays. This shows that certain costs of the rail market liberalisation are shifted to the consumers, who nowadays enjoy less protection under combined journeys than before the liberalisation.

As a result, compensation is calculated differently in the event of delays when a journey is composed of several legs. According to the desk and field research, the calculation of compensation for a delay in some Member States, like Germany, Italy (since March 2015) and Lithuania, is based on the whole ticket price for the entire journey if the journey is carried out by a single operator or by different operators in a single public transport network association which provides rail services in a specific region (such as a "Verkehrsverbund" in Germany). However this is not always the case; for example in Italy before March 2015<sup>74</sup>, a number of continuous rail services were not considered as through tickets by railway undertakings (Trenitalia and RFI) but as separate transport contracts – e.g. a regional rail service followed by a medium or long-distance national rail service. In that case, a delay of less than one hour on the first rail service which led to a missed connection for the second service would not entitle a passenger to assistance or compensation, even if he/she arrived with a delay of more than one hour at the final destination, since the two rail services were governed under separate transport contracts.

According to information received, notably from EPF but also from ticket vendors and travel agents, railway undertakings tend to regard separate tickets as separate contracts, even if they are bought at the same time and in a single purchase transaction for one journey. Consequently they deny compensation or assistance for the whole journey and grant it only for the separate segments. Rail companies justify this policy by referring to the General Conditions of Carriage for Rail Passengers (GCC-CIV/PRR)<sup>75</sup> which stipulate that one ticket represents one transport contract and that several tickets represent several contracts unless it is specifically mentioned that they represent a single contract<sup>76</sup>.

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<sup>74</sup> Following several complaints submitted by passengers and passengers' associations, in 2014 the Italian competition authority (AGCM) initiated proceedings against Trenitalia and RFI to establish the existence of infringements with respect to Trenitalia's complaint handling mechanism; and the failure to classify a journey composed of several legs as a "through ticket" – i.e. a single contract of carriage – which was deemed by the AGCM as being designed to limit the passengers' rights protection by limiting passengers' entitlement to compensation for delays and missed connections.

<sup>75</sup> <http://www.cit-rail.org/en/passenger-traffic/cit-documentation/>

<sup>76</sup> Points 3.4 - 3.6 about the handling of reimbursements and compensations of GCC-CIV/PRR

Although the GCC-CIV/PRR is only a recommendation document, railway undertakings widely use them as a reference document.

In the 4<sup>th</sup> railway package, the Commission clarified certain aspects related to through tickets and their availability and declared its intention to monitor rail market developments in the Member States in this respect. It will decide, by 2022, on the need for further action. However, currently the enforcement of the relevant provision in the Regulation is ineffective. The effects of the EC Interpretative Guidelines (2015) which recommend that "separate tickets sold under a single contract should be understood as a through ticket" cannot yet be assessed owing to the short time since their introduction and, in any event, they are not binding on the railway undertakings.

The replies to the open public consultation show the controversy of the subject and could reflect the different interests of various stakeholders groups. In particular, 51% of citizens (66) and 60% of passenger/consumer associations (9) responded that the concept of through tickets was unclear, (partly) missing or (partly) obsolete. Also, 50% of public authorities (8)<sup>77</sup> consider that the concept is unclear or (partly) missing. On the other side only 27% (3) of railway undertakings believe that the concept of through tickets was unclear and 64% (7) that do not.

#### **1.2.1.5 Enforcement: NEB complaint handling and cooperation**

Member States are in charge of ensuring the correct application of the Regulation. They have to designate national enforcement bodies (NEBs)<sup>78</sup>. However the tasks and enforcement policies of NEBs vary greatly depending on the country; and different interpretations of their role co-exist.

The Regulation requires NEBs to cooperate, to exchange information on their work and decision-making principles to coordinate their enforcement activities across the EU<sup>79</sup>. Despite Commission efforts to bring NEBs together in regular meetings<sup>80</sup> and to reply to and share questions on interpretation, the cooperation level between NEBs is low and, if any, restricted to a few cross-border cases, notably when passengers complain about incidents during cross-border journeys or when travelling in another country than their residence. The ex-post evaluation found that "of the 17 case study States, the NEBs of 7 States had had no contact with other NEBs, and for a further 6 NEBs any contact has been limited"<sup>81</sup>. The Polish NEB considered that owing to the frequency of NEB meetings good working relationships could not easily be established. At the NEB meeting of 31 March 2015, NEBs insisted that rules for the cooperation are unclear and the wording of the current Regulation did not allow to fully clarifying this in interpretative guidelines<sup>82</sup>.

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<sup>77</sup> BE, EE, FI, SE, EL, CZ, two authorities from LV (NEB and MoT),

<sup>78</sup> Article 30 of the Regulation

<sup>79</sup> Article 31 of the Regulation

<sup>80</sup> Seven NEB meeting have been organised by the Commission between 2010 and 2017

<sup>81</sup> The 2012 Evaluation Study Report by Steer Davies Gleave found that "of the 17 case study States, the NEBs of 7 States had had no contact with other NEBs, and for a further 6 NEBs any contact has been limited. <http://ec.europa.eu/transport/sites/transport/files/themes/passengers/studies/doc/2012-07-evaluation-regulation-1371-2007.pdf>

<sup>82</sup> Minutes of NEB meeting of 31.3.2015

As a result, passengers who suffer a delay or cancellation during a cross-border journey may not be adequately protected. Despite the fact<sup>83</sup> that passengers can complain to any NEB, NEBs may avoid to assume responsibility to handle a complaint if the incident took place in another or involves more than one Member State. Although at recent meetings with NEBs there was no evidence that such a situation has indeed produced itself, such a scenario was not ruled out, notably at a NEB meeting of 2015 to discuss the Interpretative Guidelines. This may notably occur if the ticket is bought in one Member State, the journey is carried out by a railway undertaking licensed in another Member State and the incident happened in a third one. The process to handle complaints and issues of competence, i.e. which NEB has to handle a complaint, is not entirely clear, although the Commission has tried to clarify this and to propose a procedure in its 2015 Interpretative Guidelines. In the NEB meeting of 6 March 2017 some NEBs mentioned again that the cooperation process was not sufficiently clear to them and that sharing and coordination of enforcement activities was not done sufficiently.

While international journeys represent only 7 % of all rail journeys in the EU, the primary purpose of cooperation between NEBs should be to ensure that cross-border cases are handled in a way allowing passengers' complaints to be adequately dealt with. In addition, cooperation to exchange decision-making principles shall improve consistency of application across Member States so that passengers can expect similar levels of enforcement.

Also the process that passengers should follow when lodging complaints under the Regulation is not entirely clear. According to the Italian NEB it is problematic that the Regulation does not specify that passengers should complain to railway undertakings in the first instance, as NEBs then need to contact the railway undertakings to obtain information about the incident. Finally, the Regulation does not make any connection with passengers' rights to alternative dispute resolution (ADR)<sup>84</sup>. The ADR Directive ensures that consumers have access to independent, fast and cost-effective procedures for solving their disputes with businesses out of court. Such out-of-court dispute resolution is most often not granted by NEBs, who concentrate their activities on enforcement.

## **1.2.2 Secondary issues with the regulation**

The following issues qualify as "secondary" problems as their impact on stakeholders is less than for the "major" issues. They relate mainly to clarifications of rules in the Regulation, definitions and procedures.

### **1.2.2.1 Discrimination on the basis of nationality, residence or currency**

*(Protection of all passengers (including PRMs) – see Figure I)*

Although the Regulation does not contain a clause to prohibit discrimination on the basis of nationality, rail passengers are in principle protected by the *Treaty on the Functioning of the European Union*<sup>85</sup>. However, there have been instances of discrimination on the

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<sup>83</sup> Article 30 of the Regulation

<sup>84</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), OJ L 165, 18.6.2013, p. 63

<sup>85</sup> Article 18 of the *Treaty on the Functioning of the European Union*

basis of residence or currency, which would amount to indirect discrimination on the basis of nationality (e.g. if residents of France are discriminated against, this will disproportionately discriminate against people of French nationality). The European Passenger Federation (EPF) reported for instance that to be able to use a season ticket or a national reduction card on a certain national railway, passengers must have a nominative card which can only be obtained in the neighbouring countries. This represents discrimination on the basis of residence.

In another example, a national railway has not made available certain fares on the internet to passengers who did not indicate the Member State of this railway as their country of residence on its website. EPF mentioned examples for Paris – Geneva TGV fares and also for Paris – Barcelona TGV fares. The latter discrimination issue received some press coverage and was quickly removed. It was also addressed by the European Parliament under a parliamentary written question<sup>86</sup>. In the Commission's contacts with SNCF and RENFE the former suggested that this was a “technical error”, but other similar instances were reported to the Commission through citizens' complaints. This also represents discrimination on the basis of residence.

There have also been instances where passengers were discriminated on the basis of currency. In particular, citizens reported that a railway undertaking offers tickets on its website depending on the country customers indicate to be their residence, e.g. if a customer indicates country X, then tickets cannot be bought to “any station of country Y”. Customers indicating a continental country of residence cannot buy through tickets beyond the UK Eurostar stations. Eurostar justifies this policy by claiming that some fares are only available in pounds sterling (and only visible when selecting “UK”) and others only in euros. However the price differences cannot only be explained by exchange rate fluctuations. These policies could also be understood as indirect discrimination on the basis of nationality. NEBs cannot and do not currently address such policies, and there is no obligation under the Regulation for Member States to mandate them to do so. This means that passengers have to seek redress from national courts in cumbersome, lengthy and costly procedures.

### 1.2.2.2 Definitions

*(Protection of all passengers (including PRMs) – see Figure I)*

#### *A) "Missed connection"*

The lack of a clear definition of which situations are covered under the concept of "missed connection" adds to the problems related to compensation and assistance, also in connection with the issue of through ticketing, described above. Although the Regulation<sup>87</sup> considers missing a connection as a situation of disruption it is not entirely clear whether 'missed connection' only means a situation where a passenger misses his/her next passenger service in a journey under a transport contract owing to a delay of the previous service or whether other scenarios are covered under this notion (e.g. missed connections under separate contracts). Neither are the obligations of railway undertakings or other actors clearly spelt out in such a situation and passengers may not be adequately protected. The responses to the open public consultation show that 21% (27) of the

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<sup>86</sup> E-013686-15

<sup>87</sup> Art 15, 18 (4) and in Annex I Art. 11 and Art. 32 of Regulation 1371/2007

citizens believe that the concept of missed connections is unclear with 46% (60) having no opinion. On the other hand, 82% (9) of the railway undertakings and 50% (3) of the industry federations responded there was no problem with the clarity of the rules in the Regulation.

### *B) Re-routing and "comparable transport conditions"*

Another element that hinders the effectiveness of passenger protection is linked to re-routing in case of delays, cancellations or missed connections. According to EPF, many railway undertakings<sup>88</sup> limit what they regard as 'comparable transport conditions' for rerouting (as per Article 16(b) and (c) of the Regulation) to their own services and exclude services from other companies or other modes of transport, even if this means extra delays for passengers. According to EPF, some railway undertakings<sup>89</sup> specify that re-routing must be made under exactly the same conditions (type of day, type of train, peak/off-peak services, etc.). This appears to be a too narrow interpretation impacting negatively on passengers, notably as the Regulation explicitly speaks about "comparable transport conditions" without, however, defining that term.

### **1.2.2.3 CIV**

#### *(Protection of all passengers (including PRMs) – see Figure I)*

A number of issues have also been identified with regard to the relations between the Regulation and the internationally applicable CIV UR of COTIF<sup>90</sup> of which a major extract is part of the Regulation and reproduced in Annex I to the Regulation. Problems have been identified with definitions of terms in the Regulation and the CIV that could be in conflict. Moreover, there is a risk of potential inconsistencies between the Regulation and the CIV in the event the OTIF<sup>91</sup> would decide to amend the CIV, as explained below.

#### *A) Definitions – concept of "carrier"*

The definition of "carrier" introduced in the Regulation<sup>92</sup> is potentially in conflict with the term "carrier" as defined in the CIV<sup>93</sup>. Indeed, the Regulation defines "carrier" under the list of definition, but further in the text it does not mention "carrier" any more and puts all obligations on the "railway undertaking". In contrast, the CIV focuses on the term "carrier" which is broader in nature and may include also certain domestic bus operators or international maritime companies in the chain of rail carriage. Unclear and inconsistent provisions could lead to different interpretations of the Regulation, with patchy implementation and variable levels of enforcement. In the open public consultation, the majority (9) of railway undertakings considered the notion of 'carrier' as unclear. The Dutch passenger organisation<sup>94</sup> requests to clarify the relationship

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<sup>88</sup> without specifying the companies

<sup>89</sup> Including NS and SNCB, however EPF have noted that they would not like this detail to be included in a public facing version of this document

<sup>90</sup> Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV), which constitute the Appendix A to the Convention concerning International Carriage by Rail (COTIF) of 9 June 1999

<sup>91</sup> The Intergovernmental Organisation for International Carriage by Rail

<sup>92</sup> Article 3 of the Regulation

<sup>93</sup> Article 3 of the CIV

<sup>94</sup> ROVER

between both acts, notably as regards the rules applicable in case of conflicts. The Finnish Competition and Consumer Authority<sup>95</sup> said that the CIV could become an issue if it was used more often. However, the Finnish NEB<sup>96</sup> did not identify the CIV as a problem.

### *B) Changes to the CIV*

Including the CIV in Annex I to the Regulation risks posing legal and enforcement problems due to the CIV being an International Convention, which is subject to the rules of the Intergovernmental Organisation for International Carriage by Rail (OTIF). OTIF has repeatedly in 2013 and 2014 advised the Commission that if the CIV Uniform Rules were "to continue to improve passengers' rights and to improve the entire CIV system, it will be necessary, from time to time to make arrangements to maintain their effectiveness"<sup>97</sup>. OTIF had in mind for instance to adapt financial amounts for compensation in the light of inflation. The CIV can be amended swiftly through an OTIF General Assembly decision. Amending the CIV would mean that the extract in Annex I of the Regulation (which explicitly cannot be amended through comitology<sup>98</sup>,) would differ from a revised CIV. Rail operators and NEBs would be confronted with two different versions of the same rules. In such a situation, passengers in the EU would thus not benefit from e.g. increased compensation amounts for damages<sup>99</sup>.

#### **1.2.2.4 Assistance in case of major disruptions (contingency planning)**

*(Burden on railway undertakings – see Figure I)*

In the event of major transport disruptions (e.g. natural catastrophes, terrorist attacks etc.), Member States' and transport industry responses to ensure assistance and mobility continuity in such situations vary or are inconsistent. According to the desk and field research conducted, the instances of major disruption seem to represent between 0.1% up to around 5% of the incidents or irregularity of rail services. For further details, please consult Tables A3 and A4 of Annex 5. Although these events are by nature exceptional, their impact on railway undertakings as well as on passengers can be significant. In the absence of contingency planning involving all rail transport actors, passengers who are stranded because their rail transport is severely disrupted might, in some Member States, not get timely assistance, notably as regards re-routing, care (including meals and refreshments) or reasonable accommodation if the journey cannot be pursued<sup>100</sup>.

In addition, taking into account the international obligations deriving from the UNCRPD, organisations representing persons with disabilities should be closely consulted in the development and implementation of legislation, policies and other decision-making processes concerning issues related to them.

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<sup>95</sup> KKV

<sup>96</sup> TraFi

<sup>97</sup> See i.a. letter of OTIF to Fotis Karamitsos ARES(2013)3289525

<sup>98</sup> Article 34 of the Regulation

<sup>99</sup> E.g. Article 30 and 45 of CIV

<sup>100</sup> Passengers were stranded because of sudden ice: <http://www.faz.net/aktuell/gesellschaft/wintereinbruch-passagiere-muessen-nacht-im-zug-verbringen-13996086.html> or owing to floods: <http://www.sueddeutsche.de/panorama/folgen-der-fluten-wie-das-hochwasser-die-bahn-behindert-1.1697209>

Under the 4<sup>th</sup> Railway Package<sup>101</sup>, only railway undertakings have to have contingency plans in place, i.e. to provide information and assistance to passengers and to preserve their mobility in the event of a major transport disruption. However, no such obligations exist for other actors such as station and infrastructure managers or national authorities. The burden to provide assistance to passengers in the event of major transport disruption has therefore to be borne by railway undertakings alone. If these are unable to cope, passengers are left to their own resources in especially difficult situations. This would mainly affect vulnerable categories such as PRMs, elderly persons or children. According to the desk and field research, most Member States and some railway undertakings<sup>102</sup> have put in place certain measures to cater for events of service disruption (see Table A4 in Annex 5 for further information). However, the extent to which the different stakeholders are involved varies considerably from one Member State to another and notably when the station manager and the railway undertaking are separated.

Burden on railway undertakings in case of 3rd party responsibility

*(Burden on railway undertakings – see Figure I)*

Under the current Regulation, it is the responsibility of railway undertakings to provide assistance and care and pay compensation in the event of long delays, missed connections and cancellations even if it is clear that a third party caused the incident. This would be the case, for instance, if the infrastructure manager did not ensure adequate maintenance of the tracks and their environment and leaves or branches fallen on the tracks caused a delay. For such a situation the Regulation does not contain specific provisions on 3<sup>rd</sup> party redress. Railway undertakings may thus have more difficulties to obtain redress, depending on the applicable national legislation.

### **1.2.2.5 Complaint handling by railway undertakings**

*(Burden on railway undertakings – see Figure I)*

The 2013 Eurobarometer on Europeans' satisfaction with rail services<sup>103</sup> identified “a notable increase in the proportion of Europeans who are satisfied with complaint handling mechanisms” compared to previous years. In the open public consultation, slightly more citizens (42 or 32%) believe that the Regulation had a high or very high impact on service quality and complaint handling. Those who think its impact was low or very low (38 or 29%) are fewer. Amongst passenger/consumer organisations, 3 (20%) thought the Regulation's impact was high, whilst 5 (33%) thought it was low or very low.

However, the assessment of the complaint handling mechanism carried out in the course of the ex-post evaluation and impact assessment suggests that there is still room for improvement notably as regards unclear deadlines for complaint handling. All railway undertakings indicated in the field research that in the absence of a time limit for submitting complaints it was difficult for them to establish the details of an incident. Moreover, different deadlines exist under national law, increasing legal uncertainty and administrative burden (although it is difficult to quantify this). This seems unnecessary in view of usual passenger conduct. While currently passengers are free to lodge complaints

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<sup>101</sup> Article 13 (3) of Directive (EU) 2016/2370

<sup>102</sup> Slovenia, Luxembourg and Greece have not provided information regarding contingency planning. According to the Slovenian railway undertaking, there are no contingency plans in case of terrorist attacks or other security threats at the moment

<sup>103</sup> [http://ec.europa.eu/public\\_opinion/flash/fl\\_382a\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_382a_en.pdf)

within the time frames under national law, the information received from railway undertakings, NEBs and EPF indicate that they usually complain within one month after an incident.

### **1.3 Description of the main problems linked to the issue of "force majeure" (Part II – see Figure I)**

Passengers who suffer long delays are entitled to a number of rights, i.e. i) the right to choose between reimbursement of the ticket price or re-routing to their final destination<sup>104</sup>; ii) the right to information and assistance<sup>105</sup> and finally iii) the right to request financial compensation in the form of a proportion of the ticket price (25 % for a delay of 60 to 119 minutes and 50 % for a delay of 120 minutes or more)<sup>106</sup>. This latter additional payment is meant to compensate passengers for the inconvenience suffered by the delay. Overall, railway undertakings comply with this requirement and national legislation or carriers' customer policy may provide for even more generous compensation.

In 2013, and contrary to the common understanding until then, the Court of Justice of the European Union ruled<sup>107</sup> that railway undertakings also have to pay compensation in situations where delays were caused by "force majeure".

"Force majeure" is a well-established general legal principle describing events which may affect the performance of a service/contract but are beyond the control of the parties. As the Court already noted in an early Court case<sup>108</sup>, it implies that "the non-performance ... is due to abnormal and unforeseeable circumstances beyond the control of the person invoking "force majeure" whose consequences could not have been avoided in spite of the exercise of all due care". In these exceptional circumstances, it is recognised that an individual or entity may be able to escape responsibility, on the basis of the general principles of legal fairness and proportionality, and in particular an equitable balancing of the interests of the parties. The concept is found in national and international law and in a wide range of areas of EU law, from agriculture to postal services and the financial sector (e.g. credit transfers and payment services) to package travel and passenger rights in the air, bus and coach and waterborne transport sectors.

Indeed, in the area of EU passenger rights legislation, "force majeure" clauses were expressly included in the legislation in the air, bus and coach and waterborne transport sectors to reflect the "equitable balancing" of the interests of passengers and transport operators. For example, under the legislation on air passenger rights<sup>109</sup>, obligations on operating air carriers should be limited or excluded in cases where an event has been caused by "extraordinary circumstances" which could not have been avoided even if all reasonable measures had been taken. A comparable provision exists under the Montreal Convention. Under the Regulation on passenger rights in waterborne transport<sup>110</sup>, the

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<sup>104</sup> Article 16 of the Regulation

<sup>105</sup> Article 18 of the Regulation

<sup>106</sup> Article 17 of the Regulation

<sup>107</sup> Case C-509/11

<sup>108</sup> C-4/68, Schwarzwaldmilch, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61968CJ0004&from=EN>

<sup>109</sup> According to the 14<sup>th</sup> and 15<sup>th</sup><sup>109</sup> recitals of Regulation (EC) 261/2004

<sup>110</sup> Article 20 of Regulation (EC) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004

carrier is not liable to compensation<sup>111</sup> when it can prove that the cancellation or delay is caused by weather conditions endangering the safe operation of the ship or by extraordinary circumstances hindering the performance of the passenger service which could not have been avoided even if all reasonable measures had been taken. Under the Regulation on passenger rights in bus and coach transport<sup>112</sup>, even the obligations of the carrier to assistance<sup>113</sup> in case of cancelled or delayed departures shall not apply when the carrier proves that the cancellation or delay is caused by severe weather conditions or major natural disasters endangering the safe operation of bus or coach services.

As regards the rail sector, before the EU Court of Justice ruling, it was commonly understood by all stakeholders, rail industry, national authorities and passenger representatives<sup>114</sup> alike, that similar considerations applied to the payment of compensation under the rail passenger rights Regulation via its reference to the CIV rules, which contain a "force majeure" clause for damages<sup>115</sup>. However, in its judgment in Case C-509/11<sup>116</sup> the Court rejected the argument of the Commission and concluded that the reference to CIV could not be understood as "carrying over" a "force majeure" clause into the compensation obligations set out in Article 17 of the Regulation<sup>117</sup>.

As a result, railway undertakings currently have to pay compensation in situations where they were not responsible for long delays and which they were not able to prevent. Therefore, the absence of a clause in the Rail Passenger Rights Regulation to exempt railway undertakings in such situations from the payment of the compensation amounts per se to unfair treatment.

There is also a clear problem not only of internal coherence within the Regulation itself but also of legal certainty given the drafting of Article 15 of the Regulation, which expressly refers to the chapter in the CIV, which includes a "force majeure" clause.

The problem of coherence extends also to the Package Travel Directive, which uses the concept of "unavoidable and extraordinary circumstances"<sup>118</sup> and which covers rail journeys as part of a package. The draft UNWTO Convention on the Protection of Tourists and the Rights and Obligations of Tourism Service Providers, which is currently being negotiated, also uses the concept of "unavoidable and extraordinary circumstances"<sup>119</sup>.

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<sup>111</sup> Article 19 of Regulation (EC) No 1177/2010

<sup>112</sup> Article 23 of Regulation (EC) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004

<sup>113</sup> Article 21 of Regulation (EC) No 181/2011

<sup>114</sup> EPF chairman Trevor Garrod pointed out in 2014 that, in the event of "force majeure", passengers would expect to receive assistance, but not additional financial compensation: [https://www.greens-efa.eu/legacy/fileadmin/dam/Documents/Events/2014\\_01\\_09\\_Passenger\\_rights\\_for\\_all/PR\\_20140109\\_Garro\\_d.pdf](https://www.greens-efa.eu/legacy/fileadmin/dam/Documents/Events/2014_01_09_Passenger_rights_for_all/PR_20140109_Garro_d.pdf)

<sup>115</sup> Article 15 of Regulation 1371/2007 refers to the CIV rules (Article 32(2)).

<sup>116</sup> Judgment of the Court of 26 September 2013: <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30dd7c3c0b567f904baa8ae2878ebc9ba08c.e34KaxiLc3qMb40Rch0SaxuPaNf0?text=&docid=142215&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=412580>

<sup>117</sup> Compensation of the ticket price

<sup>118</sup> See Articles 3(12), 12(2), 13(7) and (8) and 14(3)(c) of Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, OJ L326, 11.12.15

<sup>119</sup> See Standard 9.8 and Recommended Practice 9.1 of Annex II to the draft.

It has been demonstrated in the area of air passenger rights, that, unless situations of "force majeure" or "extraordinary circumstances" are clearly and narrowly defined, air carriers tend to take broad interpretations of such circumstances in order to reduce the compensation amounts that have to be paid. In the air transport field, this has given rise to a series of cases before the Court of Justice which have underlined the key objectives of passenger rights legislation.

Despite numerous requests, railway undertakings have not been very forthcoming with data on the cost of the current arrangements. However, field and desk research<sup>120</sup> made evident the important differences in estimates of "force majeure" by railway undertakings. The data represents a very broad range of "force majeure" incidents in the EU, which varies from 'the vast majority' to less than 1.25% of delays with the average of the reported proportions of delays considered to represent 'force majeure' of 22.6%. These discrepancies are largely caused by the different definitions applied by Member States<sup>121</sup>. Therefore, depending on the definition, the proportion of delay minutes which could be considered to fall under this definition varies significantly. This becomes even more evident while considering the potential scale of delays attributed to force majeure in the UK<sup>122</sup> of delays that can be attributed to different causes<sup>123</sup>.

**Table 1 – Scale of delays attributed to "force majeure" events**

Force majeure definition	Causes included	% of delay within 'force majeure' definition
1. Any cause of delay outside of the control of the railway undertaking concerned	TOC-on-TOC <sup>124</sup> All NR-on-TOC <sup>125</sup> , that includes causes linked to External factors, Network management, Non-track access, Severe Weather, Autumn & Structures and finally problems on tracks	71.0%
2. Any cause of delay outside of the control of the railway undertaking concerned (but assuming all TOCs count as one organisation)	All NR-on-TOC, that includes causes <sup>126</sup> linked to External factors, Network management, Non-track access, Severe Weather, Autumn & Structures and finally problems on tracks	59.8%
3. Any cause of delay which could not reasonably have been foreseen or could not reasonably have been	External factors; Severe Weather, Autumn & Structures; Non-Track Assets Track	41.4%

<sup>120</sup> Please consult Tables A5- A9 in Annex 5

<sup>121</sup> The average of the reported proportions of delays considered to represent "force majeure" in Table A5 (Annex 5) is 22.6%, which lies between the estimates generated for definitions 3 and 4 in Table A9 (Annex 5)

<sup>122</sup> UK was the only Member State in the desk and field research that provided such a scale

<sup>123</sup> See Table A9 in Annex 5

<sup>124</sup> TOC = Train operating companies, TOC-on-TOC means incidents that one train operating company causes to another train operating company

<sup>125</sup> NR is the infrastructure manager Network Rail, NR-on-TOC means incidents caused by the infrastructure manager to a train operating company

<sup>126</sup> Definitions in use are provided in Table A8 in Annex 5

mitigated		
4. Any cause of delay which could not reasonably have been foreseen	External Severe Weather, Autumn & Structures	17.0%

Source: (UK, 2015-2016)

Therefore, in the context of this impact assessment, the Commission considers several definitions of the "force majeure" concept, which will be further described and assessed when considering the policy options (see Section 4).

Railway undertakings have repeatedly appealed to the Commission to re-introduce the concept of "force majeure" in the Regulation. Similarly, when specifically consulted by the Commission on this issue<sup>127</sup>, 13 Member States have said that they were in favour of such a re-introduction. Only 2 Member States were rather against although they said that they could perhaps accept it, and 11 Member States had not made up their mind or did not answer. Most Member States expressing an opinion made it however very clear that the re-introduction of a force majeure clause should be precisely ring-fenced to avoid abuses by railway undertakings. Therefore it is considered opportune that this impact assessment looks into the issue.

#### 1.4 How would the problem evolve, all things being equal? (Baseline)<sup>128</sup>

##### 1.4.1 Part I – problems linked to the current application of the rail passenger rights legislation

The rail passenger demand is expected to grow by an annual average of 1.8% between 2015 and 2035 with much of this growth occurring between 2020 and 2030. This increase will be reflected more heavily in international and domestic long distance services based on the assumption of an increasing availability of high speed services and the implementation of the fourth railway package. The rail sector's share of passenger demand is estimated at 7.6% in 2014 and is expected to rise to 9.2% by 2035 against road transport with a relevant impact on carbon emissions.

If the Regulation remains unchanged and no further action at EU level is taken, most of the issues identified (with the notable exception of some of the problems linked to the scope of the legislation) would not be addressed and passengers will continue to face the problems that are described in section 1.2.

Passengers will benefit from the phasing-out of exemptions under Article 2(4) for domestic services at the latest by 2024 and by any national initiative to reduce the scope of exemptions before that date. However, in the consultations for this impact assessment, Member States revealed that they were not planning to change exemption schemes in the short term<sup>129</sup>. With the further opening of the domestic rail passenger market under the 4th railway package, there is also a risk of further exacerbating the identified problems,

<sup>127</sup> The Member States reserve their individual positions on that matter

<sup>128</sup> Annex 4, p.p. 60-63

<sup>129</sup> For analytical purposes, it is assumed that they could consider a progressive phasing out over a few years rather than a step-change in a single year (2024), as they will have to put in place processes before the expiry of exemptions.

even if not all the objectives of domestic liberalisation will be achieved owing to national exemptions under the 4<sup>th</sup> railway package.

The expiration of the exemptions for domestic services is expected to have an impact on social benefits as passengers will be able to enjoy better information on their journey and on passenger rights and assistance when disruptions take place (including PRMs). The expiration of the exemptions would also have a material impact, in particular on the amount of compensation paid for delays according to Article 17 of the Regulation. Thus, the costs for railway undertakings will increase slowly.

Similar results are observed for the assistance in case of delay under Article 18 of the Regulation. The increase in the assistance level in the long-term due to the expiration of the exemptions is not as important as the compensation increase. After expiration, passengers will have the right to assistance in all Member States on all non-exempted services. This again raises the cost for railway undertakings and infrastructure managers which amounts to EUR 1,178,029 million and for infrastructure managers to EUR 687,996 million<sup>130</sup> for a 15-year period.

The Commission proposal for the European Accessibility Act (EAA) aims at improving accessibility in rail transport by complementing the provisions of the PRM TSI. Its impact on rail transport services will depend on its final scope to be determined in the discussions in Council and European Parliament. However, under the baseline, the objective of clarification of passenger rights legislation and improved quality of transport of elderly and PRM passengers will not be achieved. Without strengthened provisions there is a risk that, under the rail market liberalisation of the 4<sup>th</sup> railway package, PRM passengers are not sufficiently protected. The UNCRPD, the European Disability Strategy and the EAA set out to better integrate PRMs in society. Under the baseline, PRM rights are not aligned with the new requirements under these instruments, notably as regards assistance to ensure personal mobility and accessibility of information.

Direct or indirect discrimination on the basis of nationality, residence or currency will not be addressed by NEBs. The only option for citizens suffering from alleged discrimination would have to refer to Article 18 TFEU in a court procedure.

As regards the consistency with other legal acts, the revisions to the CIV UR by OTIF would not be reflected in the Regulation and its Annex I, which contains an extract of the CIV UR. Annex I cannot be adapted without revision of the Regulation. This means that in case of amendments to the CIV UR, railway undertakings in the EU and NEBs would be confronted with two different legal acts. Updates to the CIV benefitting passengers (e.g. increasing insurance amounts in case of accidents) cannot be reflected in Annex 1. Passengers in the EU would thus have lesser rights than passengers in other OTIF member states.

The Regulation will be included in the Annex of the Consumer Protection Cooperation (CPC) Regulation 2006/2004<sup>131</sup>, once the Commission's proposal for the new CPC

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<sup>130</sup> Data based on Cost & Contribution of Rail study (SDG). Data was available for 2013 and the 10 year CAGR has been used to arrive at revenue for 2014. Splits between Railway undertakings and IMs are based on the EU average where the study did not uncover sufficient evidence of the split.

<sup>131</sup> The proposal for a new CPC Regulation of 25 May 2016<sup>131</sup> strengthens powers and cooperation procedures for competent authorities to address infringements to Union consumer law in a cross-border context (see Article 8 of the CPC proposal, which includes, among others, powers to adopt interim measures, powers to sanction, powers to order consumer compensation). These powers would have to be implemented as a minimum by all Member States. The proposal also includes an obligation for the Commission to activate the cooperation procedure at the EU level in case it suspects that widespread infringements concern a large majority of European consumers (in 75% of

Regulation is adopted by the co-legislators. The CPC Regulation provides for a cooperation framework between national competent authorities to stop cross-border infringements to Union consumer laws. The inclusion of the Regulation in the Annex of the CPC Regulation is expected to strengthen enforcement in a cross-border context for the following reasons.

The actions of national enforcers are limited by the national jurisdictional boundaries. To put an end to cross-border infringements, a cooperation mechanism is needed, obliging the competent authority of the jurisdiction where the author of the infringement is established (with its assets) to act against this author, upon request of a competent authority from another Member State's jurisdiction. Where more than two Member States are concerned, an additional mechanism of cooperation and coordination is needed. The CPC Regulation provides the legal basis for both mechanisms. Its revision aims to reinforce the existing procedures and powers in order to adapt the Regulation to the new conditions of the digital market and to ameliorate the mechanisms on the basis of the experience gained during the past 10 years.

Under the baseline, conflicts regarding legal consistency with the Package Travel Directive and its use of the concept of "unavoidable and extraordinary circumstances" will not be addressed.

Regarding contingency planning, different measures by the various stakeholders in different Member States will continue to exist. According to the available information, railway undertakings have ready contingency plans and are required to have them under the 4<sup>th</sup> railway package. According to the stakeholder consultation, in Austria, Belgium, Finland, France, Germany, Latvia, Lithuania, Netherlands, Romania, UK, Denmark, Ireland and Portugal other stakeholders such as station managers, infrastructure managers, state authorities, police, etc. also have a role in a situation of major disruption, but this is not always the case and not in all Member States (Annex 6, Table A4). This means that in such situations and in the absence of mandatory requirements for other actors, the railway undertaking might be alone to provide assistance to passengers. This might put the railway undertaking in a difficult position or it may not even be able to shoulder the burden e.g. to provide food or overnight accommodation. As a result, stranded passengers might not be adequately taken care of.

Under the baseline scenario, the burden of railway undertakings stemming from unclear deadlines for complaint handling will continue to exist. Railway undertakings will continue to keep data and information for an indefinite period of time subject to varying national rules, leading to an unlevel playing field. Nowadays, thanks to electronic data and storage systems to keep the data should not be a high burden. However, there might be problems when railway undertakings will need to retrieve incident information after long periods of time from their files or from another provider.

Finally, Article 38 of the Charter of fundamental rights calls for a high level of consumer protection. Article 26 calls for integration and independence of PRMs. These objectives will be reached only moderately, given that the identified problems will not be addressed.

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Member States or more that are amounting to 75% of the EU population or more). In such cases the Commission will launch a procedure requiring national authorities to coordinate a common position assessing the problematic practices. Overall Member States are and will remain in charge of investigation and enforcement. Under the CPC proposal, in specified cases of Union dimension, Member States' authorities will do so with the assistance of the Commission in a coordinated manner by pooling their resources, expertise and thus saving resources and time.

#### 1.4.2 Part II –problems linked to the issue of "force majeure"

An important component of the compensation costs is linked to "force majeure". Railway undertakings will continue to pay compensation in case of major disruptions caused by "force majeure". An estimate provided by the Community of European Railways (CER) states that for a small-sized company compensation costs due to "force majeure" events may reach up to EUR 1 million, while for a medium- and large-sized rail company, this amount may reach up to EUR10 million per year. According to the little data provided by railway undertakings during the targeted stakeholder consultation, compensation costs due to events of "force majeure" may reach up to EUR 4-5 million per year for a medium- and large-sized company (data source is subject to business secrets). This figure is supported by the estimates suggested by the impact assessment tool. According to the tool, the "force majeure" compensation payments can reach from EUR 10 to 38 million per year depending mainly on the size of the company and the year of operation. On the other hand, passengers will continue to enjoy the right to claim compensation even when delays are caused by "force majeure".

It is important to note the unpredictable nature of "force majeure" events. When compensation is paid in case of "force majeure", greatly different amounts apply from one year to another. This generates risks and volatility in the business model of rail operators, especially the open-access, non-subsidised ones, and affects their ability to invest. Additional analysis is provided in Annex 6.

In order to ensure a common minimum level of treatment among Member States and to limit at maximum the negative impact on passengers the concept of "force majeure" for the purpose of this IA needs to be defined restrictively so that only clearly defined and exceptional situations can qualify.

Under a narrow definition force majeure situations would be limited to heavy floods, earthquakes, volcanic eruptions and very heavy storms (known as 'Acts of God'). This excludes normal seasonal weather such as autumnal storms and snowfall (even heavy) in winter, interruptions caused by normal wear and tear of rolling stock or infrastructure even where maintenance is carried out correctly and at regular intervals, theft of metal or catenary, vandalism, power cuts, demonstrations on rail tracks, labour strikes or suicides which could be considered as being inherent in the operation of the service. It would also exclude terrorist attacks. In addition to invoking "force majeure" railway undertakings would have to demonstrate that they have taken all reasonable measures to avoid delays of more than 1 hour to be exempted from paying compensation.

Considering the data provided by the UK and assuming an equal probability of "force majeure" occurrence across Member States, it can be assumed that less than 17% of all delays of more than 1 hour across the EU are caused by such circumstances. This figure is in line with the information provided by some other market players – see Annex 6 for further details<sup>132</sup>. Based on this information, it is assumed that depending on the year in question the level of "force majeure" incidents could reach at most 17% - 20% of all delays exceeding 1 hour. Moreover, information from 14 Member States<sup>133</sup> made evident that the median value of all services being delayed for more than 1 hour in a regular year accounts for 1% across the EU. This means that around 7,280 thousand pkm across the EU are affected by "force majeure". Yearly, the compensation the railway undertakings

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<sup>132</sup> For the confidentiality reasons information in Annex 6 will not be made publically available.

<sup>133</sup> Please consult Table A6 in Annex 5

in the EU would need to pay due to "force majeure" events which correspond strictly to "Acts of God" could fluctuate from EUR 10 to 54 million which accounts for around 0.31%-1.7% decrease of their compensation costs and 0.26%-1.4% of their operating costs.

Under a broad definition, which corresponds to situations where a railway undertaking proves that a long delay of more than one hour is caused by external factors which would include i.a. severe weather conditions, cable theft or failures, vandalism, fatalities and terrorist attacks, the percentages are changing. The compensation all railway undertakings in the EU would need to pay due to "force majeure" events under such a broad definition could fluctuate from EUR 19 to 95 million which accounts for around 0.59%-2.99% decrease of their compensation costs and 0.49%-2.47% of their operating costs.

The above-mentioned estimates of the total compensation costs related to "force majeure" events and the percentage of the total operating costs that these costs represent suggest that the financial impact of the Court ruling on railway undertakings is definitely low<sup>134</sup>. Thus, there is no economic data that would prove that there is a serious financial problem for the railway undertakings. However, the issue of legal unfairness still persists. In addition, to respond to the repeated requests by all railway undertakings and most of the Member States which expressed an opinion during the consultation by the Commission, the issue of "force majeure" and the potential effects that the re-introduction of a "force majeure" clause could have on the rest of the policy options will be analysed and presented separately after the preferred policy option has been chosen.

## 2 WHY SHOULD THE EU ACT?

### Right to act

Article 91(1) TFEU serves as the legal basis for the adoption of EU legislation related to a common transport policy. This covers provisions to protect the rights of passengers when travelling by rail in the EU. This provision was the legal basis for the Regulation, and will serve as a legal basis for a future revised Regulation.

The EU has also received conferral to promote the interests of consumers and to ensure a high level of consumer protection (Article 169 TFEU).

The EU shares competences with Member States to regulate in the field of common transport pursuant to Article 4(2)(g) TFEU. This means that the EU can only legislate as far as the Treaties allow it, and with due consideration to the principles of subsidiarity and proportionality<sup>135</sup>.

### Subsidiarity

While the greater part of rail passenger transport in the EU still takes place on a national level (381 billion passenger-kilometres), a considerable and overall growing proportion is carried out across borders in the EU (22 billion passenger-kilometres travelled on

<sup>134</sup> It should however be mentioned that the absence of a "force majeure" clause generates risks and volatility in the business model of rail operators, especially the open-access, non-subsidised ones, and affects their ability to invest. This is due to the unpredictable nature of force majeure events which leads to greatly different amounts being paid from one year to another. Additional analysis is provided in Annex 6 in this respect.

<sup>135</sup> Consolidated Version of the Treaty on European Union [2008] OJ C115/13, Art 5 (3) and (4)

international journeys)<sup>136</sup>. As the EU intends to stimulate rail services as well as cross-border mobility, notably in agglomerations and regional conurbations there is a need for action at EU level so that citizens travelling on domestic rail services of different EU countries enjoy the same rights<sup>137</sup>. Disparities in the level of protection between Member States due to the current regime of exemptions under the Regulation lead to passengers having different rights and different means of redress when using rail services in different Member States. This applies in particular to PRM passengers whose rights to mobility are enshrined in the UNCRPD<sup>138</sup>. These passengers would be encouraged to travel if they can expect equivalent rights to accessibility and assistance when travelling in different EU countries. National legislation would also not allow tackling cross-border journeys appropriately as a single journey would fall under two or more legal regimes. The most appropriate level to address the problems identified is therefore at EU level in order to ensure a uniform high level of passenger rights across all Member States for national and international journeys alike.

Further to the judgement of the Court of Justice of the European Union in Case C-509/11 of 2013, railway undertakings have to pay compensation to passengers also in situations where delays were caused by "force majeure" and which they could not have foreseen or prevented. In order to ensure legal fairness for rail operators across the EU with regard to other modes of transport and to ensure consistency with other EU legislation such as the Package Travel Directive it seems appropriate for the EU to act. It would also be appropriate at EU level to come up with an EU-wide definition of the nature of "force majeure" in order to clearly delineate these events, limit the impact on passengers and ensure legal certainty for all actors.

The current Regulation leaves much room for interpretation as regards its application and enforcement. Different interpretations and thus divergent application of rules and different practices are obstacles to the Single Market and negatively affect the competition between operators. Moreover, these discrepancies do not allow ensuring the same level of passenger rights across all Member States as originally laid down in the objectives of the Regulation. Attempts already made to align the understanding and application between the Member States through non-legislative actions such as the interpretative guidelines on the Regulation<sup>139</sup> have not yielded sufficient result. Only reinforced common EU rules can create a level playing field for rail transport operators while ensuring a basic set of passengers across all EU Member States.

Consequently, as the objectives cannot be achieved sufficiently by the Member States, it seems that EU action would be appropriate and proportionate to achieve this aim.

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<sup>136</sup> Eurostat transport statistics 2016 [http://ec.europa.eu/eurostat/statistics-explained/index.php/Passenger\\_transport\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Passenger_transport_statistics)

<sup>137</sup> See for instance the strong commitment for cross-border transport and its potential notably in commuter regions that was given in the Rotterdam declaration at the TEN-T conference in June 2016 <http://www.benelux.int/files/4914/6726/5385/spoorttopverklaring.pdf>

<sup>138</sup> <http://www.un.org/disabilities/convention/conventionfull.shtml>

<sup>139</sup> Interpretative Guidelines on Regulation (EC) No 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations – C220, 4.7.2015, p.1

### 3 WHAT SHOULD BE ACHIEVED? (PART I)

#### 3.1 General policy objective

In view of the two main problems areas identified in the problem definition, as described in section 1, there are two general objectives to address the identified problems. This should ensure a fair balance between the interests of passengers and the rail industry. The first policy objective is thus to promote equal and strengthened rights for all rail users including PRM in the EU. The second policy objective is to enhance railway undertakings' competitiveness and to better allow them to invest in the quality and effectiveness of rail passenger services, without negatively impacting the rights of passengers. The two general objectives can be seen as conflicting as benefits for passengers will generate a financial burden for railway undertakings and benefits for railway undertakings risk generating a reduction in passenger rights. This has made it necessary to find a compromise between the two objectives.

The issue of "force majeure", which is linked to the second general policy objective, is dealt with separately following the current analysis under Section 6.

#### Specific objectives

Two specific objectives (SO) have been identified which are linked to the identified issues discussed in section 1.2.

#### **SO1: improve the application and enforcement of the Regulation, so that all passengers can fully exercise their rights when travelling by rail in the EU**

This objective addresses the problems related to the protection of passengers (including PRM).

#### **Issues with a major impact on passengers described in section 1.2.1.:**

- Issues regarding exemptions (scope of the Regulation – Section 1.2.1.1) should be addressed to allow a more uniform application of the Regulation in all Member States to increase legal certainty of passenger to their rights under the Regulation, wherever they travel in the EU.
- The protection of PRM passengers (Section 1.2.1.2) should be increased by ensuring improved and independent access to information and complaint handling and better access to transport services through more uniform assistance in all EU Member States.
- The awareness of passengers about their rights should be increased through strengthened dissemination of information (Section 1.2.1.3).
- The rights of passengers to compensation and assistance in case of missed connections, delays or cancellations should be reinforced by strengthening the definition of and provisions on through ticketing (Section 1.2.1.4).
- The rights of passengers to an effective enforcement of the Regulation should be strengthened through better NEB complaint handling and cooperation (Section 1.2.1.5).

#### **Issues with a lesser impact on passengers described in section 1.2.2 (secondary issues):**

#### **Protection of rail passengers**

- Passengers should not be discriminated on the basis of their nationality, residence or currency of payment to ensure an equal treatment of passengers irrespective of where they buy or how they pay their tickets (Section 1.2.2.1).
- The clarity of the Regulation should be enhanced by defining certain concepts such as "missed connections" and "comparable transport conditions" in the context of re-routing (Section 1.2.2.2).
- Current and possible future inconsistencies with the CIV should be removed to increase legal certainty (Section 1.2.2.3).

**SO2: reduce the burden placed on railway undertakings across the EU (Section 1.2.2 – secondary issues)**

- The burden of providing assistance to passengers in the event of major transport disruption (e.g. natural catastrophes but also other events such as terrorist attacks) should be shared between all actors involved, including station and infrastructure managers (Section 1.2.2.4)
- The burden on railway undertakings' liability in situations where a third party has caused a long delay should be reduced by allowing railway undertakings to obtain redress from these third parties (Section 1.2.2.5).
- The administrative burden on railway undertakings stemming from imprecise complaint handling procedures should be reduced (Section 1.2.2.6).

**3.2 *Interrelation with other EU policies***

The policy objectives are consistent with general transport policy objectives, namely with the 2011 Transport White Paper which emphasises the increasing importance of high quality, accessible and reliable rail services for passenger transport and the need for mobility continuity in case of travel disruption. It also calls for a clarification of passenger rights legislation as well as for an improved quality of the transport for elderly people, passengers with disabilities or reduced mobility.

The development and liberalisation of the railway market has been pursued by a number of "packages" of legislation. A fourth railway package was adopted in December 2016. The objective of strengthened passenger rights is to protect passengers in a liberalised market.

Consistency with regard to carrier liability in the event of "force majeure" needs to be ensured with other pieces of EU legislation such as passenger rights legislation in other modes of transport and the Package Travel Directive.

The inclusion of the Regulation in the Annex of the future CPC Regulation, which enshrines the procedures for cross-border investigations, enforcement and coordination of investigation and enforcement where more than two Member States are concerned, is expected to strengthen cross-border enforcement.

To increase the share of rail passenger transport in comparison to other modes by making it more attractive to citizens will contribute positively, albeit to a limited extent, to lowering CO2 emissions and reducing costs. This is in line with the 2011 Transport White Paper, which also promotes the objective of environmental sustainability by aiming to reduce transport CO2 emissions by 60% by 2050 and the current Commission priority "Energy Union and Climate Change Policy".

Strengthening rights for PRM passengers is in line with the objectives of the UNCRPD to which the EU and its Member States are party and the European Disability Strategy 2010-2020. Directive (EU) 2016/797 on the interoperability of the rail system (recast)<sup>140</sup> also contains references to accessibility.

Since the accession of the EU to OTIF<sup>141</sup> in 2013, the EU and its Member States are party to OTIF. An extract of the Convention on International Carriage by Rail (Uniform Rules CIV of COTIF<sup>142</sup>) is reproduced in Annex I of the Regulation. Its rules are thus extended to domestic rail transport in the EU. As Members of OTIF, the EU and its Member States apply the CIV rules, participate in the General Assemblies and have a vote in case of revisions applied to the CIV.

#### Charter of fundamental rights

Article 38 of the Charter of fundamental rights calls for Union policies to ensure a high level of consumer protection. The overall high level of consumer protection will be enhanced by the general policy objectives through strengthening the rights of rail passengers in the EU. Article 26 of the Charter calls for the integration of persons with disabilities and requires Member States to take measures to ensure their independence as well as social and occupational integration and participation in the life of the community.

## **4 WHAT ARE THE VARIOUS OPTIONS TO ACHIEVE THE OBJECTIVES? (PART I)**

### **4.1 Methodology of the policy options construction (PART I)**

Based on the support work carried out by external consultants and on the stakeholder consultation the Commission identified a list of policy measures which have the potential to address the issues described. All measures were assessed under four criteria: i) legal feasibility, ii) effectiveness and efficiency, iii) political feasibility and iv) proportionality and scope.

Based on a pre-screened list of the policy measures, presented in Section 4.2, a set of the policy options is to be designed. However, the analysis needs to consider two important particularities of the problem definition structure discussed in section 1.

First of all, due to the absence of hard evidence as well as the political sensitivity of the force majeure issue (Part II of the problem definition), this concept is assessed and presented separately from other problems identified in the course of the impact assessment. The policy options for force majeure issues and their assessment are presented under Section 6.

Secondly, the high number of issues under consideration in this report entails a high number of policy options. Combining the various policy options for each of the issues under consideration into packages of policy options would lead to an unmanageable number of such packages to assess. Although the policy choice with regard to the exemptions may have an impact on the other problems identified, these other problems are not or are only weakly linked to each other. This allows us to discard a highly

<sup>140</sup> OJ L 138/44, 26.5.2016

<sup>141</sup> Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail on the Accession of the European Union to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, OJ L 51, 23.2.2013, p. 8, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22013A0223\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22013A0223(01)&from=EN)

<sup>142</sup> Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV), which constitute the Appendix A to the Convention concerning International Carriage by Rail (COTIF) of 9 June 1999

complex approach in which we would design policy packages. Instead, we have chosen to apply a sequential approach in which we will assess theme by theme. The robustness of the conclusion for each of the themes will every time be tested against the different policy options for the exemptions.

Moreover, various policy options are considered for the problems that were previously defined as "major". As the impact of the "secondary" issues is only marginal on either railway undertakings or passengers, and as policy options are limited for these issues, the impact assessment will only consider one possible option other than the baseline for each of these issues.

## 4.2 Retained regulatory policy measures

Following the initial assessment the Commission retained the following potential policy measures. The table below provides an overview of the retained possible policy measures and their link to the problem driver.

**Table 2: Policy measure (by theme) in relation to the major issues identified in the context of the current application of the Regulation**

A/A	Measures	Description	Hard/ Soft measure
<b>Scope of the rail passenger rights legislation (Exemptions)</b>			
1.	Advancing removal of exemptions for long distance domestic services to 2020	Measure would require Member States to remove the exemptions for long distance domestic services 4 years earlier than under the current provisions of the Regulation	H
2.	Limit in time exemptions for services with third countries	Measure would introduce a limit by 2024 to the number of five-year periods for which services with a significant part operated outside the EU could be exempted from the Regulation. In view of the difficulties of negotiations with Russia and the discussion in the framework of the OSJD (Organisation for Co-operation between Railways), a "rendez-vous clause" for countries which have services with Russia could be arranged for. This means that after the expiry of the last five-year period, the situation of these countries would be re-assessed to decide whether or not exemptions may be prolonged for services with Russia.	H
3.	Removal of exemptions for urban, suburban and regional services when they are <b>cross-border services</b>	Measure would require Member States to remove the possibility to exempt urban, suburban and regional services <b>which operate across borders</b> within the EU from the application of the Regulation by 2020.	H
4.	Remove the possibility to apply exemptions for urban, suburban and regional services	Measure would require Member States to remove the possibility to exempt urban, suburban and regional services by 2020.	H
<b>PRM rights</b>			
<i>PRM rights are applicable on all services</i>			

5.	PRM rights are applicable in all Member States and on all services	This measure would make provisions on PRM rights under Chapter V (notably assistance at railway stations and on board trains and compensation for damaged mobility equipment) <sup>143</sup> mandatory for all services, i.e. these provisions cannot be exempted by Member States for any services	H
<i>Information provisions for PRMs</i>			
6.	Journey information is accessible to all PRMs	Measure would require railway undertakings and station managers to make journey information accessible to persons with all kinds of disabilities, e.g. cognitive disabilities (in addition to deaf and blind people whose needs are currently covered by the Regulation).	H
7.	Information on passenger rights under the Regulation is accessible to all PRMs	Measure would require railway undertakings and station managers to make information on passenger rights accessible to persons with all kinds of disabilities (e.g. deaf and blind people, people with cognitive disabilities etc.). Currently, the Regulation does not have any accessibility requirements for passenger rights information (e.g. information on assistance, reimbursement, rerouting, compensation etc.).	H
<i>Assistance for PRMs at the stations and on board trains</i>			
8.	Best practices exchange on disability awareness training	Measure would require the Commission to set up a platform for the exchange of best practices on disability awareness training between railway undertakings and station managers.	H
9.	Require disability awareness training for rail staff	Measure would require railway undertakings and station managers to provide appropriate levels of training for different categories of staff (depending on their interaction with travellers) along the lines of staff training required under the Air Passenger Rights legislation <sup>144</sup> .	H
<i>Complaint handling mechanism for PRMs :</i>			
10.	Complaint handling to Station Managers / Infrastructure Managers	<p>This measure would introduce requirements for Station and Infrastructure Managers of stations of more than 10.000 passengers/day to handle passengers' complaints for services they are responsible for, e.g. information and PRM assistance. Time limits to introduce complaints would be aligned with those applicable to complaints to railway undertakings.</p> <p>Two possible implementation scenarios will be considered:</p> <ul style="list-style-type: none"> <li>• Measure will be introduced through guidelines</li> <li>• Measure will be introduced through a revision of the Regulation</li> </ul>	H/S
<b>Information provisions for all passengers</b>			

<sup>143</sup> Articles 19-25 of the Regulation

<sup>144</sup> Article 11 of Regulation 1107/2006

11.	Information on rail passenger rights is provided together with ticket	This measure would require railway undertakings to provide basic information about passenger rights, including the right to compensation and assistance, and contact details of NEBs either by printing on the ticket or provided electronically / electronic ticket. In view of space limits this could be done e.g. through a bar code or QR code.	H
12.	Information on passenger rights is provided in stations and on board trains	This measure would require railway undertakings and station managers to place notices in prominent positions at stations which inform passengers of their rights granted by the Regulation.	H
13.	Issue guidance of good practice regarding the provision of passenger rights information	This measure would require the Commission to provide guidance (e.g. in form of a staff working paper) on what constitutes good practice regarding the provision of information about the Regulation by railway undertakings and station Managers. This could complement the interpretative guidance provided in 2015.	S
<b>Compensation and assistance to passengers in case of missed connections, delays or cancellations</b>			
14.	Definition of through ticket and linked obligations	This measure would define that single journeys which are sold in a single purchase, under a single transport contract with multiple tickets have always to be considered as a 'through ticket' by railway undertakings and ticket vendors. As a result, the rights under the Regulation e.g. to assistance, reimbursement, rerouting or compensation apply to the whole journey.	H
15.	Obligation to sell through ticket wherever possible, and burden of proof on railway undertakings and ticket vendors if no through-ticket was sold	This measure makes it clear, as already pointed out in the Interpretative Guidelines, that the possibility to purchase through tickets has to be offered wherever this is technically possible. The measure would, however not oblige railway undertakings to conclude agreements with each other, as this would interfere in their business conduct and commercial freedom. Railway undertakings and tickets vendors would, in addition, have the burden of proof if no through-ticket was sold, i.e. that the obligations under the Regulation to e.g. assistance, reimbursement, rerouting or compensation <u>do not apply</u> to the whole journey but only to the different segments of the journey.	H
<b>Complaint handling and enforcement</b>			
<i>NEB complaint handling and cooperation</i>			
16.	NEB reporting on their activities	This measure would require NEBs to report publicly about their activities including on the complaint handling mechanisms.	H
17.	Detailed instructions on the complaint handling process	This measure would spell out the details of how the complaint handling process has to be set up. This measure will be inspired by the Commission guidelines of 2015 <sup>145</sup> . This would require passengers in particular to	H

<sup>145</sup> OJ C 220, 4. 7. 2015 (part 8.1)

		complain to railway undertakings or station managers in the first instance, and to approach an alternative dispute resolution body (ADR) or a NEB in a second step. The Directive on consumer alternative dispute resolution <sup>146</sup> would be specifically cited with regard to the rights passengers have when seeking alternative redress.	
18	Duty to NEBs to cooperate on cross border issues	This measure would make mandatory provisions of the Commission guidelines <sup>147</sup> on NEB responsibilities and competencies in cross-border cases. In particular, it would require NEBs to cooperate and to consider appointing a 'lead NEB' in cross-border cases to avoid gaps in complaint handling and ensure that at least one NEB will be responsible to handle the complaint in question.	H

**Table 3: Policy measures (by theme) in relation to the secondary issues identified in the context of the current application of the Regulation**

A/A	Measures	Description	Hard/ Soft measure
<b>Measures regarding the protection of passenger rights</b>			
<b>Discrimination on the basis of nationality, residence or currency</b>			
19.	Non-discrimination clause	This measure involves introducing a general non-discrimination clause into the Regulation. This clause would specifically ban any form of discrimination, including price discrimination, on grounds of nationality, residence or currency of payment.	H
<b>Unclear definitions</b>			
20.	Definition of "missed connection"	This measure would define a "missed connection" as a situation where a passenger misses his/her next passenger service in a journey under a transport contract owing to a delay of the previous service. The concept includes cross-border journeys and services with other modes of transport under a single transport contract.	H
21.	Definition of "comparable transport conditions" in case of re-routing	This measure would define "comparable transport conditions" in the context of rerouting as follows: 'comparable transport conditions' mean that, depending on the circumstances, passengers shall not be downgraded to transport facilities of a lower class. Comparable re-routing shall be offered without additional cost to the passenger, reasonable efforts shall be made to avoid additional connections and the total travel time when using an alternative mode of transport for the part of the journey not completed as planned shall be comparable to the scheduled travel time of the original journey. The needs of persons with disabilities and persons with reduced mobility have to be taken into account.	H

<sup>146</sup> Directive 2013/11/EU

<sup>147</sup> OJ C 220, 4. 7. 2015 (part 8.2)

22.	Definition of "carrier"	This measure would align the definition of "carrier" to the definition in the COTIF/CIV rules, which may also encompass other modes of transport.	H
<b>CIV</b>			
23.	Consistency between the Regulation and the COTIF/CIV rules	<p>This measure would adjust the text of the Regulation to ensure the consistency between the Regulation and the COTIF/CIV rules. Two possible implementation scenarios will be considered:</p> <ul style="list-style-type: none"> <li>• Removal of Annex I from the Regulation, adjust the text of the Regulation accordingly to ensure consistency between the Regulation and the COTIF/CIV rules<sup>148</sup>, notably when the CIV is amended;</li> <li>• New provisions to the Regulation allowing the Commission to change Annex I of the Regulation, which contains an extract of the COTIF/CIV rules, through delegated acts to reflect any changes to the CIV without requiring a wholesale revision to the Regulation each time that the CIV is amended.</li> </ul>	H
<b>Measures to address the burden on railway undertakings</b>			
<b>Contingency planning</b>			
24.	Service continuity and contingency planning in case of massive disruption	The measure will introduce the formal requirement for actors other than railway undertakings (e.g. Station and Infrastructure Managers, Member States) to have contingency planning in place in the event of massive service disruption (caused by e.g. by natural catastrophes, strikes, terrorist attacks). The modalities of contingency planning as well as the coordination of the different either existing or to be established contingency plans will be left to the discretion of the Member States. For example, Member States in cooperation with national authorities can decide on the detail and coordination of the plans.	H
<b>Burden on railway undertakings in case of 3rd party responsibility</b>			
25.	A right to redress	This measure introduces a provision in the Regulation giving railway undertakings the right to redress to third parties if delays or cancellations were caused by their fault or negligence. The measure would be in line with the relevant provision of Air Passenger Rights legislation <sup>149</sup> .	H
<b>Complaint handling for railway undertakings</b>			
26.	Specify deadlines for passenger to introduce complaints	This measure will introduce a time limit of 3 months within which passengers will be able to submit their complaints to a relevant service-provider. This threshold is in line with the relevant provision of the proposal for a revision of the Air Passenger Rights legislation <sup>150</sup> .	H

<sup>148</sup> Note that the EU acceded to COTIF further to the Agreement of 23 June 2011, OJ L183, 13.7.2011.

<sup>149</sup> Article 13 of Regulation 261/2004

<sup>150</sup> COM (2013) 130, 13.3.2013

### 4.3 Other (discarded) potential policy measures

We have analysed other policy measures proposed by the stakeholders during the stakeholder consultation, which were discarded. We have used the following screening criteria to discard them:

- **Legal feasibility:** Measures should respect any obligation arising from the EU Treaties (and relevant international agreements) and ensure respect of fundamental rights. Obligations already incorporated in the current Regulation or other existing primary or secondary EU legislation may also rule out certain measures.
- **Effectiveness and efficiency:** Some measures would achieve a worse cost-benefit balance than some alternatives.
- **Political feasibility:** Measures that would clearly fail to get the necessary political support for legislative adoption and/or implementation could also be discarded.
- **Proportionality and scope:** Measures should only address what is clearly necessary at EU level and not restrict the scope for national decision making over and above what is needed to achieve the objectives satisfactorily.

The results of this screening are summarized in **Table A11 in Annex 5**.

### 4.4 Policy options addressing the problems linked to the current application of the Regulation (Part I of the problem definition)

As discussed above, a sequential approach (i.e. theme by theme) was chosen to design alternative solutions (policy scenarios) to various problems under Part I of the problem definition. The tables below present different policy scenarios depending on the issues discussed.

#### Major issues

**Table 4: Policy options to address issues linked to the scope of the rail passenger rights legislation**

Policy scenario A	Policy scenario B	Policy scenario C
<ul style="list-style-type: none"> <li>• Advancing removal of exemptions for long distance domestic services to 2020 (PM1);</li> <li>• Limit in time exemptions for services with third countries (PM2)</li> </ul>	<ul style="list-style-type: none"> <li>• Advancing removal of exemptions for long distance domestic services to 2020 (PM1);</li> <li>• Limit in time exemptions for services with third countries (PM2)</li> <li>• Removal of exemptions for urban, suburban and regional services when they are cross-border services (PM3)</li> </ul>	<ul style="list-style-type: none"> <li>• Advancing removal of exemptions for long distance domestic services to 2020 (PM1);</li> <li>• Limit in time exemptions for services with third countries (PM2)</li> <li>• Removal of exemptions for urban, suburban and regional services when they are cross-border services (PM3)</li> <li>• Removal of the exemptions for urban, suburban and regional services (PM4)</li> </ul>

**Table 5: Policy options to address issues linked to the PRM rights**

<i>Applicability of PRMs rights to all services</i>	
Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>Guidelines to promote the application of the PRM rights (PM 10 S)</li> </ul>	<ul style="list-style-type: none"> <li>Regulatory provision on the application of the RPM rights (PM 10 H)</li> </ul>
<i>Information provisions for PRMs:</i>	
Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>Journey information is accessible to all PRMs (PM5)</li> </ul>	<ul style="list-style-type: none"> <li>Journey information is accessible to all PRMs (PM5)</li> <li>Information on passenger rights is accessible to all PRMs (PM6)</li> </ul>
<i>Assistance for PRMs on the board of the train</i>	
Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>Best practices exchange on disability awareness training (PM7)</li> </ul>	<ul style="list-style-type: none"> <li>Require disability awareness training for rail staff (PM8)</li> </ul>
<i>Complaint handling mechanism for PRMs :</i>	
Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>Guidelines on the complaint handling to Station Managers / Infrastructure Managers (PM 9 S)</li> </ul>	<ul style="list-style-type: none"> <li>Regulatory provision on the complaint handling to Station Managers / Infrastructure Managers (PM 9 H)</li> </ul>

**Table 6: Policy options to address issues linked to the information provisions for all passengers**

Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>Issue guidance of good practice regarding the provision of passenger rights information (PM13)</li> </ul>	<ul style="list-style-type: none"> <li>Information on rail passenger rights is provided together with ticket (PM11)</li> <li>Information on passenger rights is provided in stations and on board trains (PM12)</li> </ul>

**Table 7: Policy options to address issues linked to the compensation and assistance to passengers in case of missed connections, delays or cancellations**

Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>Definition of through ticket and linked obligations (PM13);</li> </ul>	<ul style="list-style-type: none"> <li>Definition of through ticket and linked obligations (PM13);</li> <li>Obligation to sell through ticket wherever possible, and burden of proof on railway undertakings and</li> </ul>

	ticket vendors if no through-ticket was sold (PM14)
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**Table 8: Policy options to address issues linked to the complaint handling and enforcement**

Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>• NEB reporting on their activities (PM15)</li> </ul>	<ul style="list-style-type: none"> <li>• Detailed instructions on the complaint handling process (PM16)</li> <li>• Duty to NEBs to cooperate on cross border issues (PM17)</li> </ul>

**Secondary issues**

As described above, for this group of problem the impact assessment will only consider one possible solution (by problem) other than the baseline. A list of policy measure by topic is considered in Tables 2-3 above.

**5 WHAT ARE THE IMPACTS OF THE DIFFERENT POLICY OPTIONS AND HOW DO THE OPTIONS COMPARE? (PART I)**

**5.1 General methodological considerations**

**Issues linked to the current application of the Regulation (Part I of the problem definition)**

The methodology of the impact assessment follows the sequential approach (i.e. theme by theme) described for the design of the policy option under section 4.1.

As the first step, the report will examine various policy solutions (scenarios) with regard to the "major" and "secondary" problems presented under section 4.3.1 and 4.3.2 respectively. The analysis will be done for each problem separately and will include the assessment of main economic and social impacts. For the "secondary" problems, the assessment will consider a choice between a regulatory change and the baseline.

Following this analysis a comparison of scenarios based on three main criteria (i.e. effectiveness, efficiency and coherence) will be carried out per each theme. As a result, a preferred policy scenario per theme will be considered. The final preferred option will be composed of a combination of preferred scenarios per topic analysed.

It is important to note that while there are no notable links and interdependencies between the various problems described, the policy solution under a theme might affect the policy solution under another theme. In particular, it is important to assess how the choice of the exemption regime could potentially affect the conclusions for other issue. Therefore, the sensitivity analysis (depending on the various options for the exemptions) will be carried out for each scenario of each "major" problem.

**Issues linked to the economic analysis**

The analysis of impacts covers the baseline scenario and all the policy options. The key economic and social benefits and costs are captured quantitatively at a level of detail consistent with the available data. Other impacts are quantified where evidence suggests

that there is sufficient material and data available to enable quantification, otherwise they are treated qualitatively. However the analysis did not identify any substantial environmental effects. Passengers' rights are difficult to be quantified. The assessment of the net social value for the whole society is based on conflicting interests between the two main stakeholders: passengers and railway undertakings. The assessment of impacts of each policy option was performed both a) quantitatively for a number of measures and b) qualitatively (Annex 4, p.p.41-59). The criteria used to compare the options quantitatively are mainly four; they are straightforward and based on the assumption that railway undertakings' aim is profit maximization. So, the Commission looked at the increase/reduction of railway undertakings' costs caused by:

- The compensation paid to passengers owing to delays;
- The assistance provided to passengers in the event of disruptions/delays of transport services;
- Staff training on PRM issues.

As regards passengers the assumption is that they aim at increasing their welfare. The welfare of passengers is assumed to increase/decrease in a direct relationship depending on the following economic criteria (additional criteria could not be quantified and are explained below):

- The compensation they receive owing to delays (increase in compensation equals increase in passenger welfare);
- The assistance they receive when disruptions/delays occur (increase in assistance equals increase in passenger welfare) ;
- Training of staff working on rail passenger services on PRM issues (increase in PRM training equals increase in passenger welfare).

In addition, there are more criteria that could not be quantified but still contribute to passenger welfare such as the increase of accessibility, the improvement of complaint handling mechanisms by NEBs (eg. timeframe to submit a complaint, complaint handling to station/infrastructure managers as well, synergies between NEBs), clarity of the term "through ticket" and obligations linked to it, clarity of the terms "missed connection", "carrier" etc. For the qualitative analysis, opinions of the various stakeholders were considered as the main benchmark.

The above analysis becomes more complex when taken into interdependencies and indirect effects that lead to different directions.

On a short-term analysis, the increase of passenger welfare comes at a cost for railway undertakings. In the long run, this might be slightly different as the increase in passenger welfare is expected to lead to small increase in demand for rail services which might lead that railway undertakings would get part of their "investment" back. On the other hand, excessive costs for railway undertakings might lead to a lack of investment from their part that will generate deterioration of service quality and/or increase of costs of tickets. This can lead to decrease of passenger welfare and consequent decrease in demand.

Based on the above and on a set of basic assumptions, an analytical tool (In Annex 4 the results of every policy scenario are presented in a print-out form) was developed by an external consultant. The tool was fed with evidence and data collected through field and desk research. The results are disaggregated by Member State (MS). The tool assesses the changes in passenger kilometres, passenger journeys, compensation costs,

compensation under "force majeure" events, cost of assistance, PRM training costs, railway undertakings' operating costs and infrastructure managers' operating costs. All costs and benefits are added over a 15-year period (2020-2035) and Net Present Values are calculated based on the social discount rate. Every policy measure presented below is compared against the results of the baseline scenario unless stated otherwise. Costs and benefits are calculated at EU level. Given the assumptions made (see also Annex 4), the results should be seen in orders of magnitude.

## 5.2 Analysis of policy options

Measures to address major issues

### *Policy scenarios to address issues linked to the scope of the rail passengers legislation (exemptions for all passengers)*

Policy scenario A	Policy scenario B	Policy scenario C
<ul style="list-style-type: none"> <li>• Advancing removal of exemptions for long distance domestic services to 2020 (PM1);</li> <li>• Limit in time exemptions for services with third countries (PM2)</li> </ul>	<ul style="list-style-type: none"> <li>• Advancing removal of exemptions for long distance domestic services to 2020 (PM1);</li> <li>• Limit in time exemptions for services with third countries (PM2)</li> <li>• Removal of exemptions for urban, suburban and regional services when they are cross-border services (PM3)</li> </ul>	<ul style="list-style-type: none"> <li>• Advancing removal of exemptions for long distance domestic services to 2020 (PM1);</li> <li>• Limit in time exemptions for services with third countries (PM2)</li> <li>• Removal of exemptions for urban, suburban and regional services when they are cross-border services (PM3)</li> <li>• Removal of the exemptions for urban, suburban and regional services (PM4)</li> </ul>

### *Social Impacts*

Extensive use of exemptions by all but 5 Member States is a chief reason that passengers may not fully exercise their rights when using rail services. The removal of exemptions will increase the protection of passengers compared to the baseline scenario as the Regulation will be applicable more widely and more uniformly and will therefore increase legal certainty for passengers.

For example, regarding domestic long distance services, currently 4 Member States have completely exempted their services and 10 Member States partially. The rights to compensation and assistance will be available on these services in all Member States instead of 15 (Annex 5 Table A.2). Compared to the baseline scenario, the compensation received by rail passengers is estimated to increase by EUR 1 million (or by 0.03%) between 2020 and 2035. Compared to the baseline scenario, the level of assistance received by passengers is estimated to increase incrementally between 2020 and 2035.

### *Economic Impacts*

#### **Table 9 – Summary of assessment of scenario A**

<i>Metric (NPV)</i>	<i>Baseline</i>	<b>POLICY SCENARIO A<sup>151</sup></b>
		Advancing removal of exemptions for long distance domestic services to 2020 (PM1)
		Limit in time exemptions for services with third countries (PM2)
<i>Compensation Costs (€m)</i>	3172	+1
<i>Cost of Assistance (€m)</i>	663	-
<i>Total Costs (€m)</i>	3835	+1
		<i>Incremental</i>

Thus, policy scenario A is expected to increase the **overall cost** for railway undertakings by about EUR 1 million for the period of 15 years between 2020 and 2035 in comparison with the baseline scenario (or increase of 0.031% in compensation costs and 0.026% in total costs imputable to the Regulation).

**Table 10 – Summary of assessment of scenario B**

<i>Metric (NPV)</i>	<i>Baseline</i>	<b>POLICY SCENARIO B<sup>152</sup></b>
		Advancing removal of exemptions for long distance domestic services to 2020 (PM1)
		Limit in time exemptions for services with third countries (PM2)
		Removal of exemptions for urban, suburban and regional services when they are cross-border services (PM3)
<i>Compensation Costs (€m)</i>	3172	+4
<i>Cost of Assistance (€m)</i>	663	+1
<i>Total Costs (€m)</i>	3835	+5
		<i>Very low</i>

Policy scenario B is expected to increase the **overall cost** for railway undertakings by about EUR 5 million for the period of 15 years between 2020 and 2035 in comparison with the baseline scenario (increase by 0.13% in total costs). This amount is due to the

<sup>151</sup> Annex 4, policy scenario A, p.p. 64-65

<sup>152</sup> Annex 4, policy scenario B, p.p. 65

increase of **costs of compensation** resulting from the removal of the exemptions expected to amount to EUR 4 million (increase by 0.12%) between 2020 and 2035 compared to the baseline scenario. The increase of **costs of assistance** resulting from the removal of the exemptions will amount to EUR 1 million (increase by 0.15%) between 2020 and 2035 compared to the baseline scenario.

**Table 11 – Summary of assessment of scenario C**

<i>Metric (NPV)</i>	<i>Baseline</i>	<b>POLICY SCENARIO C<sup>153</sup></b>
		Advancing removal of exemptions for long distance domestic services to 2020 (PM1)
		Limit in time exemptions for services with third countries (PM2)
		Removal of exemptions for urban, suburban and regional services when they are cross-border services (PM3)
		Removal of the exemptions for urban, suburban and regional services (PM4)
<b>Compensation Costs (€m)</b>	3172	+1,259
<b>Cost of Assistance (€m)</b>	663	+55
<b>Total Costs (€m)</b>	3835	+1,314
		<b>High</b>

Policy scenario C is expected to produce for the EU railway undertakings an **overall cost** increase of about EUR 1,314 million (or 34.26%) for the period of 15 years between 2020 and 2035 in comparison with the baseline scenario. This amount is due to the increase of the **costs of compensation** resulting from the removal of exemptions to urban, suburban and regional services and would amount to EUR 1,259 million (or by 39.69%) between 2020 and 2035 compared to the baseline scenario. The high level of this cost compared with the other the policy scenarios is due to the high number of urban, suburban and regional services and the corresponding number of passengers on these services (accounting for round 90 % of annual rail passengers in the EU) compared with the other services. The removal of exemptions to urban, suburban and regional will increase the **costs of assistance** to EUR 55 million (or by 8.29%) between 2020 and 2035 compared to the baseline scenario.

*Likely impacts on public administrations*

Reinforced rights in particular following the removal of the exemption of long distance domestic services will increase the costs of ADRs and NEBs especially in the Member States which had exempted entirely these services from the Regulation and were therefore only marginally concerned.

*Likely impacts on third countries, international trade or investment*

No specific impacts are expected on third countries. However, a measure to impose a limit to the number of renewal times for exemptions for services of which a significant part is carried out outside the EU will put pressure on Member States to accelerate

<sup>153</sup> Annex 4, policy scenario C, p.p. 65-66

negotiations of their bilateral agreements with third countries. This might lead to a higher level in passenger protection in third countries as well.

*Preferred policy scenario*

The removal of exemptions in general addresses the issue of patchy application and ensures coherence in the application of the Regulation across the EU. As a higher number of passengers will benefit from the Regulation, the degree of convergence with the objectives of the Transport White Paper and the Charter of fundamental right is rising. Thus, the policy scenario C is more coherent towards relevant other policy objectives, initiatives and instruments, policy scenario B is in the middle and policy scenario A is less.

The removal of exemptions will allow for a more uniform application of the Regulation in all Member States increasing legal certainty for all passengers. From the passengers' point of view, policy scenario A is the worst, policy scenario B is a middle choice with policy scenario C being the best choice as it addresses all the problems linked to the scope of the rail passenger right legislation and exemptions and satisfy the first general and first specific objectives. On the contrary, policy scenario C is the worst scenario for railway undertakings as it means excessive costs for them. This is attributed to the removal of exemptions to urban, suburban and regional services (Table 11). In view of these costs, railway undertaking might decide to discontinue certain services rather than bearing the cost of applying the Regulation in full. The best economic choice for railway undertakings is policy scenario A with the lowest economic burden which also satisfies the second general and second specific objectives.

Policy scenario B proposes a compromise between the two conflicting general objectives. It does not impose an excessive economic impact on railway undertakings and covers a high percentage of exempted services, while taking into account the specific nature of urban, suburban and regional services. Under policy scenario B, these services cannot be exempted when they are operating across borders.

In combination with the proposed mandatory nature of provisions under Chapter V for PRM passengers, discussed below, this results in a reasonable partial lifting of exemptions for these services.

For the above reasons, *policy scenario B* is the preferred one as it increases the protection of passengers without imposing a high financial burden on the rail industry.

Policy scenario A	Policy scenario B	Policy scenario C
<ul style="list-style-type: none"> <li>• Advancing removal of exemptions for long distance domestic services to 2020 (PM1);</li> <li>• Limit in time exemptions for services with third countries (PM2)</li> </ul>	<ul style="list-style-type: none"> <li>• Advancing removal of exemptions for long distance domestic services to 2020 (PM1);</li> <li>• Limit in time exemptions for services with third countries (PM2)</li> <li>• Removal of exemptions for urban, suburban and regional services when they are cross-border services (PM3)</li> </ul>	<ul style="list-style-type: none"> <li>• Advancing removal of exemptions for long distance domestic services to 2020 (PM1);</li> <li>• Limit in time exemptions for services with third countries (PM2)</li> <li>• Removal of exemptions for urban, suburban and regional services when they are cross-border services (PM3)</li> <li>• Removal of the</li> </ul>

		exemptions for urban, suburban and regional services (PM4)
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***Policy scenarios to address issues linked to PRM rights***

**Policy scenarios to address issues linked PRM rights are applicable on all services**

<i>Applicability of PRMs rights to all services</i>	
Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>Guidelines to promote the application of the PRM rights (PM 10 S)</li> </ul>	<ul style="list-style-type: none"> <li>Regulatory provision on the application of the RPM rights (PM 10 H)</li> </ul>

In this paragraph are analysed the impacts of removing the exemptions regarding the articles related to PRMs issues.

*Social Impacts*

PRMs are a vulnerable group of travellers who need special attention. Making mandatory the provisions under Chapter V related to PRMs on all rail services will allow them to use rail services more confidently. The right to receive appropriate assistance on all services will provide them a smoother travel experience and induce them to travel by rail more often, thus improving their social inclusion. Such a measure is in line with the requirements for Member States under the UNCRPD to ensure personal mobility of persons with disabilities and their full access to transport services.

*Economic Impacts*

Due to lack of data specifically for PRMs, data for all passengers are used in order to give an estimation of potential costs of policy measures targeting PRMs. The assumptions made are the following:

- exemptions on provisions related to PRMs are part (%) of the general set of exemptions discussed above concerning all passengers (Annex 5 Tables A2 and A3), and
- compensation and assistance costs are related to the number of passengers who are entitled to these (in this case is PRMs).

For analytical reasons, the structure of the exemptions for all passengers is followed. In that case, the provisions for PRMs that can currently be exempted (Chapter V - Articles 19-25) refer to all services (including urban, suburban and regional services). As a result, the scenario for the PRM exemptions follows the policy scenario C when exemptions for all passengers are concerned (Table 11). The assumption is that the costs for railway undertakings for applying the relevant provisions, will be around 9.3% of the costs for all the provisions exempted (Annex 4, p.p. 66-67) (Table 12 below).

**Table 12 – Summary comparison of assessment of scenarios**

<i>Metric (NPV)</i>	<i>Baseline</i>	<b>POLICY SCENARIO</b>
		Regulatory provision on the application of the RPM rights (PM

		10 H)	
<b>Compensation Costs (€m)</b>	3172		+113,29
<b>Cost of Assistance (€m)</b>	663		+4,97
<b>Total Costs (€m)</b>	3835		+118,27
			<i>low</i>

The above assumptions lead to the conclusion that the costs for railway undertakings are low for regulatory provisions on the application of the PRM rights. The increase in compensation cost is expected to be EUR 113.3 million between 2020 and 2035 compared with the baseline scenario, notably because PRM provisions will then be mandatory on all services, including on urban, suburban and regional services. Still, this is an increase of only 3.56% for compensation costs. In the case that guidelines are chosen to promote the application of the PRM rights, then due to their non-binding character fewer railway undertakings are expected to apply them, leading to an incremental cost increase (much less than 3.56%).

#### *Competitiveness of business*

This option is expected to bring a slight indirect effect on the competitiveness of European rail businesses towards the other modes by an incremental increase in its modal share. Increase in passengers' rights notably for PRMs as discussed in social impacts and especially the increase in passenger awareness notably for PRMs is expected to have a slight impact in the passenger demand for rail transportation services.

#### *Preferred policy scenario*

Removal of exemptions for PRMs mainly satisfies the first general and second objectives as it will allow for a more uniform application of the Regulation in all Member States increasing legal certainty for PRMs and persons travelling with them. The interpretative guidelines on the Regulation already include some guidance on how to improve rail transport for PRM passengers. However, the non-binding nature of the guidelines limits their impact and scope, e.g. railway undertakings or station managers cannot be required to provide assistance where the relevant services are exempted from the application of the Regulation. As a result, they avoid the costs linked to assistance and PRMs' benefits under the guidelines are limited. Thus, policy scenario A is expected to better satisfy the second general and second objectives and to a lesser degree the first general and first objectives. For these reasons, policy scenario B is the preferred one as it gives higher benefits to PRMs with a low burden for the railway industry.

<i>Applicability of PRMs rights to all services</i>	
Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>Guidelines to promote the application of the PRM rights (PM 10 S)</li> </ul>	<ul style="list-style-type: none"> <li>Regulatory provision on the application of the RPM rights (PM 10 H)</li> </ul>

#### **Policy scenarios to address issues linked information provisions for PRMs**

Policy scenario A	Policy scenario B
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<ul style="list-style-type: none"> <li>• Journey information is accessible to all PRMs (PM5)</li> </ul>	<ul style="list-style-type: none"> <li>• Journey information is accessible to all PRMs (PM5)</li> <li>• Information on passenger rights is accessible to all PRMs (PM6)</li> </ul>
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*Social Impacts*

An increase of PRMs' awareness of their rights is expected by introducing requirements for basic information about journey and passenger rights to be provided in alternative formats for PRMs. Better information regarding their journey, will encourage PRMs to travel by rail which will improve their social inclusion. On the other hand, PRMs' awareness will increase through more and better information about their rights. As a result, more PRMs will be aware of their rights and able to assert them.

*Economic Impacts*

The provision of information on passenger rights in accessible formats for PRMs entails some extra operational costs for railway undertakings and station managers related to displaying information on passenger rights (e.g. at ticket counters or ticketing machines, notices in stations and announcements in trains).

In the absence of data about the costs for railway undertakings and station managers for providing journey information and information on passenger rights accessible to all PRMs, an effort is made to estimate the potential compensation they will need to pay to passenger rights for PRMs with all kinds of disabilities. Thus, it is assumed that the compensation cost will be either equal or less than the compensation cost to all passengers (for compensation paid to all passengers due to improved information please see the analysis below on section 5.2.3 information provisions for all passenger). Even in the case that the compensation costs for railway undertakings to PRMs is 100% of their compensation costs for all passengers, the financial burden for railway undertakings is still low in the course of the 15 year period as explained above (Annex 4, p. 68).

**Table 13 – Summary of assessment of scenario B**

<i>Metric (NPV)</i>	<i>Baseline</i>	<i>Policy Scenario B</i>
		Journey information is accessible to all PRMs (PM5)
		Information on passenger rights is accessible to all PRMs (PM6)
<i>Compensation Costs (€m)</i>	3172	+28
<i>Total Costs (€m)</i>	3835	+28
		<i>Low</i>

Based on the data estimated by the tool for provision of information for all passengers, it could be argued that an increase of maximum EUR 28 million in compensation costs is expected between 2020 and 2035 compared with the baseline scenario.

*Preferred policy scenario*

Policy scenario B is the preferred one as it constitutes a complete approach to address the first group of general and specific policy objectives without provoking high costs for the railway undertakings and station managers. In addition, the general information requirements that will be added to the Regulation are in line with the objectives of the White paper, disability legislation and the Charter of Fundamental Rights. For the above reasons, policy scenario B is the preferred one.

Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>• Journey information is accessible to all PRMs (PM5)</li> </ul>	<ul style="list-style-type: none"> <li>• Journey information is accessible to all PRMs (PM5)</li> <li>• Information on passenger rights is accessible to all PRMs (PM6)</li> </ul>

#### *Sensitivity analysis*

The removal of exemptions, among other issues, leads also to the fact that railway undertakings will not be exempted anymore from their obligation to inform PRMs of their rights and obligation under this Regulation. Then, better informed PRMs can better exercise their rights in an environment with no services exempted.

On economic terms, checking the preferred policy scenario B for information provisions for PRMs against each of the policy scenarios on exemptions for PRMs would not be expected to create extra costs than the ones already identified under each policy scenarios A, B and C (Annex 4).

The combination of the two preferred policy scenarios (policy scenario B on information and policy scenario B on exemptions) can provide stronger protection of PRMs rights without provoking a very high burden for the rail industry (Annex 4, p.p. 68-69). This supports our choice for policy scenario B as the preferred scenario.

#### **Policy scenarios to address issues linked assistance for PRMs at the stations and on board trains**

Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>• Best practices exchange on disability awareness training (PM7)</li> </ul>	<ul style="list-style-type: none"> <li>• Require disability awareness training for rail staff (PM8)</li> </ul>

#### *Social Impacts*

The requirement for disability awareness training for staff working in the rail sector will impose obligations on railway undertakings and station managers to provide appropriate levels of training for different categories of staff depending on their interaction with travellers similarly to the requirements under Air passenger rights legislation (Article 11 of Regulation 1107/2006). Trained staff will be better able to provide adequate assistance to PRM passengers and will make them feel more comfortable when travelling by rail. Training on PRM assistance and awareness is a cornerstone for staff who deal with PRMs as they will feel more confident and be more efficient in assisting PRMs with different kinds of disabilities, including "hidden" disabilities (such as dementia, autism etc.). Thus, PRMs will feel more comfortable and confident to travel by rail knowing that staff is well aware about their needs and well trained to respond to them. These will

improve their social inclusion and would probably lead to increased demand for rail services by this category of passengers.

### *Economic Impacts*

Policy scenario A generates, if any, marginal extra costs for rail industry. The costs for policy scenario B are presented below (Annex 4, p.p. 69-70).

**Table 14 – Summary of assessment of scenario B**

<i>Metric (NPV)</i>	<i>Baseline</i>	<b>POLICY SCENARIO B</b>
		Require disability awareness training for rail staff (PM8)
<i>Compensation Costs (€m)</i>	3172	0
<i>PRM training (€m)</i>		+12
<i>Total Costs (€m)</i>	3835	+12
		<i>low</i>

Maintaining all other issues the same as in the baseline scenario, the possibility of increase in disability awareness training for rail staff is examined. Under this scenario, the cost for rail industry to train their staff on PRM issues will provoke an increase of EUR 12 million (0.31% increase in total costs) between 2020 and 2035 compared with the baseline scenario.

### *Preferred Policy Scenario*

The proposal to provide best practices on disability awareness training for railway undertakings and station managers will have an impact only if and when railway undertakings and station managers decide to put into practice these recommendations. However, there is no obligation for them to do so. In fact, the interpretative guidelines already suggest that rail operators need to train their staff in order to provide adequate assistance to passengers with different types of disabilities (par. 5.5). However, these recommendations did not have any measurable impact up-to-date.

On the other hand, introducing obligations for railway undertakings and stations managers to provide disability awareness training does not seem to represent a high financial burden for them with only 0.31% increase in their total costs (notably as a number of railway undertakings already now provide staff training), while the advantages of PRMs' increased confidence in rail travel can be significant. Thus, policy scenario B satisfies both objectives in a more effective way. In addition, such an initiative is in line with the objectives of the White paper, disability legislation and the Charter of Fundamental Rights.

For the above reasons, policy scenario B is the preferred one.

Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>• Best practices exchange on disability awareness training (PM7)</li> </ul>	<ul style="list-style-type: none"> <li>• Require disability awareness training for rail staff (PM8)</li> </ul>

### *Sensitivity analysis*

The removal of exemptions for PRMs, among other issues, also means that railway undertakings and station managers will need to make all reasonable efforts to provide assistance to PRMs whenever and wherever needed. The preferred policy scenario B will help them to realise this goal.

In economic terms, while checking the preferred policy scenario B for disability awareness training against the policy scenario for exemptions (see Table 10), the preferred solution points in the same direction (Annex 4). A combination of these two policy scenarios (policy scenario B on disability awareness training and policy scenario B on exemptions) can provide the assistance PRMs need without provoking a very high burden for the rail industry (Annex 4). This supports our choice for policy scenario B as the preferred scenario.

### ***Policy scenarios to address issues linked complaint handling mechanisms for PRMs***

Policy scenario A	Policy scenario B
<ul style="list-style-type: none"><li>Guidelines on the complaint handling to Station Managers / Infrastructure Managers (PM 9 S)</li></ul>	<ul style="list-style-type: none"><li>Regulatory provision on the complaint handling to Station Managers / Infrastructure Managers (PM 9 H)</li></ul>

### *Social Impacts*

Station and infrastructure managers are in charge of providing PRM assistance, but are currently not obliged to receive and handle complaints. The introduction of requirements for station and infrastructure managers of stations of more than 10 000 passengers/day to handle passengers' complaints about lack of or inadequate assistance will improve the response to complaints from PRMs, who currently can only complain to the railway undertaking. Improved complaint handling mechanisms will benefit passengers as they will be encouraged to lodge a complaint and claim redress.

### *Economic Impacts*

There are no financial data on this issue. However, the introduction of the obligation for complaint handling by Station Managers / Infrastructure Managers is expected to increase their costs slightly.

### *Preferred Scenario*

The proposal to provide guidance on complaint handling for station managers and infrastructure managers can have a restricted impact only if and when they decide to put these recommendations into practice. However, there is no obligation to do so and positive impacts on passengers risk to be limited.

On the other hand, regulatory complaint handling provisions for station and infrastructure managers will have a higher impact for a broader group of passengers.

Policy scenario A	Policy scenario B
<ul style="list-style-type: none"><li>Guidelines on the complaint handling to Station Managers / Infrastructure Managers (PM 9 S)</li></ul>	<ul style="list-style-type: none"><li>Regulatory provision on the complaint handling to Station Managers / Infrastructure Managers (PM 9 H)</li></ul>

## Overall assessment for PRM preferred policy scenarios

**Table 15 – Summary comparison of assessment of scenarios**

<i>Metric (NPV)</i>	<i>Baseline</i>	<b>Policy Package</b>
		<p><u>Applicability of PRMs rights to all services</u></p> <p>Policy scenario B: Regulatory provision on the application of PRM rights (PM10H)</p> <p><u>Information provisions for PRMs</u></p> <p>Policy scenario B:</p> <ul style="list-style-type: none"> <li>• Journey information is accessible to all PRMs (PM5)</li> <li>• Information on passenger rights is accessible to all PRMs (PM6)</li> </ul> <p><u>Assistance for PRMs on the board of the train</u></p> <p>Policy scenario B:</p> <ul style="list-style-type: none"> <li>• Require disability awareness training for rail staff (PM8)</li> </ul> <p><u>Complaint handling mechanism for PRMs</u></p> <p>Policy scenario B:</p> <ul style="list-style-type: none"> <li>• Regulatory provision on complaint handling for Station Managers / Infrastructure Managers (PM 9 H)</li> </ul>
<b>Compensation Costs (€m)</b>	3172	+141,29
<b>Cost of Assistance (€m)</b>	663	+4,97
<b>PRM training (€m)</b>		+12
<b>Total Costs (€m)</b>	3835	
		<b>Low</b>

According to the results from the tool for the preferred policy package on PRMs (Annex 4), the estimation of the costs remains the same as under separate policy scenarios and thus strengthens our conclusions.

### *Policy scenarios to address issues linked information provisions for all passengers*

Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>• Issue guidance of good practice regarding the provision of passenger rights information (PM13)</li> </ul>	<ul style="list-style-type: none"> <li>• Information on rail passenger rights is provided together with ticket (PM11)</li> <li>• Information on passenger rights is provided in stations and on board trains</li> </ul>

### *Social Impacts*

The social impacts analysed for all passengers apply for PRMs as well. Any adjustment to improve the information of passengers about their rights will increase passengers' awareness and the possibility for passengers to complain if these rights are not respected. Better information increases chances for passengers to assert their rights.

An increase of passengers' awareness of their rights is expected by introducing requirements for basic information about passenger rights to be printed on tickets or provided with electronic tickets, notices to be placed in prominent positions at stations and on-train notices and/or announcements. Thus, more passengers will be better aware of their rights and better able to assert them by lodging complaints.

Specifically, information that is provided to passengers regarding their rights (either printed or electronically) provides a source of knowledge which passengers can use to claim their rights before, during and after the trip. They can trace back their rights at any time. If information is provided only on the ticket, e.g. through a barcode or QR code, there is a risk that passengers do not look at it and ignore its existence. On the other hand, information that is provided in stations and on board trains will raise passenger awareness during their trip, but cannot be taken home after a journey. A combination of both measures will enable passengers to be aware of their rights during the journey and to consult them later when needed.

### *Economic Impacts*

The provision of information on passenger rights, should entail some extra operational costs for railway undertakings related to displaying information on passenger rights (e.g. at vending desks or ticketing machines, notices at stations and announcements in trains) which are not estimated by the tool (Annex 4, p.p.70-71). However, the inclusion of the obligation for the companies to provide information on passenger rights in stations and on board trains in the policy scenario B is expected to increase the railway undertakings' compensation costs. These costs are estimated and presented below.

**Table 16 – Summary of assessment of scenarios**

<i>Metric (NPV)</i>	<i>Baseline</i>	<i>Policy Scenario B</i>
		Information on rail passenger rights is provided together with ticket (PM11)
		Information on passenger rights is provided in stations and on board trains (PM12)
<i>Compensation Costs (€m)</i>	3172	+28
<i>Cost of Assistance (€m)</i>	663	
<i>Total Costs (€m)</i>	3835	+28
		<i>Low</i>

An increase of EUR 28 million in compensation costs is expected between 2020 and 2035 compared with the baseline scenario, notably in view of already existing requirements for accessible information under Article 8 (2) of the Regulation. This represents 0.88% increase in compensation costs railway undertakings need to pay and 0.73% in their total costs.

*Likely impacts on public administrations*

Reinforced rights and a better awareness of passengers of their rights might lead to an increase in complaints lodged with NEBs.

*Preferred Scenario*

Due to the non-binding nature of the guidelines on good practices regarding the provision of passenger rights information and based on the above analysis and the low cost compared to the benefits for the passengers, the preferred policy scenario is B.

Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>• Issue guidance of good practice regarding the provision of passenger rights information (PM13)</li> </ul>	<ul style="list-style-type: none"> <li>• Information on rail passenger rights is provided together with ticket (PM11)</li> <li>• Information on passenger rights is provided in stations and on board trains (PM12)</li> </ul>

*Sensitivity Analysis*

The removal of exemptions, among other issues, leads also to the fact that railway undertakings will not be exempted anymore from their obligation to inform passengers of their rights and obligation under this Regulation (Art. 29). As a result, better informed passengers can better exercise their rights in an environment where no services are exempted.

In economic terms while checking the policy scenario for information provisions for all passengers against each of the three policy scenarios for exemptions (policy scenarios A, B and C) the result points to the same direction (Annex 4).

The example below shows the combination of policy scenario B for exemptions for all passengers and policy scenario B on information, which remains the best one as it provides stronger protection of passenger rights without provoking any extra burden for the rail industry (the rest combinations are presented in Annex 4). The costs remain the same as identified under each policy scenario separately. This supports our choice for the policy scenario on information as the preferred scenario.

**Table 17 – Summary comparison of assessment of scenarios**

Metric (NPV)	Baseline	Policy Package
		<p><b>Exemptions for all passengers</b></p> <ul style="list-style-type: none"> <li>• Advancing removal of exemptions for long distance domestic services to 2020 (PM1)</li> <li>• Limit in time exemptions for services with third countries (PM2)</li> <li>• Removal of exemptions for urban, suburban and regional services when they are cross-border services (PM3)</li> </ul>

		<b>Information provisions for all passengers</b> <ul style="list-style-type: none"> <li>Information on rail passenger rights is provided together with ticket (PM11)</li> <li>Information on passenger rights is provided in stations and on board trains (PM12)</li> </ul>
<b>Compensation Costs (€m)</b>	3172	+32
<b>Cost of Assistance (€m)</b>	663	+1
<b>Total Costs (€m)</b>	3835	+33
		<i>Low</i>

*Policy scenarios to address issues linked to the compensation and assistance to passengers in case of missed connections, delays or cancellations*

Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>Definition of through ticket and linked obligations (PM13);</li> </ul>	<ul style="list-style-type: none"> <li>Definition of through ticket and linked obligations (PM13);</li> <li>Obligation for railway undertakings and ticket vendors to sell through ticket wherever possible, and burden of proof on railway undertakings and ticket vendors if no through-ticket was sold (PM14)</li> </ul>

*Social Impacts*

The clarification of the notion of "through ticket" and of the relevant obligations for railway undertakings when they sell journeys under policy measure A will make it clear that journeys sold in a single purchase and under a single transport contract always entitle the passenger to the rights linked to a 'through ticket', unless this is otherwise stated by the railway undertaking or ticket vendor, irrespective of the existence of specific contractual agreements between operators. In the event of delays or missed connections when a journey is composed of several segments, passengers will thus be better protected and able to get compensation or assistance for the whole journey and not only for the separate segments as it is the practice of railway undertakings in many cases nowadays.

On the other hand, the extra obligation for railway undertakings under policy measure B to offer through tickets wherever this is technically possible, will help passengers to obtain a through ticket (i.e. a single contract, which might, however, be composed of several tickets<sup>154</sup>) for their journeys even when different railway undertakings are involved. In addition, the fact that railway undertakings and tickets vendors would have

<sup>154</sup> See CIV Uniform Rules, Article 6(2)

to prove that they informed the passenger in the event that no through-ticket was sold, will motivate them to comply with the rules which will be advantageous for the passengers and provide legal certainty. Passengers would still have the option to combine tickets for different segments of their journey themselves, e.g. to benefit from specific low fares, but would then not benefit from protection under the Regulation on the whole journey, but only on the different segments. As provided in the 4th Railway Package, the Commission will monitor market developments on through-ticketing, report to the EP and the Council and, if appropriate, present further legislative proposals by December 2022.

### *Economic Impacts*

The railway undertakings in countries other than Germany, Italy and Lithuania<sup>155</sup>, will face some cost increases regarding compensation costs as they will need to compensate passengers or provide assistance in the event of delays or missed connections taking into account the whole journey and not only its individual segments. On the other hand, the obligation for railway undertakings to offer through tickets might, contrary to the broad believe, trigger an increase in the number of tickets they sell for services or routes that otherwise they would not sell in segments. For example, for those routes where the alternatives to a combination of separate rail tickets are journeys by airplane or bus, passengers might prefer to use the alternative mode of transport. If, however, railway undertakings offer through tickets with clear obligations regarding reimbursement, compensation and assistance in the event of delays or missed connections, then passengers might prefer rail over the other modes.

### *Likely impacts on public administrations*

The policy scenarios related to through ticketing would not have an additional impact on NEBs' workload. On the one hand, the number of cases where compensation and assistance will be granted will increase; on the other hand legal clarity will improve, thus simplifying the work of NEBs.

### *Preferred policy scenario*

The combination of the two policy measures is suggested to better serve passengers. According to EPF, passengers are increasingly asking to combine journeys and to obtain "through tickets". They should thus also receive the right to adequate protection for the whole journey. These rights would however not apply if passengers deliberately and independently choose to combine different segments to form a journey (e.g. to benefit from specific low fares).

In the absence of economic data on this issue, we cannot estimate the cost for the railway undertakings.

In addition, the Regulation would thus be aligned with the 4<sup>th</sup> railway package where the Commission clarifies certain aspects related to through tickets and their availability and declares its intention to monitor rail market developments in the Member States in this respect.

For the above reasons, policy scenario B is the preferred one.

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<sup>155</sup> Germany, Italy and Lithuania already compensate the passengers or provide assistance taking into account the whole journey when journeys were sold under a single contract

Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>Definition of through ticket and linked obligations (PM13);</li> </ul>	<ul style="list-style-type: none"> <li>Definition of through ticket and linked obligations (PM13);</li> <li>Obligation to sell through ticket wherever possible, and burden of proof on railway undertakings and ticket vendors if no through-ticket was sold (PM14)</li> </ul>

***Policy scenarios to address issues linked to the complaint handling and enforcement (NEB complaint handling and cooperation)***

Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>NEB reporting on their activities (PM15)</li> </ul>	<ul style="list-style-type: none"> <li>Detailed instructions on the complaint handling process (PM16)</li> <li>Duty to NEBs to cooperate on cross border issues (PM17)</li> </ul>

*Social Impacts*

Increased synergies between NEBs across modes will strengthen NEBs. This will benefit passengers by encouraging them to lodge complaints and claim redress.

*Likely impacts on public administrations*

The clarification of the roles and responsibilities of NEBs with regard to complaint handling and cooperation, including on cross-border issues, will directly affect their working modalities. The increased use of passengers of Alternative Dispute Resolution bodies to obtain private redress, should not increase the costs of Member States as it will reduce NEBs' complaint-handling tasks and therefore reduce their costs. NEBs will thus be better able to concentrate on their enforcement activities.

*Preferred Scenario*

For the above reasons, policy scenario B is the preferred one.

Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>NEB reporting on their activities (PM15)</li> </ul>	<ul style="list-style-type: none"> <li>Detailed instructions on the complaint handling process (PM16)</li> <li>Duty to NEBs to cooperate on cross border issues (PM17)</li> </ul>

**Measures to address secondary issues**

**Measures regarding the protection of passenger rights**

***Policy scenario to address issues linked to discrimination on the basis of nationality, residence or currency***

Policy scenario
<ul style="list-style-type: none"><li>• Prevent discrimination on the basis of nationality, residence or currency (PM19)</li></ul>

*Social Impacts*

While citizens are in principle protected from discrimination on the grounds of nationality by Article 18 TFEU, a specific non-discrimination clause (as included in passenger rights legislation for other modes of transport) will ensure that passengers can notify infringements of this right, e.g. discrimination on the basis of residence or currency, directly to NEBs without having to resort to court procedures. As a result, fare discrimination will be reduced, thus directly benefitting passengers<sup>156</sup>.

*Economic Impacts*

It is very difficult to estimate the costs resulting for railway undertakings following the introduction of a non-discrimination clause, notably in view of their assertion that already now they do not discriminate between passengers.

***Policy scenario to address issues linked to clarification of unclear definitions***

Policy scenario
<ul style="list-style-type: none"><li>• Definition of "missed connection" (PM20)</li><li>• Definition of "comparable transport conditions" in case of re-routing (PM21)</li><li>• Definition of "carrier" (PM22)</li></ul>

*Social Impacts*

To clarify the term "missed connection" will provide clarity about linked rights to assistance and compensation. These two measures will improve rail passengers' travel experience and secure their rights to onward travel, assistance and compensation under a single journey with multiple tickets. In addition, a more precise definition of "re-routing" and "comparable transport conditions" will render assistance more effective for passengers, notably when re-routing is performed by another operator or alternative means of transport and prevents further delay for passengers by having to wait for re-routing only by own services of the railway undertaking responsible.

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<sup>156</sup> The Commission undertook to introduce such a clause in its proposal on geo blocking of 25.5.2016 (Proposal for a Regulation of the European Parliament and of the Council on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC; COM (2016) 289 final of 25.5.2016). A corresponding recital was added in the Recitals of the proposal ("7 Discrimination can also occur in relation to services in the field of transport, in particular with respect to the sales of tickets for the transport of passengers. However, in that regard Regulation (EC) No 1008/2008 of the European Parliament and of the Council, Regulation (EU) No 1177/2010 of the European Parliament and of the Council and Regulation (EU) No 181/2011 of the European Parliament and of the Council already contain broad prohibitions of discriminations covering all discriminatory practices that the present Regulation seeks to address. Furthermore, it is intended that Regulation (EC) No 1371/2007 of the European Parliament and of the Council will be amended to that effect in near future. Therefore, and in order to ensure consistency with the scope of application of Directive 2006/123/EC, services in the field of transport should remain outside the scope of this Regulation").

### *Economic Impacts*

The clarification of the notion of ‘carrier’ in line with its definition under the CIV will release railway undertakings from some of their obligations, notably when the operating carrier is another mode of transport (e.g. a bus or a ferry).

### ***Policy scenario to address issues linked to uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV)***

Policy scenario
<ul style="list-style-type: none"><li>• Consistency between the Regulation and the COTIF/CIV rules (PM23)</li></ul>

### *Social Impacts*

The removal of the CIV from Annex I in the Regulation will ensure consistency between the Regulation and the COTIF/CIV rules. This reinforces the legal certainty for all stakeholders by removing the risk of contradiction between the CIV and the Regulation. An amending provision to the Regulation that allows for changes to the CIV to be reflected without a wholesale revision to the Regulation will lead to a similar result. Updates to the CIV with regard, e.g. to increase amounts for damages in case of death and personal injury (Article 30 of CIV) would directly benefit passengers in the EU.

### *Economic Impacts*

It is very difficult to estimate the costs.

### **Measures to address the burden on railway undertakings**

Apart from the provisions that will increase railway undertakings costs, some are aiming at a reduction of railway undertakings' economic burden.

### ***Policy scenario to address issues linked to contingency planning***

Policy scenario
<ul style="list-style-type: none"><li>• Introduce obligations on service continuity and contingency planning to actors other than railway undertakings (PM24)</li></ul>

### *Social Impacts*

Obliging actors other than railway undertakings (e.g. station and infrastructure managers, Member States) to have contingency planning in place in the event of massive service disruptions will increase passengers' welfare because of the integrated approach which will take place between the different rail players. In this regard, contingency planning is complementary to the provisions for railway undertakings under the market pillar of the 4th railway package and will ensure adequate care to stranded passengers even in the event of major disruption.

### *Economic Impacts*

Burden sharing with other stakeholders through a clarification of railway undertakings' and third parties' (station and infrastructure managers, Member States etc.)

responsibilities and obligations in situations of severe transport disruption through contingency planning will limit the cost for railway undertakings.

*Likely impacts on public administrations*

The main factor impacting on the Member States' budget is the requirement for national authorities to share the burden with Railway undertakings for the assistance to passengers in case of major disruptions (i.e. ensuring mobility continuity and contingency planning).

***Policy scenario to address issues linked to right to redress***

Policy scenario
<ul style="list-style-type: none"><li>• Right to redress to 3<sup>rd</sup> parties (PM25)</li></ul>

*Economic Impacts*

The costs for railway undertakings are expected to decrease as they will obtain the right under the Regulation to claim compensation from third parties when delays and cancellations are caused by their fault or negligence without having to specify this in commercial agreements. On the other hand, stakeholders who are responsible for these delays and cancellations, such as station or infrastructure managers, will need to assume their responsibility which means an increase of their cost.

***Policy scenario to address issues linked to complaint handling for railway undertakings***

Policy scenario
<ul style="list-style-type: none"><li>• Specify deadlines for passenger to introduce complaints (PM26)</li></ul>

*Social Impacts*

A detailed complaint process with time limits for the introduction of claims will stimulate a faster and better processing of passenger complaints. Improved complaint handling mechanisms will benefit passengers as they will be encouraged to lodge a complaint and claim redress.

*Economic Impacts*

There are no economic data on this issue. However, the introduction of a time limit for lodging complaints is expected to reduce costs for railway undertakings since they will no longer need to keep incident data for a long period of time, which leads to large data volumes and hence higher costs. In addition, the longer an incident dates back the more difficult it is to verify the history and background of complaints. This becomes even more complicated when railway undertakings from several Member States are involved. The decrease in costs is, however expected to be rather low, as the targeted consultation suggests that, in general, passengers lodge their complaints within three months after the incident.

### 5.3 The preferred policy option

The combination of policy measures which contribute most to the achievement of the two general policy objectives, namely promoting equal and strengthening rights for all rail transport users in the EU and fair and equal treatment of rail transport operators across the EU, and has the most positive overall impact.

#### Major issues

#### **Policy measures addressing issues linked to the scope of the rail passenger rights legislation (exemptions)**

- Advancing removal of exemptions for long distance domestic services to 2020 (PM1);
- Limit in time exemptions for services with third countries (PM2)
- Removal of exemptions for urban, suburban and regional services when they are cross-border services (PM3)

#### **Policy measures addressing issues linked to the PRM rights**

<i>Information provisions for PRMs:</i>
<ul style="list-style-type: none"><li>• Journey information is accessible to all PRMs (PM5)</li><li>• Information on passenger rights is accessible to all PRMs (PM6)</li></ul>
<i>Assistance for PRMs on the board of the train</i>
<ul style="list-style-type: none"><li>• Require disability awareness training for rail staff (PM8)</li></ul>
<i>Complaint handling mechanism for PRMs :</i>
<ul style="list-style-type: none"><li>• Regulatory provision on the complaint handling to Station Managers / Infrastructure Managers (PM 9 H)</li></ul>
<i>Applicability of PRMs rights to all services</i>
<ul style="list-style-type: none"><li>• Regulatory provision on the application of the RPM rights (PM 10 H)</li></ul>

#### **Policy measures addressing issues linked to the information provisions for all passengers**

- Information on rail passenger rights is provided together with ticket (PM11)
- Information on passenger rights is provided in stations and on board trains (PM12)

#### **Policy measures addressing issues linked to the compensation and assistance to passengers in case of missed connections, delays or cancellations**

- Definition of through ticket and linked obligations (PM13);
- Obligation to sell through ticket wherever possible, and burden of proof on railway undertakings and ticket vendors if no through-ticket was sold (PM14)

#### **Policy measures addressing issues linked to the complaint handling and enforcement**

- Detailed instructions on the complaint handling process (PM16)
- Duty to NEBs to cooperate on cross border issues (PM17)

### Secondary issues

#### **Policy measures addressing issues linked to discrimination on the basis of nationality, residence or currency**

- Prevent discrimination on the basis of nationality, residence or currency (PM19)

#### **Policy measures addressing issues linked to unclear definitions**

- Definition of "missed connection" (PM20)
- Definition of "comparable transport conditions" in case of re-routing (PM21)
- Definition of "carrier" (PM22)

#### **Policy measure addressing issues linked to CIV**

- Consistency between the Regulation and the COTIF/CIV rules (PM23)

#### **Policy measure addressing issues linked to contingency planning**

- Service continuity and contingency planning in case of massive disruption (PM24)

#### **Policy measure addressing issues linked to right to redress**

- Right to redress to 3<sup>rd</sup> parties (PM25)

#### **Policy measure addressing issues linked to complaint handling for railway undertakings**

- Specify deadlines for passenger to introduce complaints (PM26)

The above combination of policy measures provides a balanced approach to the divergent policy objectives without imposing a high cost on the railway undertakings. Their total costs will increase by EUR 191.26 million (4.98%) from the baseline scenario (Table 18). This increase is attributed mainly to 5.4% increase (EUR 173.29 million) in compensation costs needed to submit to passengers (including PRMs) due to removal of exemptions mainly the ones attributed to articles regarding PRM issues.

Table 18 – Summary assessment of the preferred option

<i>Metric (NPV)</i>	<i>Baseline</i>	<i>Policy option</i>
<i>Compensation Costs (€m)</i>	3172	+173.29
<i>Cost of Assistance (€m)</i>	663	+5.97
<i>PRM training (€m)</i>		+12

<b>Total Costs (€m)</b>	<b>3835</b>	<b>+191.26</b>
		<b>Low</b>

It emphasises the protection of passengers, including PRMs, broadens the scope for passengers' rights and increases the rights of PRM passengers without imposing an unproportionately high financial burden on railway undertakings.

This combination of policy measures is also in line with the proportionality principle. As the current Regulation leaves room for interpretation regarding its application and enforcement, the application of rules is divergent in Member States thus hindering the Single Market and negatively affecting the competition between rail operators. These differences also prevent a harmonised level of passenger rights across Member States. Attempts to align the understanding and application between the Member States through guidelines have not yielded sufficient result. Only reinforced common EU rules can ensure a harmonised set of basic passenger rights across all EU Member States while creating a level playing field for rail transport operators.

Due to the variety of the issues discussed and for the convenience of the reader below follows a summary Table with the policy options for which there was an economic analysis. Thus, Table 19 presents the costs and benefits for the main preferred policy options for which economic data could be retrieved.

Table 19 – Summary of costs and benefits of the preferred policy option

Policy measures	Costs			Benefits
<b>Policy measures addressing issues linked to the scope of the rail passenger rights legislation (exemptions)</b>				
<ul style="list-style-type: none"> <li>• Advancing removal of exemptions for long distance domestic services to 2020 (PM1);</li> <li>• Limit in time exemptions for services with third countries (PM2)</li> <li>• Removal of exemptions for urban, suburban and regional services when they are cross-border services (PM3)</li> </ul>	<b>Costs (€m)</b>	<b>Baseline</b>	<b>Change</b>	<ul style="list-style-type: none"> <li>✓ Measure will allow for a more uniform application of the Regulation in all Member States increasing legal certainty for all passengers.</li> <li>✓ As a higher number of passengers will benefit from the Regulation, the degree of convergence with the objectives of the Transport White Paper and the Charter of fundamental right is rising.</li> </ul>
	<i>Compensation Costs</i>	3 172	+4	
	<i>Cost of Assistance</i>	663	+1	
	<i>Total Costs</i>	3 835	+5	
<b>Policy measures addressing issues linked to the PRM rights</b>				
<b>Applicability of PRMs rights to all services</b>				
<ul style="list-style-type: none"> <li>• Regulatory provision on the application of the RPM rights (PM 10 H)</li> </ul>	<b>Costs (€m)</b>	<b>Baseline</b>	<b>Change</b>	<ul style="list-style-type: none"> <li>✓ Measure will allow PRMs using rail services more confidently</li> <li>✓ The right to receive appropriate assistance on all services will provide them a smoother travel experience and induce them to travel by rail more often, thus improving their social inclusion.</li> <li>✓ Is in line with the requirements for Member States under the UNCRPD to ensure personal mobility of persons with disabilities and their full access to transport services.</li> </ul>
	<i>Compensation Costs</i>	3 172	+113,29	
	<i>Cost of Assistance</i>	663	+4,97	
	<i>Total Costs</i>	3 835	+118,26	
<b>Information provisions for PRMs</b>				
<ul style="list-style-type: none"> <li>• Journey information is accessible to all PRMs (PM5)</li> </ul> <p>Information on passenger rights is</p>	<b>Costs (€m)</b>	<b>Baseline</b>	<b>Change</b>	<ul style="list-style-type: none"> <li>✓ Increase of PRMs' awareness of their rights</li> <li>✓ Better information regarding their journey, will encourage PRMs to travel by rail which will improve their social</li> </ul>
	<i>Compensation Costs</i>	3 172	+28	

accessible to all PRMs (PM6)	Total Costs	3835	+28	<p>✓ inclusion. More PRMs will be aware of their rights and able to assert them</p>												
<b>Assistance for PRMs on the board of the train</b>																
Require disability awareness training for rail staff (PM8)	<table border="1"> <thead> <tr> <th>Costs (€m)</th> <th>Baseline</th> <th>Change</th> </tr> </thead> <tbody> <tr> <td>PRM training</td> <td></td> <td>+12</td> </tr> <tr> <td>Total Costs</td> <td>3835</td> <td>+12</td> </tr> </tbody> </table>			Costs (€m)	Baseline	Change	PRM training		+12	Total Costs	3835	+12	<p>✓ Measure will impose obligations on railway undertakings and station managers to provide appropriate levels of training for different categories of staff depending on their interaction with travellers</p> <p>✓ Trained staff will be better able to provide adequate assistance to PRM passengers and will make them feel more comfortable when travelling by rail.</p> <p>✓ Also the staff who deal with PRMs will feel more confident and be more efficient in assisting PRMs with different kinds of disabilities, including "hidden" disabilities (such as dementia, autism etc.).</p> <p>✓ PRMs will feel more comfortable and confident to travel by rail knowing that staff is well aware about their needs and well trained to respond to them.</p> <p>✓ Measure will improve PRMs social inclusion and would probably lead to increased demand for rail services by this category of passengers.</p>			
Costs (€m)	Baseline	Change														
PRM training		+12														
Total Costs	3835	+12														
<b>Policy measures addressing issues linked to the information provisions for all passengers</b>																
<ul style="list-style-type: none"> <li>Information on rail passenger rights is provided together with ticket (PM11)</li> <li>Information on passenger rights is provided in stations and on board trains (PM12)</li> </ul>	<table border="1"> <thead> <tr> <th>Costs (€m)</th> <th>Baseline</th> <th>Change</th> </tr> </thead> <tbody> <tr> <td>Compensation Costs</td> <td>3172</td> <td>+28</td> </tr> <tr> <td>Cost of Assistance</td> <td>663</td> <td></td> </tr> <tr> <td>Total Costs</td> <td>3835</td> <td>+28</td> </tr> </tbody> </table>			Costs (€m)	Baseline	Change	Compensation Costs	3172	+28	Cost of Assistance	663		Total Costs	3835	+28	<p>✓ Measure will increase passengers' awareness and the possibility for passengers to complain if these rights are not respected.</p> <p>✓ Better informed passengers can better exercise their rights in an environment where no services are exempted</p>
Costs (€m)	Baseline	Change														
Compensation Costs	3172	+28														
Cost of Assistance	663															
Total Costs	3835	+28														

## 6 PROBLEMS LINKED TO THE ISSUE OF "FORCE MAJEURE" (PART II)

As explained above, the issue of re-introduction of a "force majeure" clause in the Regulation is examined separately from the rest in this section.

### 6.1 What should be achieved?

#### General policy objective

The issue of "force majeure" described in section 1.3 relates to the second general policy objective, which is to enhance railway undertakings' competitiveness and to better allow them to invest in the quality and effectiveness of rail passenger services, without negatively impacting the rights of passengers.

#### Specific objectives

Specific objectives are identified in relation to the identified problems discussed in chapter 1. Tackling the problem of "force majeure" would require including the following as a specific objective of the revision.

#### SO2 bis: ensure that the principle of legal fairness is respected

The problem of legal unfairness and proportionality owing to the fact that railway undertakings have to pay compensation for delays caused by "force majeure" although they have not caused these delays and could not prevent them is described in section 1.3. This problem can be addressed by allowing railway undertakings to be exempted from having to pay compensation in a number of exceptional and clearly defined situations.

### 6.2 What are the various options to achieve the objectives?

#### *Retained policy measures addressing the problems linked to "force majeure"*

The analysis in part II of the main problems linked to the issue of "force majeure" and the data in the example of UK in Table 1, reveal the potential magnitude of the range of the scale of delays that could be attributed to "force majeure" events. The Commission's experience in the area of air passenger rights has shown that the only way to prevent railway undertakings from taking advantage of these events not to compensate passengers, is to clearly and narrowly define situations of "force majeure". For these reasons, the two policy measures suggested are kept as narrow and clearly defined as possible as described below. Other measures concerning the issue of force majeure were suggested by different stakeholders, but were discarded for reasons explained in Table A11 in Annex 6.

**Table 20: Policy measures in relation to force majeure**

A/A	Measures	Description	Hard/ Soft measure
1.	Reintroduction of a "force majeure" clause for article 17	The measure will add a "force majeure" clause to the Regulation, so that railway undertakings would be exempted from having to pay compensation where long	H

	(compensation)	delays were caused by "force majeure" and which they were not able to foresee or prevent, even if all reasonable measure had been taken.	
2.	Definition of force majeure	<p>This measure will provide a definition of force majeure concept. Two possible definitions will be considered:</p> <ul style="list-style-type: none"> <li>• <u>Narrow definition</u> situations where a <i>railway undertaking proves that a long delay of more than one hour is caused by heavy floods, earthquakes, volcanic eruptions or very heavy storms (known as 'Acts of God') and which it could not have foreseen or prevented even if all reasonable measures had been taken.</i></li> <li>• <u>Broad definition</u> corresponding to situations where a <i>railway undertaking proves that a long delay of more than one hour is caused by external factors which would include i. a. severe weather conditions, cable theft or failures, vandalism, fatalities (including suicides), terrorist attacks. Strikes would not be included. See tables A8 and A9 in Annex 5</i></li> </ul>	H

Both measures related to "force majeure" are linked and cannot be introduced separately. In policy scenario A, the definition of force majeure is restricted to only natural catastrophes (so-called "acts of Gods") as described explicitly in section 1.3; the possibility of occurrence of such events is restricted to around 17% (Table 1). In policy scenario B, the definition of "force majeure" is broadened beyond "acts of Gods", and reaches the possibility of occurrence of around 41,4% (Table 1).

### ***Policy option/scenarios addressing the problems linked to the "force majeure"***

Policy measures in relation to the reintroduction of the force majeure concept are presented in the table above. On this basis, two policy scenarios are designed. The difference between them lies in the choice made for the second measure, i.e. the broad or narrow definition of the "force majeure":

Policy scenario A	Policy scenario B
<ul style="list-style-type: none"> <li>• Reintroduction of a "force majeure" clause for article 17 (compensation)</li> <li>• <u>Narrow definition</u> of force majeure</li> </ul>	<ul style="list-style-type: none"> <li>• Reintroduction of a "force majeure" clause for article 17 (compensation)</li> <li>• <u>Broad definition</u> of force majeure</li> </ul>

### **6.3 What are the impacts of the different policy options (scenarios) and how do they compare?**

#### ***General methodological considerations***

The assessment of impacts of the reintroduction of a "force majeure" clause will be performed considering the analysis of the previous section. In particular, this assessment will consider the economic and social impacts of a "force majeure" clause depending on

the two definitions described under section 1.4.2, i.e. a narrow definition and a broad definition.

### ***Issues linked to the economic analysis***

The analysis of impacts follows the same principles as for the other policy measures (section 5.1) and covers the baseline scenario and the policy measures related to "force majeure".

The difference compared to section 1.5 is that regarding compensation costs, the Commission looked also at the increase/reduction of railway undertakings' costs caused by the compensation paid to passengers for delays caused by "force majeure" events. As regards passengers, their welfare is assumed to increase/decrease in a direct relationship depending on the compensation they receive owing to delays because of "force majeure" events (increase in compensation owing to "force majeure" equals increase in passenger welfare).

### ***Analysis of policy scenarios addressing the problems linked to "force majeure"***

Following the ruling C-509/11(2013) of the EU Court of Justice, passengers have the right to compensation irrespective of the cause of a long delay. Although the re-introduction of a "force majeure" clause will not affect railway undertakings' obligations regarding assistance, reimbursement and rerouting, it will reduce their costs regarding compensation and, consequently, the level of passenger protection by reducing the overall compensation that passengers could be entitled to. The degree of reduction of compensation depends on the definition of "force majeure" events. According to railway undertakings, a relief from the financial burden caused by "force majeure" incidents is expected to reinforce their competitiveness and should allow them to invest in the quality and effectiveness of their services. This could include measures from which passengers would also benefit, such as investments in better quality services (e.g. with ticket prices rising more slowly). The scale of the reduced expenses depends on the definition of "force majeure" and could be higher (under policy scenario B) or lower (under policy scenario A).

### **Policy scenario A**

#### ***Social Impacts***

In the event that a long delay of more than one hour is caused by heavy floods, earthquakes, volcanic eruptions or very heavy storms (so-called 'Acts of God') and the responsible railway undertaking could not have foreseen or prevented the delay even if it had taken all reasonable measures, the possible overall compensation level over 15 years will be reduced by EUR 562 million. Assuming that the compensation level represents the level of passenger protection under the Regulation, then it will be reduced by 17.62% in comparison with the baseline scenario.

#### ***Economic Impacts***

The re-introduction of a force majeure clause with a narrow definition will bring a saving of cost for the railway undertakings by the removal of the burden. The decrease in compensation costs is expected to be EUR 562 million representing 17.62% decrease in comparison with the compensation costs under the baseline scenario and 14.65% in comparison with the overall costs of the regulation under the baseline scenario. This

amount of savings would positively affect the business model of Railway undertakings and consequently their level of investment.

**Table 21 – Summary of assessment of policy scenario A**

<i>Metric (NPV)</i>	<i>Baseline</i>	<i>Policy scenario A</i>
		<i>Narrow definition of FM (possibility of occurrence: 17%)</i>
<i>Compensation Costs (€m)</i>	3172	
<i>Force Majeure (€m)</i>		-562
<i>Total Costs (€m)</i>	3835	-562
		<i>Medium</i>

**Policy scenario B**

*Social Impacts*

In this scenario, a long delay of more than one hour could be caused by external factors which would include inter alia. severe weather conditions, cable theft, vandalism, fatalities (including suicides) or terrorist attacks, and the responsible railway undertaking could not have foreseen or prevented the delay even if it had taken all reasonable measures, the possible overall compensation level of passengers over 15 years will be reduced by EUR 1,299 million. Thus, the inclusion of a "force majeure" clause will reduce the level of passenger protection under the Regulation by reducing the possible overall compensation level by 40.95% in comparison with the baseline scenario.

*Economic Impacts*

The re-introduction of force majeure clause with a broad definition is expected to bring cost savings for railway undertakings of EUR 1,299 million representing a cost decrease in terms of compensation of up to 40.95% in comparison with the baseline scenario and 33.87% decrease of overall costs of the regulation in comparison with the baseline scenario. The removal of this burden will positively affect the business model of railway undertakings and their level investments.

**Table 22 – Summary assessment of policy scenario B**

<i>Metric (NPV)</i>	<i>Baseline</i>	<i>Policy scenario B</i>
		<i>Broad definition of FM (possibility of occurrence: 41,4%)</i>
<i>Compensation Costs (€m)</i>	3172	
<i>Force Majeure (€m)</i>		-1,299
<i>Total Costs (€m)</i>	3835	-1,299
		<i>High</i>

## Preferred policy scenario

Table 23 - Policy options to address issues linked to the "force majeure"									
Policy scenario A					Policy scenario B				
<ul style="list-style-type: none"> <li>Reintroduction of a "force majeure" clause for article 17 (compensation)</li> <li><u>Narrow definition</u> of force majeure</li> </ul>					<ul style="list-style-type: none"> <li>Reintroduction of a "force majeure" clause for article 17 (compensation)</li> <li><u>Broad definition</u> of force majeure</li> </ul>				
Costs for rail industry									
	Costs (€m)	Baseline	Change			Costs (€m)	Baseline	Change	
	Compensation	3172				Compensation	3172		
	Force Majeure		-562			Force Majeure		-1,299	
	Total	3835	-562			Total	3835	-1,299	
Social impacts – impacts on passengers									
✓ <u>EUR 562 million</u> reduce of the level of passenger protection under the Regulation by reducing the possible overall compensation level they could possibly receive by 17.17% in comparison with the baseline scenario					✓ <u>EUR 1,299 million</u> reduce of the level of passenger protection under the Regulation by reducing the possible overall compensation level they could possibly receive by 40.95% in comparison with the baseline scenario				

The re-introduction of a "force majeure" clause better satisfies the second group of objectives as it would mean a reduction of the burden for railway undertakings. In that respect, policy scenario B better satisfies the second general and second-bis specific objective as it brings a higher financial relief for railway undertakings of EUR 1,299 million compared to the baseline scenario and EUR 737 million compared to policy scenario A. In addition, it would ensure better coherence with passenger rights legislation for other modes and other relevant EU legislation, such as the Package Travel Directive, which contain provisions to exempt carriers from having to pay compensation under certain conditions. Thus, the strictly economic analysis based on the compensation levels coincides with the point of view of railway undertakings. To re-introduce a "force majeure" clause would be the most desirable outcome for railway undertakings and would respond to their repeated calls to the Commission. Depending on the investments they make with the savings from paying less compensation, it could be argued that, eventually, the effect could also be positive on passengers. When informally consulted by the Commission on this issue, a large majority of the Member States were in favour of a "force majeure" clause, as long as "force majeure" was precisely and narrowly defined.

The re-introduction of a "force majeure" clause satisfies less and could even be opposed to the first group of objectives as it will reduce the level of passenger protection and legal certainty. The re-introduction of a "force majeure" clause would mean that passengers would lose the right to financial compensation in the event of "force majeure" incidents. As stated in the problem definition (section 1.3), the rights of passengers to information, assistance reimbursement or re-routing would not be affected by that measure. Still, there will be a certain reduction in passenger rights, the degree of which will depend on the definition of "force majeure". The reduction in passenger rights would be higher by EUR 737 million if policy scenario B was chosen. Therefore, policy scenario A is the preferred one for passengers.

The reduction in passenger rights due to the reduction of compensation in the event of "force majeure, is expected to be counter-balanced by the increased benefits to passengers notably through the reduction of exemptions and specific measures for PRMs which is expected to reach EUR 191 million. As the rights to assistance, information etc. would not be affected, the high level of consumer protection required by the Charter of Fundamental Rights would be guaranteed. Thus, from a strictly economic analysis based on the compensation levels received, policy scenario A would be the most desirable for passengers and would represent a fair balance between the interests of passengers and the rail industry.

A "force majeure" clause cannot solely be justified by economic reasons and consumers and their representatives have been rather reluctant on this issue. However, the opinion of Member States and railway undertakings had to be taken into consideration who have clearly and repeatedly requested its introduction to ensure the principles of legal fairness and proportionality by emphasizing the importance of a ring-fenced approach to avoid abuses by the railway undertakings (as pointed out under points 1.3 and 1.4.2 above).

The introduction of a "force majeure" clause even for a very limited number of events might lead to more legal uncertainty and thus to an increase in disputes between passengers and railway undertakings, resulting in more complaints to NEBs/ADRs. The burden on NEBs who might be called upon for controversial cases is going to rise, especially in policy scenario B.

#### *Sensitivity Analysis*

A sensitivity analysis is made to examine the outcome of a decision if the re-introduction of a "force majeure" clause accompanies the preferred policy options. For this reason, the tool is run for:

- Both, policy scenario A on "force majeure" situations with 17% of occurrence and the preferred policy options for the other measures (see section 6.2.2).
- Both, policy scenario B on "force majeure" situations with 41.4% of occurrence and the preferred policy options for the other measures (see section 6.2.2).

In both sensitivity tests there are only incremental changes on the impacts of the final result. Thus, one could argue that the results are the same as when policy scenarios are analysed separately.

### **Legal basis and nature of the instrument**

Article 169(2) TFEU provides that the Union shall contribute to the promotion of consumers' interests and ensure a high level of consumers' protection by adopting measures pursuant to Article 114 TFEU in the context of completion of the Internal Market. Article 91 TFEU enables the European Parliament and the Council to lay down appropriate provisions to implement appropriate provision within the framework of a common transport policy. The nature of the instrument would thus be a revision to the Regulation for which Article 91 was also the legal basis.

#### **Consistency with other EU policies**

The preferred option would be fully consistent and compatible with existing EU policies in the transport sector, notably the specific legislation on passenger rights in air, waterborne and bus and coach transport, the 4<sup>th</sup> railway package and the PRM TSI and TAP TSI. It would also be in line with the Package Travel Directive. It would also be

consistent with the UN Convention on the Rights of Persons with Disabilities and EU disability legislation.

## **7 MONITORING AND EVALUATION**

The Commission services will monitor the implementation and effectiveness of this initiative through a set of core progress indicators, listed in the table below. The reporting of the indicators will be annual following the implementation of any changes to legislation required to give effect to the preferred option. It is foreseen that five years after the entry into force of the proposed legislation, the Commission services will carry out an evaluation to verify whether the objectives of the initiative have been reached. Starting year is considered 2020.

This evaluation will be carried out *inter alia* based on the core progress indicators referred to below.

Table 24 –: Core progress indicators for monitoring purposes

Objectives	Stage in policy cycle	Indicator	Reported yearly by:	Comments
<b>SO1: Improve the application and enforcement of the Regulation, so that all passengers can fully exercise their rights when travelling by rail in the EU</b>				
<b>Issues with a major impact on passengers</b>				
<b>Address issues regarding exemptions</b>				
<b>OO1.1*: Reduce the scope for exempting rail services which currently can benefit from the provisions on exemptions under the Regulation</b>	Implementation	Number of types of service exempted (TSE)	Member States	The number would only be reported following changes in response to legislation (cost should not be significant). The number of services exempted in 2020 should be higher than the ones in the years after 2020. Example for 2021: $\frac{TSE[2020]}{TSE[2021]} \geq 1$
	Application	Number of services exempted (SE)	Member States	Monitoring of the KPI would require an annual estimation (cost could be significant depending on changes to services over time). The number of services exempted in 2020 should be higher than the ones in the years after 2020. Example for 2021: $\frac{SE[2020]}{SE[2021]} \geq 1$
<b>Increase the protection of PRM passengers</b>				
<b>OO1.2: Specify higher minimum standards for PRM assistance</b>	Implementation	% of customer-facing staff who have received training in PRM assistance	RUs	Establishing an objective measure will be challenging if the appropriate level of training is open to interpretation. Nevertheless, data on the

		(SPRMT)		<p>proportion of staff who have a disability awareness, at least to some degree, will be a useful measure of compliance (additional cost of recording staff attendance on training courses over and above the cost of the training itself should not be significant). Example for 2021:</p> $\frac{\text{SPRMT}[2020]}{\text{SPRMT}[2021]} \leq 1$
	Application	Number of PRMs seeking assistance (PRMA)	RUs	<p>This information is reported already, although not by all rail undertakings. (additional cost of reporting requests over and above the cost of registering and responding to requests should not be significant). Example for 2021:</p> $\frac{\text{PRMA}[2020]}{\text{PRMA}[2021]} \leq 1$
<b>Increase of passenger awareness about their rights</b>				
<b>OO1.3: Specify channels by which information on passenger rights are to be disseminated</b>	Implementation	% of stations complying with requirement to provide information  % rail undertakings and ticket vendors complying with the requirement to provide information on the ticket	RUs	<p>The KPIs will capture the extent to which rail undertakings, ticket vendors and stations comply with the new regulation and, over time, the speed with which they take the necessary action (data should be relatively simple to collect, and the costs of reporting information over and above the costs of compliance should not be significant)</p> $\frac{\text{No. of stations comply}[2020]}{\text{No. of stations [2020]}} \geq 0.9$ $\frac{\text{No. of RUs comply}[2020]}{\text{No. of RUs [2020]}} \geq 0.9$

					$\frac{\text{No. of ticket vendors comply}[2020]}{\text{No. of ticket vendors [2020]}} \geq 1$
Application	% passengers agreeing that they are aware of their rights	RUs			<p>This measure will indicate whether the change in policy is having the desired effect from the passenger's perspective (data collection will be relatively simple where rail undertakings already carry out passenger satisfaction surveys, but if a bespoke survey is required the costs will be higher)</p> $\frac{\text{No. of pax. aware of their rights}[2020]}{\text{No. of pax. [2020]}} \geq 0.2$
<b>Compensation and assistance to passengers</b>					
	Implementation	Number of through tickets sold (TTS)	RUs/ticket vendors		<p>The KPIs will capture the extent to which rail undertakings/ticket vendors comply with the new rules on selling through tickets wherever possible (the underlying data should be collected in the normal course of operations and the costs of reporting should not be significant).</p> $\frac{\text{No. of TTS}[2020]}{\text{No. of TTS [2021]}} \leq 1$
<b>OO1.4: Ensure that through-tickets are provided to passengers</b>	Application	Compensation granted to passengers who travel with a through-ticket (CTT)	RUs		<p>This measure would be expected to increase following the increase in the number of through tickets sold (the underlying data should be collected in the normal course of operations and the costs of reporting should not be significant).</p> $\frac{\text{CTT}[2020]}{\text{CTT [2021]}} \leq 1$

<b>Strengthen the rights of passengers to an effective enforcement of the Regulation through better NEB complaint handling and cooperation</b>				
<b>OO1.5: Specify requirements in respect of reporting regarding complaints handling activities</b>	Application	Number of complaints to NEBs (CNEB)	NEBs	NEBs should keep records of the number of complaints received (costs of reporting should not be significant). The ratio of the two KPIs (number of complaints to NEBs/number of complaints to RUs) should provide a proxy for the complaint handling process.
	Application	Number of complaints to RUs (CRU)	RUs	RUs should keep records of the number of complaints received (costs of reporting should not be significant). The ratio of the two KPIs (number of complaints to NEBs/number of complaints to RUs) should provide a proxy for the complaint handling process.  $\frac{\text{No. of CRU [2020]}}{\text{No. of CRU [2021]}} \leq 1$ $\frac{\text{No. of CNEB [2020]}}{\text{No. of CRU [2020]}} \geq 1$
<b>Issues with a lesser impact on passengers</b>				
<b>Increase of passenger awareness about their rights</b>				
<b>OO1.6: Eliminate observed instances of discrimination in ticket prices by geography and sales channel</b>	Implementation	Incidence of sales channels offering inconsistent prices (CIP)	NEBs	This would need to be calculated on the basis of a sample (same sample every year) of inspections of different sales channels (cost should be material).  $\frac{\text{No. of CIP [2020]}}{\text{No. of CIP [2021]}} \geq 1$

	Application	Number of complaints about discrimination in pricing and other terms (CDP)	NEBs	NEBs should keep records of the number of complaints received (costs of reporting should not be significant). $\frac{\text{No. of CDP [2020]}}{\text{No. of CDP [2021]}} \geq 1$
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**SO2: Reduce the burden on railway undertakings across the EU**

The burden of providing assistance to passengers in the event major disruption should be shared between all actors involved				
<b>OO2: Ensure that all relevant stakeholders apart from RUs have contingency planning in place</b>	Implementation	Number of infrastructure managers involved in contingency planning (IMCP)	Infrastructure managers	Infrastructure managers should keep records of the contingency planning they have in place (costs of reporting should not be significant). $\frac{\text{No. of IMCP [2020]}}{\text{No. of IMCP [2021]}} \leq 1$
	Implementation	Number of station managers involved in contingency planning (SMCP)	Station managers	Station managers should keep records of the contingency planning they have in place (costs of reporting should not be significant). $\frac{\text{No. of SMCP [2020]}}{\text{No. of SMCP [2021]}} \leq 1$

**SO2bis: Ensure that the principle of legal fairness is respected**

<b>OO2bis: Ensure that rail services are not unduly disadvantaged as a result of compensating passengers for force majeure</b>	Implementation	Number of force majeure incidents that would otherwise have generated	RUs	The information required to determine this KPI is relatively simple to obtain provided the RUs regularly analyses performance data to determine
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<p><b>event which could not be foreseen or prevented even if all reasonable measures had been taken</b></p>			<p>claims for compensation (FMI)</p>	<p>underlying causes (as part of a process of continuous improvement). However, a review of service quality reports on the ERADIS database suggests that such information is not routinely collected in Member States. Thus the costs of putting in place a monitoring framework could be substantial.</p> $\frac{\text{No. of FMI}[2020]}{\text{No. of FMI}[2021]} \leq 1$
	<p>Application</p>	<p>Compensation payments per passenger-km (CP, pax-km)</p>	<p>RUs</p>	<p>This measure could be expected to fall following the provision of relief in the event of force majeure. At the same time, it normalises for increases in payments arising from increases in the volume of travel (the underlying data should be collected in the normal course of operations and the costs of reporting should not be significant)</p> $\frac{\text{CP/pax - km}[2020]}{\text{CP/pax - km}[2021]} \geq 1$

**\* OO: Operational objective**