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*The European Consumers' Organisation*

## **BEUC comments**

### **International Rail Passenger's Rights and Obligations**

#### **Commission's consultation document<sup>1</sup>**

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<sup>1</sup> Consultation paper of DG TREN on International Rail passengers' rights and obligations, October 2002.

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Den Europæiske Forbrugerorganisation  
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## I. GENERAL COMMENTS

BEUC welcomes the opportunity to comment on the Commission's consultation paper on International Rail Passengers' Rights and Obligations.

Due to the short period, which was allocated, for submitting contributions to the Commission, our comments will focus on the key aspects for consumers.

As underlined by the Commission in its consultation document<sup>2</sup>, it is essential that passengers can expect basic consumer rights to be protected in the railway sector and that increased competition will not lead to a weakening of the position of the passenger. The problem is not only the scope of passenger's rights but also their enforcement.

We strongly believe that legislation at the EU level is the only way to provide clear, legally enforceable levels of passenger protection in the passengers/rail operator relationship and removal of legal uncertainty. We therefore support a legislative proposal regarding rail passengers' rights.

Self-regulatory initiatives are welcome but they should never aim at replacing legislation. It is clear that any self-regulatory initiative in the area of rail transport, regardless if it takes the form of a charter or a code of conduct, should follow up public interest objectives. It should supplement legislation and help to make consumers be aware of the rights and obligations that they have. Hence it is obvious, that the setting up, operating and enforcing of any self-regulatory instrument cannot be considered a purely private business initiative. All interested parties should be involved in that exercise and, what it is more important, on an equal footing.

*There is no reason that important service sectors shall rely on codes of conduct, while strict legislation governs the product sectors. This does not only concern contract law, but also liability legislation.*

Experience in the area of air transport<sup>3</sup> shows that "industry-only" mechanisms do not work properly and cannot be considered as a tool for replacing legislation. Effective protection of passengers requires uniform rules set up by Community legislation. Voluntary commitments are non-legally binding. However, there is a need for effective legal redress if rights and obligations are not respected. Because of the voluntary nature of non-binding commitments, passengers can only rely on the good will of the rail companies and do not dispose of any means to force rail companies to comply with these commitments. They may even not at all implement their code, because they do not have to.

We therefore very much urge the Commission to put forward soon a legislative proposal dealing with the rights and obligations of rail passengers.

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<sup>2</sup> Page 5.

<sup>3</sup> ECAC/EU dialogue with the European air transport industry, Lisbon 2001.

## II. SPECIFIC COMMENTS

An effective implementation of Article 153 of the EC Treaty in the field of transport is necessary. All relevant Community legislation on consumer protection should apply to the rail sector. Furthermore, exceptions for the rail sector, such as those included in the 93/13/EC directive on unfair contract terms<sup>4</sup> or in the 97/7/EC directive on distance selling<sup>5</sup> are not justified anymore and need to be re-considered.

As previously underlined our comments will focus on three aspects which are central to the protection of consumers:

- the information provided to consumers
- consumer redress
- the enforcement of rights and obligations

All these aspects must be sufficiently considered in a future legislative proposal as regards rail passengers' rights and obligations.

### 2.1. Information provided to consumers

Consumers must be provided with information in a clear manner, using language, which is easily understandable, in respect of the various elements of the rail transport system and its general service.

As already underlined by the Commission in its consultation document<sup>6</sup>, consumers face problems as regards the availability of information before the rail journey. Complaints received by consumer organisations show that the information available is poor and the quality of services provided by railways operators are inadequate. Rail passengers complain mainly about the quality of the information as regards prices, travel conditions and restrictions, ticketing and reservation systems, information facilities on board, accessibility of trains for disabled people, cancellations, disruptions or works on the tracks. Factual evidence shows that the quality of information available to passengers should be improved.

Minimum requirements as regards the information to be provided to consumers should be included in a legislative proposal at the EU level. Rail transport operators should provide passengers with precise information on the features of services, particularly with regard to the general conditions of access to services, prices, quality standards and quality levels and, more particularly, details of the systems for handling complaints and compensation. Information available should be reliable, consistent and updated on a regular basis.

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<sup>4</sup> Council Directive 93/13/EEC of 5<sup>th</sup> April 1993 on unfair terms in Consumer contracts.

<sup>5</sup> Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the Protection of Consumers in respect of Distance Contracts.

<sup>6</sup> Page 19.

Such information is essential not only for passengers but also for effective competition between train operators and as well between the railway and other modes of transport (car, plane).

As previously stressed, consumers complain quite often about the quality of the services provided by rail operators. In this context, we believe that the work done by the standardization bodies<sup>7</sup> as regards standard quality requirement should be taken into consideration when specifying safety and quality conditions that services should comply with.

The disclosure of this information must be closely monitored to ensure that consumers are not being misled and can make an informed choice.

Clear, accurate and comprehensive information is essential to the development of a successful railway network.

As a consequence of ordinary contract law, the operator is therefore responsible if he does not fulfil the terms of this contract.

A clear regime of responsibility of the rail operator (and any other parties involved, e.g. intermodality) is of particular importance. This is extremely important in case of cross-border services and intermodal transport chains. The consumer should be able to address his complaint against the party he has the contract with, mainly the rail operator. A clear-defined regime of liability should be established. The consumer should be able to identify who is the party to whom he has to address his complaint.

Consumers should be fully compensated from the inconvenience they have suffered from the party they have a contract with. We believe that a joint-liability regime would be the best solution for the passenger. All parties involved in the journey should share of the responsibility, so that the passenger does not end up being sent from one operator to another, each operator trying to escape from its responsibilities.

## **2.2. Consumer redress**

We are convinced that problems encountered by consumers in the area of rail transport are larger than the amount of complaints seems to indicate. This is not only because consumers lack information and in a majority of cases passengers are not aware of their rights, but as well because the sums involved rarely justify court actions for redress.

We consider that detailed provisions on the handling of consumer complaints should be a key-point when proposing legislation in the area of rail transport. This is of particular relevance in case of cross-border consumer complaints.

Rail companies should have in place an in-house complaint system, which should be fair, effective, transparent and confidential. Complaints should be acknowledged within a short period of time and the consumer should be advised on the time-scale for dealing with the complaint.

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When the consumer remains dissatisfied, rail companies should provide information on the alternative dispute resolution system that they must adhere to. Any ADR systems should fully comply with the two Commissions' Recommendation on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes<sup>8</sup>.

Despite the fact that the possibility for consumers to go to courts is always open, this possibility is often not a realistic option for consumers. Judicial procedures are long and costly (in money and in time) for consumers and in practice consumers do not go to courts at the first instance. We therefore believe that quick, efficient, easy and non-expensive extra-judicial procedures for solving consumer complaints should be put in place. Furthermore, it would be useful to refer to the EU standardized complaint form.

We strongly believe that consumer organizations should be entitled to seek redress on behalf of consumers affected under the regime established by the 1998 Directive on Injunctions.

All these measures will encourage operators to respond to the existing standards and will raise the average performance of railway transport in terms of reliability and regularity.

It is to be remembered that consumers enter into a contract with the operator when buying their rail ticket.

Quick and effective systems for reimbursing or compensating the consumer affected should be in place. Procedures for getting compensation must be simple and undemanding for the consumer.

As already existing in the area of air transport, a possibility for passengers to cancel their journey before the scheduled service and due to *force majeure* should be foreseen. Refunds should be a matter of the commercial policy of railway operators and full refunds should be processed in an easy and transparent way.

Delays and cancellations should follow a similar approach to that existing in the area of air transport<sup>9</sup>.

### **2.3. Enforcement of rights and obligations**

We consider that there is a need for an efficient and regular follow-up procedure in order to enforce and monitor continuing respect of rail passengers' rights and obligations.

We consider that it is necessary for the performance of rail transport systems to be verified by independent bodies at regular intervals and in a systematic manner. In addition, we consider that it is absolutely essential that the results of these verification procedures should be published at regular intervals (annually) and would underline the importance of these publications being made accessible to the consumer. Consumer organisations must be involved in the process of monitoring the performance of the various public transport systems.

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<sup>8</sup> Commission's Recommendation 98/257/EEC on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes.

Commission's Recommendation 2001/310/EEC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes.

<sup>9</sup> Proposal for a Regulation establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights (COM (2001) 784 final and Amended proposal (COM (2002) 717 final).

These measures will encourage operators to comply with standards and will improve the average performance of public transport systems.

Any legislative proposal at the EU level should deal with the question of the bodies responsible for enforcement of legislation and investigation of consumer complaints within the Internal Market.

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