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

**Exemptions granted by Member States under Regulation (EC) 1371/2007 on rail
passengers' rights and obligations**

Application of Regulation (EC) No 1371/2007 on rail passengers' rights and obligations: Exemptions granted by Member States under Article 2 of the Regulation

INTRODUCTION

Regulation (EC) No 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations of 23 October 2007¹ ('the Regulation') entered into force on 3 December 2009. The aim of the Regulation is to protect the rights of rail passengers in the EU, particularly when travel is disrupted, and to improve the quality and effectiveness of rail passenger services.

Whilst, in principle, the Regulation applies to all rail passenger services in the EU, the Regulation allows Member States to grant exemptions to domestic long distance rail passenger services to ease the phasing-in of the Regulation. In view of the specific character of urban, suburban and regional rail passenger services, the Regulation also allows Member States to exempt these services from the application of the Regulation.

Article 2 of the Regulation thus allows Member States to exempt certain services from the full application of the Regulation:

1. Article 2(4): Domestic rail passenger services for a maximum period of five years, renewable twice (with the exception of the provisions listed in Article (2)3 of the Regulation);
2. Article 2(5): Urban, suburban and regional rail passenger services (with the exception of the provisions listed in Article (2)3 of the Regulation);
3. Article 2(6): Rail passenger services or journeys of which a significant part is operated outside the EU for a maximum period of five years. This exemption may be renewed.

Article 2(7) invites the Commission to provide the European Parliament and the Council with a report on the exemptions granted by Member States pursuant to paragraphs 4, 5, and 6 of Article 2.

I. STATUS QUO OF EXEMPTIONS

From the entry into force of the Regulation on 3 December 2009 to the end of the first five year period on 2 December 2014

With regard to the overall state of application of the Regulation, it can be noted that four Member States are currently applying it in full, whilst 22 Member States have granted exemptions, to varying degrees. The report will look at the situation as regards the different rail passenger services provided in the Member States in detail.

¹ OJ L 315, 3.12.2007, p. 14.

1. Rail passenger services operated at national level (domestic, urban, suburban and regional services)

With regard to how exemptions were granted during the first five year period the following distinctions between Member States can be made²:

1) *Full application of the Regulation without exemptions*

Only four Member States have decided to apply the Regulation in full without opting for any exemptions: *Denmark, Italy, the Netherlands and Slovenia*.

2) *Exemption of all services (domestic, urban, suburban and regional)*

Five Member States have decided to adopt full exemptions so that only the mandatory provisions referred to in Article 2 (3) of the Regulation³ apply: *Bulgaria, France, Ireland, Latvia and Romania*.

3) *Partial exemption*

- **Exemptions granted according to the type of service (domestic or urban, suburban and regional)**

- *Exemption of domestic but not urban, suburban and regional services*

Three Member States have granted exemptions to their long distance domestic services but not to their urban, suburban or regional services: *Belgium, Czech Republic and Lithuania*.

- *Exemption of urban, suburban and regional but not domestic services*

Five Member States have not applied any exemptions for domestic (long distance) services, but only for urban, suburban and regional services: *Austria, Finland, Germany, Luxembourg and Sweden*.

- **Exemptions granted according to the type of requirement (i.e. per article)**

- *Exemptions granted for certain articles on certain services*

Belgium has exempted its long distance national services only from the right to information during the journey under Annex II, Part II to the Regulation. *Spain* has only exempted long distance domestic services from Article 27 on complaints handling.

- *Exemptions granted for a number of articles on all national services*

² Malta and Cyprus do not have any passenger rail services.

³ Under Article 2(3) Articles 9, 11, 12, 19, 20(1), and 26 apply to all rail passenger services throughout the EU.

Nine Member States have granted exemptions in relation to specific articles: *Croatia*⁴, *Estonia*, *Greece*, *Hungary*, *Poland*, *Portugal*, *Spain*, *Slovakia* and the *UK*.

2. Cross-border services with third countries

Ten Member States have granted either full or partial exemptions under Article 2(6) to rail passenger services or journeys of which a significant part is operated outside the EU: *Bulgaria*, *Croatia*, *Estonia*, *Finland*, *Greece*, *Hungary*, *Latvia*, *Lithuania*, *Poland* and *Romania*. This means that all those countries which have cross-border services with third countries have exempted these services from the application of the Regulation on their territory.

3. Additional elements

Most Member States which have exempted their long distance domestic services have granted exemptions in relation to Articles 8, 10, 13, 15, 17 and 18. Most Member States which have exempted urban, suburban and regional rail passenger services have granted exemptions in relation to Articles 8, 10, 15, 16, 17 and 18. Member States do not have to provide specific justification for the adoption of exemptions, but this must take place on a transparent and non-discriminatory basis. It seems clear that exemptions have been granted mainly for those articles which can be considered as most financially onerous, i.e. those related to advance payments in case of accidents (Article 13) and those related to liability in case of delays, missed connections and cancellations and thus to reimbursement, compensation and assistance (Articles 15, 16, 17 and 18). Also Articles 8 (on information) and 10 (on information and reservation systems) might be considered as burdensome or costly if new or renovated rolling stock or computer systems are required to comply with the obligations under these articles.

The above outline shows that the use of exemptions, notably for domestic services, has led to a patchwork of different rights for rail passengers in the EU, owing to different national legislation which applies in the absence of a single set of EU passenger rights. Already in the conclusions to its report of 14 August 2013 to the European Parliament and the Council on the application of the Regulation⁵ the Commission noted that ‘the extensive use of exemptions [is] a serious obstacle to the fulfilment of the Regulation’s objective’, which is to improve the quality and effectiveness of rail passenger services. Exemptions in Member States prevent the creation of a level playing field for railway undertakings across the EU. They also deprive rail passengers of legal certainty and of the full enjoyment of their rights.

A summary table showing the situation of exemptions as of November 2014 can be found at the end of the Report⁶.

⁴ The accession of Croatia to the EU took place on 1 July 2013. Croatia has adopted exemptions from the date of its accession until the end of the first 5 year period in relation to the entry into force of the Regulation, i.e. until 2/12/2014.

⁵ COM(2013) 587 final, 14.8.2013.

⁶ The list of exemptions is based on information provided by the Member States.

II. OUTLOOK AFTER 3 DECEMBER 2014

The Report is also looking at the future situation as regards the application of the Regulation and notably the potential renewal of exemptions by Member States. According to the information received from Member States, the situation will not change significantly after 3 December 2014, with potentially only five Member States which will apply the Regulation in full and 21 which will continue to grant exemptions to varying degrees.

Member States may renew exemptions under Article 2 (4) and (6) of the Regulation but are required to inform the Commission about any prolongation after 3 December 2014. The same applies to the nine Member States which have chosen a five-year period of exemptions for urban, suburban and regional services under Article 2(5) with the option of renewal⁷.

In this context, the Member States have been asked about their intentions for the reduction or renewal of exemptions⁸.

From the information received, it appears that four Member States have the intention to reduce the number of articles for which exemptions have been granted during the next five-year period: *Belgium, Bulgaria, Estonia and Poland*. In the case of *Belgium*, this will lead to the full application of the Regulation for all rail passenger services.

12 Member States intend to maintain the status quo of their exemptions for another period of five years: *Austria, France, Finland, Germany, Greece, Croatia, Hungary, Lithuania, Latvia, Romania, the Czech Republic and Slovakia*. *The UK* advised that it would prolong the existing exemptions as a holding measure and carry out consultations and a review in the course of 2015 prior to deciding whether exemptions should be prolonged, or fully or partly removed. *Denmark, Italy, the Netherlands and Slovenia* already apply the Regulation in full.

Sweden which had not previously specified the exemptions it would apply to urban, suburban or regional services, has now informed the Commission of its plans to exempt these services from certain articles of the Regulation.

Whilst some Member States have not yet officially notified either the renewal or the removal of exemptions under Article 2(7) of the Regulation, it can be estimated that the situation regarding the application of the Regulation to domestic rail passenger services will not change substantially after the first five-year period. This means that passenger protection under the Regulation will, if at all, improve only moderately for these services. A similar situation applies as regards international services and journeys where a significant part is operated outside the EU.

In conclusion, it can be said that Member States granted extensive exemptions during the first five years of application of Regulation (EC) No 1371/2007, and only very modest improvements can be expected in the near future. A level playing field for railway undertakings and a high level of protection for passengers in the EU is thus still far from a reality.

⁷ Bulgaria, Croatia, Estonia, Greece, Hungary, Ireland, Latvia, Portugal and Spain.

⁸ Member States which have not replied to the informal survey are not listed.

Regulation 1371/2007 on rail passenger rights
Summary Table - Information on national exemptions (situation in November 2014)

Country	Domestic Rail Services			Urban, suburban and regional services			International rail services beyond external EU borders		
	Yes		No	Yes		No	Yes		No
	Exemptions	Time-limit		Exemptions	Time-limit		Exemptions	Time-limit	
Austria			x	Except for those provided in Art 2(3), exemptions apply to Art 16, 17, 18(4), 28, 15 in conjunction with Annex I Title IV Chapter II: €80 cost limit for hotel and €50 for taxi (not applicable to disabled persons).	unlimited				x
Belgium	Annex II, Part II.	5 years				x			x
Bulgaria	All provisions of the Regulation except for those provided in Art 2(3)	5 years		All provisions of the Regulation except for those provided in Art 2(3)	5 years		All provisions of the Regulation except for those provided in Art 2(3)	5 years	
Czech Republic	Art 8, 10, 17 18(2)(a) and (b), 18(3), Annex I Art 7(2)(b), 17(2)(b), 24(3)(b), 32, and Annex II	5 years				x			x
Croatia	Art 13,15,16,17,18,25 and 28	until 3.12.2014 may be prolonged	x	Art 13,15,16,17,18,25 and 28	until 3.12.2014 may be prolonged	x	Art 13,15,16,17,18,25 and 28	until 3.12.2014 may be prolonged	x
Denmark			x			x			x
Estonia	Art 8, 10, 13(2), 15, 16, 17, 18(2), (4) and (5), 20(2), 21, 22, 23, 24 and 25	until 3.12.2014		Art 8, 10, 13(2), 15, 16, 17, 18(2), (4) and (5), 20(2), 21, 22, 23, 24 and 25	until 3.12.2014		Art 8, 10, 13(2), 15, 16, 17, 18(2), (4) and (5), 20(2), 21, 22, 23, 24 and 25	until 3.12.2014	
Finland			x	As regards regional services limited to Helsinki Metropolitan Region (Helsinki-Kirkkonummi, Helsinki-Karjaa, Helsinki-Vantaankoski, Helsinki-Riihimäki, Helsinki-Lahti and Lahti-Riihimäki) and only related to Art 10, 17 and 18(2)(a) and (b)	unlimited		Only those related to services to/from Russia.	5 years (until 12/2014)	
France	All provisions of the Regulation except for those provided in Art 2(3)	until 3.12.2014 may be prolonged		All provisions of the Regulation except for those provided in Art 2(3)	unlimited				x
Germany			x	Art 8 (2), Art 15 - 18 (modifications), 18 (2) a), 27 (3), 28, 29 (1) sentence 1, and for services run mainly on account of their historical significance or for the purposes of tourism	unlimited				x
Greece	Art 13, 15, 16, 17, 18 and 28	5 years		Art 13, 15, 16, 17, 18 and 28	5 years		Art 13, 15, 16, 17, 18 and 28 related to services to Serbia, other countries via FYROM and Turkey	5 years	
Hungary	Art 8(2), 10(1), (2) and (4), 17, 18(2)(a) and (b), 18(5), 21(1) and 23	5 years		All provisions of the Regulation with the exemption of what established in Art 2(3)	5 years		Art 10(1), (2) and (4), 18(2)(a) and (b), 18(5), 21(1) and 23	5 years	
Ireland	All provisions of the Regulation except for those provided in Art 2(3)	5 years		All provisions of the Regulation except for those provided in Art 2(3)	5 years		<i>not applicable</i>		
Italy			x			x			x
Latvia	All provisions of the Regulation except for those provided in Art 2(3)	5 years		All provisions of the Regulation except for those provided in Art 2(3)	5 years		Not applicable to the services between stations located in Latvia and third country.	5 years	
Lithuania	Art. 8 (2) and (3) (Annex II), 13, 21, 22, 23 and 24 not applicable	until 3.12.2014				x	All provisions not applicable for the international rail services, when these services are provided outside EU member state, including at least one stop according to the timetable	5 years	
Luxembourg			x	All provisions of the Regulation except for those provided in Art 2(3)	unlimited				x
Netherlands			x			x			x
Poland	All provisions of the Regulation except for those provided in Art 4, 5, 7, 8(1), 9, 11, 12, 16, 19, 20(1), 21(2), 22, 23, 24, 25, 26, 27, 28, 29. For the services carried out with trains: Ekspres, InterCity, Express InterCity, EuroCity and EuroNight – Articles 13 and 17 of the Regulation are applied, too.	until 3.12.2014 may be prolonged		All provisions of the Regulation except for those provided in Art 4, 5, 8(1), 9, 11, 12, 16, 19, 20(1), 21(2), 22, 23, 24, 26, 27, 28, 29.	unlimited		All provisions of the Regulation except for those provided in Art 4, 5, 7, 8(1), 9, 11, 12, 16, 19, 20(1), 21(2), 22, 23, 24, 25, 26, 27, 28, 29. For the services carried out with trains: Ekspres, InterCity, Express InterCity, EuroCity and EuroNight – Articles 13 and 17 of the Regulation are applied, too.	until 3.12.2014 may be prolonged	
Portugal	All provisions of the Regulation except for those provided in Art 2(3) as well as Art 8, 10,13-17, 18(2), 20(2), 27, 28, as well as art.6-14 &32 of Annex I, Annex II, Annex III • PT confirm that intends to apply for those exemptions	5 years		All provisions of the Regulation except for those provided in Art 2(3) as well as Art 8, 10,13-17, 18(2), 20(2), 27, 28, as well as Art.6-14 &32 of Annex I, Annex II, Annex III	5 years				
Romania	All provisions of the Regulation except for those provided in Art 2(3)	5 years		All provisions of the Regulation except for those provided in Art 2(3)	unlimited		x	5 years	
Slovenia			x			x			x
Slovakia	Art. 8,13, 15, 17, 18, 21, 22, 23, 25, 28	Until 3.12.2014 May be prolonged		All provisions of the Regulation except for those provided in Art 2(3)	unlimited				x
Spain	Art. 27	5 years may be prolonged		Art.10	unlimited				x
				Art 21-24&27	5 years				
Sweden			x	to be determined					x
UK	All provisions of the Regulation except for those provided in Art 2(3)	5 years		Services which are not licensed in accordance with Directive 95/18/EC. This primarily means some local services serving urban and suburban areas.	unlimited				x

Note: this list of exemptions is based on information provided by Member States and does not therefore represent any view or commitment by the European Commission