

MAKE RAIL TRAVEL ATTRACTIVE FOR CONSUMERS – STRENGTHEN PASSENGER RIGHTS

Position paper by the Federation of German Consumer
Organisations on the European Commission's proposal on
rail passengers' rights and obligations

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Editorial Information

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I. INTRODUCTION

Regulation (EC) No 1371/2007 on rail passengers' rights and obligations was agreed in 2007 and came into effect in 2009. It provides a binding legal framework and a number of benefits for European consumers. Unlike European air passengers, however, European rail passengers do not enjoy the same rights throughout the European Union, as most of the Member States have made use of exemptions. Consumer protection has thus become somewhat patchy.

From a consumer perspective, the attractiveness of rail travel is primarily determined by qualitative factors such as punctuality. The Passenger Rights Regulation was thus supposed to incentivise railway undertakings to increase their efforts to provide punctual services. The revision of the Passenger Rights Regulation offers an opportunity to increase the quality of rail travel for consumers. It should therefore include a provision allowing passengers to claim a refund of their fare after a 30 minute delay instead of 60 minutes.

A new version of the Regulation must build on the existing one and result in a further strengthening of passenger rights. However, the Commission's Regulation proposal on the rights and obligations of rail passengers published on 27 September 2017 only goes part way towards fulfilling this requirement. The Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband – vzbv) believes the proposal needs to be improved on a number of points to prevent any reduction in the level of consumer protection.

II. FUNDAMENTAL CONSIDERATIONS

1. ARTICLE 17: NO EXEMPTION FOR TICKET PRICE REFUNDS

vzbv opposes the inclusion of an exemption for ticket price refunds in the event of severe weather conditions and natural disasters (*force majeure* exemption) as it believes this represents a weakening of passenger protection. The proposal fundamentally contradicts the Regulation's aims by reducing the level of consumer protection and introducing legal uncertainty. vzbv's specific criticisms are as follows:

- ❖ The terms 'severe weather conditions' and 'major natural disasters' are insufficiently defined and leave too much room for interpretation. There is a risk that the railway undertakings will take advantage of these exemptions when they are not entitled to do so, leaving it up to the customer to prove that the facts do not support the use of the exemption. This amounts to a reversal in the burden of proof for the customer, placing disproportionately high costs and financial risks upon passengers. Not only might they have to hire a lawyer and initiate court proceedings for a limited compensation sum in disputed cases, but they will lose even more faith in the idea of a protective state and a fair regulatory system. Even though consumers in many EU Member States have access to independent arbitration, this option will be of no assistance if regulations that are hostile to consumers are put in place
- ❖ The inclusion of a *force majeure* exemption would bring European railway undertakings a relatively small financial benefit. However, the savings calculated in the impact assessment for the Regulation proposal (€562 million over 15 years, spread across all European railway undertakings) do not take into account the consequential costs that the companies would be likely to face as a result of legal action being brought against them by passengers. The unclear legal situation for travellers and the need for rulings on a case-by-case basis will lead to increased numbers of court

cases, with corresponding costs for the companies. The *force majeure* exemption could even end up costing them more.

- ❖ The occurrence of ‘severe weather conditions’ and ‘natural disasters’ in one part of the railway undertaking’s network may also lead to changed operating conditions in other areas not originally affected by these adverse circumstances. This makes it virtually impossible for customers to prove whether train cancellations or delays are a direct consequence of the *force majeure* or not.
- ❖ The impact of bad weather events on rail transport is heavily dependent on the condition and maintenance of the rail infrastructure and its immediate environs. If, for example, essential maintenance works are cancelled or scaled back in order to save costs, this may have a direct impact on passengers. The failure of a railway undertaking to carry out a systematic programme of tree cutting would be indirectly rewarded.
- ❖ One argument for the introduction of the *force majeure* exemption for rail services is the supposed advantage enjoyed by airlines, where a similar provision already applies. However, this ignores the fact that, unlike airlines, train companies do not have to pay any compensation beyond the refund of the fare price. So there can be no question of train companies being placed at a disadvantage. Moreover, in 2013¹, the European Court of Justice ruled that different levels of customer protection could be created for the different transport sectors because they are not identical as regards the manner in which they operate, their accessibility and the distribution of their networks.

2. ARTICLE 10: MAKE THE INTRODUCTION OF THROUGH-TICKETS MANDATORY

Passengers care about the journey as a whole, not the activities and the responsibilities of the individual transport companies that form each part of that journey. For this reason, simple, direct and transparent access to tickets for the whole journey from a single source is particularly important. However, there is currently no obligation to issue through-tickets, which means there is a significant regulatory gap. vzbv specifically demands:

- ❖ Railway undertakings should be required to offer through-tickets for both national and international journeys. The ‘all possible efforts’ clause proposed by the European Commission is not far-reaching enough. A voluntary commitment will do nothing to remedy the current deficit.
- ❖ The lack of through-tickets also causes problems for passengers when it comes to asserting their passenger rights, as the rights only apply to specific, separately ticketed segments of the journey. A representative survey² conducted by vzbv showed that more than two thirds of passengers would like end-to-end protection for the whole journey, irrespective of the number of railway undertakings used or tickets issued. The Commission’s proposal in Article 10 (6) that railway undertakings could be released from their obligation to pay compensation provided they explicitly inform

¹ Case C 509/11 ÖBB-Personenverkehr

² Question: “For international train journeys, passengers often are not offered through-tickets for the whole journey, but instead are sold individual tickets for each segment, sometimes by different train companies. Passengers’ rights to compensation for delays and cancellations therefore do not apply to the whole journey. Do you think this is right in principle, or should passenger rights for delays and cancellations always apply to the whole journey?” A total of 67 percent of respondents said “no, passenger rights should apply to the whole journey”, 23 percent said “yes, the rule is basically correct” and 10 percent didn’t know or didn’t respond. Survey: 1,001 people, representative random sample.

passengers of this in writing represents a further weakening of consumer protection. This illustrates the absurdity of demands for voluntary through-tickets.

3. ARTICLE 9: INFORMATION BEFORE AND DURING THE JOURNEY

Timely, complete and accurate information is essential for consumers before and during their journey. Railway undertakings and station operators must be required to provide this information to all third-party providers openly and in real time so that they can in turn inform their customers. The proposal for the recast of the Regulation needs to be worded more precisely. It must also contain specifications for systematic monitoring, implementation and sanctions in the event of any breach.

4. ARTICLE 9 AND ARTICLE 10: CONSUMER-FRIENDLY TICKET BOOKING

Proprietary information and booking channels that exclude competitors and represent a major obstacle to the issuing of through-tickets for journeys involving several different railway undertakings must be eliminated. There must be no distinction between online-based ticket sales and sales in (company-owned) ticket offices. Appropriate IT interfaces and data formats must be developed that make it possible for passengers to obtain information and book travel on different networks and across regional and national borders. Passengers must be able to buy all tickets easily from a single source.

5. ARTICLE 17 (2): RIGHTS FOR SEASON TICKET OR PASS HOLDERS

vzbv strongly welcomes the proposal that would allow holders of passes or season tickets who suffer recurrent delays of less than 60 minutes to add up the delays and be compensated in accordance with the railway undertaking's compensation arrangements. Unfortunately, the Commission's proposal does not include any detailed provisions on how passengers can prove such delays to the company. Specifications are required to guarantee consumers a standardised, transparent and consumer-friendly procedure.

6. ARTICLE 28: MAKE THE PROCESSING OF COMPENSATION CLAIMS MORE CONSUMER-FRIENDLY

With increasing digitalisation and the growing importance of online tickets, an online-based procedure must be developed for processing compensation claims. The Regulation proposal must take account of this development and create a binding framework. In addition, the information and documents concerning compensation claims provided in each Member State must be available in the country's official language and – as a minimum – in English, as well as in the languages of the neighbouring countries.

7. ARTICLES 31–33: NATIONAL ENFORCEMENT BODIES

The requirement to designate national enforcement bodies is welcomed in principle, but in some cases these bodies do not have the necessary authority and powers at national level. vzbv believes the Regulation needs to be fleshed out in this regard so that the mandatory national enforcement bodies envisaged in Article 31 are able to help all passengers, regardless of interpretation and enforcement difficulties at national level.

8. ARTICLE 35: SANCTIONS

The provisions for the protection of passenger rights can only be effective if failings on the part of the railway undertakings, station and infrastructure operators, and ticket vendors are properly punished. For this reason, there must be more severe penalties for breaches of the Regulation and national bodies must be required to ensure that European law is implemented effectively.