

EUROPEAN PASSENGERS' FEDERATION:
PROVISIONAL COMMENTS ON A PROPOSAL FOR
A REGULATION OF THE EUROPEAN PARLIAMENT & THE COUNCIL
ON INTERNATIONAL RAIL PASSENGERS' RIGHTS AND OBLIGATIONS
(COM (2004) 143 final).

General

1. The European Passengers' Federation warmly welcomes the proposal for a Regulation on International Rail Passengers' Rights and Obligations. It considers that this could make a significant contribution towards putting passengers at the heart of the planning and operation of Europe's cross-border rail services. As such, the European Passengers' Federation acknowledges the sympathetic response by DG TREN to the preparatory work carried out by the members of the European Passengers' Federation.

2. The draft regulation is notable for its stated commitment to the principle that 'users of the transport system need to be put back at the heart of the transport policy'. The Preamble (1) emphasises the importance of safeguarding the quality of rail services, of users' rights and of improving the quality and effectiveness of international rail passengers (*sic*) services in order to help them increase their modal share. The Preamble (4) goes on to note that the rail passenger is the weaker party to the transport contract and that the passenger's rights in this respect need to be safeguarded.

3. We consider that the shortcomings of the Proposal arise principally from the drafting style used for the proposal rather than its substance. The English language version of the draft regulation does not read fluently and therefore unintended ambiguities may arise in its interpretation. The document does not appear to have been subject to final review by a lawyer. However, there are some matters of substance where we consider that the Proposal would be improved significantly if it were also to address a number of additional issues. Specifically, these concern:

- The need to make special provision to safeguard the interests of those passengers who are particularly reliant on cross-border rail services for dependable access to local employment, education and essential services (e.g. those who hold season tickets for use on cross-frontier services to commute to work should be provided with compensation should certain levels of reliability or punctuality not be achieved in any month. Drawing

on the UK Passengers' Charter model, discounts to the published price of season tickets might be given to season ticket holders if fewer than 99% of advertised cross-border trains actually operated (reliability) or if fewer than 95% of peak-hour trains in any cross-border travel-to-work-area arrived within 5 minutes of their advertised time.)

- The need to ensure that proper and full consideration is given to the needs of all groups for whom access to rail services may be impaired whether by their physical, mental or social condition (e.g., including those who are illiterate, those whose mobility is impaired by having to cope with small children).
- The implications of accommodating cycles, push chairs, perambulators, etc.
- The measures that might be adopted to enhance perceptions of personal security of those using railway passenger services.

4. More generally, the application of the proposed Regulation should never have the effect of creating conditions that are less advantageous than those deriving from COTIF. We consider that it is worth the Commission examining it would be better if the proposed Regulation were seen to be downwardly compatible with COTIF/CIV and not separate from them. This would obviate the need for international passengers in the European Union to work through the details of COTIF/CIV as well as those of the proposed Regulation to determine the most appropriate to their case. Thus COTIF would be the defining document for non-EU journeys but a Regulation that was consistent with COTIF but appropriately strengthened would apply to journeys within the EU.

Preamble

5. Clause (12) of the Preamble emphasises the importance that the rules of the draft Regulation should apply even when the passenger transport is carried out by other modes, in particular by sea or inland waterway, as a part of the railway journey. It is not made clear as to why sea or inland waterway transport should be singled out although it is recognised that this may be a reflection of obligations arising under COTIF/CIV. We consider that, in light of the widespread support for increased coordination of different modes of public transport – including road transport – this clause should be strengthened and proposals clarified in the body of the proposal.

6. Clause (13) says that in the case of travel provided by successive rail undertakings (presumably, for example, in the case of a journey involving more than one carrier) a passenger should be able to claim against any of the railway undertakings taking part in the transport. Clause (17) refers to Directive 95/46/EC that relates to data protection. It is possible that the practical implications of Clause (13) would be in conflict with this.

Definitions

7. Article 2 comprises Definitions. Some of these appear to require further clarification. For example, Main Railway Station in 2.6 is defined as meaning a railway station served by International Services and/or national long-distance services of more than 100 kilometres. Article 6.1 requires tickets to be offered for International Journeys between all Main Railway Stations. 6.3.(a) requires there to be points of sale for tickets for International Journeys at ticket offices and, if available, selling machines on all Main Railway Stations. Using British examples, even remote rural stations like Pewsey or Lockerbie would require facilities to distribute such tickets. We have debated this issue within the European Passengers' Federation. We are aware that, in present conditions, it can be argued that the inventory required could prove an unworkable burden on the economic viability of some operators and result in the withdrawal of International Services or national long-distance services of more than 100 kilometres from those stations, to the disadvantage of consumers. Equally, it has been pointed out to us that the MERITS database and, in the near future, PRIFITS, should diminish the burden on railway operators. We suggest that this debate requires careful and informed further evaluation and that, should there be a significant inventory cost issue, consideration should be given to the inclusion of quantitative criteria – for example, the requirement could be conditional upon a Main Railway Station serving catchments of a certain minimum population size.

8. We consider (see the first bullet point of paragraph 3 above) that there needs to be special provision to safeguard the interests of those passengers who are particularly reliant on cross-border rail services for dependable access to local employment, education and essential services. There should therefore be a subsidiary definition of International Journey (2.12) to capture the particular needs of these special groups.

9. The definition of International Service in 2.13 appears unduly complicated and counter-productive: it seems that while the carriages forming the train may be joined by others or split away from others during the course of the journey within the EU, every

constituent carriage must cross at least one border. Thus if, for a domestic sector of an international journey, a restaurant car is joined to carriages forming a train that has already crossed an internal Community border it appears that no part of the train qualifies as an International Service. We suggest the following improved definition of International Service: “A rail passenger service where a train or a portion of the train forms or is connected to a train or a portion of a train that crosses at least one internal Community border during any part of its scheduled journey.

10. Article 2.15 is ambiguous about the source document against which Delay may be assessed: it refers to a choice of either the working timetable or the published timetable, as well as leaflets. Where available documents are contradictory passengers should be able to refer to that document that they consider most pertinent to their case.

11. Article 2.16 defines Cancellation in a way that makes it unclear whether a train is cancelled if it is suspended for only part of its schedule. The delay should be defined as the time elapsing between the planned arrival time and the actual arrival time at the scheduled final destination.

12. Article 2.18 refers to the Working Timetable without making it clear whether this is intended to cover Temporary Timetables used at times of engineering possession or other planned disruptions. COTIF refers to *announced* delays or cancellations in order to identify what is excluded from compensation schemes; there is a need to define the acceptable limit for the timing of an announcement and to ensure minimum standards for publicising such announcements. A poster that is confined to stations on route is unlikely to be sufficient.

13. Article 2.22 defines Successive Railway Undertaking in terms that fail to describe what is implied elsewhere (a journey involving more than one carrier or a succession of carriers), for example in Clause 13 of the Preamble (see paragraph 2 above).

Information and Tickets

14. Article 3 requires that travel information should be provided ‘in the most appropriate format’. There is no sense given as to what are the parameters of appropriateness: cost, convenience to the information provider, or to the passenger? We note the useful definition developed in the context of the CER ‘Charter’: “The languages used for communication with customers on board trains and/or stations should be the language(s) in use on the route where the customer is travelling. For international

travelling railway undertakings will endeavour to communicate with customers in at least one other commonly used language.”

15. Article 6.3 provides that tickets for International Journeys must be distributed via all Main Railway Stations or information technology (as opposed to and). Such an option is premature, socially exclusive and therefore unacceptable. The Article does not say who should be responsible for distribution.

16. We consider that some provision needs to be made to provide for consistent standards for reimbursement for tickets cancelled prior to travel.

Liability

17. Article 7.1 is currently worded in an ambiguous way. The meaning of the term, and relevance of ‘accident’ is undefined. We also consider that the liability should be extended to cover liability where death or injury occurs on railway premises.

18. Article 9 does not appear to defend the Railway Undertaking from liability where damage, etc to Other Luggage while under the responsibility of the Railway Undertaking has been caused by the passenger himself. It is possible, however, that Article 26 covers this. This exonerates the Railway Undertaking from liability where damage was caused or contributed to by the person claiming compensation.

19. The European Passengers’ Federation would like to see liability for Delay (Article 10) drawn more widely. We see no reason why Railway Undertakings should not be required to pursue the originator of the Delay in all cases where a legal person can be identified as responsible, or to insure for the consequences of the Delay.

Damages and Compensation

20. Article 15 refers to payments being made within 14 days whereas elsewhere in the draft there is reference to working days (see, for example, Article 34). In any case, it is questionable whether this is a reasonable period of time given that a disrupted International Journey may require inquiries involving a number of Railway Undertakings.

21. In relation to Article 16.2 (b) we attach particular importance to the obligation on Railway Undertakings to provide a continuation of a journey ‘at the earliest opportunity’. We are concerned, however, that there are some indications that some Railway Undertakings interpret CIV to allow them to exclude use of trains like Thalys for this purpose, arguing that they are obliged solely to provide a continuation or re-routing by a service that employs the same fare structure. For this reason, we are concerned that the

phrase ‘under comparable transport conditions’ may be interpreted in a way that works against the interests of the passenger and the principle of overcoming delays by continuing or re-routing passengers at the earliest practical (as opposed to equivalent) opportunity.

22. Article 17.3 says that Railway Undertakings shall certify on the ticket that the rail service has suffered a delay. It is not clear what procedures might be involved: could any railway employee do this? If not, might passengers find themselves caught between trying to recover lost time and the need to spend time finding a particular official, perhaps queuing with others, etc.? There should be a duty on Railway Undertakings to ensure that if certification is required by the Railway Undertakings those Railway Undertakings must make appropriate arrangements for simple and speedy certification where passengers are affected by late running and cancellations.

Common Provisions

23. It is not clear from the way in which the two paragraphs of Article 21 are structured as to whether Railway Undertakings are deemed responsible for all those from whom it has procured services (such as the staff of third party contractors) in addition to its own staff and those of the manager of the infrastructure. The drafting also seems to leave an unintended loophole in relation to the liability of the person who is manager of the infrastructure (Infrastructure Manager): he and his staff are specifically differentiated from those other persons whose services the Railway Undertaking makes use of, while only his staff are identified as persons whose services the Railway Undertaking makes use of. Generally the European Passengers’ Federation would like to see a clear obligation on Railway Undertakings to assume liability for all activities connected with their provision of an International Service (see Articles 7, 10, and 21).

Quality and Security of Service

24. Article 33 provides for a high degree of unaccountable self-regulation in respect of quality management systems. Annex IV itemises various topic-areas for monitoring but there is no indication of what is or is not seen as an acceptable quality standard, despite the work of CEN and others in this area. There is no provision for harmonisation of quality standards between Railway Undertakings or to ensure any independent audit of the efficacy of the proposed self-regulation unless it is intended that the body subsequently referred to in 38.1 should do this.

25. There might be a temptation for complainants to cherry-pick Successive Railway Undertakings for compensation where applicable. The consequence of these potentially differing arrangements might be to inhibit the more amenable Railway Undertakings in their generosity or to lead to pressure being put on them by other Railway Undertakings to be less generous. There needs to be some mechanism for ensuring that standards and processes are equitable. It would be sensible for there to be a common Appeals service for international passengers within the European Union, with common levels of redress, approved in principle by the Commission but administered professionally through a process that is clearly independent of Railway Undertakings. We suggest that Article 34.5 should be amended to make provision for the European Passengers' Federation to assist in passenger advocacy and thereby facilitate the mediation of appeals. The Commission should have specific powers to finance the appointment and activity of competent European Passengers' Federation staff for this purpose.

26. It is hard to see how Article 36.1 can be applied to those cross-border services where there is a high degree of security, such as services using the Eurotunnel.

27. It is important that any body responsible for enforcement of the Regulation within a Member State is responsive to consumer needs and not purely driven by the operation interests of Railway Undertakings and their sponsoring national administrations. An element of consumer representation should be built in to these arrangements, if only to demonstrate the commitment to the users of transport systems claimed by the Commission in the introduction and preamble to the draft Regulation (see paragraph 1, above).

Information and Enforcement

28. Article 37 deals with the provision of information. The European Passengers' Federation considers that it is essential to the transparent operation of the market that there should be an obligation on all Railway Undertakings to publish all tariffs and conditions.

29. The same principle that is referred to in paragraph 27 above should be reflected in the application of Article 39 that deals with the exchange of information between the Member States' enforcement bodies about their work and the coordination of decision-making principles across the Community. It is clear that it would be consistent with the Commission's stated principles if the European Passengers' Federation were to be contracted to manage this process, arbitrating and resolving disputes between Member

States' enforcement bodies, Railway Undertakings and complainants the instance of disagreements. This would involve providing coordination of the activities of the bodies referred to in Article 38.1. The European Passengers' Federation would have the power to make representations and to interested parties and to make referrals to the Commission when it is unable to secure resolution between interested parties. Again, the involvement of the European Passengers' Federation in this process would provide consumers with the reassurance that their Appeals and Disputes were being dealt with in a disinterested way by a body that is clearly independent. Consumer representation must be built in to the proposed Regulation from the outset.

Final Provisions

30. We are unclear as to whether the reference to the Committee refers to the Committee of representatives of Member States. It is proposed that Article 43 should also include specific provision for assistance from the European Passengers' Federation as the one organisation that most comprehensively represents the widest gathering of railway passengers' organisations in the EU.

Annexes

31. We would like to see in Annex 1 the inclusion of intermodal information as a requirement and are mindful of the CER Charter which, in Article 5 refers to customers being provided with information on access to and from stations and on connections with other modes and, in Article 12, refers to the provision of convenient transfer facilities between railways and other modes.

32. In Annex 2 there should be an obligation to identify the component elements of a fare – for example, the part reflecting local taxes, distribution fees, etc. The passenger has a right to know what it is that he is paying for.

33. We would like to see an express provision in Annex 3 that accommodates the need to safeguard the interests of those passengers who are particularly reliant on cross-border rail services for dependable access to local employment, education and essential services.

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