



The Consumer Voice in Europe

THE RIGHTS AND OBLIGATIONS OF RAIL PASSENGERS -

Commission draft interpretative guidelines on Regulation 1371/2007

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Introduction

BEUC welcomes the endeavour of the Commission to provide more clarity in the interpretation of the rights of rail passengers stemming from Regulation 1371/2007.

Below we set out our comments on a number of relevant issues dealt with by the draft guidelines.

Scope of the Regulation

Regulation 1371/2007 has clearly contributed to improving the protection of rail passengers when confronted with disruptions in their journeys. However, as rightly indicated in the draft guidelines, the large possibilities given to member states to postpone or even exclude the application of the Regulation, create inequalities among passengers, cause legal uncertainty and jeopardise the objective to achieve a high level of consumer protection throughout the EU. The Report of the Commission of 2010 regarding the use of exemptions showed that a considerable number of member states have made use of the postponement possibilities.

We therefore consider that should the Regulation be revised or amended, the possibilities to make use of exemptions should be reduced both in time and in scope.

Concept of "carrier" and re-routing

We support the draft guidelines stating that the liability of the contractual carrier vis-à-vis the passenger, still applies if the passenger has to be re-routed with other means of transport. Even though the Regulation limits the definition of "carrier" to railway undertakings, this interpretation clearly results from article 31.3 of the Uniform Rules of the Annex in the Regulation.

Missed connections

We support the draft guidelines regarding the application of the Regulation in situations where the delay is the result of a missed connection. Indeed, following articles 15 of the Regulation and 32 of the Uniform rules in the Annex, the carrier is liable for a delay caused by a missed connection.

Through-tickets

We agree with the statement in the draft guidelines that in case the passenger bought several tickets for successive services under a single contract, all the undertakings involved in the journey are jointly liable vis-à-vis the passenger in case of problems. This interpretation stems directly from articles 3 (10), and 2.2 of the Regulation and is also implied following Article 38 of the Uniform Rules of the Annex regarding the liability for luggage.

Cancellations

The cancellation of a service can have the same impact on passengers than a delay and therefore it should trigger the same rights (reimbursement, re-routing and compensation), for instance if the scheduled time of arrival of the next available service (re-routing) or the time of arrival at the final destination, exceeds 60 minutes.

We thus support the draft guidelines regarding this issue. Even though article 16, 17 and 18 of the Regulation only refer to “delays”, the inclusion of cancellations in the protection regime is explicitly indicated in article 32 of the Uniform Rules in the Annex of the Regulation. This also results from the wording of article 15 which refers to delays, *cancellations*, missed connections and late running of trains.

Compensation in case of “force majeure”

The Court of Justice of the European Union, in Case C-509/11 (26 September 2013) ruled that the obligation of the carrier to compensate the passenger for delays, missed connections and cancellations, cannot be waived in case of ‘force majeure’ since the Regulation (article 17) does not foresee any exoneration clause as regard the standard compensation rights of the passenger in those cases.

The Commission however seems to suggest that it does not support the ruling of the Court of Justice and considers that the rule should be aligned with the legislation on air passengers’ rights i.e. the exclusion of the right to compensation in the case of extraordinary circumstances (force majeure).

We however consider that this is an aspect where air transport and rail transport, are not comparable. Air transport is more vulnerable to this kind of situations as it entails long distances and therefore it is more costly for airlines to find alternatives for passengers to avoid the effect of a cancellation or delay due to an extraordinary event. On the contrary, railway transport allows for more flexibility to find alternatives and to limit the damages caused by a disruption due to an extraordinary event.

We therefore support the ruling of the Court of Justice interpreting the Regulation and urge the Commission not to put it into question.

Assistance

Regarding the right to assistance under article 18, we agree that it cannot be denied in cases of “force majeure”. We also agree that the Regulation clearly obliges railways to provide and pay for the assistance (article 18.2).

We however consider that the Regulation should be interpreted as granting passengers the right to be reimbursed of *necessary, appropriate and reasonable* costs incurred in cases the undertaking did not abide by its obligation of assistance. This interpretation follows the ruling of the Court of Justice in case C-12/11 (Denise McDonagh v Ryanair) of 31 January 2013.

Payment of compensation

Regarding the payment of compensation in vouchers, it would be desirable that the Commission gives some guidance on the interpretation of the term "flexible"; for instance will a voucher valid only on the route concerned or for a very limited duration, be considered as "flexible"? Cooperation between national enforcement bodies on the handling of cross-border complaints (Article 31), and deciding on the competent national enforcement body

Regarding the cooperation of national enforcement bodies in the handling of complaints, contrary to what the draft guidelines suggest, we consider that rail passengers should be able to make complaints to any national enforcement body and in particular to the national enforcement body of their domicile. This rule should apply irrespective of the type of complaint while National enforcement bodies should cooperate at a later stage by sharing their responsibilities according to the complaint.

The system proposed by the Commission in the draft guidelines is too complex and contrary to the requirement of national enforcement bodies to cooperate. It also departs from the rule proposed in the context of air transport where air passengers *may complain to any national enforcement body* (see article 16a of the Commission proposal amending Regulation 261/04: COM/2013/130).

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