

II

*(Information)*INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES
AND AGENCIES

EUROPEAN COMMISSION

COMMUNICATION FROM THE COMMISSION

Interpretative Guidelines on Regulation (EC) No 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations

(2015/C 220/01)

INTRODUCTION

Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations ⁽¹⁾ (the Regulation) entered into force on 3 December 2009. It aims to protect the rights of rail passengers in the Union, particularly when travel is disrupted, and to improve the quality and effectiveness of rail passenger services. This should, in turn, help to increase the usage of rail transport relative to other modes of transport.

In its report of 14 August 2013 to the European Parliament and the Council on the application of the Regulation ⁽²⁾, the Commission stated that it would consider adopting interpretative guidelines in the short term to facilitate and improve the application of the Regulation and to promote best practices ⁽³⁾.

These guidelines are intended to tackle the issues most frequently raised by national enforcement bodies, passengers and their associations (including persons with disabilities and/or reduced mobility, and associations representing the interests of these persons), the European Parliament and industry representatives.

In this Communication, the Commission provides additional explanations for a number of the provisions contained in the Regulation, together with guidance on best practices. It does not set out to cover all provisions in an exhaustive manner, nor does it create any new legislative rules. It should also be noted that the interpretation of Union law is ultimately a matter for the Court of Justice of the European Union.

1. SCOPE OF THE REGULATION

1.1. Scope of the Regulation in relation to carriers from third countries

Article 2(1) of the Regulation stipulates that it applies 'to all rail journeys and services throughout the Community provided by one or more railway undertakings licensed in accordance with Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings ⁽⁴⁾'. The Regulation does not apply to journeys and services carried out on third countries' territory. Article 17(4) of Directive 2012/34/EU of the European Parliament and of the Council ⁽⁵⁾ (which replaced Directive 95/18/EC) states that, 'no undertaking shall be permitted to provide [...] rail transport services [...] unless it has been granted the appropriate licence'. In accordance with Article 17(1) of the Directive, an undertaking can apply for a licence in the Member State where it is established.

As a result, a carrier from a third country which has not established a base in a Member State cannot operate rail passenger services on the territory of the Union. Where cross-border services depart from or arrive in a third country, traction on the territory of the Union must be provided by an undertaking licensed in a Member State. Undertakings licensed by the Member States must comply with and may be liable under the Regulation, even in cases where the railway carriage belongs to an undertaking from a third country.

⁽¹⁾ OJ L 315, 3.12.2007, p. 14.

⁽²⁾ COM(2013) 587 final, 14.8.2013.

⁽³⁾ See point 5.1 of the report of 14.8.2013.

⁽⁴⁾ OJ L 143, 27.6.1995, p. 70. Recast by Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32).

⁽⁵⁾ Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32).

1.2. Exemptions

1.2.1. *Issues concerning exemptions for domestic rail passenger services granted in accordance with Article 2(4)*

Article 2(4) of the Regulation allows Member States to exempt domestic services, including long-distance national services, from most provisions contained in the Regulation for a limited period of time (five years, renewable twice, i.e. for a maximum of 15 years). The Regulation does not, however, specify a particular period of time following its entry into force during which such exemptions may be granted.

Nonetheless, Article 2(4) should be interpreted in the light of recital 25 of the Regulation, which explains that temporary exemptions for long-distance domestic services may be introduced with a view to allowing a period of 'phasing-in', in order to help railway undertakings that may have difficulties in implementing all of the provisions by the date of the Regulation's entry into force. In view of this, new exemptions should not be granted several years after the entry into force of the Regulation.

Moreover, the maximum duration of exemptions, which are limited in time by Article 2(4), cannot be exceeded, i.e. no exemption can apply beyond 3 December 2024 (15 years after the entry into force of the Regulation).

1.2.2. *Issues concerning exemptions of cross-border urban, suburban and regional rail services granted in accordance with Article 2(5)*

Article 2(5) of the Regulation refers to Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways⁽¹⁾ in order to define urban, suburban and regional rail services. Directive 91/440/EEC was repealed and replaced by Directive 2012/34/EU and the definitions of urban, suburban and regional services provided for in Article 3(6) and (7) of Directive 2012/34/EU explicitly include cross-border services.

The provision allowing Member States to exempt urban, suburban and regional services can be applied to services serving cross-border regions or conurbations. It is left to the discretion of Member States to define the services in question in accordance with the criteria set out in Article 2(5) (i.e. to decide which can be classed as urban, suburban or regional). Nevertheless, Member States are encouraged to grant all rights under the Regulation to passengers on cross-border urban, suburban or regional services, i.e. not to use exemptions for these services. This is in line with the objective of achieving a high level of consumer protection in the field of transport, as expressly noted in the second recital of the Regulation and would ensure an equal treatment of all services with an international dimension.

1.2.3. *Issues concerning exemptions of services or journeys partly carried out outside the Union granted in accordance with Article 2(6)*

Article 2(6) allows Member States to grant exemptions from the provisions contained in the Regulation, for a maximum period of five years, to particular services or journeys where a significant part of the service or journey is carried out outside the Union. Article 2(6) stipulates that Member States may renew the initial maximum exemption period without specifying how many times this may be done.

The Commission considers that the purpose of Article 2(6) is to give Member States enough time to adapt their relations with third countries (e.g. to adjust their bilateral agreements) with regard to the requirements under Regulation (EC) No 1371/2007 on the Member States' territory. In view of the objective of achieving a high level of consumer protection within the Union (Recital 24) exemptions granted under Article 2(6) should not be understood to be indefinitely renewable. Passengers should be able to benefit progressively from their rights under the Regulation on those parts of the journey which are carried out on the Member State's territory even where a significant part of the service or journey is carried out outside the Union.

1.2.4. *Application of the Regulation to rail transport journeys that include exempted services (Article 2(4), (5) and (6))*

In the conclusions to its report on the application of the Regulation, the Commission noted that 'the extensive use of exemptions [is] a serious obstacle to the fulfilment of the Regulation's objective'⁽²⁾. The extensive use of exemptions hinders the creation of a level playing field for railway undertakings across the Union, and deprives rail passengers of legal certainty and of full enjoyment of their rights.

Article 2(1) stipulates that the Regulation applies 'to all rail journeys and services throughout the Union provided by one or more railway undertakings'. A rail journey is to be understood from the passenger's perspective, as their transportation from a place of departure to a destination, according to a contract of carriage involving at least one railway service. A rail service is a service operated by a railway undertaking between two or more points and can be classified as urban, suburban, regional, domestic or international (cross-border).

⁽¹⁾ OJ L 237, 24.8.1991, p. 25.

⁽²⁾ See point 4 of the report of 14.8.2013.

The question may arise as to whether a passenger on an international journey (i.e. a journey crossing the border of at least one Member State) using a combination of exempted and non-exempted services would benefit from passenger rights during the whole journey or only during the non-exempted segments of his or her journey.

A passenger who has concluded a contract of carriage for an international journey within the Union would expect to receive the same protection under Union passenger rights legislation throughout his or her journey. Granting different levels of protection on the exempted and non-exempted parts of a journey under a single contract would create confusion, remove legal certainty and be detrimental to passenger rights. This would be contrary to the objectives of the Regulation, notably to the objective of providing a high level of protection to all passengers on international journeys within the Union, which cannot be exempted under the Regulation. It would also lead to inequalities between passengers on international journeys who would be treated differently according to whether or not their journey includes exempted domestic services.

Railway undertakings should therefore be encouraged to offer the protection granted under the Regulation to all passengers with whom they have concluded a contract of transport for a cross-border journey within the Union, including for the parts of the journey performed by services exempted in accordance with Article 2(4) and (5).

2. DEFINITIONS

2.1. Concept of a 'carrier' (Article 3(2)) and intermodal journeys

A definition of 'carrier' is contained both in the Regulation and in Article 3 of the 'Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV)', which constitute the Appendix A to the Convention concerning International Carriage by Rail (COTIF) of 9 June 1999.

The Regulation reproduces in its Annex I most of the provisions of the CIV but does not include Article 3⁽¹⁾. This means that the EU legislator preferred to create its own definition adapted to the EU legal context.

Article 3(2) of the Regulation limits the meaning of carriers to railway undertakings. If, owing to severe disruption in rail transport, re-routing cannot be provided by a railway undertaking but only by another means of transport, the contractual liability still lies with the railway undertaking with which the contract was concluded and which remains the principal interlocutor of the passenger⁽²⁾.

2.2. Concept of a 'delay' (Article 3(12))

Article 3(12) of the Regulation defines a delay as 'the difference between the time the passenger was scheduled to arrive in accordance with the published timetable and the time of his or her actual or expected arrival'. Delays thus always refer to the delay of the passenger's journey and not to the delay of the train. In practice, the time of arrival of the train at the final destination stated on the ticket will be used to calculate the length of the delay.

A more complex situation may, however, arise on journeys comprising several services and/or several carriers, if disruption causes a passenger to miss a connection. In such a case, the passenger might have to take the next scheduled train service to reach his or her final destination. Even if that train meets its schedule, the passenger could still suffer a significant delay on arrival at his or her final destination as compared to the time of arrival originally scheduled. In such a case, the delay in arrival will be determined on the basis of the actual time the passenger reaches his or her final destination if the passenger concluded a single contract of carriage for his journey. This interpretation is also valid for situations in which a passenger is re-routed.

3. TRANSPORT CONTRACT, INFORMATION AND TICKETS

3.1. Travel information

3.1.1. Real-time information (Article 8(2))

In accordance with Article 8(2) of the Regulation, railway undertakings are obliged to provide passengers 'during the journey with at least the information set out in Annex II, Part II'. This includes real-time information on delays and main connecting services including those of other railway undertakings. In Case C-136/11⁽³⁾, the Court of Justice of the European Union clarified that the infrastructure manager needs to 'make available to railway undertakings, in a non-discriminatory manner, real-time data relating to trains operated by other railway undertakings, in so far as those trains constitute main connecting services within the meaning of Part II of Annex II to Regulation (EC) No 1371/2007'. Whilst the responsibility of providing passengers with information on delays, cancellations and connecting services lies with railway undertakings, there is also therefore an obligation on infrastructure managers to provide railway undertakings with all relevant real-time information.

⁽¹⁾ Annex I starts at Article 6 of CIV.

⁽²⁾ See also Article 31(3) of Annex I, which states that the carrier retains liability for the death of, or personal injury to, passengers when they are carried by another mode of transport substituting the rail transport because of exceptional circumstances.

⁽³⁾ Judgment of the Court (First Chamber) of 22 November 2012 in Case C-136/11, *Westbahn Management GmbH v ÖBB-Infrastruktur AG*.

3.1.2. Means of providing travel information to passengers

In accordance with Article 10 of the Regulation, which relates to travel information and reservation systems, railway undertakings and ticket vendors must make use of a computerised information and reservation system for rail transport (CIRSRT) which railway undertakings can set up according to the procedures specified in that Article. Article 8(1) of the Regulation states that the obligation on railway undertakings and ticket vendors to provide passengers, upon request, with at least the information set out in Annex II, part I applies irrespective of Article 10 of the Regulation. The obligation to provide information does therefore not depend on the setting up of a computerised system and is independent of the sales channel.

Information which cannot be provided through a computerised system must be provided in alternative formats, accessible to persons with disabilities (Article 8(3)).

3.2. Issues related to tickets and to the carriage of bicycles

3.2.1. Form and content of tickets and electronic transport cards (Article 4 and Annex I, Article 7)

According to Article 4 of the Regulation, the provision of tickets is to be governed by the provisions of the Uniform Rules CIV included in Annex I (Title II and III) to the Regulation. Article 7 of the Uniform Rules provides flexibility with regard to the form and content of the ticket. It lists the minimum information to be provided, but beyond this, any form and content can be chosen which meets the General Conditions of Carriage. An electronic transport card should therefore be considered to be a ticket, if the following conditions are fulfilled:

1. The railway undertaking with whom the transport contract is concluded, or the series of railway undertakings which are liable on the basis of this contract (Article 3(2) of the Regulation), can be identified from the information recorded on the electronic card. For inter-available or open tickets (e.g. InterRail) it is not always possible to indicate the name of individual railway undertakings. In such a case, a statement such as 'all companies participating in InterRail' or the use of a common logo could replace the name.

The absence of details on the carrier for a specific journey should, however, not lead to a lack of transparency. Passengers must receive appropriate information on their rights and on how and where to complain in case of travel disruption; and

2. It must include a reference to the Uniform Rules and a statement(s) constituting proof that a contract of carriage has been concluded, and providing evidence of its content.

Article 7(5) of Annex I explicitly states that a ticket may be created in the form of electronic data registration provided that this data can be converted into legible written symbols. The moment when a contract of carriage is concluded may vary. While some electronic cards are activated at the moment when the ticket is purchased, in other cases individual journeys or segments can be activated at the start of the journey by validating a ticket on or just before boarding a train.

3.2.2. Availability of tickets

Article 9(2) of the Regulation stipulates that railway undertakings shall distribute tickets to passengers via at least one of the points of sale specified there. Most undertakings offer tickets via more than one sales channel. However, especially certain low fare tickets might only be available through a single channel (e.g. internet), thus potentially excluding certain user groups. In order to ensure the widest possible access to passengers, the Commission recommends that railway undertakings offer at least the most essential tickets via all channels they propose, notably via ticket offices, selling machines and on board trains. Additionally, in accordance with Article 8(1) and Annex II, Part I, railway undertakings shall inform passengers about the tickets and tariffs available on the different channels. In line with Article 9(1), railway undertakings shall offer through tickets whenever their commercial agreements and available data allow this.

Tickets must be offered on a non-discriminatory basis. Direct or indirect discrimination on grounds of nationality is contrary to Article 18 TFEU.

3.2.3. Carriage of bicycles (Article 5)

In accordance with Article 5 of the Regulation, railway undertakings shall enable passengers to take bicycles on board, under certain conditions (e.g. limitations of space, service requirements, ease of handling and possibly against a fee). Annex II to the Regulation also stipulates that railway undertakings must provide pre-journey information on accessibility for bicycles. The European Cyclists' Federation has provided a list of examples of good practice for the carriage of bicycles⁽¹⁾.

⁽¹⁾ http://www.ecf.com/wp-content/uploads/130418_Bike-carriage-on-long-distance-trains_Good-practice_Final-ECF-paper.pdf

4. LIABILITY, DELAYS, MISSED CONNECTIONS AND CANCELLATIONS

4.1. Coverage of a railway undertaking's liabilities and insurance (Articles 11 and 12)

In accordance with Articles 11 and 12 of the Regulation, railway undertakings must be able to cover their liabilities, especially where an accident leads to fatalities or injuries. Article 22 of Directive 2012/34/EU further stipulates that, amongst the conditions for obtaining a licence, 'a railway undertaking shall be adequately insured or have adequate guarantees under market conditions for cover, in accordance with national and international law, of its liabilities in the event of accidents [...]'. In order to determine what constitutes 'adequate' coverage, a railway undertaking would need to assess its risks, e.g. in terms of the numbers of passengers carried or the numbers of potential accidents. As noted in the report on the application of the Regulation ⁽¹⁾, the railway undertakings examined appear to be adequately covered.

In accordance with Article 30 of Annex I to the Regulation, Member States may determine the amount to be paid in the case of loss of life or personal injuries to passengers resulting from rail accidents, but the maximum limit on compensation per passenger cannot be set at less than 175 000 units of account ⁽²⁾. National legislation should therefore require a level of cover in line with this requirement applicable to all services, national and international, according to Articles 11 and 12 of the Regulation. Member States can also set a higher limit on compensation. Railway undertakings' liability for injuries, the damages which can be awarded, and the scope of claims are to be defined in national law.

4.2. Reimbursement, re-routing and compensation

4.2.1. Reimbursement and re-routing or compensation of the ticket price for multi-segment journeys (Articles 16 and 17)

Article 9(1) of the Regulation stipulates that 'railway undertakings and ticket vendors shall offer, where available, tickets, through tickets and reservations'.

Passengers have the right to reimbursement and re-routing (Article 16) or to compensation for delay as a percentage of the ticket price including all supplements (Article 17) only where there is a delay in arrival of more than 60 minutes 'at the final destination under the transport contract'. This creates potential problems for journeys involving a connection and possibly different carriers, notably where passengers, in spite of an intention to purchase a single contract, do not obtain one single ticket covering the whole journey but receive separate tickets for the different segments of the journey. In line with Article 4 in connection with Article 6(2) of Annex I, a single contract can also consist of separate tickets. Contractual arrangements between the passenger and the railway undertaking should clearly stipulate whether the passenger is travelling under a single contract or under separate contracts.

As specified in Article 3(10) of the Regulation, separate tickets sold under a single contract should be understood as a 'through ticket', when they represent 'a transport contract of successive railway services operated by one or several railway undertakings'. Passengers holding separate tickets under a single transport contract are entitled to the rights granted under Articles 16 and 17 if their delay in arriving at their final destination is more than 60 minutes, even if delays in the individual segments are each less than 60 minutes. (See also the point on delays under section 2.2.). As stipulated in Article 27, in case of problems, 'passengers may submit a complaint to any railway undertaking involved' in the journey and do not have to address each undertaking separately. The railway undertakings involved need to cooperate to address such complaints.

4.2.2. Right to compensation in case of 'force majeure'

The ruling of the Court of Justice of the European Union of 26 September 2013 in Case C-509/11 clarified that the principle of 'force majeure' does not apply in the context of the right to compensation for delays, missed connections and cancellations, as granted by Article 17 of the Regulation.

In particular, the Court noted that the Regulation does not contain a 'force majeure' clause limiting the responsibility of railway undertakings with regard to compensation of the ticket price, as set out in Article 17. According to the ECJ ruling, Article 17 sets a **fixed-rate form of compensation** for the failure to provide a service according to the transport contract, which cannot be waived in case of 'force majeure' since the article does not contain a corresponding clause. In contrast, Article 32(2) of the Uniform Rules in Annex I relates to the carrier's liability for individualized damage or loss resulting from the delay or cancellation of a train, which would have to be claimed individually.

⁽¹⁾ See point 2.8.2. of the Report.

⁽²⁾ In accordance with Article 9 of the Convention concerning International Carriage by Rail (COTIF), the units of account referred to in the Appendices are the Special Drawing Right as defined by the International Monetary Fund.

Railway undertakings are therefore not permitted to include in their General Conditions of Carriage a clause exempting them from having to pay compensation under Article 17 when a delay is caused by 'force majeure' or is attributable to one of the causes set out in Article 32(2) of the Uniform Rules. As a result, passengers are entitled to compensation from the railway undertaking even in cases of 'force majeure'. In this respect, rail transport is different from other modes of transport (see especially the paragraph 47 of the judgment). However, as indicated in its 2013 report ⁽¹⁾, the Commission will examine the possibility to give the rail sector the same treatment as in other transport modes, i.e. not to compensate passengers for delays in cases of unforeseen and unavoidable events.

4.2.3. Concept of 'comparable transport conditions' in cases where a journey is continued or re-routed (Article 16(b) and (c))

'Transport conditions' are the defining characteristics of the transport services provided by the carrier under a transport contract between a railway undertaking or ticket vendor and a passenger. In accordance with Article 16(b) and (c) of the Regulation, when passengers are offered the option of a continuation or re-routing of a journey, due to a delay of more than 60 minutes, this must be 'under comparable transport conditions'. Whether transport conditions are comparable can depend on a number of factors and must be decided on a case-by-case basis. Depending on the circumstances, the following good practices are recommended:

- if possible, passengers are not downgraded to transport facilities of a lower class (where this occurs, passengers such as first class ticket holders should receive reimbursement of the difference of the ticket price);
- where passengers can only be re-routed on another rail carrier or on a transport mode of a higher class or with a higher fare than paid for the original service, re-routing shall be offered without additional costs for the passenger;
- reasonable efforts are made to avoid additional connections;
- when using another rail carrier or an alternative mode of transport for the part of the journey not completed as planned, the total travel time should be as close as possible to the scheduled travel time of the original journey;
- if assistance for disabled persons or persons with reduced mobility was booked for the original journey, assistance should equally be available on the alternative route;
- where available, re-routing accessible to persons with disabilities or reduced mobility should be offered.

4.2.4. Multimodal journeys

Multimodal journeys involving more than one mode of transport under a single transport contract (e.g. a journey by rail and air sold as a single journey) are not covered under the Regulation, nor are they covered under any Union legislation on passenger rights in other modes of transport. If a passenger misses a flight because of a delayed train, he or she would only benefit from the rights to compensation and assistance granted by the Regulation in relation to the train journey, and only if the passenger was delayed by more than 60 minutes at the destination of the rail journey under a single contract of carriage (unless other provisions are laid down by national law, as stated in Article 32(3) of Annex I to the Regulation).

4.3. Cancellations

The cancellation of a rail service may have the same consequences as a delay as regards the loss of time and inconvenience suffered by the passenger ⁽²⁾. Passengers using the next available service instead of the cancelled one may also arrive at their final destination with a delay of more than 60 minutes (as compared to the original scheduled time of arrival with the cancelled service). In such a case, passengers will benefit from the same rights to reimbursement of the ticket price, re-routing or compensation as laid down in Articles 16 and 17 unless the passenger was informed appropriately and well in advance about the cancellation.

As regards the obligation to provide assistance under Article 18, the cancellation of a train will trigger the same rights as a delay in departure, namely, that passengers will be entitled to information in accordance with Article 18(1). They will also be entitled to assistance in accordance with Article 18(2) if the time of departure of the next train or other means of transport exceeds 60 minutes.

⁽¹⁾ See point 5.1 of the Report.

⁽²⁾ See definition of delay under 2.2. which relates to the delay of the passenger and not of the train service.

4.4. Assistance

4.4.1. Provision of meals, refreshments and accommodation (Article 18(2))

Where there is a delay of more than 60 minutes, railway undertakings are obliged to provide meals and refreshments, in 'reasonable relation' to the waiting time, if they are available (in sufficient quantity) on the train or in the station. If they are not available (or in insufficient quantity) on board or in the station, the obligation of the railway undertaking is qualified by whether they can reasonably be provided. The railway undertaking will have to evaluate whether the provision of meals and refreshments is 'reasonable', taking into account criteria such as the distance from the place of delivery, the time required for and ease of delivery, and the cost. They cannot however be exempted from the requirement to assess each situation on a case-by-case basis.

Article 18(2) of the Regulation does not set minimum quality requirements for assistance. The quality of meals and refreshments, hotel or other accommodation, and other assistance should be reasonable and proportionate to the inconvenience suffered, including meeting the needs of persons with disabilities or reduced mobility. Where no hotel accommodation can be offered, the quality of 'other accommodation' should be as close as possible to a hotel. The Commission considers 'in reasonable relation to the waiting time' to mean that railway undertakings should provide passengers with appropriate assistance corresponding to the length of the delay and the time of day (or night) at which it occurs. Under Article 18(2) passengers must 'be offered' assistance in a clear and accessible way, if needed via alternative means of communication. This means that passengers cannot be expected to make arrangements themselves, e.g. finding and paying for accommodation. Instead, railway undertakings are obliged, where possible, actively to offer assistance. Railway undertakings should also ensure, where available, that accommodation is accessible for persons with disabilities and their service dogs.

Article 32 of Annex I to the Regulation specifies rail carriers' liability for loss and damage under the CIV Uniform Rules in case of long delays. Under CIV rules (Article 32(2)), carriers may be relieved from their obligation to cover the cost of accommodation and communication, e.g. when delays were caused by 'force majeure'. This liability for damages must be distinguished from the obligation to provide assistance under Article 18 of the Regulation, which does not include such derogation⁽¹⁾. Undertakings offering services to which the Regulation applies cannot therefore make use of an exemption.

Good practices or more favourable conditions may be codified in the General Conditions of Carriage, providing this does not contravene the Regulation, leaves scope for the assessment of individual situations on a case-by-case basis and does not limit passengers' rights under the Regulation⁽²⁾.

4.4.2. Proof of delay (Article 18(4))

In accordance with Article 18(4), railway undertakings are obliged, upon request, to certify a delay on a passenger's ticket as proof of the duration of the delay. If the passenger requests compensation for delay under Article 17, the proof of delay established by the railway undertaking or its staff (e.g. in the form of a stamp or signature from a ticket inspector or equivalent) must subsequently be accepted by the railway undertaking and cannot be renegotiated or modified retrospectively.

5. RIGHTS OF PERSONS WITH DISABILITIES AND/OR REDUCED MOBILITY

5.1. Right to transport

Persons with disabilities or reduced mobility have equal rights with other passengers to use rail transport. In line with Article 19 of the Regulation, persons with disabilities or reduced mobility cannot be discriminated against when booking, purchasing and using rail transport services. Derogations from this principle under Article 19(2) and subsequent refusals to accept a reservation, to sell tickets or to provide carriage to persons with disabilities or reduced mobility must always be based on justified grounds in line with the non-discriminatory access rules required under Article 19(1).

Where wheelchair spaces are designated, including shared spaces, these should as a matter of good practice always be available and easily accessible⁽³⁾.

⁽¹⁾ See also point 4.2.2.

⁽²⁾ See Article 6(2) of the Regulation.

⁽³⁾ See also Commission Regulation (EU) No 1300/2014 of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility (OJ L 356, 12.12.2014, p. 110) which contains specific requirements with regard to wheelchair spaces.

5.2. Disability certification

The Regulation grants the right to assistance to 'disabled persons' and 'persons with reduced mobility' within the meaning of Article 3(15). The right to assistance is not made subject to the production of a certificate. Railway undertakings and station managers cannot therefore require passengers to show a disability certificate or other proof of disability in order to benefit from assistance in stations and on board trains.

5.3. Information for passengers with disabilities and/or reduced mobility (Article 20)

In accordance with Article 20 of the Regulation, railway undertakings, ticket vendors and tour operators must inform passengers, upon request, about the accessibility of services, including stations. In the light of the objectives of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) ⁽¹⁾, the Commission recommends that station managers, independently of contractual link with passengers, also provide information on accessibility (e.g. on accessible websites and in alternative formats).

5.4. Prior notification of the need for assistance including in case of 'multiple journeys' (Article 24(a))

Article 24(a) of the Regulation sets out the conditions relating to prior notification under which passengers are entitled to receive assistance. As the provision of assistance is free of additional charge, so should be the booking process, e.g. through toll-free phone lines. Assistance should be available at all times when trains are operating (including night services or during week-ends) and not be limited to conventional working hours.

In case of multiple journeys (i.e. journeys composed of different segments as well as recurrent journeys), one notification from the passenger shall be sufficient, provided that the passenger gives adequate information on the timing of subsequent journeys. It is therefore the responsibility of the party who receives the notification (railway undertaking, station manager, ticket vendor or tour operator) to forward the information to all the railway undertakings and station managers concerned. If no notification is made, railway undertakings and station managers at staffed stations must still make all reasonable efforts to provide assistance in order that the disabled person or person with reduced mobility can travel. It would therefore not be compatible with the Regulation to limit assistance to those cases where a prior notification has been received nor to enshrine this in the contractual terms.

5.5. Training of staff providing assistance to persons with disabilities and/or reduced mobility

Whilst the Regulation does not contain specific provisions on training and awareness-raising, in order to ensure the effectiveness of assistance provided under the Regulation, best practice would require that staff be trained regularly and made aware of the varying needs of passengers with different types of disabilities and mobility restrictions.

6. COMPLAINTS TO RAILWAY UNDERTAKINGS

Under Article 27(2) of the Regulation, passengers can submit complaints to any railway undertaking involved in the journey concerned. Passengers need to be informed of the time limits placed on actions for damages set out in Article 60 of the Uniform Rules, contained in Annex I to the Regulation (see also Section 7 below).

7. PROVIDING INFORMATION TO PASSENGERS ABOUT THEIR RIGHTS

Under Article 29 of the Regulation, passengers have the right to be informed of their rights and obligations. The information provided must be adequate and it must be provided in such time that, at the point of concluding the contract of carriage, passengers have obtained information on their rights and obligations under this contract. Information can be provided in alternative formats, but has to be accessible to persons with disabilities and directly accessible to the passenger (for example, passengers should not be directed only to information on the internet if they can book or pay for tickets at the station).

This is without prejudice to information requirements established by other Union law, in particular Article 8(2) of Directive 2011/83/EU of the European Parliament and of the Council ⁽²⁾ on consumer rights and Article 7(4) of Directive 2005/29/EC of the European Parliament and of the Council ⁽³⁾ on unfair commercial practices.

⁽¹⁾ United Nations Convention on the Rights of Persons with Disabilities (<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>). The Convention entered into force in the EU on 22 January 2011. All 28 Member States have signed it and most have ratified it. See also the report on the implementation of the Convention by the EU, SWD(2014) 182 final, 5.6.2014.

⁽²⁾ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

⁽³⁾ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ L 149, 11.6.2005, p. 22).

8. ENFORCEMENT, COOPERATION BETWEEN NATIONAL ENFORCEMENT BODIES AND PENALTIES

8.1. Handling of complaints by national enforcement bodies

National enforcement bodies may handle complaints either in the first instance (i.e. where no prior complaint or request has been addressed to the undertaking, station manager or ticket vendor) or in the second instance, in cases where the passenger is not satisfied with the solution proposed by the railway undertaking, station manager or ticket vendor, or where no response has been received. It is recommended that complaints be addressed first to the railway undertaking, as they should be able to handle complaints most efficiently.

Although the Regulation does not specify a procedure for handling complaints (this is left to Member States), the principle of sound administrative management requires complaints to be handled quickly and efficiently. Excessively long delays would not only jeopardise compliance with the Regulation but would also create unequal treatment of passengers between Member States. Complaint handling bodies should therefore be adequately equipped and staffed to perform their duties.

For the greatest effectiveness, and accessibility for passengers, best practice would require the setting of time limits for replying to passengers. For example, an acknowledgement of receipt of a complaint would be sent at the latest within two weeks and a final reply provided within three months. In complex cases, the national enforcement body might, at its own discretion, extend the time taken to resolve the complaint to a maximum of six months. In such a case, passengers should be informed of the reasons for such an extension and of the expected time needed to conclude the procedure. In cases where a national enforcement body is also an alternative dispute resolution body acting in the capacity set out in Directive 2013/11/EU of the European Parliament and of the Council⁽¹⁾, the suggested time limits mentioned here would not in any way affect or replace those stipulated in that Directive.

The Regulation does not set any time limit for passengers to submit their complaints to the national enforcement body. Deadlines set by national legislation should therefore apply even if this means that deadlines may differ between Member States. In order to ensure that complaint procedures are enforced efficiently and to provide a secure legal environment for railway undertakings and other businesses potentially involved, the Commission recommends that passengers be advised to make complaints within a reasonable timeframe. Good practice would also require that passengers are informed about appeal possibilities or other actions to take in case they do not agree with the assessment of their case.

8.2. Cooperation between national enforcement bodies on the handling of cross-border complaints (Article 31), and deciding on the competent national enforcement body

Apart from the requirement to cooperate, the Regulation does not include any specific provisions concerning the handling of cross-border complaints between Member States. With a view to accelerate and facilitate the handling of such complaints, the Commission recommends the following good practice:

The Regulation sets out obligations incumbent on railway undertakings. Passengers may always complain to any NEB or other designated body (Article 30(2)). When they complain about an alleged violation of an obligation by a railway undertaking, the national enforcement body to handle the complaint should, for reasons of efficiency and effectiveness, be the one of the Member State which granted a licence to that railway undertaking.

For instance, if a complaint is made relating to a fatality or injury resulting from a rail accident, the competent national enforcement body would be the one of the Member State which granted a licence to the railway undertaking that carried the passenger at the moment of the accident. If a complaint is made for lack of pre-journey travel information, it would be the national enforcement body of the Member State which granted a licence to the railway undertaking with which the passenger had concluded the transport contract, even if this was done via an intermediary (e.g. ticket vendor, travel agent etc.). If a complaint is made relating to assistance (refreshments, meals or accommodation), it would be the national enforcement body of the Member State which granted a licence to the railway undertaking responsible for providing such assistance under Article 18.

In certain cases (e.g. complex cases, cases involving multiple claims and cross border travel or e.g. accidents on the territory of a Member State other than the one who granted the railway undertaking's licence), national enforcement bodies might jointly decide to depart from the above principles and identify among themselves a 'leading' national enforcement body, in particular in cases where it is unclear which body is competent, or where it would facilitate or accelerate the resolution of the complaint. In line with their obligations under Article 31 of the Regulation, all national enforcement bodies involved should cooperate with the 'leading' national enforcement body and provide relevant information in order to facilitate the resolution of the complaint (e.g. by sharing information, assisting with the translation of documents and providing information on the circumstances of incidents). The passenger should be informed which body is acting as 'leading' body, and this body should then serve as his or her single point of contact.

⁽¹⁾ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165, 18.6.2013, p. 14).

Where a complaint is made relating to possible violations committed by station managers, the competent national enforcement body should be the one of the Member State on whose territory the incident occurred.

In order to promote the effectiveness of the cooperation between Member States' enforcement bodies, any agreement made between them on the handling of complaints should ensure that penalties for violations of the Regulation can be imposed by at least one Member State's authority.
