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## REPORT

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. prev. doc.:	ST 13760/18 TRANS 493 CODEC 1856 CONSOM 301 + ADD 1
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on rail passengers' rights and obligations (recast) – Progress report

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### 1. INTRODUCTION

The Commission submitted the above-mentioned proposal to the European Parliament and to the Council on 27 September 2017. The proposal is presented using the recasting technique.

The main reasons for the Commission to present the revision were to address the perceived problems relating notably to *force majeure* situations, use of exemptions, rights of persons with disabilities and reduced mobility, and availability of and information on so-called *through-tickets*.

## **2. WORK AT OTHER INSTITUTIONS**

The European Parliament has designated the Committee on Transport and Tourism (TRAN) as the responsible committee on this proposal and Mr Bogusław LIBERADZKI (SD, PL) as the rapporteur. The Committee on Legal Affairs (JURI) adopted an opinion on the recast technique, dated 28 February 2018, and the Committee on Internal Market and Consumer Protection (IMCO) adopted its opinion on the substance of the proposal, dated 5 June 2018.

TRAN voted on the report on 9 October 2018. On 15 November 2018, the Parliament voted in its plenary session on the report and adopted it as their first reading position.

The European Economic and Social Committee adopted their opinion on the proposal at the 531<sup>st</sup> plenary session, on 18 January 2018. The European Committee of the Regions decided not to issue an opinion.

The Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission issued an opinion on the use of the recast technique on 19 February 2018.

## **3. WORK AT THE COUNCIL AND ITS PREPARATORY BODIES**

The Working Party on Land Transport started its work on the proposal on 29 September 2017 with a general presentation on the proposal. On 5 October 2017 the impact assessment was analysed. The proposal was presented also to the Working Party on Consumer Protection and Information for information.

The Council (TTE, Transport) was informed, under *Any Other Business*, on the intermediate state of play of the first examination on 5 December 2017 (doc. 14637/17).

The first examination was finalised during spring 2018 and a progress report was presented at the TTE Council (Transport) on 7 June 2018 (doc. 8721/18).

#### **4. WORK TOWARDS A COMPROMISE TEXT**

The Presidency presented a first compromise proposal for examination on 25 October 2018, covering Chapters I, II and III. A provisional text of the work in progress is presented in the addendum to this report (doc. 13760/18 ADD 1).

The main objective of the Presidency was advancing the discussions on these three chapters and concluding on these articles as much as possible. Delegations generally welcomed the efforts made by the Presidency on the first three chapters. Progress was made on these three chapters thereby providing guidance for future discussions.

A number of delegations entered scrutiny reservations on parts of the Presidency compromise text while others maintained their reservations on the initial proposal.

The concerns of the main outstanding issues and other remarks raised by the Member States during the discussion are recorded below in general, chapter by chapter. The aim is to provide guidance and facilitate further work on developing the final view of the Council on this regulation.

##### **4.1. Chapter I**

###### **(a) Subject matters (Article 1)**

Certain Member States requested that the scope clearly indicates that the regulation provides for a minimum level of protection, allowing the possibility for more stringent protection of the rights of passengers. Some Member States recalled that the terminology related to persons with disabilities or reduced mobility need to be aligned with the results on the Accessibility Act, whose negotiations between the Council and the European Parliament were ongoing at the time of the discussions (see also Article 2).

## **(b) Scope (Article 2)**

A number of Member States welcomed the Presidency compromise text as a step in the right direction insofar as it clarifies that cross-border services within the Union may be exempted from the scope of the Regulation. However, as regards the scope in paragraph 1, views remain diverse among the Member States; the proposal from a Member State to exclude all domestic transport was opposed by some Member States.

Certain Member States had doubts about the implementation of requirements prescribed notably as "... *adequately ensured* ..." and "...*significant part* ..." as well as the application of Chapter V to all rail passenger services which cannot be exempted from the scope. A number of Member States opposed the deletion of the old paragraph 4, as in certain cases the exemption is already granted, based on the assumption that it can be renewed. Furthermore, some Member States requested that the Accessibility Act should not cross-referenced, since the outcome of that work is not known yet (see also Article 1).

One Member State requested that services operated only for historical or tourism interests could be exempted from the application of the regulation.

## **(c) Definitions (Article 3)**

Although the Presidency compromise text enabled some progress to be made on the discussions related to the definitions, it is clear that this article needs to be reviewed once there is consensus on the rest of the proposal.

Remarks of Member States can be summarised as follows:

- The definition of a 'ticket vendor' may need an editorial and more substantive revision in view of new online ticket sales.
- The definitions on 'through-ticket', 'infrastructure manager', 'railway undertaking', 'carrier', 'substitute carrier', 'person with disabilities and person with reduced mobility' need to be aligned with the respective legislation in the area, notably the directive on railway governance, COTIF rules on passenger rights and the Accessibility Act.

- The definition of a 'station' as well as the use of the term throughout the text needs revisiting according to a number of Member States. It was proposed to amend the text in this respect.

## 4.2. Chapter II

### (a) Non-discriminatory conditions of transport contract (Article 5)

Some Member States regarded the proposed text as too broad. It was argued that the residence of the customer affects the tariff of subsidies for existing suburban transport services. Furthermore, some delegations noted that the article de facto could prohibit competition and special offers from undertakings and vendors.

### (b) Bicycles (Article 6)

The Presidency compromise text was positively acknowledged by a number of Member States while considered as insufficient by others. Overall, there is a broad variety of views on this article among Member States. The proposal of Member States for a right for railway undertakings to refuse access to bicycles was opposed by other Member States that argued for easier access. Some Member States proposed editorial modifications, changing "*operational reasons*" to "*safety-related reasons*" and adding the conditions that the respective rolling stock needs to allow this. Some Member States raised the issue whether bicycles are, or could be, considered as 'registered luggage' as well as raised concerns about oversized bicycles and whether they should be treated in the same manner. Finally, certain Member States reminded that the technical specifications for interoperability (Commission Regulation (EU) 454/2011) already cover carriage of bicycles on trains.

### (c) Obligation to provide information concerning discontinuation of services (Article 8)

The discussion was postponed by the Presidency until an agreement is reached on the Accessibility Act.

#### **(d) Travel information (Article 9)**

A number of Member States had doubts whether obligations should be imposed on ticket vendors and whether those obligations should be proportional to the size of the business of the ticket vendor. Some Member States clearly opposed further obligations on ticket vendors.

Certain Member States also requested to define more precisely what real-time data should be transmitted to the passengers.

#### **(e) Availability of tickets, through-tickets and reservations (Article 10)**

The Presidency compromise text was acknowledged as a generally positive step. Certain Member States had doubts as to whether an explicit obligation to offer through-tickets is necessary and enforceable. However, the discussions need to be continued on this article due to the limited time available.

### **4.3. Chapter III**

#### **(a) Insurance and coverage in the event of passenger death or personal injury (Article 12)**

There was provisional support for the alignment proposed in the Presidency compromise text, however the technical details will require further attention.

## **5. CONCLUSIONS**

The Presidency underlines the importance of protecting the rights of passengers and by doing that in an intelligent and balanced manner the attractiveness of rail services could be improved.

Despite the heavy work load the *Mobility Packages I, II and III*, the Austrian Presidency devoted resources to move forward the work on the proposal. The ongoing discussions at the Council, however, highlight that the challenge of reaching a technically correct and balanced solution is considerable and that the definition of the most suitable policy choice will continue to require a detailed and comprehensive examination.

In the light of the above the Permanent Representatives Committee and the Council are invited to take note of the progress made on the examination of the proposed regulation.