

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	Revision of Regulation (EC) 1371/2007 on rail passengers' rights and obligations		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG MOVE D4	DATE OF ROADMAP	27/11/2015
LIKELY TYPE OF INITIATIVE	Legislative proposal		
INDICATIVE PLANNING	https://webgate.ec.europa.eu/agendap/agenda/protected/agendaItems/detailAgendaItemVersion.agenda?itemId=79503		
ADDITIONAL INFORMATION	-		
<p>This Inception Impact Assessment is provided for information purposes only and can be subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.</p>			

A. Context, Subsidiarity Check and Objectives

Context
<p>Relationship with past and possible future initiatives.</p> <p>In regard to President Juncker's guidelines for a deeper and fairer internal market where consumer interests and social policy are set at the heart of the single market and in line with the provisions of Article 169 TFEU calling for a high level of consumer protection, consumer rights remain a clear priority of the EU policy for the next years. Bringing the EU closer to its citizens is also one of the main objectives of the new Commission. For citizens to fully enjoy the benefits of transport services in an integrated market, be it for business or private purposes, it is necessary to provide them with an adequate level of passenger protection, notably when something goes wrong during travel. All citizens have an equal right to transport without discrimination, e.g. based on nationality, disability or reduced mobility. Following the adoption of the air passenger rights Regulation in 2004, rail transport was the second mode of transport where passengers started to enjoy basic rights during travel in the EU. Regulation (EC) 1371/2007 on rail passengers' rights and obligations was adopted in parallel to legislation to open up the market for international rail passenger services. The main objective of the Regulation is - as for air passenger rights legislation - to improve the attractiveness of rail passenger transport and its market functioning through ensuring a minimum level of protection for rail passengers across the EU, enhancing social inclusion for disabled persons and persons with reduced mobility (PRM) in transport as well as by establishing a level playing field for rail operators in the EU. Moreover, by the adoption of the Regulation, the EU intended to improve the quality and effectiveness of rail passenger services to increase the share of rail transport in relation to other modes of transport.</p> <p>The Regulation establishes rules with regard to:</p> <ul style="list-style-type: none"> • the information to be provided by railway undertakings, the conclusion of transport contracts and the issuing of tickets; • the liability of railway undertakings and their insurance obligations towards passengers and their luggage; • the obligations of railway undertakings to passengers in cases of delays or missed connections. Among other obligations this also includes financial compensation for delays of more than 60 minutes in the form of a percentage of the ticket price. Further to the ECJ ruling in case C-509/11¹, railway undertakings cannot claim 'force majeure' situations to be exempted from having to pay compensation; • the prohibition of discrimination of, and the assistance to, persons with disabilities or persons with reduced mobility; • the definition and monitoring of service quality standards, and the handling of complaints;

¹ Judgment of the Court of 26 September 2013; <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30dd7c3c0b567f904baa8ae2878ebc9ba08c.e34KaxiLc3qMb40Rch0SaxuPaNf0?text=&docid=142215&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=412580>

- in cooperation with public authorities, the management of risks to ensure the personal security of passengers;
- and general rules on enforcement.

Annex I of the Regulation reproduces the rules of the internationally applicable Convention on International Carriage by Rail (Uniform Rules CIV of COTIF²).

The Regulation applies to all rail journeys and services throughout the EU provided by railway undertakings licensed under Directive 2012/34/EC establishing a single European railway area. Also journeys covered under Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours³ as well as under the new directive on package travel and assisted travel arrangements⁴ are concerned.

The Regulation however allows Member States to grant a number of exemptions to certain services. Exemptions include temporary exemptions for domestic rail passenger services (for a period up to 15 years, i.e. until 2024), unlimited exemptions for urban, suburban and regional services as well as exemptions for services where a significant part, including at least one scheduled stop, is operated outside the EU.

The Transport White Paper of 2011⁵ emphasises the increasing importance of high quality, accessible and reliable rail services for passenger transport, but also the need to provide for mobility continuity in case of travel disruption. It calls for clarification of passenger rights legislation as well as for an improvement of the quality of transport for elderly people, passengers with disabilities or reduced mobility.

In its 4th railway package⁶, the Commission proposed to open the domestic rail passenger market to competition through several initiatives aiming at removing barriers at the entry of new operators into the market, enhancing the attractiveness of rail, making the sector more responsive to customers' needs, and allowing rail operators to compete with other modes. It is at this time unclear how current discussions in Council will bring changes to the proposal and hence how the rail market will develop.

Ex-post analysis

An ex-post evaluation of the Regulation, carried out in 2012, concluded that the impact the Regulation has been limited by a number of factors⁷. As most important obstacles to the fulfilment of the objectives of the Regulation the Report identified the derogations adopted by Member States. Several Member States, including large ones, have granted extensive exemptions from most of the provisions of the Regulation to a significant number of rail services. Even where Member States have granted extensive exemptions, a number of Member States either have national laws which provide similar rights to those in the Regulation or similar rights and policies are granted through other means. This leads to confusion on which passenger rights apply depending on the country. In addition, enforcement of the Regulation is not uniform across Member States. Both factors result in only partial achievement of many of the Regulation's objectives, and passengers do not benefit fully from their rights depending on the countries in which they travel.

The 2013 Commission report on the application of the Regulation in Member States came to similar conclusions⁸. Although no deliberate, severe or systematic non-compliance was detected, the report underlined

² 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

³ OJ L 158, 23.6.1990, p. 59–64

⁴ 2013/0246 (COD) – formal approval by the Council and official publication in OJ expected before the end of 2015

⁵ White Paper - Roadmap to a Single European Transport Area, COM/2011/144 final

⁶ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail (COM(2013) 28 of 30/01/2013) and Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/34/EU of 21/11/2012 establishing a single European railway area (COM(2013) 29 of 30/01/2013)

⁷ "Evaluation of Regulation 1371/2007" by Steer Davies Gleave on the application and enforcement in the Member States of the Regulation on rail passengers' rights and obligations;
<http://ec.europa.eu/transport/themes/passengers/studies/doc/2012-07-evaluation-regulation-1371-2007.pdf>

⁸ Report from the Commission to the European Parliament and the Council on the Application of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on Rail Passengers' Rights and Obligations, COM/2013/0587 final

that the extensive use of exemptions was a serious obstacle to the fulfilment of the Regulation's objectives and the setting-up of a single European Railway Area. It also stressed the need to improve passenger rights and the level-playing field between operators in order to avoid discrimination in view of the further opening of the rail market. In this context the widespread use of exemptions creates a patchwork of national rules which hampers the entry of new operators into the national markets.

Finally, it also identified a number of areas where the regime of rail passenger rights should be clarified or improved, e.g. in relation to assistance to persons with disabilities, as well as the need to consider the possibility to apply to rail transport the rules applicable in other modes of transport in case of force majeure (e.g. exemption to pay compensation). The 2015 Commission report on the exemptions granted by MS under Regulation EC 1371/2007⁹ shows that only five Member States apply (and will continue to apply) the Regulation in full while twenty-one Member States grant exemptions to varying degrees¹⁰. The cross-border nature of rail transport services but also problems on domestic routes owing to services provided by different operators can lead to complex situations and questions of competence between railway undertakings and among national authorities that might arise also owing to the lack of clear rules and deadlines for complaint handling between NEBs. This impedes passengers' access to redress, and reduces passenger rights.

Other issues highlighted in the above reports are considered in the problem definition of the present initiative.

Issue

The main problems which negatively affect the principal stakeholders: passengers, railway industry and national authorities, which the initiative will address

- **Passengers do not fully benefit from the provisions under the Regulation and are insufficiently protected, notably on domestic rail passenger services**
 - This means **legal uncertainty and lack of transparency** for rail passengers whose rights are different depending on the country where they are travelling as well as a **low level of passenger protection** in those Member States which have opted for broad exemptions. E.g. if a train is delayed for more than 60 minutes, passengers may be entitled to compensation or assistance from the railway undertaking or not, depending on whether the country in which they are travelling has exempted the relevant provisions of the Regulation. In order to know their rights, passengers have to check each time the exemptions granted by the Member State in which they are travelling. To quantify the scope of the problem related to exemptions on domestic services, it must be noted that, in 2013, 387 billion pkm were carried out on national railway networks in the EU (EU 27) compared to 25 billion pkm carried out on international journeys in the EU (EU27)¹¹. The number of complaints related to the Regulation received by national enforcement bodies is still relatively low (see above), notably compared to air transport.
 - The **rights of persons with disabilities or reduced mobility** may not be fully implemented on exempted domestic services, thus reducing the rights of these passengers in certain Member States. According to the 2012 study, most RUs had implemented effectively most of the requirements of the Regulation and sometimes provide an even better service than the Regulation requires (e.g. some require less than 48 hours for pre-notification of assistance needs). However, there are nonetheless some issues with the implementation of the requirements related to persons with disabilities or reduced mobility. While RUs may not discriminate these passengers on ticket purchase or booking, this still means that they may not receive adequate assistance at stations or on-board trains which would fully allow them to use rail transport on an equal footing with other passengers. The 2012 study showed that, due to exemptions granted, none of the 18 railway undertakings (RUs) examined was fully compliant in terms of online accessibility information provision¹², 7 RUs were not providing the possibility to PRM to purchase tickets and request

⁹ Report from the Commission to the European Parliament and the Council on the Exemptions granted by Member States under Regulation (EC) No 1371/2007 on Rail Passengers' Rights and Obligations, COM/2015/117 final

¹⁰ Two Member States, Malta and Cyprus, do not have rail passenger services

¹¹ Source: Eurostat
http://ec.europa.eu/eurostat/statistics-explained/index.php/Passenger_transport_statistics#Rail_passengers

¹² Information on train types or services where facilities are available (14 complying RUs), types and minimum quantities of PRM facilities on board (7), methods for requesting assistance (17), maximum size and weight of wheelchair permitted (7), conditions for accompanying persons and/or animals (14) and access conditions for stations and platforms (15).

assistance at no additional cost¹³, 4 RUs were requiring a longer advance notice period than the 48 hours notice set in the legislation. In addition, the fact that the Regulation does not set a deadline by when rolling stock and infrastructure must be made accessible is an important limitation for PRM travel.

▪ **Unequal treatment of railway undertakings (RUs) operating in different Member States**

- Also RUs have to cope **with legal uncertainty** caused by the extensive use of exemptions and unclear and inconsistent provisions, notably in connection with cross-border journeys but also when operating in different Member States. In particular, provisions redundant or potentially inconsistent with the internationally applicable Convention on International Carriage by Rail (Uniform Rules CIV of COTIF¹⁴, currently reproduced in Annex I to the Regulation) may be the cause of legal uncertainty.
- Differences in enforcement between Member States, create an unlevel playing field in terms of rules applied to RUs, and so could **distort competition between RUs**. This may also potentially hinder the entrance of new players, notably where RUs operate in a number of countries.

Further evidence, notably on the scope of the problem, will be collected under the impact assessment to substantiate and quantify these problems.

▪ **Risk of discrimination of RUs with regard to other modes of transport**

- Currently, RUs have to pay **financial compensation** to passengers for delays of more than one hour **irrespective of the cause of the delay** and even if the RUs were not responsible and could not have prevented the delay (so-called 'force majeure' situations). The conditions under which compensation is provided in rail transport differs from other transport modes in particular on the following:
 - Rail passengers who do not opt for reimbursement are already entitled to compensation after a delay of one hour, compared to three hours in air transport and two hours on departure for bus and coach transport. Under bus and coach passenger rights legislation, no compensation at all is due for delays at arrival.
 - Compensation for delay in rail transport is calculated as a percentage of the ticket price (between 25 % and 50 %), similarly to bus and coach transport (50%). In air transport there are fixed rate compensation amounts depending on the length of the flight.
 - In the event of an incident, many RUs pro-actively invite passengers to lodge a complaint and to claim compensation, which is in the interest of passengers. The 2012 evaluation highlights that, in general, RUs' compliance with the obligation to pay compensation for long delays was good. Air carriers only compensate passengers who (individually) take the initiative to lodge a complaint without encouraging them.
 - Finally, air carriers can invoke extraordinary circumstances in order not to have to pay delay compensation, which is not provided for in rail transport. The fact that no exemptions apply to the obligation to compensate passengers for long delays places RUs in a different situation from carriers in other transport modes where EU passenger rights legislation provides for such exemptions. RUs may thus be negatively economically affected with costs that can neither be recovered from a third party nor appropriately be insured.

In view of the above, there is a risk of discriminating RUs economically, notably on routes where they compete with other modes (in particular with air transport and long distance coach transport). The 2012 evaluation includes a qualitative comparison of the Regulation with the passenger rights in other transport modes. This will be used as basis to estimate the impact and actual cost for all actors involved, including passengers, to implement the ECJ ruling on force majeure in the course of the impact assessment.

These issues are likely to be further exacerbated with the further opening of the domestic rail passenger market in line with the 4th railway package. The impact assessment will need to take into account potential limitations to

¹³ Additional booking fees charged or booking through premium rate number.

¹⁴ 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

market liberalisation by the introduction of national exemptions to the liberalisation of domestic markets in the course of the adoption of the 4th railway package. Although with the phasing-out of exemptions of (long-distance) domestic services by 2024 implementation may become slightly more homogenous and passengers will benefit from better protection on these services, in the meantime, rail passengers on exempted domestic journeys continue to suffer from uneven protection.

At this stage, the **main causes for problems** with the Regulation have been identified in the previous evaluation. They can be summarised as follows:

- The extensive use of **exemptions** by Member States as well as some unclear and/or inconsistent provisions have led to a **patchy application** of the Regulation. Under Article 2 of the Regulation, Member States are allowed to grant exemptions from the full application of the Regulation to domestic services, including long-distance national services, to urban, suburban and regional services, and to particular services or journeys where a significant part of the service or journey is carried out outside the Union. The 2012 evaluation concluded that EU-wide, only 36% of all services in terms of passenger kilometres have no exemptions, while the remaining services have partial or full exemptions (respectively 27% and 37%). The 2015 Commission report on the exemptions granted by MS under Regulation EC 1371/2007¹⁵ shows that five Member States have adopted full exemptions so that only the mandatory provisions¹⁶ apply. The last updated overview table of exemptions in May 2015¹⁷ shows that only five Member States were not applying exemptions while all other Member States grant exemptions to a very different extent and scope: long distance domestic services and/or urban, suburban or regional services and/or services or journeys of which a significant part is operated outside the EU, for all non-mandatory articles or only some articles or annexes. As mentioned above, certain Member States which have granted extensive exemptions have either national laws which provide similar rights to those in the Regulation or similar rights and policies are granted through other means. However, this may lead to confusion on which rights apply depending on the country. Moreover, there may also be problems with enforcement as NEBs are only responsible for enforcing rights under the Regulation. As a result, passengers might have difficulties to obtain individual redress.
- The Regulation is unclear or vague on a number of matters and hence leaves too much room for interpretation. As a result, **enforcement is not uniform in the Member States**. (1) Firstly, the roles of national enforcement bodies (NEBs) are not clearly defined which weakens their position and limits effective enforcement. For example, according to the 2012 evaluation, in 9 out of 17 countries, NEBs had not undertaken inspection activities relating to the Regulation, and the number of sanctions imposed for infringements was very low¹⁸. (2) Secondly, there are no clear and binding rules and deadlines for complaint handling. The evaluation report highlighted that missing rules for complaint handling by actors other than railway undertakings (e.g. station managers) also impede passengers' access to redress. In the absence of reporting obligations on complaint handling, the latest data are from the 2012 evaluation report and cover the year 2011 where NEBs received around 15.000 complaints of which only 2500 – 3500 were directly related to the Regulation. Rail companies, who have to publish data on complaint handling, receive much higher numbers of complaints, which may, however, not always be related to the Regulation¹⁹. Whilst the lack of complaints to NEBs could be an indication of effective compliance with the Regulation it could also reflect the lack of passengers' awareness of their rights or confusion about the applicable exemption. This will need to be further investigated in the course of the impact assessment. (3) Finally provisions regarding cooperation on cross-border issues are missing.
- Passengers who are stranded because of a **major transport disruption** (e.g. massive strikes, natural catastrophes, terrorist attacks etc.) do not receive adequate assistance and protection in all

¹⁵ Report from the Commission to the European Parliament and the Council on the Exemptions granted by Member States under Regulation (EC) No 1371/2007 on Rail Passengers' Rights and Obligations, COM/2015/117 final

¹⁶ Under Article 2(3) Articles 9, 11, 12, 19, 20(1), and 26 apply to all rail passenger services throughout the EU.

¹⁷ http://ec.europa.eu/transport/themes/passengers/rail/doc/summary_table.pdf

¹⁸ Apart from Germany which imposed 372 administrative charges, only 8 sanctions by 3 Member States were imposed (Denmark, Hungary and Poland)

¹⁹ As an example, DB received 1,27 million complaints in 2013 and 1,3 million in 2014, SNCF received 1,4 complaints in 2013, Eurostar ca. 50.000 in 2014 and RENFE 113.000 in 2013 and 126.000 in 2014. See service quality reports on the website on the European Railway Agency ERA: https://eradis.era.europa.eu/interop_docs/ruSQPreports/default.aspx

Member States. In the absence of harmonised contingency planning, there are currently no consistent responses to ensure mobility continuity in such situations, but Members States' and transport industry **approaches vary or are inconsistent**.

- Following the ECJ ruling in case C-509/11²⁰, railway undertakings cannot be exempted from having to pay compensation for delays caused by unforeseen and unavoidable events (**'force majeure'**). This places railway undertakings in a different situation from the other transport modes where EU passenger rights legislation provides for such exemptions. From the evaluation, which was carried out before the ECJ ruling, it is known that at the time, 13 of the 18 RUs examined were providing an interpretation of unavoidable circumstances under which no compensation for delays would be granted. The costs incurred by RUs consequent to the ECJ ruling will be investigated in the course of the impact assessment.
- Annex I of the Regulation currently reproduces the internationally applicable Convention (Uniform Rules CIV of COTIF²¹) which focuses on the contractual relationship between railway undertakings and passengers. The **link between the CIV rules in Annex I and the provisions of the Regulation is unclear** and may create legal confusion amongst rail operators in charge of their implementation. Indeed, certain definitions, such as the notion of "carrier" are conflicting. Moreover, if and when the CIV rules will be updated²², there is a risk that the Regulation be outdated and conflicting with international rules as the annex cannot be automatically adapted to such changes .
- A number of **provisions of the Regulation are outdated** and need to be reinforced. This concerns in particular provisions for PRMs which should be updated in the light of the revised technical specifications for interoperability for PRM (PRM TSI)²³ and the UN Convention on the rights of persons with disabilities - UNCRPD (e.g. requirement for awareness and assistance training for staff dealing with disabled persons like in other modes of transport, accessibility of information in alternative formats and other provisions on accessibility).

Subsidiarity check

Legal Basis

The Treaty on the functioning of the European Union confers to the European institutions the competence to lay down appropriate provisions in the transport sector (TFEU article 91). The Union has also received conferral for promoting the interests of consumers and ensuring a high level of consumer protection (TFEU article 169). This initiative will review and improve an existing regulation on rail passenger rights.

Necessity checks & Added-value test

The international character of rail transport sets the need for action at EU level. Disparities in the level of protection between Member States due to the current regime of exemptions lead to passengers having different rights and possibly different means of redress when using domestic services in different Member States. National legislation would also not allow tackling cross-border journeys appropriately as a single journey would fall under two or more jurisdictions. The most appropriate level to address the problems identified is therefore at EU level in order to ensure a uniform high level of passenger rights across all Member States for national and international journeys alike. Subsidiarity issues will be further assessed in the course of the impact assessment. Particular attention will be paid to the fact that some Member States have national laws or policies which address the same issues as the Regulation.

Main policy objectives

²⁰ Judgment of the Court of 26 September 2013;
<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30dd7c3c0b567f904baa8ae2878ebc9ba08c.e34KaxiLc3qMb40Rch0SaxuPaNf0?text=&docid=142215&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=412580>

²¹ 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

²² As intended by OTIF, notably to adapt amounts for damages

²³ 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

The overall objective is to strengthen and improve the rights of passengers when travelling by rail in the EU. The EU has already adopted passenger rights policy in the rail passenger transport sector. The review thus aims at improving existing policy and reinforcing passenger rights. This objective needs to be balanced against the economic and technical constraints of the railway sector.

This means to:

- Improve rail passengers' rights by
 - ensuring that passengers benefit from uniform protection under the Regulation in all Member States by limiting their access to exemptions,
 - ensuring adequate information, assistance (including to PRM passengers) and where necessary compensation in case of travel disruptions,
 - providing for service continuity and contingency planning in case of massive disruptions,
 - clarifying unclear issues and grey zones;
- Prevent unequal treatment of RUs in different Member States by
 - providing legal certainty and fair competition among RUs irrespective of the EU Member States,
 - ensuring harmonised enforcement in all MS,
 - ensuring that rules on passenger rights are clear for all interested parties and that there are no overlaps or potential conflicts with other pieces of legislation or with international conventions;
- Align obligations in passenger rights legislation for other modes of transport and ensure a level playing field and fair competition with other transport modes by
 - moderating the (unequal) economic burden for railway undertakings compared to other modes of transport under EU passenger rights legislation. This concerns i.a. their obligations in unforeseeable and unavoidable situations ('force majeure'). The impact assessment will assess other potential areas of discrimination between transport modes.

B. Option Mapping

Baseline scenario – no EU policy change

Option 1 – baseline scenario

Under the baseline scenario, the existing Regulation EC1371/2007 on rail passengers' rights and obligations **remains unchanged and no further action at EU level is taken**. This means that the issues identified would not be addressed. With the further opening of the domestic rail passenger market in line with the 4th railway package, there is a risk of further exacerbating the identified problems, even if not all the objectives of domestic liberalisation will be achieved owing to national exemptions .

Additional costs will arise for RUs by the progressive phasing out of exemptions which Member States can grant to specific services and journeys under Article 2 of the Regulation. Passengers will benefit from the phasing-out and removal of exemptions by 2024 at the latest: social benefits will be reaped from (slowly) increasing and more harmonised passenger protection on long distance domestic services across Member States. No significant environmental impact is expected, since the minimum quality standards set for passenger rights under this Regulation are expected to have at most a marginal impact on modal shift. This will, however, need to be further investigated and quantified in the course of the impact assessment.

According to the 2015 Commission report on exemptions granted by Member States, the situation is not expected to change significantly in the short term. Five Member States are expected to continue to apply the Regulation in full and twenty one will continue to grant exemptions to different degrees.

Options of improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation

Option 2

This option would **offer new definitions and strengthen provisions** of the Regulation, hence addressing the current lack of uniform application and poor level of passenger protection on domestic rail passenger services and the lack of level playing field between rail operators through legislative change. This would inter alia include the following:

- Clarifying/adding/removing definitions of key terms in the Regulation. This could cover notably the following issues: notion of "carrier" and "missed connections" also in an intermodal context; the concept of "through tickets" and their availability, notably in the context of assistance and compensation in case of delays and missed connections.
- Clarifying amounts for insurance or other guarantees to cover railways' liabilities in case of accidents, notably in relation to the minimum amounts specified in Article 30 of the Uniform Rules CIV in Annex I to the Regulation.
- Clarifying and strengthening the roles and responsibilities of NEBs, notably as regards rules on complaint handling and cooperation on cross-border issues.
- Incorporating into the Regulation more detailed elements concerning the service quality standards which should play an increased role as a tool for self-monitoring of performance by railway undertakings.
- Either deleting Annex I of the Regulation on the Uniform Rules CIV of COTIF from the body of the Regulation or introducing an article enabling any amendments or revisions of the Uniform Rules CIV to be adapted timely and as necessary in the Regulation. A separation of the Uniform Rules would need to be carried out in close cooperation with the Intergovernmental Organisation for International Carriage by Rail (OTIF) in order to avoid a reduction in passenger rights.
- Extending current national schemes and administrative best practices with regard to enforcement to all Member States.

Option 3

An alternative option to improve implementation and enforcement would **in addition to the above** also consider the following elements:

- Removal of exemptions under Article 2 (4) for domestic long distance passenger services, notably by taking into account national provisions offering similar protection as under the Regulation. Taking into account the expected timetable for the adoption of the amended Regulation and its entry into force, a removal of exemptions could lead to save around five years, which is the duration of a renewal of an exemption. This would allow passengers to benefit from full protection under the Regulation on all national long distance services. RUs will still be entitled to offer more generous conditions than those required under the Regulation.
- Introducing a limitation in time regarding certain exemptions
 - Under Article 2 (5) for urban, suburban and regional services by closely examining the situation in countries which do not apply exemptions and which might set a good practice example to those countries who do so. This applies in particular to suburban and regional services which are cross-border services.
 - Under Article 2 (6) for services of which a significant part is carried out outside the Union as regards the part of the journey which is carried out on EU territory.
- Introducing additional obligations for NEBs:
 - Regarding their enforcement activities (e.g. monitoring RUs' and station managers' service quality, general conditions and websites, inspections etc.).
 - Introducing reporting obligations for NEBs (on complaint handling and sanctions)
 - Strengthening their roles and responsibilities, notably as regards their access to and nature of sanctions available to them.

Alternative policy approaches

Option 4

In addition to the changes proposed under options 2 and 3 with the aim to improve implementation and

enforcement, an option to reinforce the Regulation, by **adding a number of new provisions** especially as regards alignment with legislation in other transport modes, will be assessed. Changes to be considered include:

- To align with passenger rights legislation in other modes of transport, introducing awareness and assistance training requirements for staff providing assistance to PRM passengers as well as accessibility requirements in line with PRM TSI and the UNCRPD.
- Introducing provisions on service continuity and contingency planning and the impact on the different actors in order to ensure harmonised procedures to provide assistance and protection to passengers in case of massive disruption to rail transport, as was done in the proposal for a revision of the air passenger rights regulation²⁴.
- To align with passenger rights legislation in other modes of transport, adding a general "non-discrimination clause".
- Imposing rules on complaint handling for actors other than railway undertakings (e.g. station managers). The impact assessment will need to investigate how this can be done without making the complaint procedure more difficult for passengers and notably those with disabilities or reduced mobility (e.g. by defining a RU as one-stop-shop for lodging all complaints, including those made about other actors). In passenger rights legislation for other modes, infrastructure managers are also covered.
- To remove potentially excessive financial burden from RUs, notably where they are competing with modes of transport which benefit from exemptions in the event of extraordinary circumstances, adding a clause on "force majeure" would allow railway undertakings to be exempted from having to pay compensation for long delays which were caused by situations beyond their control and which they were unable to prevent. Such an exemption would not affect other obligations of railway undertakings, e.g. the obligation to provide information and assistance also in cases of "force majeure". The nature of "force majeure" situations will be specified by limiting these to very specific and rare situations such as natural disasters, very severe meteorological conditions, and massive, unforeseeable strikes in order to avoid a reduction in passenger rights as well as the risk of divergent interpretation by MS leading to non-uniform implementation and enforcement throughout the EU. The impact assessment will examine whether the absence of an exemption to pay compensation in cases of 'force majeure' puts the rail transport at a competitive disadvantage compared to other transport modes, taking into account relevant cost factors. The impact assessment will also assess further options (e.g. a reduction of the compensation amounts, extension of duration of delays triggering compensation or other options still to be identified) to prevent discrimination of RUs compared to other modes of transport.

Alternative policy instruments

No further soft law measures will be considered as Guidelines to improve the application of the Regulation have already been adopted in 2015²⁵. These guidelines provide some interpretation of unclear elements of the Regulation as well as some recommendations and examples of good practice. They can, however, not address the problems with the Regulation or lack of legislation mentioned under the problem definition. Other non-legislative activities would concentrate on monitoring enforcement, promoting cooperation and good practices between Member States and among RUs.

Alternative/differentiated scope

The initiative does not aim at a change of scope and will hence continue to apply to all rail journeys and services throughout the Community provided by railway undertakings licensed under Directive 2012/34/EC establishing a single European railway area. The removal of a number of exemptions will however affect the current services to which the Regulation effectively applies.

²⁴ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air , COM/2013/0130 final, 13.3.2013

²⁵ Interpretative Guidelines on Regulation (EC) No 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations, OJ C220; 4.7.2015

Options that take account of new technological developments
The Regulation already allows for the application of new technologies and the new initiative does not envisage a change or prohibition of technological developments. Reference could be made to options for on-line complaint handling and individual redress, such as the Regulation on on-line dispute resolution ²⁶ .
Preliminary proportionality check
The initiative shall ensure a high level of protection for rail passengers whilst not imposing unnecessary obligations on the rail industry or on Member States. The assessment of the different options in the framework of the impact assessment will allow determining advantages and disadvantages of each option and identifying the best-suited option while, at the same time, not exceeding what is strictly necessary to achieve the overall objective of ensuring a high and uniform protection of rail passengers' rights in line with the principle of proportionality.
C. Data Collection and Better Regulation Instruments
Data collection
An ex-post evaluation was carried out in 2012. On this basis, a report has been adopted in 2013 ²⁷ . These will serve as a basis for the impact assessment. Other sources of information are a recent Eurobarometer survey on passenger awareness of their rights ²⁸ and the report on the implementation of exemptions adopted in 2015 ²⁹ . Further information will be gathered through an external study to 1) validate the findings from the ex-post evaluation of 2012 and update the results to include more recent developments (e.g. impact of ECJ ruling on force majeure) and 2) gather relevant information as input to the impact assessment. This support study will take into account desk research of existing reports and studies as well as the replies to the public consultation (see below). The methodological approach of the study will comply with the requirements of the Impact Assessment Guidelines ³⁰ . The call for tender should be launched towards the end of the fourth quarter of 2015. The terms of reference will be agreed with the Steering Group.
Consultation approach
Stakeholders will be consulted in the course of the impact assessment process. They will be consulted on the problem definition and respective drivers, the issue of subsidiarity and the EU dimension of the problem, the proposed options and the likely impacts of each option. Both qualitative (opinions, views, suggestions) and quantitative (data, statistics) information will be sought from stakeholders. The consultation will take the form of an open public consultation and of targeted consultations through interviews of most relevant stakeholders. The open internet-based public consultation running for 12 weeks will take place in the last quarter of 2015. The questionnaire for the 12-week public consultation will be prepared by DG MOVE, together with the members of the steering group. The external contractor will collect and summarise the submissions. The objective of the public consultation will be to validate the problem definition, the drivers and the options of the Impact Assessment and to enquire about the likely impacts of each option. The launch of stakeholder consultation related to this initiative will be announced in the consultation planning that can be found at http://ec.europa.eu/yourvoice/consultations/docs/planned-consultations_en.pdf . The consultation will be open to all stakeholders wishing to comment on the questionnaire. Targeted consultations will take place in the frame of the external study. This will be done through a series of phone (or face-to-face) interviews. The stakeholder categories that will be targeted include: Railway Undertakings (RU), Station staff (station manager, other), Public authorities (Member State representatives, Ministries, Agencies, National Enforcement Bodies, other), as well as stakeholder associations, including consumer and user organisations including representatives of persons with disabilities, and worker's organisations. Interview guides, tailored to the different stakeholder groups, will be prepared by the external

²⁶ Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, OJ L165, p.1, 18.6.2013

²⁷ See footnote 4

²⁸ Special Eurobarometer 420 of November 2014, http://ec.europa.eu/public_opinion/archives/ebs/ebs_420_en.pdf

²⁹ See footnote 5

³⁰ http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm

contractor. The final list of stakeholders will be agreed during the impact assessment.

A separate meeting with national enforcement bodies (NEB) will also take place towards mid 2016. The meeting will allow the contractor to present and validate the findings of the external study. Results from this meeting will be incorporated in the analysis of the impact assessment.

A consultation strategy will be prepared and discussed within the inter-service steering group.

Will an Implementation plan be established?

Yes No

There is no need for establishing an implementation plan, because the initiative can be carried out by a relatively simple change to existing legislation which would be easy to implement at national level or by simple non-regulatory measures (Commission recommendations or guidelines) depending on the policy option chosen. The initiative would not need a new institutional framework neither at national, nor at EU level. The usual implementation period could be granted for Member States and stakeholders to take the necessary measures to apply it correctly.

D. Information on the Impact Assessment Process

The work on the impact assessment will start in the fourth quarter of 2015.

The IA Steering Group will be convened within the third quarter of 2015. The Secretariat General, Legal Service, DG GROW (Internal Market, Industry, Entrepreneurship and SMEs), DG JUST (Justice and Consumers), DG EMPL (Employment, Social Affairs and Inclusion), DG NEAR (Neighbourhood and Enlargement Negotiations), DG ECFIN (Economic and Financial Affairs) and the EEAS (European External Action Service) have been invited to be part of the Steering Group. The Group will meet on a regular basis during the preparation and elaboration of the impact assessment.

E. Preliminary Assessment of Expected Impacts

The benefits and costs of each policy option will be assessed in the impact assessment. At this stage, a preliminary assessment of the likely economic, social and environmental impacts of the different options can be made. The expected magnitude of the main potential impacts under any of the options above will depend on the particular sub-options chosen.

Potential effects on the following stakeholders have been identified:

- Rail passengers, including those with disabilities or reduced mobility, will enjoy more transparent and strengthened rights; on the other hand, they would have to cope with a potential reduction of compensation payments in cases of 'force majeure'.
- Railway industry and their staff (RUs, station and infrastructure managers) will have to comply with the new requirements, potentially including services currently exempted. The financial burden of RUs in cases of 'force majeure' would be reduced.
- National enforcement bodies (NEBs) responsible for the enforcement of the rail passenger rights Regulation in the Member States will have to enforce the new requirements.

Potentially, other modes of transport might be indirectly affected by a closer alignment of passenger rights legislation between transport modes.

Likely economic impacts

Under the baseline scenario (option 1) and option 2, additional costs are expected to arise for Railway Undertakings during the progressive phasing out of exemptions which Member States can grant for specific services and journeys under Article 2 of the Regulation. These costs are related to the progressive application of provisions under the Regulation (e.g. compensations for delay, provisions for assistance to persons with disabilities or reduced mobility, etc.). These compliance costs will persist (at least for the recurring ones) when full removal of exemptions takes place in 2024 at the latest.

The other options (option 3 and 4) will also involve the same compliance costs for removal of exemptions. One-off compliance costs will be similar but recurring costs will have to be borne from an earlier stage, and will be higher given that possibly exempted non-domestic services are also concerned.

Under option 4, these costs for RUs would be balanced by a reduction of the overall compensation payments. This could be achieved i.a. by the introduction of a 'force majeure' clause exempting railway undertakings from having to pay compensation in situations where unforeseeable and unavoidable disruptions occur. Alternatively,

<p>other options could include e.g. a reduction of the percentage of the ticket price or higher thresholds (i.e. longer delays) before passengers are entitled to compensation. These options, however, result in a loss for passengers. In order to avoid differences in interpretation and enforcement by NEBs and thus a) an unproportionate reduction in passenger rights and b) an unequal treatment of railway undertakings depending on the Member State where they are operating, situations which would exempt RUs from having to pay compensation would need to be clearly and narrowly defined.³¹ This is also necessary in order to avoid increased legal litigation which could cause additional costs for RUs and passengers.</p> <p>Option 4 also implies further additional costs for the railway industry, which will arise from training obligations to provide assistance to PRM travellers as well as provisions to improve service accessibility. However, PRM assistance is already required under national legislation in some Member States. Some costs will be created for the industry by requirements for contingency planning and complaint handling.</p> <p>Finally, it will be investigated in the impact assessment whether significant economic benefits (or costs for other transport modes) arise from modal shift (expected to remain marginal).</p>
<p>Likely social impacts</p> <p>In the case of no EU policy change (option 1), passengers will continue to experience an inconsistent level of protection of their rights as rail passengers. However, some social benefits should be reaped from the progressive phasing out of exemptions on domestic long distance services until 2024.</p> <p>A direct positive social impact is expected from options 2, 3 and 4. These initiatives will enhance the protection of passengers' rights through better enforcement of passenger rights, and will consequently increase the welfare of passengers as well. The effect under all three options would be positive notably for passengers with disabilities or reduced mobility (provision of assistance, training requirements for assistance providers) and will enhance their inclusion in society through increased mobility. The removal of exemptions under options 3 and 4 would bring social benefits earlier and on additional services that are expected to be quantified in the study.</p>
<p>Likely environmental impacts</p> <p>No significant environmental impact is expected. However, the impact assessment will examine the impact the minimum quality standards set for passenger rights under this Regulation may have on modal shift and how this may affect the environment.</p>
<p>Likely impacts on simplification and/or administrative burden</p> <p>The phasing out and removal of exemptions is likely to increase administrative burden for railway undertakings. Under options 1 (baseline scenario) and 2, currently exempted domestic services are concerned starting from the phasing out of the exemption, while under options 3 and 4, also other exempted services (under Article 2 (5) and (6) of the Regulation) will have to bear this burden. With the reduction of exemptions, NEBs will have to enforce the Regulation on more services/railway undertakings.</p> <p>Under Option 4, NEBs may have to deal with interpretation issues in individual cases of 'force majeure'.</p>
<p>Likely impacts on SMEs</p> <p>The impacts on the RUs that belong to this category will be examined in the impact assessment.</p>
<p>Likely impacts on competitiveness and innovation</p> <p>Options 2 and 3 are expected to increase fair competitiveness of RUs among each other by harmonising application and enforcement of the Regulation in all EU Member States. Option 4 is expected in addition to contribute positively to the competitiveness of RUs with other modes of transport. This should stimulate the competitiveness of the railway sector as a whole.</p>
<p>Likely impacts on public administrations</p> <p>A direct impact is expected for those public administrations who are National Enforcement Bodies (NEBs)</p>

³¹ See e.g. definition of extraordinary circumstances in Recital 17 of Regulation (EU) No. 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No. 2006/2004, OJ L 334 p. 1

through the clarification of their roles and responsibilities. Currently, the roles of NEBs are not clearly defined in the Regulation and there is a lack of clear rules and deadlines for complaint handling and cooperation among NEBs in cross-border issues. The impact assessment will need to assess the cost for NEBs notably also in connection with a potential clause on 'force majeure' and related interpretation issues.

Options 2, 3 and 4 will clarify and strengthen the roles and competences of the NEBs. However, with some new obligations notably under option 3 (e.g. reporting on complaint handling), increased enforcement measures and better access to sanctions, the workload will increase, and additional staff might be required.

Reinforced rights and better awareness of passengers might also lead to an increase in complaints to NEBs.

Likely impacts on third countries, international trade or investment

No specific impacts are expected on third countries. However, the investors from third countries who will invest in RU are expected to be impacted to the same extent as EU stakeholders as they will have to comply with the new rules.