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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the recast of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations
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Delegations will find attached document COM(2021) 40 final.

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Brussels, 2.2.2021
COM(2021) 40 final

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TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the recast of Regulation (EC) No 1371/2007 of the European
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(Text with EEA relevance)

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council 27/09/2017
(document COM(2017) 548 final – 2017/0237 (COD):

Date of the opinion of the European Economic and Social Committee: 18/01/2018

Date of the position of the European Parliament, first reading: 15/11/ 2018

Date of transmission of the amended proposal: N/A

Date of adoption of the position of the Council: 25/01/2021

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The Commission did not propose a full revision but a recast of the Rail Passenger Rights (RPR) Regulation with the aim to achieve a prompt adoption of the following essential parts:

Exemptions: The legislative proposal sought (a) to advance the expiry of the exemptions for domestic services (under the currently applicable rules, they should end by 2024); and (b) that cross-border urban, suburban and regional services are always covered under the RPR rules.

Through-tickets: In line with the 4th railway package, which leaves it to Member States to decide whether they want to impose stricter rules on through-ticketing, and provides that the Commission should monitor related market developments until 2022, the recast proposal focused only on increasing the passengers' right to information. Where passengers were not correctly informed that they purchased only separate tickets, these tickets should be considered as a through-ticket allowing for comprehensive protection in cases of travel disruption.

Force Majeure clause: Before an ECJ ruling of 2013¹, stakeholders commonly understood that the Regulation contained a *force majeure* clause exempting carriers from compensation. After the ruling, railway undertakings felt discriminated against as compared with other transport

¹ Case C-509/11, *ÖBB-Personenverkehr*, §§ 38-42.

operators who benefit from *force majeure* exemptions. Therefore, the Commission proposed to introduce such a provision with a narrow scope, which would cover severe weather conditions and major natural disasters. The legislative proposal aimed to ensure a level playing field, legal fairness, proportionality and consistency with other transport modes.

Persons with disabilities and persons with reduced mobility (PRM): In line with the commitments undertaken under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), the legislative proposal aimed to ensure that Member States can no longer exempt the provision of assistance and compensation for damaged mobility equipment. Information has to be provided in accessible formats in line with the requirements proposed in the European Accessibility Act². Rail staff will have to be trained accordingly. This would contribute to making rail traveling more inclusive.

Given that the co-legislators did not follow the rules set for recast procedures and proposed a number of amendments regarding provisions that were not included in the legislative proposal, the Commission's initial aim to achieve a quick adoption of several main provisions did no longer appear to be realistic. Therefore, during the negotiations the Commission supported the co-legislators in finding solutions, which could incentivise the further development of rail passenger services, including the ticketing market. The Commission focused its efforts in particular on the introduction of a through-ticket obligation, the provision of real-time information, the right to self-rerouting, the carriage of bicycles on-board the train, the reduction of PRM pre-notification times and clarifying the complaint-handling mechanism.

3. COMMENTS ON THE POSITION OF THE COUNCIL

The Council's position at first reading, adopted on 25 January 2021, supports the main objective of the Commission's proposal, i.e. to ensure an overall improvement of passengers' rights, whilst ensuring a proper balance between the passengers' interests and those of the rail industry. The main improvements to the current legislative framework are the following:

(1) Provision of real-time traffic and travel information

The Council agrees with the EP and the Commission that infrastructure managers and railway undertakings should provide real-time traffic and travel information to other participants in the rail services' chain (i.e. to other rail companies, station managers, ticket vendors and tour operators). If it is technically not feasible for an infrastructure manager to distribute real-time data to any entity, then the respective Member State could apply an exemption, for a maximum period of nine years, and shall re-assess the situation every two years. In this regard, the Member State shall inform the Commission about the reasons for the exemption and the measures undertaken or envisaged in order to amend the situation.

The Commission welcomes the introduction of this provision. It would allow avoiding any discrimination between passengers, who would now dispose of the same level of quality and real-time information, irrespective of whether they purchased the ticket directly from the rail carrier or from an intermediary company. Furthermore, the access to travel information and to the operation of reservation systems would allow ticket vendors and tour operators to develop more innovative ticketing products, which would boost the dynamic within the rail ticketing market.

(2) Through-tickets

“Sole undertakings” which offer international, long-distance domestic and regional rail

² Directive 2019/882 on the accessibility requirements for products and services.

services shall perform these services as a “through-ticket”, providing for an increased passenger’s protection in cases of travel disruptions. As a “sole undertaking” are to be understood not only single companies but also separate legal persons, which are inter-linked based on a 100% ownership criterion.

The Commission regrets that, at this stage of the rail market development, it was not possible to establish that the “sole undertaking” should be defined in relation to the ‘control and decisive influence’ criterion. However, given that the compromise found already goes beyond what was contained in the legislative proposal and is a positive further step in ensuring passengers’ protection, the Commission welcomes the new obligation for “sole undertakings” to offer through-tickets for their rail services.

(3) Tickets bundled at retailers’ own initiative

Where ticket vendors or tour operators bundle tickets at their own initiative, and the passenger who purchased connecting rail services in a single commercial transaction was not informed that this is not a through-ticket, the retailer should be subject to an increased liability in cases of travel disruptions.

This provision would ensure that the enhanced offer of travel options would translate into realistic connecting services for passengers. The Commission welcomes the possibility for ticket vendors and tour operators not to be bound to only sell products, which are already on offer by railway undertakings.

(4) Right to self-rerouting

According to this new provision, if the railway undertaking does not offer a solution for re-routing or journey continuation within 100 minutes as of the travel disruption, the passenger has the right to take an alternative public (rail or bus) transport and be reimbursed by the initial carrier for the necessary, appropriate and reasonable cost incurred for the alternative ticket.

The Commission welcomes this rule, as it would provide additional incentives for railway undertakings to offer timely solutions, so that the passenger can reach his or her final destination. This provision may also lead to an increased cooperation amongst carriers.

(5) PRM pre-notifications

The Commission welcomes the rule that persons with disabilities and persons with reduced mobility would submit in the future their requests for assistance within 24 hours, instead of the current 48 hours. If a Member State decides to apply, until 30 June 2026, pre-notifications within 36 hours, it should inform the Commission, also about the reasons and the measures taken in this regard.

(6) Carriage of bicycles on board the train

The Commission welcomes the rule that, as of 2025, procurement procedures for new rolling stock and major maintenance works for trains in circulation include requirements for reserved spaces for the carriage of bicycles. The adequate number of spaces reserved for bicycles should be established by railway undertakings after public consultations. These should, in principle, not be less than four spaces. Member States would have the possibility to request a higher (than four) number of spaces reserved for the carriage of bicycles. This provision would support green and multimodal travel solutions. It is in particular positive that the provision would be mandatory, even for exempted regional services.

(7) Complaint-handling

The Commission welcomes the clarifications introduced to the complaint-handling

mechanism, including the provision on the cooperation between National Enforcement Bodies and the designation of a “lead body” for complex cases. Next to all rail carriers, station managers of big stations should now also establish a complaint-handling mechanism. The Commission also agrees to develop an EU-wide compensation and reimbursement form, which should be in an accessible format for PRM passengers.

(8) Force Majeure clause

The Commission proposed a “force majeure” clause limited to extreme weather conditions and major natural disasters. However, the outbreak of Covid-19 has shown that also “major public health risks” should be regarded as extraordinary circumstances. The Commission can agree that other events (for example, terrorist attacks or law enforcement measures) could also relieve rail carriers from liability to pay compensation in cases of delays, missed connections and cancellations. The proposed “force majeure” clause states in clear terms that carriers would only be relieved from the payment of compensation (whereas other passengers’ economic rights remain unaffected). In view of a number of court cases related to air passenger rights in “extraordinary circumstances”, the Commission welcomes the clarification that strikes by carrier’s staff or acts attributable to other railway undertaking using the same infrastructure, as well as to station and infrastructure managers, cannot be considered as “extraordinary circumstances”.

(9) Exemptions and applicability

The Commission regrets that the new rules would be applicable after a general 24-month transition period. The provision related to the procurement procedures, which should ensure dedicated spaces for the carriage of bicycles, would apply after a 48-month transition period. The Commission takes, however, note that according to rail industry, the transition period is needed in order to put in place preparatory measures related to the new rules.

The Commission has reservations as regards the possibility to (a) prologue by five years the currently applicable exemptions to domestic rail services; and (b) exempt without time limitation cross-border regional services, likewise cross-border urban and suburban services. However, the situation created by exempting such services would be mitigated by the following:

- Exemptions to domestic long-distance services would be restricted: (i) only to those eleven Member States, which currently apply such exemptions; (ii) granted for a period not exceeding five years after the expiry of the currently applicable exemptions; and (iii) while all provisions of the Regulation will remain applicable, only five provisions (perceived as financially most burdensome) could be exempted;

- Exemptions to urban, suburban and regional services: the legislative proposal sought to ensure that cross-border rail services cannot be exempted. This could not be achieved but at least more provisions will now be mandatory, if Member States – in line with the subsidiarity principle - would decide to exempt such services from the Regulation.

With respect to regional services, the Commission appreciates the fact that further additional provisions have been included as mandatory. This regards all provisions laid down in Chapter V on PRM protection, and the right to bicycle carriage. Moreover, the important provisions on through-tickets and self-rerouting are also amongst the mandatory provisions, although Member States would have the possibility to postpone that mandatory application for five years after the date of applicability of the new rules.

As until now, Member States which decide to exempt urban, suburban and regional services from the Regulation could do so without time limitation.

4. CONCLUSION

The Commission considers that the above-listed new rules increase the overall level of rail passengers' protection while ensuring an appropriate balance with the needs of the rail industry, in particular as regards the possibility to exempt railway undertakings from liability for paying compensation in cases where the carrier could neither prevent nor avoid the consequences of "extraordinary circumstances".

In the spirit of compromise, the Commission can accept the solution found for the exemption of certain rail services from the rules of the Regulation and the envisaged transition periods. The Commission accepts the position adopted by the Council, thus allowing the European Parliament to adopt the final text in a second reading. Indeed, the proposed new provisions would result in an improvement compared to the current rail passengers' rights framework. These rules are also expected to incentivise a new dynamic in the rail ticketing market, in particular by allowing that new and more innovative tickets are bundled and offered to passengers. Furthermore, the provisions may boost an increased carriers' cooperation, also in the light of the new passengers' right to self-rerouting. The achieved results may propose some useful solutions and be taken into consideration in the currently on-going evaluation of the legislative framework for passenger rights applicable to other transport modes.