

The Consumer Voice in Europe

## RAIL PASSENGER RIGHTS REGULATION RECAST

Consumer recommendations for the trilogue negotiations



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## Why it matters to consumers

European passenger rights are among the European Union's greatest successes and will become ever more important in the coming years. Today's consumers are changing their habits and want more flexibility when they travel. They also feel concerned about their environmental impact and want to reduce it.

Consequently, there is an underlying trend to shift to alternative and sustainable modes of transport. Therefore, rail will undoubtedly play a key role in the near future.

The reform of the Rail Passenger Rights Regulation is a great opportunity for EU policy makers to promote more sustainable ways of transport. To drive that change, consumers need to be encouraged to shift to rail. To do so, they should be better protected and be able to rely on strong and clear rights when a disruption arises which is currently not the case (non-availability of "through-tickets", too much national exemptions, lack of enforcement etc.<sup>1</sup>).

### CONSUMER RECOMMENDATIONS FOR THE TRILOGUE NEGOTIATIONS ON THE RAIL PASSENGER RIGHTS RECAST

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**Policy makers should not miss the first opportunity to make available to passengers' attractive alternative means of transport.** Below you will find BEUC's recommendations for upcoming trilogue negotiations.

#### 1. The "Force-Majeure" clause should be deleted

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The introduction of an exception from passenger compensation in case of extraordinary circumstances would significantly reduce the current standard of passenger protection. The policy makers objective **should be to encourage more sustainable modes of transport, not to make train transport less attractive.** To do this, it is essential that passengers are strongly protected in the event of train disruption (delay and cancellation).

Moreover, the arguments regarding legal certainty and consistency with other modes of transport which are used to justify the introduction of a "Force Majeure" clause are both unconvincing.

First, the European Court of Justice<sup>2</sup> made it clear that under the current Regulation railway companies cannot be exempted to pay compensation in Force Majeure situations.

Secondly, indeed the Air Passenger Rights Regulation stipulates an "extraordinary circumstances" exception, however in that area consumers benefit from a high standard of compensation which is not the case in the rail sector. Moreover, 15 years after its entry into force, the concept of "extraordinary circumstances" is still the subject of a lot of litigations, which creates a high level of legal uncertainty.

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<sup>1</sup> [https://www.beuc.eu/publications/beuc-x-2018-014\\_rail\\_passenger\\_rights\\_regulation\\_recast.pdf](https://www.beuc.eu/publications/beuc-x-2018-014_rail_passenger_rights_regulation_recast.pdf)

<sup>2</sup> Case C-509/11, ÖBB-Personenverkehr

Finally, the introduction of such a clause is even more unjustified as the European Commission<sup>3</sup> “*found no compelling evidence that the absence of such a clause placed a major economic burden on railway undertakings*”.

The “force majeure clause” should be deleted from the reviewed Regulation **as proposed in the European Parliament position - (Article 17)**.

## 2. National exemptions should be removed

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BEUC strongly calls for the reduction of the number of national exemptions and considers that rail passenger rights should apply to all railway services as a principle.

Currently 64% of EU trains are covered by a national exemption. In these situations, if a problem arises, travelers are subject to the goodwill of the railway operators. As a result, millions of passengers do not benefit from EU rail passenger rights protection.

**This situation is unacceptable and is a real obstacle to making train travel more attractive.** It is difficult to convince consumers of the advantages of rail transport when they have only a one-in-three chance of being protected in the event of disruption.

Therefore, **we strongly support the provisions of the article 2 of the European Parliament position.** The latter provides that regional and suburban trains cannot be subject to an exemption anymore and limits the exception for domestic trains to 12 months following the adoption of the Regulation.

BEUC encourages policy makers to find a solution along the lines of the Parliament’s position during the trilogues.

## 3. Passengers should count on fair compensation in case of disruption

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In case of travel disruption, travellers should be able to rely on fair and equitable compensation and should be able to board on the next train as proposed by the Parliament<sup>4</sup>. However, the current standard of compensation<sup>5</sup> agreed upon by the Council in its General Approach is clearly insufficient and does not cover the real detriment of passengers.

**BEUC supports the Parliament’s position<sup>6</sup>** that proposes to raise the level of compensation for delays and cancellations to:

- (a) 50 % of the ticket price for a delay of 60 to 90 minutes,
- (b) 75% of the ticket price for a delay of 91 minutes to 120 minutes,
- (c) 100% of the ticket price for a delay of 121 minutes or more.

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<sup>3</sup> Explanatory Memorandum of the Proposal for a Regulation of the European Parliament and of the Council on rail passengers’ rights and obligations - COM (2017) 548 final – (p.4)

<sup>4</sup> Article 16 (1) of European Parliament’s Position

<sup>5</sup> Article 17 (1) of the Regulation 1371/2007 on Rail Passenger’s Rights and Obligations: “25 % of the ticket price for a delay of 60 to 119 minutes, (b) 50 % of the ticket price for a delay of 120 minutes or more”.

<sup>6</sup> Article 17 (1) of the European Parliament’s Position.

BEUC also supports the **Parliament's willingness to extend these compensations to passengers holding a travel pass or season ticket** and facing recurrent delays or cancellations<sup>7</sup>.

Finally, in case of travel disruption passengers should be able to complain in their languages or **at least in English**, as proposed by the European Parliament in its Article 28 (1) and **should not be subject to deadlines of less than 6 months** to complain as advocated by the Parliament in its article 28 (3).

#### **4. Passenger rights should be secured all along consumer journeys**

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European passengers want to be protected and enjoy a safe journey in its entirety. They are not concerned with the activities and responsibilities of the individual railway undertakings that make each part of that journey. They must have tangible rights and be properly informed of them in the event of disruption.

In practice, however, the use of so-called "through tickets" (which cover all segments of a journey) is currently very limited. Railway operators tend to sell tickets for segments of a journey only, which allows them to bypass obligations relating to compensation, rerouting and assistance. At the end of day, consumers suffer from this situation.

To encourage passengers to move more towards rail transport, it is essential that they benefit from better protection during their combined journey. More trust and legal certainty for consumers would be a good signal from EU Policy makers.

**BEUC strongly supports the provision of the Article 10 (1) and (6) of the European Parliament position which sets that passengers must always be protected during their combined journey.**

A simple obligation of information if tickets are "through-tickets" or not, as proposed by the Council agreed text is not enough.

#### **5. A better enforcement of the Regulation is necessary**

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Rail passenger have more and more a cross-border dimension and, with the shift to rail tendency it will be more and more the case. Facing that situation, we strongly support any attempts to remedy the lack of enforcement of the current Regulation.

##### **5.1. Functioning of National Enforcement bodies (NEBs) and cooperation mechanism between them**

BEUC strongly supports the new provision **in both text which obliges Member States to designate a NEB**. However, for this provision to be effective, the responsible authorities should be able to deal with individual complaints as proposed only in the Parliament's text<sup>8</sup>.

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<sup>7</sup> Article 17 (2) of the European Parliament's Position

<sup>8</sup> Article 32 (1) of the European Parliament's Position : " [...] Member States shall ensure that national enforcement and complaint handling bodies shall be given sufficient powers and resources for the adequate and effective enforcement of individual complaints from passengers under this Regulation".

Moreover, **BEUC is supportive of the Council General Approach provisions to create a cooperation mechanism** to “facilitate” and “accelerate” the resolution of complex cross-border cases in Article 34(3).

### **5.2. Binding alternative dispute resolution**

The European Parliament in the article 33 of its position requires that where passengers seek redress through ADR solutions, the railway operator, ticket vendor, station or infrastructure manager concerned is obliged to participate to such an alternative dispute resolution procedure. The outcome of the procedure shall be binding on and effectively enforceable against the companies. **BEUC is supportive of that proposal.**

### **5.3. Truly dissuasive sanctions are needed against railway operators in case of infringements of the Regulation**

It is necessary to establish **truly dissuasive sanctions** in the reviewed Regulation. The text adopted by the European Parliament in its article 35 provides for penalties that include, but are not limited to, a minimum fine or a percentage of the relevant company turn-over, whichever is the higher.

**BEUC is supportive to the Parliament approach** as the Council’s wording mentioning that penalties should be “*effective, proportionate and dissuasive*” can be interpreted differently from one Member States to another to the consumer’s detriment and, in practice, leads to a patchy enforcement.

## **Conclusions**

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The reform of the Rail passenger Rights Regulation is a great opportunity for policy makers to send a strong political signal to European passengers and to promote alternative and environmentally friendly modes of transport such as rail.

**The upcoming negotiations must therefore strengthen rail passengers' rights and not reduce them.**



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