

Memo

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Your doc. 4 October 2002
Our CCwo18120201
Subject Consultation document passenger rights

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Utrecht, 18 December 2002

**NS Comments on Consultation paper of DG Tren on International Rail
Passengers Rights and Obligations**

SUMMARY

1. NS prefers an approach in which railways based on the voluntary CER Passenger Charter discuss improvements in international rail passenger services with relevant parties.
 2. If the Commission proceeds in the legislative approach, some topics could, other topics should not be part of a legislative approach:
 - Could be part of legislative approach:
 - o consultation with consumer organisations, including some monitoring;
 - o access for PRM's (see however also the interoperability dossier with an announced TSI on this topic)
 - o public security
 - Should not be part of a legislative approach:
 - o information (+ conditions) on ticket
 - o information provision, reservation, distribution of tickets
 - o quality standards:
 - o services for bicycles and luggage
 - o intermodality
 - o Complaint handling, liability and dispute settlement
 - o Compensations for delay
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Before making specific comments and recommendations we would like to stress that we welcome any proposals that are a cost effective way of improving the quality of service offered both to international and

domestic rail passengers, and we accept that in many areas there is considerable scope for improvement. Our comments need to be viewed in the light that they are intended to be a constructive and practical contribution to the debate on how to achieve these objectives, since we feel that in some areas the Commission's proposals would not achieve the objectives specified, and in some cases would be unworkable and/or impossibly expensive and therefore unrealistic. We need in close cooperation to adopt those measures that are feasible, practical, affordable and will lead to real improvements in the quality offered to passengers, and to growth in traffic.

Before answering the specific questions posed in the Consultation Paper we would therefore like to deal with the more general topics of the scope of, and justification for, the proposals, and suggest an alternative approach, since in some cases we have grave concerns concerning the approach taken.

SCOPE

The consultation document proposes in Section 2 (page 13) the following scope for the proposed regulation:

- The regulation will cover 'all services provided by railway undertakings before, during and after an international journey' and
- will cover 'domestic and international passengers on international services'.

This implies a substantial change in the way railways have dealt with this issue to date, and we do not think the Commission realises the practical implications of this new approach. At present, holding an international ticket defines the extent to which a passenger is covered by international regulations for rail passenger transport. For example, if a passenger has an international ticket from Paris to Utrecht and buys at Utrecht a local ticket to Amersfoort he will be treated as an international passenger from Paris to Utrecht (using an international train from Paris to Rotterdam and a national train from Rotterdam to Utrecht) and from Utrecht to Amersfoort he will be treated as a national passenger, even if he uses an international train for this journey. The definition of an international trip has been fixed in the CIV after long discussions. NS doesn't see any new consideration to change this now. NS urges to stick to the existing CIV regulation.

To treat national passengers using international trains as international passengers seems to be in contradiction of our responsibilities to the national, Dutch, state with whom we have a contractual relationship to provide passenger services on the railway network, unless in all cases the international requirements are superior to those for domestic passengers, which again is unrealistic. Our international trains, in particular those from Amsterdam to Brussels, form an integral part of

our national network developed to meet our contractual requirements. To treat these passengers as international passengers will, we fear, be unacceptable both from a legal and operational point of view.

In legal terms the scope of any new regulation will have to be limited to international passengers (defined by the ticket (=contract) they have bought). Since however, the legal conditions for this part of the rail passenger market are already covered by the COTIF agreement between the Member States and other countries, we think that any required changes should be implemented via this existing framework.

JUSTIFICATION

The motive behind this consultation paper is the opinion of the European Commission that the quality of international rail passenger services does not meet customer needs. This opinion is based on a recent study on behalf of DG Tren, on a hearing on this topic in October 2001 and on a number of complaints submitted to DG Tren, inter alia by MEP's, and passengers.

DG Tren gives the following reason to justify the need for legislation and regulation instead of voluntary cooperation:

- The fact that to date railways work in cooperation (not in competition) and are self regulatory (i.e. a monopolistic approach with no intramodal competition or outside regulation)
- The virtual impossibility for passengers to choose between different routes for a given journey
- A small segment of captive users in the regional cross-border market.

We are very surprised that the existing and severe intermodal competition (by car, coach and air) is not mentioned at all. It is in particular this intermodal competition, and the requirement to operate without subsidy for international services, that already demands that railways treat long distance international rail passenger services as a commercial business. Reference to a small market segment of captive users in the very small regional short distance cross border flows does not justify regulation for the much larger and more important long distance rail passenger flows. Such flows are better integrated into local arrangements, otherwise such a journey might involve three types of passengers rights! This leads NS to the conclusion that the justification for regulation of passenger rights in international rail transport is insufficiently proven.

Nevertheless, as stated above, NS agrees with the opinion of DG Tren that a larger role for the railways in the international railway market is needed in the light of a sustainable and integrated Europe. We also agree with DG Tren that improvements could be made particularly on the

regional cross border lines. It is the method that is under discussion, not the objective.

We are happy that the Commission is encouraging railway undertakings to develop voluntary service quality commitments. From our side we are convinced that the recently finalised voluntary CER Passenger Charter, combined with the commitment of structural consultation with consumer organisations, will help to improve the quality level of international rail passenger services in a more flexible, business-like and way, and sooner too, than the heavy hand of legislation would.

For this reason we ask the Commission to postpone legislation in this field until the results of the voluntary passenger charter can be evaluated in, say, two years time.

If the Commission nevertheless decides to proceed with this regulatory approach, NS asks the Commission to take account of the replies we give below to the questions posed in the Consultation Paper. It will show that NS, in the case the Commission proceed with the legislative approach, would like to restrict to scope such a Regulation to these matters that really could be considered as a public interest, not to achieve by self-regulation or market forces.

REPLIES TO THE QUESTIONS

	Questions	Section / Par.
1	<p><i>What are the areas most cost-beneficial measures justifying a Regulation at EU level?</i></p> <p>We understand this question as an invitation to come up with cost/benefit consideration in the questions below.</p>	0
2	<p><i>Should occasional services be excluded from the scope of the regulation if such a service is not a service open to the public?</i></p> <p>Obviously occasional services, not open to the public, should be excluded since they are commercially negotiated contracts. It is not needed to regulate the terms and conditions of two commercial partners beyond the already existing general legislation on contracts.</p>	I / 2
3	<p><i>Should the scope also cover entirely national services or should it be left to the sole competence of the Member States to establish appropriate passenger rights for those services?</i></p> <p>The justification for regulating international passenger services is in particular the lack of intramodal competition.</p>	I / 2

	<p>It's a little bit curious that the Commission comes up with this question and at the same time still dealing with a proposal on public services in which a domestic rail passenger service could be within a regime of open access or within a regime of controlled competition. Both regimes provide for intramodal competition, so the main justification for a regulation for national passenger services is not valid any more. This implies that it is not desirable to have a regulation on passenger rights for domestic traffic.</p>	
4	<p><i>Should consultation of consumer and passengers organisations be regulated? If yes, according to what principles of organisation?</i></p> <p>The railways are convinced of the value to have a consultation of consumer and passenger rights. For this reason CER has included an article on this in a voluntary Passenger Charter on rail passenger services. Whether still regulation is needed seems to NS of less importance.</p> <p>The principle of organisation for this kind of consultation should be worked out in the near future in cooperation between the consumer organisations and the railway sector, respecting the independence of both parties.</p>	I / 3
5	<p><i>What issues should be covered in such an exercise (e.g.: investigation of individual complaints not satisfactorily addressed by the railway undertakings concerned consultation on changes in timetables, fares, conditions of carriage, monitoring of passenger rights, cross-border services, line closures)? Should there be minimum requirements? Should an independent chairperson be appointed to facilitate to consultation process?</i></p> <p>This should include: 1) overall level of services (customer satisfaction), 2) complaints dealing and 3) to what extend the commitments in the voluntary CER Passenger Charter will be met by the railway operators.</p>	I / 3
6	<p><i>Could the set-up of the monitoring scheme contribute to better service quality in international rail passenger transport?</i></p> <p>Yes, provided that all relevant parties are involved and discuss results in a transparent and constructive way. The costs of a monitoring system could be (too) high.</p>	I / 4
7	<p><i>What essential performance indicators are to be measured and disclosed by the railway undertakings?</i></p> <p>In the voluntary CER Passenger Charter the railways commit</p>	I / 4

	<p>themselves to 1) treat with complaints, count different categories of complaints and report on it 2) customer satisfaction and 3) punctuality (incl. cancellations). If the development of complaints in certain categories heavily increases or remains on a too high unsatisfactory level, further investigations (additions to regular questionnaires to customers) could be included. This all in close cooperation with the consumer organisations. Going beyond this will imply considerable costs.</p>	
8	<p><i>Which of the contract conditions should at least be mentioned on the ticket, and how should that be regulated? See Annex I for an example.</i></p> <p>Annex 4 already provides a good overview of items that are already mentioned on rail tickets (except name of passenger and baggage information). In addition on rail tickets the point of sale is already available and the carrier(s) will be mentioned conform the CIV obligation starting 2004. This amount of information seems sufficient and is also the maximum physically possible on a ticket. Other information could be provided by other means.</p>	II / 1
9	<p><i>What is the minimum set of information that should be mentioned on a ticket, and how should that be regulated? See Annex II for an example.</i></p> <p>See reply to question 8.</p>	II / 1
10	<p><i>How can information services, especially concerning fare levels and conditions, be improved? How should the scope of services to be covered be defined, in order to ensure that the majority of passengers' needs are served without imposing unjustified costs on the undertakings concerned?</i></p> <p>Railway operators commit themselves to this. See art. 2 of the voluntary CER Passenger Charter.</p>	II / 2
11	<p><i>In the short term, how can reservation systems be made more compatible with each other in order to have EU wide reservation made possible, and how to ensure their interoperability with other modes of transport?</i></p> <p>This is a technical problem. Via UIC projects MERITS and PRIFIS this will be solved. So the railways already took initiatives for improvements, even when the costs will be high.</p>	II / 2
12	<p><i>Should there be a legal obligation on rail operators to supply information about inter-national rail of the same standard as the information they supply about national rail?</i></p>	II / 2

	<p>For international transport much more information is needed compared to national transport. Trips are longer, contain more changes, reservation is needed, situation abroad is unknown, etc. Railway operators have two functions: as operator and as distribution channel. This question regards the function as distribution channel, also for other companies. In this role of distributor commercial considerations should be leading for the question which information will be provided. The voluntary CER Passenger Charter contains a clear commitment on this topic.</p>	
13	<p><i>In the absence of accurate information on train services, should railway undertakings be obliged to provide information on the services of their direct competitors?</i></p> <p>In fact railway have two roles: 1) train operator and 2) travel agent/distributor of tickets. This deals with their agency role. It is for an agent free to distribute the tickets for everybody who agrees with the terms and conditions of the agent. It is in the interest of the train operator to sell tickets for services that are additional to his own services. If there is real competition, on the same connections, the railway could not be forced to sell tickets for the competitor. This seems to be against the principle of commercial independence.</p>	II / 2
14	<p><i>Should the railway undertakings be obliged to sell tickets for all possible connections between major stations or alternatively the most important international connections? How could this obligation be defined?</i></p> <p>Railways commit themselves to do this for all possible connections between major stations in Europe in the voluntary CER Passenger Charter.</p>	II / 3
15	<p><i>Should incumbent railway undertakings be obliged to allow new railway operators to use the existing ticketing systems in order to ease distribution of tickets?</i></p> <p>The ticket distribution system is in our opinion not an essential facility. NS is not in favour of this obligation. New railway operators could ask to use the existing systems, however only in accepting existing costs and conditions and mutual provisions to their distribution systems.</p>	II / 3
16	<p><i>What could be done at EU level in order to ensure that also as regards fare levels for cross-border rail, these are in line with fare levels for a similar distance within one country?</i></p>	II / 3

	<p>This question hurts the principle of commercial independence heavily. In principle there is no relation between fares and distance needed. EU legislation on fares is unacceptable. Legislation will restrict the possibilities for good entrepreneurship: i.e. yield marketing, take into account competitive position to other modes, etc.</p> <p>The fact that national fares are sometimes relative low often has to do with the public service requirements regarding fares for national traffic. This is accompanied with public compensation that are unknown for international passenger services.</p>	
17	<p><i>Do you agree with the proposal to oblige railway undertakings to develop public quality standards for international services geared at the specific services applicable?</i></p> <p>This obligation is not needed, since the railways already committed themselves on a voluntary CER Passenger Charter. The quality of services is really part of the commercial freedom. NS is surprised that the EC even suggests to come up with a regulation on this topic. Regulation is not the way forward in our opinion. NS has always supported the Commission in the liberalisation strategy; this type of regulation seems to be contradictory to liberalisation.</p>	III / 1
18	<p><i>Is the proposed list of quality standards to be made public by railway undertakings adequate?</i></p> <p>See also the reply to question 17.</p>	III / 1
19	<p><i>How should the performance of the quality standards be monitored?</i></p> <p>See reply to question 7</p>	III / 1
20	<p><i>Should railway undertakings develop contingency plans in case of major service disruptions? And if so, what should they cover?</i></p> <p>Should be left to commerce. Only legislation on safety-issues, etc. seems to be reasonable. Nevertheless, be convinced that NS has contingency plans in case of major service disruptions.</p>	III / 1
21	<p><i>Should there be European quality and reliability standards for international rail services as in the other sectors?</i></p> <p>See reply to question 17. The approach of the voluntary CER Passenger Charter is preferred.</p>	III / 1
22	<p><i>Do you agree with the proposal to involve associations representing PRMs in consultation procedures to enable an</i></p>	III / 2

	<p><i>improvement of the shortcomings mentioned above?</i></p> <p>Yes.</p>	
23	<p><i>Do you agree with the 3 proposals mentioned above, and should those be regulated in a Regulation?</i></p> <p>Only to question 22 the answer is yes. In general NS would like to focus on a constructive and transparent consultation process with consumer organisations. It would be better to give the railway operators and the consumer organisations a chance to develop improvement in the quality of services in international passenger transport.</p>	III / 2
24	<p><i>Do you agree with a mandatory impact assessment for PRMs of any modification proposed for rolling stock or stations?</i></p> <p>This will be included in the framework of interoperability (TSI on access of rail services to PRM) and is already available in UIC Leaflet 140.</p>	III / 2
25	<p><i>Should railway undertakings be obliged to carry bicycles on international journeys or should they merely concentrate on developing facilities for bike rental at the major stations (and allowing bikes to be returned in another station)?</i></p> <p>No, whether railways would like to deal with bike transport and/or services depends on the economic viability, the marketing strategy, etc. For NS this question is not a public question but a commercial question. In general the transport of bikes requires a lot of space in trains, the services will be used in particular in holiday periods: this implies that the costs of such a services is very high. Fares for such a service based on costs will be very high and not commercial viable.</p>	III / 3
26	<p><i>Should an 'accessibility assessment' for bikes be compulsory in case modifications of stations or its surroundings are planned?</i></p> <p>No, see also reply to question 25</p>	III / 3
27	<p><i>Should railway undertakings be obliged to offer registered luggage for PRMs?</i></p> <p>No, for luggage more or less the same as for bicycles holds. So see also reply on question 25.</p>	III / 4
28	<p><i>Should railway undertakings be obliged to have a safe or secured area for the transport of luggage in long distance trains?</i></p> <p>No, see reply to question 27.</p>	III / 4

29	<p><i>Should the issues raised in this paragraph, such as noise levels, smoking, cleaning of trains be part of a Regulation or a Quality Charter to be developed by the railway undertakings?</i></p> <p>These issues could be part of voluntary quality charter.</p>	III / 5
30	<p><i>Should a public security analysis be mandatory if plans are drawn up to modify or restructure stations and what should be the consequence? Should initiatives, such as the improvement of the co-operation with law enforcement services, be taken under the Justice and Internal Affairs pillar (third pillar)?</i></p> <p>Here in anyway is a major relationship with national transport and national laws. In general the railway can imagine EU legislation on public security, however it is questionable whether this topic belongs to the competence of the EU or to the Member States.</p>	III / 6
31	<p><i>Which are the measures to step-up prevention of security infringements? What are measures to improve the possibility to act in case of infringement occur (e.g. are there any measure to improve security such as possibly an emergency voice contact between passengers and on-board staff to be required for all services?).</i></p> <p>See reply to question 30</p>	III / 6
32	<p><i>Should there be a mutually recognised standardised form for reports of theft and other petty crime and/or a shortened procedure for victims to report this type of crime?</i></p> <p>Should be left to subsidiarity of the Member States.</p>	III / 6
33	<p><i>Is any legislative action necessary to improve intermodality between rail and other modes of transport? If yes, what actions in particular?</i></p> <p>In principle NS shares this ambition with the Commission. However there are a lot of cost/benefit question to achieve acceptable results in this field. In general this topic also should be left to commerce. However, this could be a topic for ongoing discussion to explore possibilities, challenges and barriers.</p>	III / 7
34	<p><i>Should a one-stop shop for complaint handling in relation to international services be obligatory for railway undertakings?</i></p> <p>At the moment almost all railway operators have a kind of one-stop-shop. Passengers submitting complaints for a part of a trip sold by NS will be served by NS whatever railway</p>	IV / 1

	<p>operator is involved with the complaint. Complaint handling should be treated in a proper, transparent way. NS is ready to discuss improvements. A regulation on this point seems a little bit too much.</p> <p>If the Commission considers a one-stop-shop as an EU centre for complaints, NS could not see any added value beyond the existing practice. An EU approach will include more bureaucracy, less direct impact on the railway operators, etc.</p>	
35	<p><i>Should railway undertakings be obliged to publish analyses of the complaints, such as the number of complaints, broken down by category and service, and the average time to handle a complaint? Should the results of these analyses be monitored and discussed with passenger organisations?</i></p> <p>Railway operators should not be obliged to do so. However they already committed themselves to do so in the voluntary CER Passenger Charter.</p>	IV / 1
36	<p><i>Is 4 weeks a reasonable time limit to answer complaints?</i></p> <p>Yes.</p>	IV / 1
37	<p><i>For points where tickets are sold or distributed on behalf of railway undertakings, should these points also handle complaints, which are the results of a situation beyond the control of the distributor? Or should they be referred directly to the railway undertaking?</i></p> <p>In the voluntary CER Passenger Charter railway operators commit themselves that there will be fast and clear procedure for complaint handling. This will imply that we provide the customer with a unique address/channel to which he/she can submit the complaint. This point will take care to deal with the complaint.</p>	IV / 1
38	<p><i>What language regime should be applied for complaint handling? Should the official languages of the countries where the trip has taken place determine the language used, in case a ticket was purchased in another country than where the trip was undertaken? What should be the regime for users of cards like the Eurail or Interrail card?</i></p> <p>See voluntary CER Passenger Charter article 7.</p>	IV / 1
39	<p><i>Could representative consumer bodies have a role in taking up individual complaints?</i></p> <p>Differs from country to country. In NL they don't have a role and we would like to keep it this way. They can provide their</p>	IV / 1

	members assistance, but not replace a mediator in the opinion of NS.	
40	<p><i>Should an out-of-court dispute settlement procedure according to the principles of Recommendations of the Commission (98/257/CE and 2001/310/CE) be sufficient, or should there be additional requirements, such as the creation of a mediator within railway undertakings to review replies to complaints in case the plaintiff is not satisfied?</i></p> <p>The first mentioned procedure seems to be sufficient. Other possibilities are open and left to subsidiarity. E.g. in the Netherlands we have a 'Geschillencommissie' (Commission to deal with disputes) which is really an appropriate solution. To organise a mediation function within the railway seems to NS not to combine with the requirement of independence.</p>	IV / 2
41	<p><i>If the passenger wants to file a lawsuit, where should he be able to do that? Where the case/accident happened, where he bought the ticket, the origin and destination of the journey, the country with a changeover in the journey?</i></p> <p>This is arranged in the terms and conditions of CIT, conform the CIV</p>	IV / 3
42	<p><i>What language regime should be applicable to this?</i></p> <p>See reply to question 41.</p>	IV / 3
43	<p><i>Are there reasons for a higher upper limit of the liability of railway undertakings or should it not be limited at all? Should there be a common upper limit for the EU?</i></p> <p>The question of liability has been dealt with in the CIV. NS doesn't see a job for the EU on this field beyond what has been done in the CIV.</p>	IV / 4
44	<p><i>Should there be a strict liability regime, like in the air transport sector?</i></p> <p>This is provided in the CIV, see also reply to question 43</p>	IV / 4
45	<p><i>Mandatory insurance of railway undertakings would help the passengers practically in pursuing their claim. Are any procedural improvements of this kind necessary?</i></p> <p>Insurance policy is part of the business policy of the railway operator.</p>	IV / 4
46	<p><i>Should there be an EU-wide approach in relation to minimum requirements regarding refund policy?</i></p> <p>Refund policy for unused tickets is part of the commercial strategy of RU's. E.g. some tickets are refundable, other are</p>	IV / 5

	refundable under certain conditions, other are not refundable. The later one will have a lower fare, etc. In addition also the CIV regulates this matter.	
47	<p><i>Do you agree with the principle to reimburse passengers for consequential damage in case of delays, unless the railway undertaking can prove it is not responsible?</i></p> <p>No. Consequential damage could not be the responsibility of the railways. The consequences of trips are not known, are not part of the contract, etc. If the EU proceeds on this topic it will imply huge increases in fares.</p>	IV / 6
48	<p><i>Do you agree on the proposal for compensation payments for delays? What would be a reasonable minimum compensation payment in the form of reimbursed tickets for late and cancelled train services?</i></p> <p>In the voluntary CER Passenger Charter railway operators state there will be an appropriate compensation. The content of 'appropriate' is part of the marketing strategy and could differ per ticket type.</p>	IV / 6
49	<p><i>Should all passengers have the right for compensation of fares in case of delays or could this condition be limited to a certain number of tickets with a possible different price?</i></p> <p>See reply to question 48.</p>	IV / 6
50	<p><i>Should there be common rules at EU level, which determine the surcharge to be paid in cases of travel without a valid ticket? Should there be a distinction between travel without a valid ticket, and without a ticket at all?</i></p> <p>The policy on how to deal with passengers that, against the rules, have no valid ticket, is a commercial one. Information about this policy is needed.</p>	V / 1
51	<p><i>Should train staff be given a limited law enforcement authority in order to safeguard safety and security on board of international services as well as the punctuality of the service or do the existing, national provisions suffice?</i></p> <p>The authority given to train staff regarding safety and security is part of the policy of the Member States. Regarding railway safety NS looks forward for the implementation of the safety directive from the second railway package. Regarding security this is heavily related to the national security policy. and it looks like that this should be left to subsidiarity.</p>	V / 1

52	<p><i>Should there be common rules at EU level to deny a passenger the right to board a train or to have access to a station, if that passenger might endanger safety and or security on board of international services?</i></p> <p>See terms and conditions CIT. See EU railway safety regulation.</p>	v / 2
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