

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	Rights of passengers in multimodal transport		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG MOVE UNIT B.5	DATE OF ROADMAP	22/12/2016
LIKELY TYPE OF INITIATIVE	Legislative Proposal		
INDICATIVE PLANNING	4th quarter 2018		
ADDITIONAL INFORMATION	<p><b>This Inception Impact Assessment aims to inform stakeholders about the Commission's work in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options. The Inception Impact Assessment is provided for information purposes only and its content may change. This Inception Impact Assessment does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content.</b></p>		

### A. Context, Problem definition and Subsidiarity Check

#### Context

European passenger rights legislation has been introduced in the air, rail, waterborne and bus/coach sectors<sup>1</sup>. Currently, the positive effects of existing passenger rights legislation are limited to the extent that they apply independently to each individual transport mode under a single contract of carriage. Hence, when a journey involves multimodal transport (i.e. when different modes of transport are used by a passenger one after the other to complete one journey), passenger rights cannot be guaranteed when an event occurring during one transport segment affects the following one if the latter segment is operated with another mode of transport.

This initiative to address passenger rights in multimodal transport falls under the EU's transport policy. It is linked with President Juncker's following priorities: (a) Deeper and Fairer Internal Market (strengthen consumer protection), (b) Area of Fundamental Rights (ensure that persons with disabilities are not discriminated when using multimodal transport) (c) Energy Union and Climate (incentivise the use of collective transport instead of private cars and an optimal modal combination, thus contribute to decarbonisation). The European Parliament too called for a proposal covering multimodal journeys with clear and transparent protection of passengers' rights in the multimodal context taking account of the specific characteristics of each transport mode, and integrated multimodal ticketing<sup>2</sup>.

In its Communication on passenger rights in all transport modes (2011)<sup>3</sup>, the Commission acknowledged that, as multimodal transport becomes a reality through for example the integration of carrier contracts, the legislative framework for passenger rights will need to be adapted to tackle the issue of disruption at connecting points in a multimodal journey. A first step in that direction was taken by the Commission in its draft amendment to Regulation (EC) No 261/2004<sup>4</sup> which proposes that where a part of the journey is carried out, in accordance with a contract of carriage, by another mode of transport, the Regulation would apply for the whole journey and the part of the journey carried out by another mode of transport would be considered as a connecting flight. This provision was prompted by recognition of changes in the market which saw more and more tickets sold including two or

<sup>1</sup> The EU legislation on passenger rights applies to the following single modes of transport:

- Air transport: Regulation (EC) No. 261/2004 and proposal COM (2013) 130 for its amendment, Regulation (EC) No. 2027/97 (as amended by Regulation (EC) No 889/2002) and Regulation (EC) No. 1107/2006;
- Rail transport: Regulation (EC) No. 1371/2007;
- Sea and inland waterway: Regulation (EU) No. 1177/2010;
- Bus and Coach transport: Regulation (EU) No. 181/2011.

<sup>2</sup> European Parliament resolution of 7 July 2015 on delivering multimodal integrated ticketing in Europe (2014/2244(INI)).

<sup>3</sup> Communication from the Commission to European Parliament and the Council "A European vision for Passengers: Communication on Passenger Rights in all transport modes" (COM(2011) 898 final).

<sup>4</sup> COM(2013) 130 final of 13.3.2013.

more segments operated with different transport modes.

Finally, in its Interpretative Guidelines on the Rail Passenger Rights Regulation<sup>5</sup> and on the Air Passenger Rights Regulations<sup>6</sup> the Commission recognised that currently problems arising from the use of more than one mode of transport are not covered under any EU legislation on passenger rights.

## **Problems the initiative aims to tackle**

### **Nature of the problem**

As there is no EU legislative framework in place regarding the protection of passengers' rights in a multimodal context, there has been no ex-post analysis conducted in this regard. Two detailed ex-post evaluations were carried out regarding the air<sup>7</sup> and the rail<sup>8</sup> passenger rights legislations. The EU regulations on waterborne and bus and coach passenger rights are too recent to be evaluated in such a detail; however the Commission has already submitted reports to the EP and Council about the first experiences of stakeholders and national authorities with their application<sup>9</sup>.

Passengers using multimodal services suffer from inadequate protection of their rights in particular in the following cases:

- If as a result of a transport disruption in the context of a single contract of carriage, the passenger misses the connecting service provided by another mode of transport, his or her rights are not adequately protected. In the case for instance where a passenger misses a flight because of a delayed train service, he or she would only benefit from the rights to compensation and assistance granted in relation to the rail segment, and then only if the passenger was delayed by more than 60 minutes.  
An overview of the general contractual terms at the homepages of the companies offering multimodal products seems to indicate that companies (and their cooperating partners) limit their responsibility in case of missed connections to carrying the passenger to the final destination with the next flight, but for example passengers are not entitled to care and assistance at connecting points as set out by each of the modal Regulations.
- The passengers cannot seek redress from the national authorities (the so-called National Enforcement Bodies 'NEBs') which are responsible to enforce the existing passenger rights regulations because those authorities do not have a legal basis to deal with complaints related to multimodal journeys on the basis of the existing passenger rights legislation.
- Assistance is not guaranteed for passengers with disabilities using multimodal products at the connecting points: on the basis of the current modal passenger right EU legislation, carriers are only obliged to provide assistance in relation with their own modal services, but not during the multimodal connection. Only some of the airlines indicate on their homepages that they provide assistance throughout the entire journey. The lack of assistance may impede passengers with disabilities or reduced mobility to undertake multimodal journeys.
- For situations involving two or more different contracts of transport, in which case, the traveller himself or herself combines the different modes of transport for his or her journey, the current EU passenger rights legislation does not always allow for the passenger to obtain information and seek easily redress in case of damage for a missed connection because of a delayed service even if the carrier is responsible for the delay and the passenger has chosen the connecting time with the utmost care.

### **Magnitude and EU dimension of the problem**

As mentioned above, a distinction has to be made between multimodal transport services sold under a single contract of carriage and those which are combined by the traveller, on his or her own initiative, on the basis of separate contracts concluded with individual carriers.

Currently accurate data and statistics on the number of incidents occurring during multimodal transport services operated in the context of a single contract of carriage or two or more separated contracts and thus the number of passengers affected within Europe are not available for neither categories. However the following evidence on the market could be gathered: the latter category has developed rapidly thanks to the spreading of new IT tools (booking on line) which has sparked a fast growing increase of consumers' demand for such products and for the former category, the offer of multimodal products by transport operators is steadily increasing. Multimodal products are generally based on cooperation agreements between an airline and a high-speed rail operator allowing passengers to combine different modes of transport for their long distance journeys. Several airline companies, such as Lufthansa, Air France, Iberia, KLM, Austrian Airlines, Finnair as well as railways (e.g. SNCF,

<sup>5</sup> OJ C 220, 4.7.2015, p.1.

<sup>6</sup> OJ C 214, 15.6.2016, p.5.

<sup>7</sup> [http://ec.europa.eu/transport/facts-fundings/evaluations/doc/2010\\_air\\_passenger\\_rights.pdf](http://ec.europa.eu/transport/facts-fundings/evaluations/doc/2010_air_passenger_rights.pdf)

<sup>8</sup> <http://ec.europa.eu/transport/themes/passengers/studies/doc/2012-07-evaluation-regulation-1371-2007.pdf>

<sup>9</sup> <http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-274-EN-F1-1.pdf> and [http://ec.europa.eu/transport/facts-fundings/evaluations/doc/2010\\_air\\_passenger\\_rights.pdf](http://ec.europa.eu/transport/facts-fundings/evaluations/doc/2010_air_passenger_rights.pdf) .wrong link, add a new link in a few weeks when the bus/coach report is adopted

DB, RENFE, VR) offer such products.

The Air-Rail transport combination is well-known. However, other modal combinations are developing such as Air-Coach (e.g. Iberia and Alsa launched an air/coach product where passengers of different Spanish cities are transported to Madrid Barajas airport by coach and they continue their journey by a flight) or Rail-Sea (e.g. the SailRail product of Irish Rail, UK railways and ferry companies providing the combination of rail and maritime services between Ireland and the UK). Also, several rail companies provide coach services which are accessible with a train ticket.

Other, less intensive forms of cooperation between operators include those where carriers offer promotional tariffs to passengers using the services of another carrier. Airlines often agree with railways or coach operators that the railway or coach operator will carry the airline's passengers to/from the airport at the day of the flight at promotional tariffs<sup>10</sup>. The airlines advertise such rail or coach services at their homepages.

A Special Study published by Eurobarometer<sup>11</sup> showed that at national level, close to one respondent in ten had used a single ticket combining different modes of transport (9%), either once (5%) or several times (4%) in the last 12 months. The study also showed large disparities between the Member States as respondents were most likely to have used a single ticket combining different modes of transport during the last 12 months in Sweden (21%), Austria (19%) and Germany (18%).

The general terms and conditions or other contractual arrangements regarding multimodal products offered by transport companies do not seem to include any specific provisions addressing issues of passenger rights in a multimodal context as described above. If such provisions exist in private arrangements between the companies involved they have not been made publicly available and therefore passengers are not aware of their rights, if any.

Few data are available concerning the number of passengers' complaints related to multimodal journeys. This is due to several factors such as the fact that the market of multimodal products is still an emerging market, the awareness by the passenger that there are currently no rules applicable in such situation and thus no added value to pursue a complaint and finally the lack of clarity on who is the responsible operator which might be a deterrent for passengers to complain. However, several national authorities and consumer organisations reported to have been faced with complaints from passengers who found themselves left without protection in the course of a journey involving different means of transport. Complaints of passengers combining themselves different modes are on the opposite frequent<sup>12</sup>.

As the first step, the impact assessment will further explore the scale and the scope of the problem. Based on this evidence the Commission will draw conclusions regarding a possible follow-up including the decision if an EU level initiative may or may not be necessary and what will be the scope of such initiatives (see section D for further details and according to which a new legislative proposal at EU level is only one possibility). In any case, the Commission does not plan at this stage to include urban and local transport within this initiative.

### **Subsidiarity check (and 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 (Article 91 TFEU). The Union has also the competence to promote the interests of consumers and ensuring a high level of consumer protection (Article 169 TFEU). This initiative, which will not necessarily take the form of a legislative act, is aimed to complement existing EU regulations on passenger rights in all modes of transport as regards multimodal journeys which are currently not covered by any EU passenger rights legislation.

Plenty of multimodal products presented above involve a medium or long-haul flight which makes them almost automatically cross-border transportation services. Hence, national legislations would also not allow tackling cross-border journeys appropriately as a single journey would fall under two or more jurisdictions. In addition, there is a need, for competition reasons, to subject all EU transport operators to the same passenger rights rules in the EU (see the existing EU modal rules). 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 will be further assessed in the course of the impact assessment.

## **B. Objectives and Policy options**

The initiative will explore the need to complete the existing EU legislative framework in the field of passenger rights. The scope of the initiative is limited to those transport sectors in which passenger rights legislations apply (see footnote 1 above). In principle, as already mentioned, urban and other local transport services would not be

<sup>10</sup> E.g. the "Rail & Fly" product of TAP Portugal and CP Comboios de Portugal allowing passengers to reach the airport from any the train stations in Portugal.

<sup>11</sup> Special Eurobarometer 420, PASSENGER RIGHTS REPORT (Fieldwork: September 2014, Publication: December 2014)

<sup>12</sup> 10% of the queries that EDCC (Europe Direct Contact Centre) received from citizens between 2013 and 2016 on bus and coach passenger rights are related to missed flights due to the late arrival of the coach service to the airport. EDCC is a service financed by the Commission which provides information free of charge for citizens and businesses on EU law.

covered by this initiative, except when such transport activities fall under the scope of existing EU legislation on passenger rights.

The overall objective of this initiative is to ensure an adequate level of protection to passengers when using a combination of different transport modes during their journeys in the EU.

### **Baseline scenario**

Under the baseline scenario, the existing rules on passenger rights and obligations remain unchanged and no further action at EU level is taken. This means that the issues identified in Section "A" above would not be addressed.

Such scenario would be predicated on the recognition of the fact that the magnitude of the problems linked to multimodal journeys is still limited at this point in time, even though it is expected to continue to grow in the future.

For example, findings of a study led by the French "Ministère de l'Ecologie, du Développement durable et de l'Energie" in 2014 show that air/rail intermodality in Paris CDG airport has grown steadily over the years from 2,7 in 2011 to 3,3 million passengers in 2014. Indeed, even though the market of multimodal passenger transportation currently concerns a fairly limited share of journeys in total passenger transportation, this share is steadily growing.

Another study<sup>13</sup> points out that if one considers the share of multimodal journeys in distance travelled (trip-kilometres), then multimodal long distance trips represent 20% of the long-distance trip-kilometres and 6% of total amount of kilometres travelled in Europe<sup>14</sup>.

In addition, new multi-modal products appeared in the market: Lufthansa launched its so-called "Lufthansa Express products" combining flights with coach and other modes connecting not only to Frankfurt airport but also to Munich airport.

Finally, the rapid development of internet has changed the way in which consumers organise their holidays, having led to different ways in which traders offer a combination of travel services. As the demand for online products will continue to diversify, it is likely that online retailers will in the future also sell travel services combining several modes of transport under separate contracts, which is not yet the case today.

As one could reasonably conclude that multimodal transport is poised to grow in the coming years, all policy options to be examined in the impact assessment will be assessed against this situation where passengers' rights and obligations remain unchanged and no further action at EU level is taken.

To achieve the above-mentioned objectives several policy options are considered:

### **Option 1 – Self-regulation ("Codes of good conduct" or "codes of good practices")**

Transport companies selling multimodal products, whether under a single contract or not, might agree on a common set of recommended practices and implement them on a voluntary basis. Practical and legal guidance as well as standardized clauses could be developed jointly by the European-level representatives of the transport sectors concerned and made available to the industry to support and facilitate the development in a more harmonised way of multimodal agreements between transport operators. The Commission's role would be to promote the adoption of such codes of good conducts and trigger industry initiative towards achieving that goal. Such fostering measures could include the organisation of conferences, study research, meetings with industry, industry dialogue facilitator, etc.

The Commission would also undertake to monitor the implementation of such codes of good conduct and address further recommendations to the industry if deemed necessary.

### **Option 2 – Soft laws, guidance and recommendations**

The Commission could promote via guidance or recommendations measures aimed at addressing issues identified in Section A above. The type of recommendations would depend on the results of the impact assessment and the measures identified to mitigate the effects of incidents occurring during multimodal transport services. For example, if a passenger buys a flight ticket but the first leg of the journey is a rail service, the Commission guidance would clarify to which extent specific provisions of the Air Passenger Rights Regulation or of the Rail Passenger Rights Regulation would apply in case of a transport disruption as outlined in Section A above.

### **Option 3 – New legislative instrument defining the respective scope of application of modal passenger rights Regulations in case of multimodal transport**

This option encompasses the adoption of a legislative measure aiming at specifying which of existing modal passenger rights regulations would apply in case of incidents occurring during multimodal transport. For example, if a passenger buys a flight ticket but the first leg of the journey is a rail service, the new legislative measure would establish whether the Air Passenger Rights Regulation or the Rail Passenger Rights Regulation would apply in case of a transport disruption.

<sup>13</sup> Interconnect project, 7th EU Framework Programme project.

<sup>14</sup> Ulled, A., Biosca, O., Larrea, E. and Franco, N., 2012. Impacts of improving interconnectivity between local and long-distance transport networks in Europe. *Procedia-Social and Behavioral Sciences*, 48(2012)2789-2803.



#### **Option 4– New rules specific to multimodal journeys (legislative instrument)**

This option considers the adoption of a comprehensive set of rules (including, as a sub-option, specific provisions to address some aspects of multimodal products involving two or more separated contracts of transport) going beyond the provisions adopted under Option 3.

In the case of single contracts of transport, it could address in particular the issues concerning passengers' right to information before and during the journey and data exchange between operators, rights of persons with disabilities and reduced mobility, the obligation of carriers and terminal managing bodies in case of service disruption (liability in respect of the carriage of passengers and their luggage, assistance and compensation), responsibility for complaint handling.

### **C. Preliminary Assessment of Expected Impacts**

#### **Likely economic impacts**

The transport sector should be the one mostly affected by this initiative, but others, such as the tourism sector might also be affected. The transport sector is composed of companies with different size, including a significant number of Small and Medium Enterprises (SME's) mostly in the coach sector, but also very large companies (e.g. railways, airlines, ferry companies).

Possible negative effects such as disincentives for companies to develop multimodal products because of new obligations and potentially complex liability-sharing problems between the operators involved might be possible, particularly for SME's and should be examined. Possible positive effects result from an increase in the demand for the services. Indeed, offering a better protection to passengers should in turn incentivise the use of multimodal products, and hence have positive effects on the growth of this particular segment of passenger transport (increasing demand for multimodal products as consumers would feel reassured that in case of disruption they would not be left without protection).

By 2050<sup>15</sup>, passenger transport is expected to grow by more than 50%. As the transport infrastructure is not expected to develop with the same speed, it is crucial to ensure that it is used in the most efficient way, exploiting the benefits of multimodality. If a higher level of passenger protection results in a higher demand for multimodal products, carriers will be inclined to expand the product offer, including for passengers with reduced mobility or disabilities, and passengers will be able to organise their door-to-door trip better and choose the most economic options (time and money wise).

Therefore, such initiative should contribute to the objective of a deeper and fairer economic Union, improve the rights of consumers and of those with disabilities or reduced mobility and deepen the achievement of the single market by fostering cross border transport.

The impact assessment will assess all potential benefits to passengers in terms of quality and offer of services as well all possible negative effects to the market (see above).

#### **Likely social impacts**

This initiative is expected to increase consumer welfare as passengers will be able to enjoy the wider choice of transport service with a better protection if an incident occurs during the multimodal journey.

It should have positive impact in particular for persons with disabilities and reduced mobility, because it would provide them access to multimodal transport and services tailored to their specific needs.

#### **Likely environmental impacts**

Although this is still an emerging market, the limited data available indicates that it is growing fast and should continue to do so in the foreseeable future. For example in the field of air transport, multimodal connections allows conventional airlines to gain more passengers in their hub's catchment area and there is a growing need to replace shorter haul flights with high-speed rail due to the capacity limit of major EU airports. Consumers' behavioural changes regarding travel planning facilitated by the increase flexibility offered by the internet also contribute to the higher demand for multimodal transport solutions. The initiative should therefore contribute to decarbonisation by ensuring an optimal modal combination and decentivising the use of private cars.

#### **Likely impacts on fundamental rights**

The planned measures are expected to have a positive impact on fundamental rights, in terms of an enhanced protection for passengers with disabilities using multimodal transport products and an enhanced consumer protection. On the basis of the current modal passenger right EU legislation, carriers are only obliged to provide assistance to passengers with disabilities in relation with the use of their own modal services, but not during the multimodal connection, hence, assistance is not guaranteed at the connecting points. The different transport

<sup>15</sup> According to the Commission's Communication concerning an action plan for airport capacity, efficiency and safety in Europe (2007) already by 2025 around 60 airports in the EU will be heavily congested and the top 20 airports will be saturated at least 8-10 hours per day See: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006DC0819&from=EN>

<p>modes are often not located close to each other at a multi-modal terminal, consequently, the lack of assistance impedes passengers with disabilities or reduced mobility to undertake multimodal journeys. The initiative should contribute to the objective of achieving better accessibility for passengers with disabilities or reduced mobility by facilitating their travelling conditions throughout multimodal journeys.</p>
<p><b>Likely impacts on simplification and/or administrative burden</b></p>
<p>This initiative should allow the complaint handling procedures to be simplified through the clarification of the responsibilities between the different NEBs in case of incidents occurring during multimodal transport services (see Section A above) and the improvement of their roles. Should the legislative framework remain unchanged, unclear rules would not allow addressing more frequent complaints from passengers who are not aware whether they have rights under the existing modal passenger rights legislations. The impact through an increased administrative burden upon operators will be carefully studied.</p>
<p style="text-align: center;"><b>D. Data Collection and Better Regulation Instruments</b></p>
<p><b>Impact assessment</b></p>
<p>An impact assessment is necessary for the Commission to take an informed decision. In the course of the impact assessment exercise, the scale of the problem will be carefully examined and it will be assessed whether an EU initiative is needed. The impact assessment shall examine in particular whether a potential initiative should address issues related to multi-modal travelling under a single contract and/or under separate contracts.</p> <p>Moreover, the objective of an increased protection of the passengers will be assessed against the economic and technical constraints of the transport industry. It must be ensured that the increased level of passenger rights will not constitute a disproportionate burden for the industry and/or public administration.</p> <p>An Inter-service Steering Group, composed of representatives from all relevant Commission Directorates-General, will assist in reviewing the main milestones of the process, in particular in reviewing the consultation documents and main deliverables/tender specifications of the support study. Moreover, it will be consulted on the main elements of the impact assessment and it will contribute to the drafts of the impact assessment report.</p> <p>The impact assessment support study should be launched in 2016.</p>
<p><b>Data collection</b></p>
<p>Data available about the size of this market is currently limited. Additional data will be gathered through desk and field research activities, including the mandatory public consultation and stakeholders' consultations (see below). The following organizations will be contacted to gather information: modal national enforcement bodies, organizations representing passengers (including organisations of persons with disability and reduced mobility) and other consumer organisations and consumer centres, transport and tourism companies. The Commission will also launch an external study to support the impact assessment process.</p>
<p><b>Consultation strategy</b></p>
<p>A consultation strategy will be prepared with twofold objectives:</p> <ul style="list-style-type: none"> <li>- To provide the wide public and stakeholders an opportunity to express their views on all elements related to the passenger's rights in case of multimodal travel, and express their views and positions regarding the key elements of the impact assessment</li> <li>- To gather specialised input (data and factual information, expert views) from the public authorities, transport operators, infrastructure providers, ticketing, sales and travel agencies, representative organisations of consumers and passengers,... on their views and positions regarding the potential impacts of the various measures under impact assessment</li> </ul> <p>The mains stakeholders targeted by the consultation will be transport operators (airlines, railway undertakings, waterborne passenger shipping companies, bus and coach companies) and their associations, terminal operators, infrastructure managers, passengers (notably passengers with disability or reduced mobility) and their associations, consumer and passenger organizations, public authorities (notably Member States ministries in charge of transport and national authorities responsible for the enforcement of passenger rights, including EEA countries and Switzerland), ticket vendors, travel agencies, tour operators and their organisations, employees and their associations, organisation representing environmental / climate stakeholders and citizens, academia. researchers specialising in multimodal passenger transport</p> <p>The consultation activities planned are:</p> <ul style="list-style-type: none"> <li>• An open public consultation in the form of on-line questionnaire, available for at least 12 weeks on Your Voice in Europe portal: It will focus on the experience of the travelling public and inquire about their views on the necessity of the EU intervention;</li> <li>• A targeted consultation of professional stakeholders on the issues related to the impact assessment in the form of a survey; the survey will be part of the external support study. In addition, the contractor will be requested to hold bilateral meetings with a limited number of key operators involved in multimodal transport services as shortly</li> </ul>

as possible after the launch of the study.

- A stakeholder meeting will be held before the finalisation of the external support study, to which key operators and stakeholders will be invited with the aim to validate the findings of the external study and the possible options.

At the end of the consultation process, a synopsis report will be published on the consultation website and, added as an annex to the impact assessment/evaluation report. It will summarize all the consultation activities performed and the outcome of the consultation. This report will be available in all EU languages.

Dates for consultations will also be included in the Commissions' Consultation Planning Calendar and be published on 'Your Voice in Europe'

**Will an Implementation plan be established?**

If this initiative concerns the adoption of a new Regulation, it would be directly applicable in Member States and thus would not need to be transposed into national law. However, if the outcome of the impact assessment confirms the need for a legislative action in the form of a Directive instead, which might raise implementation issues for Member States and stakeholders, an implementation plan will be envisaged.