

The Consumer Voice in Europe

RAIL PASSENGER RIGHTS REGULATION RECAST

BEUC Position Paper



Contact: Christoph Schmon – consumer-rights@beuc.eu

BUREAU EUROPEEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND
Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • www.twitter.com/beuc • consumers@beuc.eu • www.beuc.eu
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Why it matters to consumers

The establishment of passengers' rights is considered one of the EU's big achievements. However, current EU rules do not provide a high level of protection for rail passengers who face delays, poor service or discrimination. Often, consumers are not protected for their entire journey and cannot expect fair compensation in case that something goes wrong. The reform of the EU rail passenger rights should therefore focus on how to give better rights to consumers and how to implement effective enforcement measures.

Summary

BEUC supports the update of the EU rules on rail passenger rights but improvement is necessary

BEUC welcomes the Commission's proposal to update rail travellers' rights in case of delays, cancellations or discrimination. Regulation 1371/2007 has contributed to improving the protection of rail passengers when confronted with disruptions in their journeys. However, besides problems related to legal uncertainty, the **rules fall short in protecting consumers in a number of areas**. These include:

- its application is limited due to national exemptions;
- Problems related to non-availability of "through tickets";
- Poor complaint-handling and lack of enforcement of people's rights;
- Failure to provide adequate information and assistance to passengers;
- Discrimination on various grounds.

However, we have concerns about the new Commission proposal that the level of **protection still not good enough**.

One of the most important issues for consumers is the protection afforded to them in case of a delay, in particular the **right to compensation**. We do not support the Commission's idea to weaken this important consumer right by:

- **Exempting rail companies from having to pay compensation in the event of delays caused by certain extraordinary circumstances.**

Rather, the legislator should **consider improving the low standard of compensation**. Each of our concerns is outlined in detail below. We are hopeful that the European legislator will work to ensure that passenger rights across the EU are not weakened but improved and modernised.

1. National exemptions, Article 2

We support reducing the options for Member States to exempt certain services from the application of the new regulation. This relates to the removal of exemptions for:

- long-distance domestic services and
- cross-border urban, suburban and regional services.

There should be a general principle to grant the same rights to rail passengers in both international and domestic journeys. Such an approach would ensure fair competition for railway companies and non-discrimination.

We also support that Member States can only exempt services with non-EU countries if passengers' rights are adequately protected on the part of such services provided on those Member States' territory. It is also a step in the right direction that national exemptions do not apply when it comes to the use of rail services by people with disabilities or with reduced mobility.

However, we **do not see a justification for upholding the national exemptions for urban, suburban, and regional services.** Consumer rights, such as access to information, compensation in case of delay, or proper complaint handling are very important and relevant to those services.

BEUC demand:

We support reducing national exemptions. Passenger rights should apply to all railway services as a principle.

2. Through-tickets, Article 10

From the passenger's perspective, what is relevant is whether the entire journey is covered in terms of rights and whether he or she enjoys a high level of convenience or protection in case something goes wrong. In practice, consumers have real problems when through-tickets are only available to a limited extent. Railway companies sell tickets for segments of a journey only, allowing them to **bypass obligations relating to compensation, re-routing and assistance.**

Instead of remedying this problem, the proposed Regulation merely gives a right to passengers to be given better information on through-tickets. Whereas it is an improvement that consumers will receive information that their passenger rights do not apply to the whole journey but only to segments of it, the Proposal does not oblige railway companies and ticket vendors to sell through-tickets (railway companies shall offer through-tickets only 'where available' and make 'all possible efforts' to do so). The text is clear that passengers should enjoy rights to information, assistance, care and compensation only if they are not informed of the contrary. **The consumer protective standard is therefore in the hands of the company alone.**

BEUC demand:

It is not enough that railway companies are encouraged to provide through-tickets. What is needed is a mandatory offer of through-tickets, also for international journeys.

3. Compensation, Article 17

One of the most important features of the Rail Passenger Rights Regulation is the right to request compensation for delays from the railway company.

It is an improvement for consumers that delays of less than 60 minutes should be counted cumulatively in case of a **travel pass or season ticket** if they occur repeatedly (para 2).

3.1. Basic rule for compensation: improvement needed

However, it is unfortunate that the Commission did not touch upon the basic rule of compensation, according to which passenger receive a **minimum compensation** 25 % of the ticket price for a delay of 60 to 119 minutes and 50 % of the ticket price for a delay of 120 minutes or more. These are **insufficient**. As a minimum, passengers should have the right to receive 50 % of the ticket price in the first case and the full ticket price as compensation for longer delays. Furthermore, the **starting point for compensation should be a 30-minute delay** instead of 60 minutes. **Compensation should be provided automatically** to consumers where technology allows it (for example smart cards systems or electronic booking and payment).

3.2. Exception for force majeure: unnecessary as it will lead to consumer detriment

Instead of improving the situation for passengers and granting more compensation or compensation in more cases, the Proposal suggests that companies should be exempted from paying compensation if they can prove that the delay was caused by 'severe weather conditions or major natural disasters' endangering the safe operation of the service and could not have been foreseen or prevented even if all reasonable measures had been taken (para 7). The so-called exception for force majeure is a **significant weakening of the current consumer rights standard**. This should be reason alone to dismiss its introduction in the Regulation. There are many other reasons why the exception should not be supported:

- Ambiguity of the concept may lead to consumer harm:

It is not clear what the concept of 'severe weather conditions' means. Nor is it clear what the difference is to other types of bad weather conditions which might endanger the safe operation of the railway service.

Recital 21 explains that such an event should have the 'character of an exceptional natural catastrophe, as distinct from normal seasonal weather conditions, such as autumnal storms or regularly occurring urban flooding caused by tides or snowmelt'. These terms are not clear either and leave too much room for interpretative manoeuvre at the expense of affected consumers. In practice, railway companies might use this exception to limit their responsibility also in cases where they could indeed prevent the delay if all reasonable measures had been taken.

Furthermore, the company's reaction when bad weather conditions occur may not only relate to the affected areas but may also cause disadvantages to consumers in areas not affected by the weather forces. For example, it could lead to large-scale changes of transportation plans for business reasons rather than technical reasons. In individual cases, it may shift the burden on the consumer to prove that delays could have been avoided.

➤ No economic reasons for introducing a force majeure exception

The explanatory memorandum attached to the new Proposals admits that the impact assessment carried out by the Commission 'found no compelling evidence that the absence of such a clause placed a major economic burden on railway undertakings.' It only refers to the consistency with general aspects of passenger rights legislation on other transport modes (fairness) or reasons of legal certainty. Both justifications are unconvincing.

First, there is no problem of legal certainty since the **Court of Justice of the European Union** has made clear that the Regulation does not allow railway companies to be exempted from compensating passengers for delays caused by force majeure.¹ Then, the consistency argument is weak: there is an exception in case of extraordinary circumstances in the area of air passenger rights. However, for this area, consumers enjoy a relatively high standard of compensation (up to €600) and redress.

In sharp contrast, the Rail Passenger Rights Regulation only foresees compensation based on a percentage of the ticket price, which will often be low. Also, the situation of companies operating in different transport sectors is not comparable since the different modes of transport are not interchangeable as regards the conditions of their use. This was spelled out by the Court of Justice, which said that the EU legislature is entitled 'to establish rules for providing a level of customer protection that varied according to the transport sector concerned'.²

BEUC demand:

An exception for force majeure harms consumer interest and is economically unjustified. Instead of reducing the number of cases where consumers would be entitled to compensation, the standard of compensation should be improved, and passenger rights strengthened.

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

² Case C-509/11, at [47].

4. Information, Complaints, and Enforcement, Chapter VI-VIII

4.1. Information (Art 30)

Already at the start of the journey, consumers should be informed by railway companies, station managers, and tour operators about their rights and obligations, particularly in the event of cancellation, missed connection, or delay. We support article 30 where a summary of the provisions of the Regulation must be prepared by the Commission which can then be used as an information tool.

However, consumers should be informed about it. Besides information on the ticket, information must be made available and displayed at every station and on board every train in a clear and visible manner. In case of delays which entitle the consumer to compensation, passengers should be informed about their compensation rights, for example via announcements or by distributing relevant forms.

4.2. Complaint handling (Art 28)

If something goes wrong, it is vital for passengers to have access to a quick and convenient complaint handling mechanism, safeguarded by effective enforcement measures. The Commission's assessment confirmed that there are major enforcement problems in practice and that rights are not always upheld.

We support the Proposal in setting out the complaint-handling process and to introduce new obligations for station and infrastructure managers to set up complaint handling mechanisms. However, in the interest of consumer protection, managers of less frequented stations and infrastructures should also have a complaint-handling process in place.

It is very important for rail passengers to be able to receive a response within a reasonable period of time and that the complaint procedure does not take more than three months (Art 33). However, the deadline of six months for the submission of complaints should not interfere with any existing national limitation periods which are longer. The **option to extend the deadline to six months is excessive**, taking into account that some passengers may still have to go to court to enforce their rights. Also, the deadline for response should be counted from the date of the filing of the complaint by the passenger instead of from the date of receipt of the complaint (Art 28(2)).

We suggest improving **the standard of complaint-handling** by ensuring that information about passenger rights and the complaint handling process are made available in the domestic language of the railway company, as well as in English and the languages of the neighbouring countries.

4.3. Enforcement

We support the clear obligation of Member States to designate bodies responsible for the enforcement of this Regulation. Member States should take the measures necessary to ensure that the rights of passengers are respected (Art 31). We also support that the duties of National Enforcement Bodies (NEBs) to cooperate on cross-border issues are specified, as well as their power to take measures against infringements.

However, in practice, there are **problems in terms of negative or positive competence conflicts between different NEBs**³. Any review should take this problem into account and assess options to make the above-mentioned requirements happen. It will contribute to legal certainty that the proposed Recast Regulation sets out EU-wide standard for complaint handling by those NEBs, including a maximum time limit of three months. It is also an improvement that the duty to cooperate on cross-border issues is emphasised (Art 34).

4.4. Penalties

The Proposal sets out an obligation of Member States to introduce penalties applicable to infringements of passenger rights. Such penalties must be effective, proportionate and dissuasive.

The template term “effective, proportionate and dissuasive” however can be interpreted differently according to the Member State. It therefore hampers the creation of a high common level of consumer protection, particularly in cases of cross-border harm situations. The legislator should therefore sharpen this requirement by laying down more concrete penalties, for example a certain minimum fine or a penalty that amounts to a percentage of the annual turnover of the railway undertaking, whichever is higher. There should be independence requirements for NEBs to make sure they can impose such penalties.

BEUC demands:

The enforcement chapter contributes to legal certainty. However, further improvements are necessary. Information about passenger rights must be provided in a language the passenger will likely understand and there should not be a conflict of potentially competent authorities. Most importantly, there is a need for concrete and truly dissuasive penalties.

END

³ For example, our German member Verbraucherzentrale Bundesverband (vzbv) reports that in Germany, there is a conflict between regional and federal enforcement authorities in the case of long-distance journeys. This causes inconvenience and harm to consumers.



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