

## 3 December 2009 – Entry into force of Regulation 1371/2007 on rail passengers' rights

### "Railway passengers in the EU have new rights as from today"

#### Summary of EU legal provisions on rail passenger rights

##### 1. Completing the passengers' rights' spectrum

After the regulations enforcing the air passengers' rights<sup>1</sup>, the European Union now also enhances protection regarding railway passengers with Regulation 1371/2007<sup>2</sup> entering into force today.

This Regulation constitutes a further step towards the implementation of the objectives set under the **Communication from the Commission "Strengthening passenger rights within the European Union"**, of 16 February 2005<sup>3</sup>.

The protection of passengers within the whole European transport system will be completed once the European Parliament and the Council will finally adopt passenger rights legislation for bus and coach transport<sup>4</sup> as well as for maritime and inland waterways transport<sup>5</sup> for which the Commission made specific proposals on 4 December 2008 to strengthen.

##### 2. A single set of basic rights for a single market

The third railway package legislation of 2007, will on the one hand open the market for international passengers rail transport from 1 January 2010<sup>6</sup>, and on the other hand - under the so-called **Public Service Regulation<sup>7</sup>, also entering into force today** - better define the legal

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<sup>1</sup> Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents; Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 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 repealing Regulation (EEC) No 295/91; Regulation (EC) no 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.

<sup>2</sup> Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations.

<sup>3</sup> Communication from the Commission to the European Parliament and the Council "Strengthening passenger rights within the European Union" [COM(2005) 46 final - not published in the Official Journal].

<sup>4</sup> Proposal for a Regulation on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible [COM(2008)817].

<sup>5</sup> Proposal for a Regulation concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws [COM(2008)816].

<sup>6</sup> Directive (EC) 2007/58 of the European Parliament and of the Council, of 23 October 2007, amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.

<sup>7</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road, and repealing Council Regulations (EEC) No 1191/69 and (EEC) No 1107/70.

and financial framework for awarding public service contracts related to inland transport in order to ensure citizens 'quality for money' for public transport services all over Europe.

In such a context, where a single market is emerging, measures to promote users' rights are essential to grant the consumer adequate protection on opening markets and the rail industry a level playing field and thus take full advantage of the benefits of the integrated market for rail transport services.

### **3. Basic rights across all Member States**

Under the Rail Passengers Regulation 1371/2007, common minimum rules will apply throughout Europe, for instance in case of delays or cancellation of trains. In addition, since rights are meaningless unless passengers are aware of them and know how to pursue them, the railway companies are obliged to inform passengers of their rights and obligations and to establish complaint boards.

However, Member States may, on a transparent and non-discriminatory basis, grant an **exemption** on their purely **domestic** railway traffic for a period of no longer than five years, which may be renewed twice for a maximum of five years on each occasion (making a maximum of 15 years); a permanent derogation for **urban, suburban and regional** services; a derogation for a period of five years, which may be renewed, in case of **rail services a significant part of which is operated outside the Community**.

Nonetheless, certain provisions of the Regulation will be mandatory for the railway traffic within the European Union: rules on availability of tickets, through tickets and reservations; liability of railway undertakings for passengers and their luggage; minimum level of insurance for railway companies; right to transport of passengers with reduced mobility; information on accessibility of rail services; and obligations on passengers' personal security.

Hence, through such a combination of core rights and possible national exemptions, the Regulation manages to reconcile the objective of granting basic rights to passengers across the EU with the reality of heterogeneous conditions of railway services in the Member States.

### **4. Helping rail passengers with reduced mobility**

The EU rail passenger rights legislation will ensure that passengers with reduced mobility can travel in a way that is comparable to other citizens.

Railway companies and station managers have to establish **non-discriminatory access rules** for the transport of disabled persons and persons with reduced mobility, including for example the elderly.

Railway companies, ticket vendors and tour operators shall also **inform on the accessibility** of rail services, on the access conditions and its reasons on request.

Railway companies shall provide disabled persons and persons with reduced mobility with **assistance on board a train and during boarding and disembarking from a train free of charge**. Assistance is provided on condition that the railway company, the station manager, the

ticket vendor or the tour operator with which the ticket was purchased is notified of the person's need for such assistance **at least 48 hours** before the assistance is needed.

The disabled person or the person with reduced mobility should present him or herself at the designated point

- **at the time stipulated (by the railway undertaking or station manager providing assistance) which shall not be more than 60 minutes** before published departure time or
- the time at which all passengers are asked to check in, or if no time is stipulated, **at least 30 minutes** before the published departure time or the time for check in.

There is **no financial limit in case of liability of the railway undertaking** for loss or damages to mobility equipment: in this case, the liability covers the total or partial loss of, or damage to, mobility equipment or other specific equipment used by disabled persons or persons with reduced mobility.

#### **4. Other rail passengers' rights under the Regulation**

Overview of the **new rights** under the Regulation:

##### **(a) - Information**

Starting December 2009, rail passengers in Europe have to be informed comprehensively and in the most appropriate format. Particular attention shall be paid in this regard to the needs of people with auditory and/or visual impairment. Such information encompasses:

##### **Pre-journey information:**

- Which general conditions apply to the contract?
- What is the fastest trip and which has the lowest fares?
- Are there facilities for disabled persons and persons with reduced mobility as well as passengers with bicycles while entering the train and on board?
- Are there seats in smoking and non-smoking compartments, in first and second class as well as couchettes and sleeping carriages?
- Will the journey be disrupted or delayed?
- What kinds of services are offered on board?
- Where and how can I reclaim lost luggage and submit my complaint?

##### **Information during the journey:**

- Which services are offered on board?
- Which is the next station?
- Is the train delayed and if yes, when it is expected to arrive?
- Which main connecting services are available?
- What do I have to take into account in terms of security issues?

##### **(b) – Bicycle carriage**

The railway companies shall enable passengers to bring their **bicycles** on to any train, if they are easy to handle, if it does not adversely affect the specific rail service, and if the rolling-stock so permits.

##### **(c) - Delays and cancellations**

**Once a delay of at least 60 minutes is foreseeable**, the passenger shall **immediately** have the choice between:

- (i) **Reimbursement** of the full cost of the ticket or for the part of the journey not made and for the part already made if the journey is no longer serving any purpose in relation to the passenger's original travel plan. Furthermore, in this case the passenger is eligible for a return service to the first point of departure at the earliest opportunity.

(ii) **Continuation of the journey or re-routing** under comparable conditions to the final destination at the earliest opportunity or to the final destination at a later date at the passenger's convenience.

**In case the passenger continues his or her journey** despite a delay, he or she is entitled to **compensation**.

The minimum compensation for delays is:

25 % of the ticket price for a delay of 60 to 119 minutes,

50 % of the ticket price for a delay of at least 120 minutes.

The compensation of the ticket price is paid within one month after the submission of the request for compensation at the latest. The traveller is not entitled to compensation under certain conditions, if for instance the cancellation, delay or missed connection has been caused by circumstances which the carrier could not avoid, in spite of having taken all due care required in the particular case.

The company has the duty to inform travellers of delays and cancellations of trains as soon as such information is available.

In case of any delay of at least 60 minutes, passengers have to be offered free **meals and refreshments** in reasonable relation to the waiting time.

Moreover, the railway company has to offer **free hotel or other accommodation** as well as **the transport between the railway station and place of accommodation**, in cases where a stay of one or more nights becomes necessary due to the delay.

If the train is blocked on the track, the railway company has to arrange **transport from the train to the railway station, to an alternative departure point or to the final destination of the service**, where and when physically possible.

If the railway service cannot be continued anymore, the company has to organise as soon as possible **alternative transport services**.

#### **(d) - Advance payments**

If a passenger is killed or injured during a train accident, the train company is required, **within 15 days**, to **advance payments** that meet the costs for the immediate needs of the affected passenger or of his or her dependants and that shall be at least 21,000 Euro in the event of death of the passenger.

#### **5. Enabling rail passengers to complain**

Rail companies are obliged to set up a **complaint handling mechanism** for the rights and obligations covered by the Regulation and to make the contact details and working language(s) of such a complaint body widely known to passengers.

The complaints have to be answered within one month or in justified cases the passenger has to be informed by what date within a period of less than three months from the date of the complaint a reply can be expected.

#### **6. National Enforcement Bodies (NEBs)**

In each Member State there will be an independent body (the "**NEB**"), responsible for the enforcement of the Regulation, to whom passengers may complain, and which will ensure that rail travelers fully enjoy the rights provided under the Regulation, monitoring the compliance of

railway undertakings, station managers and ticket vendors with its provisions, and applying penalties, where appropriate.

## **7. Extension to domestic and urban, suburban and regional rail passengers' transport services of the passengers' rights and obligations provided under the COTIF Convention for international rail passengers' transport services.**

- Strengthening of the rights of rail passengers builds on the existing system of international law on this subject contained in Appendix A, "Uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV)" to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention concerning International Carriage by Rail of 3 June 1999 (1999 Protocol).

- As a matter of fact, except where Member States decided to opt for derogations, the Regulation extends the scope of this Convention, which makes reference only to international railway services, to domestic and urban, suburban and regional rail passengers' transport services, provided by one or more undertakings licensed in accordance with Directive 95/18/EC.

- Basically<sup>8</sup>, the general rules and passengers' rights and obligation which are contained in the COTIF Convention and which form the object of such "extension" are the following:

### **A. Rules concerning the conditions/general terms of reference (including conclusion and performance) of the contract of carriage**

#### **1.1 In general**

- Definition of the transport contract and definition of the ticket as *prima facie* evidence of the conclusion and contents of the contract;

- Tickets: form and mandatory content, transferability of the ticket, possibility of issuing tickets in the form of electronic data registration;

- Obligation of advance payment of the transport service by the passengers and conditions for the refund of the ticket price;

- Passenger's obligation to be in possession of a valid ticket during the journey, and obligation to pay a surcharge in case of omission to show a valid ticket on request and discontinuation of journey in case of refusal of paying the surcharge; other cases of exclusion from transport service (i.e., danger to safety, inconvenience to other passengers);

- Passenger's obligation to comply with customs and other administrative formalities;

- Obligation on the rail undertaking to certify on the ticket cancellations or missed connections.

#### **1.2 Conditions relating to the carriage of hand luggage, animals, registered luggage, vehicles**

- Common provisions: acceptable hand luggage and animals, obligation to carry dangerous goods in compliance with the rules concerning the Carriage of Dangerous Goods by Rail (RID);

- Carrier's right to examine the articles and animals carried and to impose payment of the inspection costs to the passenger in case of non compliance with the contractual conditions;

- Passenger's obligation to comply with customs and other administrative formalities;

- Passenger's obligation to supervise his own hand luggage and animals;

- Consignment of registered luggage and obligation to provide a luggage registration voucher, which is *prima facie* evidence of the carriage obligation; presumption that the luggage is in

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<sup>8</sup> The summary/"list" provided is neither exhaustive nor complete. Reference is made to Annex I to the Regulation 1371/2007.

good condition and corresponds to the entries on the luggage registration voucher; rules on the mandatory content of the registration voucher;

- Registration of luggage on production/presentation of a valid ticket; passenger's obligation to pay at the moment of the registration the charge for the carriage of the registered luggage; passenger's obligation to indicate on each piece of registered luggage his name and address and place of destination; passenger's right to dispose of the registered luggage upon presentation of the luggage registration voucher. The holder of the luggage registration voucher may refuse to accept the luggage if the carrier does not comply with his request to carry out an examination of the registered luggage in order to ascertain the alleged damage;
- Carriage of vehicles: the contractual obligations relating to the carriage of vehicles must be established by a carriage voucher issued to the passenger; mandatory content of the carriage voucher.

**B. Rules on: 1. railway undertaking liability for: (a) death or personal injuries to passengers; (b) delays, cancellations, missed connections; (c) damages to hand luggage, animals, registered luggage, and vehicles; 2. assertion of rights by the passenger; 3. relations between carriers.**

### **1. Railway undertaking liability**

#### **(a) Liability in case of death of, or personal injury to, passengers**

- The carrier shall be liable for the loss or damage resulting from the death of, personal injuries to, or any other physical or mental harm to, a passenger, caused by an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from railway vehicles.

- The carrier shall be relieved of this liability:

(a) if the accident has been caused by circumstances not connected with the operation of the railway or by the behaviour of a third party, which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent. Another undertaking using the same railway infrastructure shall not be considered as a third party;

(b) to the extent that the accident is due to the fault of the passenger.

- If carriage governed by a single contract of carriage is performed by successive carriers, the carrier bound pursuant to the contract of carriage to provide the service of carriage in the course of which the accident happened shall be liable in case of death of and personal injuries to, passengers.

- In case of death of the passenger the damages shall comprise any necessary costs following the death, in particular those of transport of the body and the funeral expenses.

- If, through the death of the passenger, persons whom he had a legal duty to maintain are deprived of their support, such persons shall also be compensated for that loss.

- In case of personal injury or any other physical or mental harm to the passenger the damages shall comprise:

(a) any necessary costs, in particular those of treatment and of transport;

(b) compensation for financial loss, due to total or partial incapacity to work, or to increased needs.

- The amount of damages to be awarded shall be determined in accordance with national law. However, the upper limit per passenger shall be set at 175 000 units of account, where national law provides for an upper limit of less than that amount.

### **(b) Liability in case of cancellation, late running of trains or missed connections**

- The carrier shall be liable to the passenger for loss or damage resulting from the fact that, by reason of cancellation, the late running of a train or a missed connection, his journey cannot be continued the same day.
- The damages shall comprise the reasonable costs of accommodation as well as the reasonable costs occasioned by having to notify persons expecting the passenger.
- The carrier shall be relieved of this liability, when the cancellation, late running or missed connection is attributable to one of the following causes:
  - (a) circumstances not connected with the operation of the railway or the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
  - (b) fault on the part of the passenger.

### **(c) Liability in case of damages to hand luggage, animals, registered luggage, vehicles**

- In case of death of, or personal injury to, passengers the carrier shall also be liable for the loss or damage resulting from the total or partial loss of, or damage to, articles which the passenger had on him or with him as **hand luggage**. In such case, compensation up to a limit of 1 400 units of account per passenger shall be provided by the carrier.
- In other cases, the carrier shall not be liable for the total or partial loss of, or damage to, articles, hand luggage or animals the supervision of which is the responsibility of the passenger, unless this loss or damage is caused by the fault of the carrier.
- The carrier shall be liable for loss or damage resulting from the total or partial loss of, or damage to, registered luggage.
- The carrier shall be relieved of this liability to the extent that the loss, damage or delay in delivery was caused by a fault of the passenger and to the extent that the loss or damage arises from the special risks inherent in one or more of the following circumstances:
  - (a) the absence or inadequacy of packing;
  - (b) the special nature of the luggage;
  - (c) the consignment as luggage of articles not acceptable for carriage.
- If carriage governed by a single contract is performed by several successive carriers, each carrier, by the very act of taking over the luggage with the luggage registration voucher or the vehicle with the carriage voucher, shall be responsible for the carriage over the entire route up to delivery.
- Where the carrier has entrusted the performance of the carriage, in whole or in part, to a substitute carrier, the carrier shall nevertheless remain liable in respect of the entire carriage.
- In case of total or partial loss of **registered luggage**, the carrier must pay, to the exclusion of all other damages:
  - (a) if the amount of the loss or damage suffered is proved, compensation equal to that proved amount, but not exceeding 80 units of account per kilogram of gross mass short or 1 200 units of account per item of luggage;
  - (b) if the amount of the loss or damage suffered is not established, liquidated damages of 20 units of account per kilogram of gross mass missing or 300 units of account per item of luggage.
- In case of damage to registered luggage, the carrier must pay compensation equivalent to the loss in value of the luggage.
- In case of **delay in delivery of registered luggage**, the carrier must pay in respect of each whole period of 24 hours after delivery has been requested, but subject to a maximum of 14 days:

(a) compensation equal to the amount of the loss or damage proven by the passenger, up to a maximum of 0,80 units of account per kilogram of gross mass of the luggage or 14 units of account per item of luggage, delivered late;

(b) if the passenger can not provide the proof of the loss or damage, compensation will amount to 0,14 units of account per kilogram of gross mass of the luggage or 2,80 units of account per item of luggage.

- **Delays in loading a vehicle, total or partial loss of the vehicle:** in case of delay in loading or in delivering a vehicle for a reason attributable to the carrier, the carrier shall pay compensation not exceeding the amount of the carriage charge.

- If, in case of delay in loading for a reason attributable to the carrier, the passenger chooses not to proceed with the contract of carriage, the carriage charge shall be refunded to him.

- In case of total or partial loss of a vehicle the compensation payable to the passenger shall be calculated on the basis of the usual value of the vehicle, but up to a maximum of 8 000 units of account.

## **2. The assertion of rights by the passenger: claims and right to action**

- **Ascertainment of partial loss or damage:** When partial loss of, or damage to, an article carried in the charge of the carrier (luggage, vehicles) is discovered or presumed, the carrier must without delay, and if possible in the presence of the passenger, draw up a report stating the condition of the article, the extent of the loss or damage, its cause and the time of its occurrence. A copy of such report must be supplied free of charge to the passenger.

**Claims:** as a rule, claims relating to the liability of the carrier in case of death of, or personal injury to, passengers must be addressed in writing to the carrier against whom an action may be brought.

**Judicial actions:** As a rule, actions based on the liability of the carrier in case of death of, or personal injury to, passengers may only be brought against the carrier who is bound pursuant to the contract of carriage to provide the service of carriage in the course of which the accident happened.

- As a rule, any right of action based on the liability of the carrier in case of death of, or personal injury to, passengers shall be extinguished if notice of the accident is not given by the person entitled within 12 months of his becoming aware of the loss or damage to one of the carriers to whom a claim may be addressed.

- The period of limitation of actions for damages based on the liability of the carrier in case of death of, or personal injury to, passengers shall be:

(a) in case of action brought by a passenger, three years from the day after the accident;

(b) as a rule, in case of other persons entitled to bring the action, three years from the day after the death of the passenger, subject to a maximum of five years from the day after the accident.

The suspension and interruption of periods of limitation shall be governed by national law.

## **3. Relations between carriers**

- Any carrier who has collected a carriage charge must pay to the carriers concerned their respective shares of such a charge.

- A carrier who has paid compensation shall have a right of recourse against the carriers who have taken part in the carriage. In particular, when the loss or damage has been caused by several carriers, each shall be liable for the loss or damage he has caused; if such distinction is impossible, the compensation shall be apportioned between the carriers.

## **For further information**

More information on the rail passengers' rights can be found at:

[http://ec.europa.eu/transport/passengers/rail/rail\\_en.htm](http://ec.europa.eu/transport/passengers/rail/rail_en.htm)