



European Parliament
Chair of TRAN committee
MS Karima Delli
By e-mail karima.delli@europarl.europa.eu

Gent, 18.03.2018

Subject: PROPOSED RECAST OF REGULATION (EC) 1371/2007 ON RAIL
PASSENGERS' RIGHTS & OBLIGATIONS

Please reply to: Josef Schneider, josef.schneider@epf.eu

Dear Ms. Delli,

We are writing to express our concern about key aspects of the Draft Report (2017/0237 (COD)) submitted by your Rapporteur on the proposal for a regulation on rail passengers' rights and obligations (recast). Our position in such matters is straight-forward: when we examine any proposal we ask ourselves whether it will benefit, or detract from, the interests of passengers.

The Commission's proposed recast would bring benefits to passengers – although we consider it might be improved further. Your Rapporteur's Draft Report proposes amendments which would detract significantly from the interests of passengers and, in their consequential impact, on the wider economy.

Your Committee has deservedly gained in reputation over the years for the way in which it has promoted equitable mobility and defended the interests of transport users. It has long been acknowledged in European acquis that, as the weaker party to the service contract, all passengers should be granted a minimum level of protection. This has been reinforced by the case law developed by the rulings of the European Court of Justice, not least in relation to its clarification of the circumstances where force majeure may not be applied to limit the responsibility of transport operators. (See, for example, Case C-509/11 in relation to railway undertakings or Case C-549-07 in relation to 'extraordinary circumstances' and air carriers as examples of both the limits on force majeure and these exist for more than one mode.)

In addition to the need to avoid creating a situation in which the recast leads to the erosion of passengers' rights and protections derived from the existing acquis (as reflected in the preceding paragraph) there are other important obligations that should be reflected in any recast. Article 12 of the Treaty on the Functioning of the European Union creates obligations concerning consumer protection that are binding on the policies and activities of the Union. Mrs Violeta Bulc has recently declared 2018 as the Year of Multimodality while digitalisation remains one of the Juncker Commission's key priorities. Legislative proposals in the field of

passengers' rights need to pass some basic tests:

- does it support further consumer protection,
- does it help enable multimodality, and
- does it encourage further digitalisation?

Digitalisation allows for combined rail bookings for a through journey involving more than one ticket or service operator. Specialist ticket retailers, new and innovative market entrants who are usually SMEs, tend to call these "combined journeys".

These tend to provide passengers with better rail options (e.g. cheaper and/or faster) than the more limited range of through tickets sold by the big incumbent operators. In the absence of comprehensive through tickets, combined journeys fill a void – they enable through rail bookings across Europe. It is in the interests of consumers that these should be encouraged and not penalised.

The big incumbents sometimes seek to defend their dominant position in retailing train travel by comparing their situation with that of air carriers. We do not accept the analogy. Unlike the air sector, in most parts of Europe the state incumbents are market dominant; further, the EU rail sector is in receipt of more than 70€ billion of public funding annually. It is reasonable that railway undertakings should be mandated to offer equivalent passenger rights to those making combined journeys – if one incumbent does not take part in mandatory passenger rights then entire regions, or even entire EU member states, will be excluded from the integrated cross-border protection system for passengers.

Furthermore, the dynamics of aviation are different. While many longer journeys in Europe are easily accomplished by a single flight, such as Amsterdam to Malaga or Paris to Budapest, the equivalent rail journey usually requires several legs and operators — bringing in a missed connection risk that does not apply to air travel.

Your Rapporteur makes the point that it is necessary that railways should operate on an equal footing with other modes if they are to be competitive and if the sustainability of transport and social cohesion is to be ensured. While we may have sympathy with this high-level aspiration, it needs to be tempered by realism: however much we might wish for rail passengers to receive an air passenger level refund of 250€ or more for a delay in excess of 180 minutes, as well as a refund of the whole fare, it would not be credible to argue that the rail system is capable of carrying this level of liability in its present financial circumstances. It might be argued that, given their dependence on public monies, railway undertakings have a moral obligation to make good when things go wrong. The rail sector's generally poor scores in terms of consumer satisfaction – reflected both in DG SANCO's Consumer Markets Scoreboard (where train services lurk with banks, second-hand car sales and real estate agents) and in successive special Eurobarometer surveys commissioned by DG MOVE – casts some doubt on the veracity of your Rapporteur's claim that Europe has 'one of the most modern, efficient and consumer-friendly' railway systems.

The European Passengers' Federation believes that there is a case for a limited number of amendments to the Commission's proposed recast. These are set out in the attached Appendix I to this letter. We also attach, for reference, our comments on the specific

amendments proposed by your Rapporteur (Appendix II), and on those made by the Rapporteur of the IMCO Committee (Appendix III).

Whilst generally sympathising with your Rapporteur's suggestions about how better to promote the interests on passengers with reduced mobility and disabilities, the European Passengers' Federation does not endorse those of his recommendations concerned with the scope of the proposed Regulation or many of his other proposals. We see these unduly reflecting the determination of certain incumbent railway undertakings to protect their immediate interests and contrary to the European Union's long-held commitments to consumer protection. As such, we consider them to be inconsistent with Parliament's record of seeking to protect the interests of European citizens.

I am copying this letter to members of both the TRAN and IMCO Committees, together with Violeta Bulc, the Transport Commissioner, and Elisabeth Kotthaus at Head of unit B5 in DG MOVE.

Yours sincerely,

A handwritten signature in black ink that reads "Josef Schneider". The signature is written in a cursive, slightly slanted style.

Josef Schneider, chairman