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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the documents

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards the better application and enforcement of Union rules on passenger rights

Proposal for a Regulation of the European Parliament and of the Council on passenger rights in a multimodal context

{COM(2023) 752 final} - {SEC(2023) 392 final} - {SWD(2023) 386 final} -
{SWD(2023) 387 final}

Subsidiarity Grid

- As proposed by the Committee of the Regions with guidance in blue
- Obviously, the answers to the questions below, the explanatory memorandum and – if applicable – the impact assessment should be consistent. This may require some iterations.
- Please try to stay under 10 pages.

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
Article 91(1) of the Treaty on the Functioning of the European Union (TFEU) serves as the legal basis for the adoption of EU legislation related to a common transport policy. This provision is the legal basis for the passenger rights Regulations currently in force. Furthermore, pursuant to Article 100(2) TFEU the Union legislator may lay down appropriate provisions for sea transport.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
In the case of transport, the Union's competence is shared (Article 4(2)(g) TFEU).
<i>Subsidiarity does not apply for policy areas where the Union has exclusive competence as defined in Article 3 TFEU¹. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU² sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU³ sets out the areas for which the Unions has competence only to support the actions of the Member States.</i>
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2⁴:
- Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
The Commission actively engaged with stakeholders and conducted comprehensive consultations throughout the impact assessment process. Stakeholders' views started to be collected in response to the publication of the Call for Evidence (20/12/2021 to 17/01/2022). A total of 58 replies were received. This was followed by an open public consultation (OPC), organised by the Commission and running from 14/09/2022 to 07/12/2022. A total of 185 responses were received, covering a variety of stakeholder groups. A targeted stakeholders' consultation was organised by the consultant responsible for the impact assessment support study, including a survey, a series of interviews and stakeholder workshops. Ten categories of stakeholders' groups were targeted through these activities, ensuring a representation of various interests: passengers and consumer organisations and

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

representative organisations of passengers with disabilities (PRM); carriers for air and their umbrella organisations; carriers for waterborne, bus and coach, and rail and their representative organisations; intermediary ticket vendors, online travel agencies and package travel organisers; stations, terminal or (air)port infrastructure and terminal managers; National Enforcement Bodies and other public authorities at national and local level; Alternative Dispute Resolution bodies; insurance companies and insolvency protection funds; credit card companies; claim agencies. (All of these stakeholder groups also took part in the OPC.) The survey ran from 18/10/2022 until 09/12/2022, and the targeted interviews from 14/11/2022 until 10/01/2023.

The consultant also organised three online stakeholder workshops in the period of 13/12/2022 until 26/01/2023.

Four modal NEB meetings were held between 13/10/2022 and 12/12/2022 to gather specialised input in relation to the issue of enforcement.

The Explanatory Memorandum and the Impact Assessment contain a section on subsidiarity (please see the answer to question 2.2.).

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

The two explanatory memoranda accompanying the Commission proposals do contain adequate justifications regarding the conformity with the principle of subsidiarity.

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards the better application and enforcement of Union rules on passenger rights:

The level of protection of passengers was rather limited before the passenger rights Regulations were adopted. Within the Single Market, many carriers (not only airlines but also railway undertakings and shipping companies, and increasingly bus companies) provide their services in different Member States and even beyond. Harmonisation of passenger rights at EU level is therefore necessary to ensure a level playing field for all actors involved in the provision of transport services (e.g., carriers, infrastructure managers (especially relevant for PRM), intermediaries etc.) which are often cross-border. It remains that effective enforcement rests on the cooperation between Member States and that monitoring activities are performed at national level. Regarding reimbursement by intermediaries, the air travel market in the EU is essentially cross-border, with some of the largest intermediaries being international market players. Action at national level may lead to distortions of the internal market while passengers must be able to assert their rights in the same manner and to benefit from the same protection regardless of the Member State where they travel.

The new measures related to enforcement would allow making existing rights more effective by ensuring that NEBs' enforcement practices would incentivise carriers, terminal operators and intermediaries (especially those who do not always apply the existing rules on passenger rights rules in a fully compliant way) to deliver the best protection to passengers and by removing obstacles that prevent citizens from effectively exercising their rights under EU law. A more effective implementation of passenger rights will contribute to the new approach promoted by the common transport policy and the Green Deal to incentive the use of more sustainable transport modes. Finally, the new measures will contribute to enhance the protection for air passengers across the EU, ensuring that they will be reimbursed also if they booked via an intermediary. For these reasons, the problems identified above require action at EU level.

Proposal for a Regulation of the European Parliament and of the Council on passenger rights in a multimodal context:

Passenger rights for travel by air, rail, bus and coach (for long distance journeys), sea and inland waterways are already enshrined in EU law, and it is only urban/short-distance passenger transport that has been mostly left within the jurisdictions of Member States. The current proposal seeks to address the lack of rights for passengers who travel using a combination of these modes. Without harmonisation of the rules protecting passengers during such journeys, carriers, intermediaries and multimodal hub managers would have to work under different regimes. Passengers would be subject to multiple rules and find it difficult to know and insist on their rights. Moreover, several regimes might apply to transport contracts for multimodal journeys between Member States. For these reasons, national rules, even assuming that they gave passengers a high level of protection, would not achieve essential Union objectives and would even frustrate their achievement. In sum, this initiative seeks to address a gap in EU legislation which, if left at national level, would create the risk of distortions or potential negative spill-over effects.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

The objectives of the proposed initiative cannot be effectively achieved by actions of individual Member States. The positive impact of the initiative highly depends on the availability of harmonised passenger rights that create a level playing field on the Single Market.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

A large number of carriers (not only airlines but also railway undertakings and shipping companies, and increasingly bus and coach companies) provide their services in different Member States and even beyond. Harmonisation of passenger rights at EU level is therefore necessary to ensure a level playing field for all stakeholders involved in the provision of transport services (e.g. carriers, infrastructure managers (especially relevant for PRM), intermediaries etc.). Passengers must be able to assert their rights in the same manner and to benefit from the same protection regardless of the Member State where they travel. This also concerns the enforcement of the legal framework in order to ensure the level playing field between the Member States in regard to protection of passengers and the claims the passengers may file if their rights were not respected. The problems are widespread across the EU given the cross-border nature of transport.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty⁵ or significantly damage the interests of other Member States?

No.

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?

Member States are not prevented from taking appropriate measures in this policy area. Rules on complaint handling procedures, legal redress, availability of specialised alternative dispute resolution, system of sanctions, which bodies are dealing with the monitoring and enforcement of the Regulations will remain for member States to design.

⁵ https://europa.eu/european-union/about-eu/eu-in-brief_en

(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?
The problem of inefficient enforcement of passenger rights exists in all Member States: National Enforcement Bodies cannot monitor the application of passenger rights efficiently because they do not have enough information about carriers' compliance with the respective regulations and they do not enforce passenger rights in a coherent manner because there is no EU level common approach related to monitoring and enforcement. This means that in practice passengers cannot enjoy the same rights throughout the EU. The problem of unclear rules for the reimbursement of air tickets booked via intermediaries exists at the national level, because National Enforcement Bodies are not yet competent to enforce rules on intermediaries. Otherwise, in terms of unclear rules that affect passengers, air carriers and intermediaries, there is no difference between the regional and the local level. With regard to passenger rights in a multimodal context, there are no rules currently in place at the national level, implying that the actual protection of passengers depends on the concrete terms and conditions under the contract of carriage (supposing that it covers a multimodal journey) and the actual protection offered to PRM when switching modes at multimodal passenger hubs. This means that by definition, the level of protection differs from the national, regional or local perspective.
(e) Is the problem widespread across the EU or limited to a few Member States?
The problems are widespread across the EU given the cross-border nature of transport. At the same time, no national approach would be able to result in a harmonised framework for the protection of passengers for carriers operating internationally.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
No. The measures proposed will on the contrary also help national enforcement bodies to fulfil their tasks more easily. For example, they can request documents they need, they have reports which enable them to focus their work.
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
In the stakeholder consultation, the participating authorities broadly confirmed the objective of an increased level of protection for passengers at the EU level. Inputs from public authorities, including Member States, regional and public infrastructure authorities were also collected through the general consultation tools.
2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?
[Summarise in a brief paragraph the gist of questions 2.4 a-e below.] Due to the strong cross-border dimension of passenger transport, the objectives of the proposed action can be better achieved at Union level by reason of scale and effects of that action.
(a) Are there clear benefits from EU level action?
The EU transport sector has a strong cross-border dimension, playing an important role for the free flow of passengers on the EU internal market. By removing unnecessary barriers for passengers and for actors in the passenger transport market, a level playing field will be ensured for all stakeholders. This can best be achieved through action at Union level. The new measures related to enforcement would allow making existing rights more effective by making sure that NEBs' enforcement practices

would incentivise carriers, terminal operators/managing bodies and intermediaries to deliver the best protection to passengers and by removing obstacles that prevent citizens from effectively exercising their rights under EU law. The added value of passenger rights for multimodal journeys lies in the continuity of the passenger protection across the journey; protecting passengers travelling multimodal would be an additional contribution to the new approach promoted by the common transport policy and the European Green Deal to incentivise the use of more sustainable transport modes. Finally, the new measures will also contribute to enhance the protection for air passengers across the EU, ensuring that clear rules will be in place for air tickets booked via an intermediary.
(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?
The EU transport sector and the travel sector more generally has a strong cross-border dimension, playing an important role for the free flow of people on the EU internal market. Transport services of a high quality are key to meet the demand of transport users, support the growth of the EU economy and preserve the lifestyle of citizens. A more harmonised enforcement will also contribute to a better level playing field for companies. The initiative is therefore expected to have a positive impact on the functioning of the internal market.
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
In general, the proposed Regulations do not replace any national policy, but rather provides complementary and harmonised rules for an improved protection of passengers throughout the EU. In addition, for passengers who need to switch the transport mode for a multimodal journey, there are no statutory rules yet on national level.
(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?
There will be no loss of competence of the Member States.
(e) Will there be improved legal clarity for those having to implement the legislation?
Yes. One of the main overarching objectives of the initiative is to provide more legal clarity on a number of aspects. As regards enforcement, national enforcement bodies will have to provide information to the Commission about the way they interpret and apply passenger rights and this information will be shared with other national enforcement bodies. If the Commission sees that differences in the application and enforcement of any of the provisions arise, it may clarify those provisions, with a view to promoting a common approach. To this end, the Commission may adopt a recommendation after consultation of a comitology committee. This will increase legal quality and ensure a more coherent application of passenger rights. With regard to air travel in particular, the missing legal clarity is the problem which the proposed new rules on reimbursements when air tickets were booked via intermediaries tackle. As regards multimodal journeys, the proposed rules ensure that there is a harmonised framework in place for multimodal journey offers, where there is currently none.
3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?
Yes. None of the two options dealing with enforcement go beyond what is necessary to reach the overall policy objectives. Policy options addressing the lack of clarity of reimbursement rules when a flight is booked via an intermediary also contribute to achieving the general objectives and the measures proposed are proportionate in view of the specific objectives. As regards passenger rights in a multimodal context, none of the policy options goes beyond what is necessary to reach the overall policy objectives.
3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?
Choices concerning the relevant policy measures and policy option forming the structure of this initiative were made in due consideration of the proportionality principle, thus resulting in the most balanced approach possible. A regulation was considered to be the most appropriate instrument to ensure common implementation of the measures envisaged, while reducing the risk of distortion within the single market.
(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?
Yes. A large number of carriers provide their services in different Member States and even beyond. This requires the same legal provisions in all Member States to ensure a level playing field for all stakeholders and the same level of protection for passengers. The main objective is to enhance the effectiveness of the existing passenger rights framework through targeted amendments, and the effectiveness of the passenger rights framework overall by introducing rights for passengers when switching modes.
(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?
The impact assessment evidenced that regulatory measures are necessary to achieve the objectives of the initiative. A regulation is the most appropriate instrument to ensure common implementation of the measures envisaged, while reducing the risk of distortion within the single market, which could result from differences into how EU Member States transpose the requirements into national law.
(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)
Not applicable.
(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
[If the proposal is accompanied by an impact assessment, please ensure that the response is

consistent with the tables on cost and benefits in annex 3.] The costs of the initiative are relatively minor and are commensurate with the objectives to be achieved. Costs for terminal operators and intermediaries: 5.2 million per year (of which, EUR 5.1 million for carriers, EUR 0.1 million for terminal operators and EUR 1,401 for intermediaries). One-off administrative costs for carriers and intermediaries: EUR 57.5 million (of which, EUR 57.4 million for intermediaries and EUR 0.1 million for carriers).
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
Not applicable.